



A-570-891

Scope Ruling
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February 15, 2006

MEMORANDUM TO: Stephen J. Claeys
Deputy Assistant Secretary
for AD/CVD Operations

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

FROM: Hilary E. Sadler, Esq.
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 for Central Purchasing, LLC's Two Models of
Welding Carts

Summary

On December 22, 2005, the Department of Commerce ("the Department") received a scope ruling request from Central Purchasing, LLC ("Central Purchasing") concerning whether certain types of welding carts imported by Central Purchasing 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) ("Order"). Central Purchasing requests the Department to determine whether the two welding carts (item numbers 43615 and 93851) for carrying welding machines, manufactured in the People's Republic of China ("PRC"), are subject to the order. See Central Purchasing's request for scope ruling, "Applicability of Antidumping Duty Order A-570-891 on two models of welding carts," (December 22, 2005) ("Scope Request"). Petitioners, Gleason Industrial Products, Inc. and Precision Products, Inc. (collectively "Gleason"), oppose Central Purchasing's scope inquiry arguing that the two welding carts are not excluded from this antidumping duty order. See Gleason's submission, "Antidumping Duty Order covering Hand Trucks and Certain Parts Thereof from the People's



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:

“[T]he 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); Order, 69 FR 70122.

Scope Request

Summary of Central Purchasing’s Scope Request

Description of the merchandise

According to Central Purchasing, the two welding carts have the following dimensions:

- Item 43615: Overall dimension of 21 3/8 inches in length, 10 1/2 inches in width, and 47 7/8 inches in height; a foot plate 19 1/4 inches in length, 10 inches in width, and 1 1/4 inches in height. The tubular handle has a 1-inch diameter. Two oversized pneumatic tires measure 20 3/4 inches in diameter. The net weight is 35 pounds.
- Item 93851: Overall dimension of 20 inches in length, 24 1/2 inches in width, and 38 1/2 inches in height; a foot plate 19 1/4 inches in length, 9 5/8 inches in width, and 1 1/4 inches in height. The tubular handle is 19 inches wide with a 1-inch diameter. A chain measuring 71 inches long is also attached. Two solid rubber tires measure 7 7/8 inches in diameter. The net weight is 26.90 pounds.

Central Purchasing’s argument

- Central Purchasing states that the two welding carts are specifically designed to fit and carry welding machines and do not have a projected edge or toe plate. Central Purchasing maintains that the two welding carts are only used to transport welding machines and are not utilized as standard hand trucks.

- Additionally, Central Purchasing contends that the lack of a toe plate makes the two welding carts different from hand trucks covered by the Order.

Summary of the Petitioners' Comments on Central Purchasing's Scope Ruling Request

- Gleason argues that the scope of this order clearly states that the order covers hand trucks "suitable for any use." See Response, at 3. Gleason concludes that the intended purpose of the welding carts is irrelevant as these carts otherwise meet the physical characteristics of a hand truck, as described by this order.
- Gleason also states that its petition, filed on November 13, 2003, included pictorial exhibits of cylinder hand trucks, also known as welding hand trucks, that look like and share all of the major characteristics of Central Purchasing's welding carts.
- Gleason also argues that Central Purchasing does not argue that its products fall within any of the stipulated exceptions to this order.

Legal Framework

The Department examines scope requests in accordance with the Department's scope regulations. See 19 CFR 351.225. 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).

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

Analysis

The scope of the order states:

“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.” See Order.

In its investigation report, the ITC commented that “[h]and trucks cannot serve their intended purpose without each of the three parts that are included in Commerce’s scope of investigation.” See Hand Trucks and Certain Parts Thereof From China, at 6, USITC Pub. 3737, Inv. No. 731-TA-1059 (Final), (November 2004) (“ITC Report”). In addition, the requirement that the projecting edges or toe plate of subject hand trucks “slide under a load” was first included in the scope by Gleason in its petition. See Petition for the Imposition of Antidumping Duties Against Hand Trucks from the People’s Republic of China, at 9 (November 13, 2003) (“Petition”).

From the description and pictures Central Purchasing provided, the welding carts do not have a toe plate that could slide under a load, an essential characteristic as described in the scope of this order. Generally, a toe plate is positioned on the hand truck perpendicular to the vertical frame and flush with the ground to facilitate movement of an object onto the cart. The projected edges on the welding carts rise at least a half inch above the ground. At this height the projected edges on these welding carts are not able to slide under a load. In addition, the toe plates are supported by two bars that restrict the width of objects that can be loaded and carried on the carts. Thus, the welding carts possess only two of the three key physical characteristics as the subject hand trucks defined in the scope of the order. See Scope Request, at Appendix. Therefore, we determine that the welding carts do not possess all of the characteristics of a hand truck as described in the scope of this order.

Regarding the pictorial exhibits of the welding carts in Gleason’s submitted brochure for the investigation, the Department finds the written scope description, not the pictures, is dispositive of what is included in the scope of the order. In the initial phase of an antidumping duty proceeding, the Department requires that the petitioner submit a detailed, written description of the requested scope of the imported merchandise, including the corresponding technical characteristics and any applicable U.S. tariff classification numbers. See 19 CFR 351.202(b)(5). Although pictorial exhibits assist in understanding the product defined in the requested scope, they are not controlling. The Department conducted an investigation and subsequently issued an antidumping duty order based on Gleason’s written description of the requested scope.

In this scope request, Gleason submitted welding cart pictures from the brochure that was included as an exhibit to its petition to argue that the welding carts were intended to be part of

the scope. However, Gleason failed to draft its requested scope to include these carts because the projecting edge on these welding carts does not slide under a load, as required by the scope. Pictures, by themselves, are insufficient to find that these welding carts are within the scope of the order. For these foregoing reasons, the two models of welding carts do not meet the definition of a hand truck as described in the scope of this order.

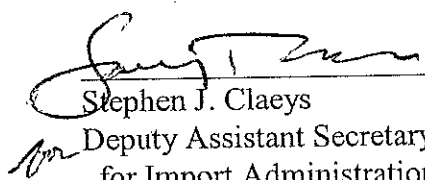
Recommendation

Based upon the above analysis, we recommend that the Department find that the two welding carts do not meet the description of merchandise covered by the scope of the order and, therefore, are not subject to the antidumping duty order on hand trucks and certain parts thereof from the PRC.

✓

Agree

Disagree



Stephen J. Claeys

Deputy Assistant Secretary
for Import Administration

2/15/06
Date