



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-891

Scope Review

Public Document

IA/III/IX: LA

JUN 03 2005

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

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

Robert Bolling *AB*
Program Manager
AD/CVD Operations, Office 8

FROM: Lilit Astvatsatrian *LA*
Case Analyst
AD/CVD Operations, Office 8

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

SUBJECT: Final Scope Ruling: Faultless Starch/Bon Ami Co.

Summary

On March 8, 2005, the Department of Commerce ("the Department") received a scope ruling request from Faultless Starch/Bon Ami Co. ("Faultless") concerning whether certain types of light-duty hand trucks imported by Faultless 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"). Faultless requests the Department to determine whether the RuXXac Fold Flat Cart Regular Model ("RuXXac") and the RuXXac Fold Flat Cart Extra Long ("RuXXac Long"), both manufactured in the PRC, are subject to 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 determinations of sales at less than fair value and the eventual antidumping duty order as follows:

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 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 Notice of 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) ("Final Determination"); 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); and 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 Faultless' Scope Request

Description of the merchandise

- Faultless states that RuXXac and RuXXac Long are folding carts that feature extendable handles and are designed for business or home use, recreation, and travel purposes. Faultless explains that RuXXac and RuXXac Long are intended to be used for non-industrial applications such as to carry personal luggage and convention materials. Faultless contends that the key selling points for the RuXXac hand trucks, in addition to its small size, are portability and strength, which allow travelers to transport heavy luggage and household items.
- According to Faultless, RuXXac and RuXXac Long hand trucks have a maximum load capacity of 275 pounds, weigh 11.9 and 13 pounds, respectively, measure 40.6 and 44.5 inches when fully extended, and measure 27 and 28.9 inches, respectively, when folded. Faultless states that their frames are constructed of powder coated steel, measuring 13/16 of an inch in diameter, while the platforms, known as toe kicks, are made of cast aluminum. Additionally, Faultless explains that the upper half of the hand trucks' vertical frame folds onto the lower half of the handle in order to make the hand trucks more conducive to storage, travel and transportation.
- Faultless claims that the only difference between the two RuXXac models is the size of the toe-kick, the larger one being designed to carry slightly larger articles. However, Faultless states that in all other respects, both models should be treated as identical for the purpose of this scope exclusion request.

Faultless' argument

- Faultless argues that both RuXXac and RuXXac Long hand trucks fall under the exclusion from the Order for “small hand trucks” due to their size and load capacity. Faultless claims that RuXXac models carry a maximum weight of 275 pounds, and when fully extended, measure 3 feet 4 5/8 inches and 3 feet 8 1/2 inches, respectively. Faultless argues that both length measurement and the load capacity of the two RuXXac hand trucks at issue fall within the lower half of the range indicated by the Petitioners¹, making them “small hand trucks.”
- Faultless claims that the difference between its RuXXac models and a hand truck subject to the Order is that both RuXXac hand trucks are designed to collapse into two inverted “U” shapes to minimize their size when stored and transported. Faultless contends that this design is not typical of hand trucks. Faultless recognizes that the scope of the Order exempts collapsible hand trucks with frames made from telescoping tubular material measuring less than 5/8 inch in diameter, whereas RuXXac’s handle component, which collapses into the lower half of the body, measures less than 13/16 inch. Faultless, however, points out that the size of RuXXac’s vertical frame is 3/16 inch larger than the 5/8 (or 10/16) inch frame outlined in the scope of the Order. Thus, Faultless states that the difference between the RuXXac’s vertical frame and the frame outlined in the scope is only “de minimis” when viewed in conjunction with its other arguments.
- In support of its argument, Faultless compared the Magna Cart² hand truck’s (“Magna Cart”) specifications to those of RuXXac hand trucks to prove that the RuXXac hand trucks should be ruled outside of the scope. Faultless claims that the RuXXac hand trucks are nearly identical to the Magna Cart except for Magna Cart’s three secondary central rails, two horizontal and one vertical, whose size is less than 5/8 inch. Faultless points out that the Magna Cart was found to be outside the scope in light of the secondary tubing described above. Faultless argues that the Department should extend equal treatment to the RuXXac hand trucks, because there is an insignificant difference between the RuXXac and Magna Cart hand trucks.

¹ The petitioners in this proceeding are Gleason Industrial Products, Inc. and Precision Products, Inc.

² See Memorandum to Jeffery A. May, dated September 3, 2004, “Scope Exclusion/Clarification Requests: Angelus Manufacturing; Custom Carts LLC; Illinois Tool Works, Inc.; Qingdao Huatian Hand Truck Co., Ltd; WelCom Products Inc.; and LL King Corporation.”

Summary of the Petitioners' Comments on Faultless' Scope Ruling Request

- Petitioners state that the scope of the Order includes “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 edge or toe plate, and any combination thereof.”³ Petitioners argue that Faultless' RuXXac carts are hand-propelled barrows with a vertical frame having a handle at the upper section of the vertical frame; two wheels at the lower section of the vertical frame; and a horizontal projecting edge perpendicular to the vertical frame at the lower section of the vertical frame. Petitioners argue that Faultless' RuXXac carts meet the definition of the subject merchandise. Petitioners contend that the retractable feature of the RuXXac carts does not exclude them from the scope which includes hand trucks that have a vertical frame, handling area, wheels, projection edges or other parts that can be collapsed or folded.
- Petitioners argue that although the scope does not define the size of the hand trucks, the RuXXac carts are not “small.” Petitioners maintain that the only hand truck that was excluded from the scope of the Order was the Magna Cart which had dimensions of 10 pounds in weight, folding open to 39 inches tall, collapsing to 2 inches wide by 28 inches height, and holding up to 200 pounds.⁴ Petitioners argue that the RuXXac cart dimensions are heavier, taller, deeper in their collapsible form, have a higher load capacity than the Magna Cart, and are better equated to the Total Trolley horizontal trolley (“Trolley”)⁵ than the Magna Cart. Petitioners argue that because the Department concluded that the Trolley is included in the scope of the Order, it should find that the RuXXac carts are included as well.
- Petitioners argue that since the scope includes hand trucks suitable for any use, Faultless' argument that the RuXXac carts are designed for the travel market should be rejected. Petitioners contend that by Faultless' own admission the RuXXac carts are designed for business, home, recreation, travel use, can carry computers, convention materials, coolers, heavy suitcases, medical and photography equipment, printouts and any unmanageable

³Petitioners' Opposition to Faultless Starch/Bon Ami Co.'s Scope Inquiry, dated March 31, 2005.

⁴Memorandum from Natalie Kempkey, Case Analyst to Barbara E. Tillman, dated January 10, 2005, “Final Scope Ruling: Total Trolley, LLC” at 10.

⁵In the final scope ruling with respect to Total Trolley, LLC's hand truck Trolley, the Department found that Trolley is taller and deeper than Magna Cart and cannot be considered a “small” hand truck. See Id.

load.⁶ Petitioners maintain that the ability of the RuXXac carts to carry 275 pounds demonstrates their capability to perform tasks beyond carrying personal luggage. Petitioners, therefore, conclude that the RuXXac carts do not fit within the exception to the scope of the Order.

- Petitioners argue that the RuXXac carts do not satisfy the third part of the exception at issue which stipulates that subject merchandise is made of telescoping tubular material. Petitioners maintain that the RuXXac carts' frames are constructed of a powder-coated steel, as opposed to telescoping tubular material. Petitioners, therefore, conclude that the RuXXac carts fail to meet the third requirement of the stipulated exception to the scope of the Order.
- Petitioners state that the scope requires that the tubular materials measure less than 5/8 inch in diameter, but the RuXXac carts' vertical frames measure 3/16 inch in diameter. Petitioners maintain that the RuXXac carts fail to meet any of the four parts of the stipulated exception for luggage carriers. Accordingly, Petitioners argue the Department should deny Faultless' request for exclusion from the scope and find that the RuXXac carts fall within 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 Faultless' request in accordance with 19 CFR 351.225(k)(1) because it finds that the descriptions of the product contained in the petition, the initial investigation, the determinations by the Secretary (including prior scope determinations)

⁶Appendix 1 of Faultless' March 8, 2005 submission.

and the ITC are, in fact, dispositive with respect to Faultless' hand trucks. Therefore, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2).

Analysis

The scope language of the Order states that "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." The scope clarifies that the "projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load."⁷

Both the RuXXac and RuXXac Long hand trucks fall within the parameters of the scope definition with respect to the following physical characteristics: 1) a vertical frame, 2) a handling area, 3) projecting edge(s) or toe plate, and 4) two or more wheels. Thus, the RuXXac and RuXXac Long hand trucks display the same key physical characteristics as the subject hand trucks.⁸

The scope of the Order excludes "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..."⁹

Thus, the scope of the Order excludes utility carts specifically (emphasis added) designed for personal bags or luggage. The RuXXac and RuXXac Long hand trucks are advertised to have different uses including, but not limited to, personal luggage. An advertisement submitted by Faultless indicates that it markets its product for a variety of commercial uses such as the ability to carry computers, convention and presentation materials, medical and photography equipment, printouts, heavy suitcase, samples, coolers, and trash cans.¹⁰ Thus, uses for the RuXXac and RuXXac Long hand trucks are not limited to carrying personal luggage. While Faultless argues that the RuXXac and RuXXac Long hand trucks should be excluded from the scope because they can be used to move luggage, the scope language describing covered merchandise encompasses hand trucks "suitable for any use." Therefore, the RuXXac and RuXXac Long hand trucks do not meet the exclusionary criteria with respect to use. See e.g., Memorandum to Barbara E. Tillman from Natalie Kempkey: Final Scope Ruling: LDL Imports (January 10, 2005), at 6. The Department previously rejected arguments based on the item's intended use, stating that "the scope language encompasses hand trucks suitable for any use." See Memorandum to Barbara E.

⁷See ("the Order").

⁸ See Pictures provided in Faultless' March 8, 2005, scope exclusion request.

⁹Id.

¹⁰See Appendix One of Faultless' March 8, 2005, scope exclusion request.

Tillman from Natalie Kempkey: Final Scope Ruling: Total Trolley, LLC (January 10, 2005), at 8, Memorandum to Barbara E. Tillman from Natalie Kempkey: Final Scope Ruling: Cabela's, Inc. (January 10, 2005) at 5, See e.g., Memorandum to Barbara E. Tillman from Aishe Allen: Final Scope Ruling: Vertex International, Inc. (February 15, 2005), at 6.

Faultless argues that its products' hand frames have a diameter of less than 13/16 inches, and that because the diameter is only slightly larger than the tubing in the excluded luggage cart, the RuXXac and RuXXac Long hand trucks should be excluded. The Order, however, specifies that "personal bags or luggage in which the frame is made from telescoping tubular material measuring less than 5/8 inch in diameter" are excluded. See Final Determination (emphasis added). A reasonable interpretation of this language is that the primary focus should be on the size of the tubular material comprising the telescoping section(s) of the frame.¹¹ In this instance, the RuXXac and the RuXXac Long hand trucks do not fall within the scope exclusion because neither has telescoping tubular material which slides into the lower half of the body. Moreover, the vertical frames of RuXXac and RuXXac Long measure more than 5/8 inches in diameter.¹² Therefore, we determine that the RuXXac and RuXXac Long do not meet this exclusion detailed in the scope of the Order.

Additionally, we determine that the RuXXac and RuXXac Long hand trucks do not conform to the definition of "small" hand trucks. The RuXXac and RuXXac Long hand trucks have a carrying capacity of 275 pounds, which conforms to the description of the subject merchandise to be "...used for tasks related to material handling when there is a need to move objects generally not exceeding 1000 pounds over short distances."¹³ Exhibit 2 of the petition indicates a range of load capacity from 200 pounds to 1,000 pounds, which position the RuXXac and RuXXac Long hand trucks' 275 pound capacity within the range of the hand trucks described in the petition. Furthermore, Exhibit 2 of the petition indicates a weight range from 9 pounds to 90 pounds that would include the 11.9 pound to 13 pound weight range of the RuXXac and RuXXac Long hand trucks. Based on Exhibit 1 of the petition the range of hand truck heights is from 38 inches to 65 inches. Therefore, we determine that the 40.6 inch and 44.5 inch height of the RuXXac and RuXXac Long hand trucks are within the scope of the petition description.

¹¹See Memorandum to Jeffrey A. May from Stephen Cho, Dan Alexy, Natalie Kempkey, Audrey Twyman: Scope Exclusion/Clarification Requests: Angelus Manufacturing; Custom Carts LLC; Illinois Tool Works, Inc.; Qingdao Huatian Truck Co., Ltd.; WelCom Products Inc.; and LL King Corporation (September 3, 2004), at 16.

¹²The Department previously determined that this exclusion applied to the Magna Cart because the Magna Cart's telescoping center vertical frame tube is constructed of 1/2" and 1/4" material. Although other parts of the frame were larger than 5/8", the Department found that the proper focus should be on the diameter of the tubular material comprising the telescoping section(s) of the frame. See Id.

¹³Page 11 of the Letter from Crowell & Moring, dated November 13, 2003 ("Petition Request").

On the basis of these comparisons, the Department previously found that the Magna Cart met the definition of "small" with dimensions of approximately 10 pounds in weight, 39 inches in height, collapsing to 2 inches wide by 28 inches high, and carrying a load capacity of 200 pounds. However, the RuXXac and RuXXac Long hand trucks have dimensions and load capacity that are substantially larger than that of the Magna Cart. In this respect, the dimensions of both RuXXac hand trucks are similar to the Trolley, which the Department determined to be within the scope of the Order.¹⁴ The RuXXac and RuXXac Long hand trucks are not only taller, but also have a larger maximum load capacity than the Magna Cart. Based on an analysis of the RuXXac carts' features, including height, weight, and load carrying capacity, they cannot be considered "small" hand trucks.

Finally, the RuXXac hand trucks are designed to collapse into two inverted "U" shapes to minimize their size when stored and transported. The scope definition clearly states "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." After careful analysis of the RuXXac carts' features, including height, weight, load carrying capacity, and the scope language of the Order, we conclude the RuXXac hand trucks do not meet any exclusionary criteria based on their design or intended use.

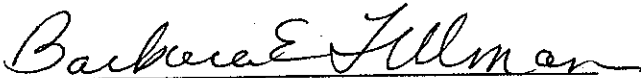
Recommendation

Based upon the above analysis, we recommend the Department find that the RuXXac and RuXXac Long hand trucks do not meet any of the exclusionary criteria specified in the scope of the Order and are, therefore, within the scope of the antidumping duty order on hand trucks from the PRC.

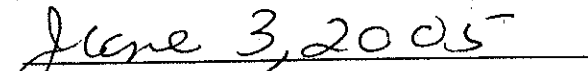


Agree

Disagree



Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration



Date

¹⁴ See Memorandum to Barbara E. Tillman, dated January 10, 2005, "Final Scope Ruling: Total Trolley, LLC."