



PUBLIC FILE

A-570-891  
Scope Review  
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IA/III/IX: AA

DATE: February 15, 2005

MEMORANDUM TO: Barbara E. Tillman  
Acting Deputy Assistant Secretary  
for Import Administration

THROUGH: Wendy J. Frankel  
Office Director  
AD/CVD Operations, Office 8

FROM: Aishe Allen  
Case Analyst

RE: Antidumping Investigation: Hand Trucks and Certain Parts  
Thereof from the People's Republic of China

SUBJECT: Final Scope Ruling: Vertex International, Inc.

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**Summary**

On December 29, 2004, the Department of Commerce ("the Department") received a scope ruling request from Vertex International, Inc. ("Vertex") concerning whether certain components (i.e., vertical steel tube supports, bent steel tube handle, bent steel bag frame, and steel wire stabilizer plate) of its Garden Cart ("Cart"), if imported separately, are covered by the antidumping duty order on hand trucks and certain parts thereof ("hand trucks") from the People's Republic of China ("PRC"). See Notice of Antidumping Duty Order: Hand Trucks and Certain Parts Thereof from the People's Republic of China, 69 FR 70122 (December 2, 2004) ("the Order"). In this request, Vertex also requests the Department to determine whether the



entire Cart, when assembled, is subject to the Order. On January 21, 2005, the petitioners<sup>1</sup> submitted comments regarding Vertex's scope ruling request. In accordance with 19 CFR 351.225(k)(1), we recommend that the Department find that the Cart and its components fall within the scope of the Order.

### **Background**

The Department defined the scope of the investigation in its notice of initiation. This scope language carried forward without modification through the preliminary and final determination of sales at less than fair value and the eventual antidumping duty order:

For the purpose of this investigation, the product covered consists of hand trucks manufactured from any material, whether assembled or unassembled, complete or incomplete, suitable for any use, and certain parts thereof, namely the vertical frame, the handling area and the projecting edges or toe plate, and any combination thereof.

A complete or fully assembled hand truck is a hand-propelled barrow consisting of a vertically disposed frame having a handle or more than one handle at or near the upper section of the vertical frame; at least two wheels at or near the lower section of the vertical frame; and a horizontal projecting edge or edges, or toe plate, perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame. The projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load.

That the vertical frame can be converted from a vertical setting to a horizontal setting, then operated in that horizontal setting as a platform, is not a basis for exclusion of the hand truck from the scope of this petition. That the vertical frame, handling area, wheels, projecting edges or other parts of the hand truck can be collapsed or folded is not a basis for exclusion of the hand truck from the scope of the petition. That other wheels may be connected to the vertical frame, handling area, projecting edges, or other parts of the hand truck, in addition to the two or more wheels located at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition. Finally, that the hand truck may exhibit physical characteristics in addition to the vertical frame, the handling area, the projecting edges or toe plate, and the two wheels at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition.

Examples of names commonly used to reference hand trucks are hand truck, convertible hand truck, appliance hand truck, cylinder hand truck, bag truck, dolly, or hand trolley. They are typically imported under heading 8716.80.50.10 of the

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<sup>1</sup> The petitioners in this investigation are Gleason Industrial Products, Inc. and Precision Products, Inc.

Harmonized Tariff Schedule of the United States ("HTSUS"), although they may also be imported under heading 8716.80.50.90. Specific parts of a hand truck, namely the vertical frame, the handling area and the projecting edges or toe plate, or any combination thereof, are typically imported under heading 8716.90.50.60 of the HTSUS. Although the HTSUS subheadings are provided for convenience and for customs purposes, the Department's written description of the scope is dispositive.

Excluded from the scope are small two-wheel or four-wheel utility carts specifically designed for carrying loads like personal bags or luggage in which the frame is made from telescoping tubular material measuring less than 5/8 inch in diameter; hand trucks that use motorized operations either to move the hand truck from one location to the next or to assist in the lifting of items placed on the hand truck; vertical carriers designed specifically to transport golf bags; and wheels and tires used in the manufacture of hand trucks.

See Initiation of Antidumping Duty Investigation: Hand Trucks and Certain Parts Thereof from the People's Republic of China, 68 FR 68591 (December 9, 2003); Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Trucks and Certain Parts Thereof from the People's Republic of China, 69 FR 29509 (May 24, 2004); Notice of Final Determination of Sales at Less Than Fair Value: Hand Trucks and Certain Parts Thereof from the People's Republic of China, 69 FR 60980 (October 14, 2004); Amended Final Determination of Sales at Less Than Fair Value: Hand Trucks and Certain Parts Thereof from the People's Republic of China, 69 FR 65410 (November 12, 2004). Notice of Antidumping Duty Order: Hand Trucks and Certain Parts Thereof from the People's Republic of China, 69 FR 70122 (December 2, 2004).

### Scope Request

#### **Summary of Vertex's Scope Request**

- Vertex states that the Cart is a portable upright rack designed for the storage and transportation of various gardening tools and supplies. Vertex points out that the Cart features: 1) an upper plastic rack into which long-handled garden implements can be placed and held upright; 2) a plastic bottom rack on which these implements rest; and 3) a bag frame that extends horizontally from the upper plastic rack.
- According to Vertex, the frame is designed to support and hold a plastic or textile trash bag and the front of the frame can also be used to suspend a fabric bag with storage compartments.
- Vertex claims that individual components that can be imported are: 1) vertical steel supports; 2) a bent steel tube handle; and 3) a steel wire stabilizer plate assembly.
- Vertex notes that other components that make up the Cart are produced in the United

States. These components include the molded plastic upper and lower frame trays. Vertex asserts that the Cart cannot be assembled or used in any other way that does not include the top and bottom plastic racks. Therefore, Vertex claims that the Cart is only suitable for organizing and storing garden equipment.

- Vertex claims it only sells the Cart to customers in a “knocked-down” position and that all assembly is preformed by the individual purchaser.
- Vertex acknowledges that the U.S. Customs and Border Protection (“CBP”) has found that certain components of the Cart are classifiable within the scope of the Order under the HTSUS subheading 8716.90.50.60, as parts of other non-self-propelled vehicles.
- Vertex argues that its Cart should be categorized as a “caddy.” Vertex states that a caddy is designed for storing and transporting tools, not for transporting heavy objects over distances, and that this differentiates the Cart from other types of “hand trucks.” Vertex further argues that the scope language does not specifically address the treatment of “carts”, “garden carts”, or “caddies” within the scope definition.
- Vertex contends that all two-wheeled garden caddies have some type of stabilizer or other plate designed to keep the cart upright. The Cart’s stabilizer is composed of steel wire and does not feature a solid “plate” or surface. As such, Vertex claims that the Cart is less sturdy than even the most light-weight hand truck. Vertex also argues that while a load may be placed onto the stabilizer plate, the plate does not readily slide under a load as does the toe plate of subject hand trucks.
- Vertex also points out that the Cart’s wheels are hollow thermoset plastic wheels, connected to each other by a steel axle, and the wheels are designed for use only on soft ground surfaces. Vertex claims that these wheels could possibly shatter or separate from the axle if a heavy load were moved over rough or uneven terrain.
- Lastly, Vertex argues that the Cart is a different class or kind of merchandise than that of the subject hand trucks because of the following factors: expectations of the customer, the ultimate use of the product, channels of trade, and how the Cart is advertised and sold.

#### **Summary of the Petitioners’ Comments on Vertex’s Scope Ruling Request**

- The Petitioners state that they do not accept Vertex’s argument that a product can be excluded based on its intended use. However, Petitioners state that they do not oppose Vertex’s scope exclusion request because the Cart does not possess all the characteristics defined in the scope of investigation.
- The Petitioners state that the Department’s scope defines hand trucks as having “projecting edge or edges, or toe plate, [that] slides under a load for purposes of lifting and /or moving the load.” The Petitioners agree with Vertex that although the Cart’s

“stabilizer plate is similar to a hand truck’s toe plate, onto which items can be loaded, it does not readily slide under a load.” Therefore, the Petitioners contend that the inability of the plate to slide under a load removes it from the scope.

### Legal Framework

The Department examines scope requests in accordance with the Department’s scope regulations. See 19 CFR 351.225 (2002). On matters concerning the scope of an antidumping duty order, the Department first examines the description of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (“ITC”). See 19 CFR 351.225(k)(1). This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. See 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise are *not* dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: i) the physical characteristics of the merchandise; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; iv) the channels of trade in which the product is sold; and v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

For this case, the Department evaluated Vertex’s request in accordance with 19 CFR 351.225(k)(1) and finds that the descriptions of the product contained in the petition, the initial investigation, the determinations by the Secretary (including prior scope determinations) and the ITC are, in fact, dispositive with respect to Vertex’s Cart. Therefore, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2).

### Analysis

With respect to the instant request, we find that for the reasons outlined below, this product is within the scope of the Order.

The scope language relevant to Vertex’s scope exclusion request states that “for the purpose of this investigation, the product covered consists of hand trucks manufactured from any material, whether assembled or unassembled, complete or incomplete, suitable for any use, and certain parts thereof, namely the vertical frame, the handling area and the projecting edges or toe plate, and any combination thereof.” Excluded from the scope are “wheels and tires used in the manufacture of hand trucks.”

The structure and placement of the “complete or incomplete, suitable for any use” language in the scope indicates that these terms relate to the hand trucks manufactured from any material, whether assembled or unassembled. The fact that the Cart is sold only in the “knocked down”

position is irrelevant as the scope language states that the subject hand truck can be “complete or incomplete” in its construction.

The scope language is specific in identifying the “certain parts thereof” that are included (vertical frame, handling area, projecting edges/toe plates) and in identifying certain parts that are excluded from the scope of the investigation (wheels and tires). Additionally, even though the Cart is equipped with additional parts being the upper and lower racks designed to specifically store and organize garden equipment, we do not find that these are grounds for the automatic exclusion of the Cart from the scope of the Order because the scope of the Order states that even if the hand truck may exhibit physical characteristics in addition to the vertical frame, the handling area, the projecting edges or toe plate, and the two wheels at or near the lower section of the vertical frame, this will not be a basis for exclusion of the hand truck from the scope of the petition.

While Vertex argues that its Cart should be excluded because it is primarily used for storage and organization of gardening tools and supplies, the scope language includes hand trucks “suitable for any use.” Therefore, the Cart falls within the definition of the scope regardless of its intended use. See e.g., Memorandum to Barbara E. Tillman from Natalie Kempkey: Final Scope Ruling: LDL Imports, (January 10, 2005) at 6, where the Department previously rejected arguments based on the item’s intended use, stating that “the scope language encompasses hand trucks suitable for any use.”

Based on our analysis, we find the Cart displays the same key physical characteristics as those of the subject hand trucks.<sup>2</sup> These characteristics defined by the scope of the Order are: 1) a vertical frame; 2) a handling area; 3) two or more wheels; and 4) projecting edge(s) or toe plate.

First, when assembled the Cart displays a vertical frame supported by the upper and lower plastic racks. From pictures depicting the Cart carrying various loads,<sup>3</sup> we find that this vertical frame is capable of supporting a load in the same manner as the subject hand trucks. Second, we find that the Cart features a handling area, which Vertex describes as “bent steel tube handle.”<sup>4</sup>

Third, record evidence indicates that the Cart has “at least two wheels at or near the lower section of the vertical frame” as defined by the scope of the Order.<sup>5</sup> Vertex argues that the Cart should be excluded because the construction of the Cart’s wheels is too fragile to carry heavy loads over rough terrain. However, for the purpose of this scope request, the construction of wheels is not determinative when examining the characteristics of the scope of the Order because the scope

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<sup>2</sup> See Id.

<sup>3</sup> See Pictures of the Cart on Vertex’s website, at [www.2vertex.com](http://www.2vertex.com).

<sup>4</sup> See Vertex’s December 29, 2004, scope exclusion request, at exhibit C.

<sup>5</sup> See Vertex’s December 29, 2004, scope exclusion request, at exhibit A.

states that a hand truck should have "at least two wheels," however, it does not refer their construction. More importantly, we find that the Cart has the requisite two wheels as defined by the scope of the Order.

Additionally, we find that the Cart displays a projecting edge(s) or toe plate as defined by the scope definition. The scope defines the projecting edge(s) or toe plate as being capable of sliding "under a load for purposes of lifting and/or moving the load." The toe plate evident in the Cart's construction is composed of steel wire. This platform is not one solid plate but rather steel rods welded together. Despite this fact, we note that the Cart is able to support a load. Although Vertex asserts that the Cart's toe plate is "too thick to be slid under a load conveniently,"<sup>6</sup> and the Petitioners assert that the toe plate's inability to "slide" under a load implies that the Cart does not fit in the definition of the scope of the Order<sup>7</sup>, neither party provided any record evidence to determine whether the toe plate can or cannot actually "slide" under a load. Therefore, we have determined that the Cart falls within the definition of the scope of the Order because all four scope characteristics are present.

Further, to demonstrate another difference between a hand truck and the Cart, Vertex points out that the Cart's stabilizer plate has a maximum weight capacity of 150 pounds. However, hand truck load capacity was not a factor in the scope of the investigation. The reference to load capacity (i.e., "loads generally not exceeding 1000 pounds"<sup>8</sup>) in the petition appears in a general description of the subject merchandise, not in the petitioners' recommended scope language, or elsewhere in the current scope of the Order.

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<sup>6</sup> See Vertex's December 29, 2004, scope exclusion request, at 7.

<sup>7</sup> See the Petitioner's January 18, 2005, response to Vertex's December 29, 2004, scope exclusion request, at 2.

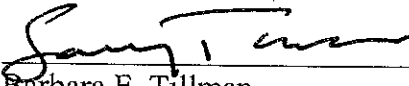
<sup>8</sup> See petition at page 6.

Recommendation

Based upon the above analysis, we recommend the Department find that Vertex's Cart is within the scope of the Order.

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Agree

\_\_\_\_\_  
Disagree

*for*   
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Barbara E. Tillman  
Acting Deputy Assistant Secretary  
for Import Administration

2/15/05  
Date