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International Trade Administration
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Scope Ruling
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MEMORANDUM TO: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

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

FROM: Hilary E. Sadler, Esq.
Senior International Trade Compliance Analyst
AD/CVD Operations, Office 8

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

SUBJECT: Final Scope Ruling for Black & Decker's Workmate 525 and
Workmate 500

Summary

On February 7, 2006, the Department of Commerce ("the Department") received a scope ruling request from Gleason Industrial Products, Inc. and Precision Products, Inc. ("Petitioners") concerning whether Black & Decker's Workmate 525 and Workmate 500 ("models 525 and 500") 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 Petitioners' request for scope ruling, "Antidumping Duty Order for Hand Trucks and Certain Parts Thereof from the People's Republic of China: Request to Certify that Black & Decker Workmate 525 and Workmate 500 Included in Scope of Antidumping Duty Order," (February 7, 2006) ("Scope Request"); see also 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"). Black & Decker opposes the Petitioners' scope inquiry, arguing that models 525 and 500 are excluded from this antidumping duty order. See Black and Decker's submission, "Antidumping Duty Order for Hand Trucks and Certain Parts Thereof from the People's Republic of China: Request to Certify that Black & Decker Workmate 525 and Workmate 500 Are Excluded from Scope of Antidumping Duty Order," (March 10, 2006) ("Response"). Petitioners also submitted comments relating to



Central Purchasing, LLC.'s models of welding carts, the subject of another scope determination, to support its contention that the 525 and 500 models are included in this order. See Petitioners' submission, "Antidumping Duty Order for Hand Trucks and Certain Parts Thereof from the People's Republic of China: Additional Comments on Request to Certify that Black & Decker Workmate 525 and Workmate 500 Included in Scope of Antidumping Duty Order," (March 10, 2006). Petitioners later submitted a Home Depot circular that advertises the Black & Decker 525 hand truck. See Petitioners' submission, "Antidumping Duty Order for Hand Trucks and Certain Parts Thereof from the People's Republic of China: Additional Evidence Confirming that Black & Decker Workmate 525 and Workmate 500 is [sic] Included in Scope of Antidumping Duty Order," (May 19, 2006) ("Petitioners' Additional Evidence").

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 Petitioners’s Scope Request

According to Petitioners, the 525 and 500 models have the following functions, as quoted from Black & Decker’s website and the boxes that they are packaged in:

- Model 525: Petitioners state that Black & Decker repeatedly identifies the product on the box as a hand truck and specifically states that it is a “Workmate 525 Hand Truck.” The box also explains that this product easily converts to a hand truck for expanded performance and has easy access levers for quick transition from a project center to a hand truck. The box states that the “hand truck supports up to 200 lbs. (90 kg)” and demonstrates its uses by showing pictures of model 525 carrying four cinder blocks, a cardboard box, four tool boxes, and three cans.

- Model 500: The box carrying model 500 states that the model 500 is a project center and a hand truck that “allows tools and materials to be transported. . . up to 125 lbs.” One picture on the box demonstrates its ability to transport a large potted plant.
- Petitioners state that the 525 and 500 models meet all of the criteria of the scope because they are specifically designed with handles at or near the upper section of the vertical frame, two wheels near the lower section of the vertical frame, and a horizontal projecting edge perpendicular to the frame that can be used to slide under a load for lifting and moving the load.
- Petitioners maintain that the ability of the 525 and 500 models to convert from a hand truck into a project center does not remove them from the scope of this order. Petitioners refer to the scope’s description that states that the ability of the vertical frame to be operated in a horizontal setting is not a basis for exclusion of a product from this order.
- Petitioners contend that the 525 and 500 models do not satisfy any of the criteria used in evaluating exclusions to the order. Additionally, Petitioners assert that the Department should not attach any importance to the load capacity of the models at issue because the Department previously dismissed load capacity as a factor in the scope.
- Petitioners submitted additional comments on March 10, 2006. First, Petitioners note that the 525 and 500 models include a toe plate that slides under a load, a physical characteristic that satisfies the scope of the order. Next, Petitioners comment on the specifications of the hand trucks from other scope rulings, e.g. Vertex garden carts and Central Purchasing welding carts. Petitioners explain that while a hand truck may have characteristics that may restrict the use for certain projects, this does not necessarily exclude it from the order. Finally, Petitioners state that Black & Decker’s 525 and 500 are purposely designed and sold as items that allow individuals to use them as hand trucks. Thus, Petitioners’ contend the 525 and 500 models are within the scope of this order.

Summary of Black and Decker’s Comments on Petitioners’ Scope Ruling Request

- Black & Decker argues that its 525 and 500 models are specifically designed as portable project centers with vises (clasp mechanisms), primarily for use in the home. The Workmate product line is comprised of portable work tables, primarily consisting of steel construction with a wooden or plastic top and a front jaw (or clasp mechanism). In addition, Black & Decker included evidence in the form of bills of materials in its submission. The Respondents assert that such evidence clearly demonstrates that the hand truck components are only [] percent of the total cost per Workmate and represent 16 out of 75 components for the 525 model and 16 out of and 62 components for the 500 model.

- Black & Decker asserts that the hand truck features are subsidiary to the primary function of a work bench. The front jaws of the 525 and 500 models swing upward for clamping objects in place for sawing, cutting, painting, and similar activities. The 525 and 500 models function primarily as a work bench, tool stand, or project center. The models can be folded, allowing them to be moved from place to place. Black and Decker also notes that other models in the Workmate product line, such as 125, 225, and 425, have no hand truck features at all.
- Black & Decker argues that the common designations for merchandise covered by this order are not representative of the 525 and 500 models. For example, a “convertible” hand truck carries loads horizontally as well as vertically and cannot be converted to another product. Also, none of the products in the Petitioners’ catalogs have additional features, such as the work center with the clamping mechanism.
- Black & Decker states that the Department has not addressed products similar to the 525 and 500 models in prior hand truck scope rulings. Black & Decker asserts that none of the products in the prior scope rulings exhibited features similar to the work bench or clamping mechanism features of the 525 and 500 models or had hand truck functions subsidiary to the products’ primary functions.
- Black & Decker points out that the International Trade Commission’s (“ITC”) report and the petition stress the commercial interchangeability and competition of the products covered by the order, such that the hand trucks described for general use could be substituted for those designed for special uses, such as carrying gas cannisters. The ITC and the petition also stressed that the most important factor in the purchasing decision is price, followed by quality and availability.
- Additionally, Black & Decker asserts that the 525 and 500 models are classified under HTS number 7326.90.85, which is located in an entirely different chapter of the HTS (Chapter 73), than the subject merchandise, which is classified under Chapter 87. Black & Decker states that this fact taken in conjunction with the rest of its arguments further supports why the 525 and 500 models should be outside the scope of this order.
- Black & Decker states that the models are advertised in the hardware departments with other Workmates, sawhorses, and workbenches. Black & Decker asserts that the 525 and 500 models compete with the sawhorses and clamping models from Skil, Stanley, Sears, and Craftsman. The competitors’ products are also in the hardware sections of retail stores. In contrast, hand trucks are merchandised in lawn and garden, lumber, or moving and storage departments in retail stores.
- With respect to its channels of trade, Black & Decker explains that it sells the 525 and 500 models online, to home improvement stores, and to individuals looking for a work bench with a clamping mechanism. Black & Decker asserts that the products covered by

this order, on the other hand, are sold to individuals who specifically looking for a hand truck, as well as to industrial users and moving and storage companies.

- Black & Decker also attaches as an exhibit a survey of Workmate purchasers. Black & Decker purports that this evidence demonstrates the expectations the ultimate purchaser of its product. According to the survey, 4.7% (i.e., 27 out of 571) of the purchasers responded that they have a model with hand truck features; 13% (i.e., 74 out of 571) responded that they did not know whether their model had hand truck features. Only 9.5% of questioned purchasers (i.e., 9 out of 95) ever used their model to transport objects. Only one purchaser responded that he or she used the model primarily to transport objects. Based on this evidence, Black & Decker concludes that a purchaser looking to buy a hand truck solely for carrying purposes would not buy a 525 or 500 model.

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 Petitioners' request 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 Black & Decker's 525 and 500 models. See 19 CFR 351.225(k)(1). Therefore, the Department finds it unnecessary to consider the additional factors set forth in 19 CFR 351.225(k)(2).

Analysis

From the description and pictures provided by both the Petitioners and Black & Decker, the 525 and 500 models exhibit the essential characteristics of a hand truck, as described in the scope of

this order, (i.e., a handle, at least two wheels, a vertical frame, and a horizontal projecting edge at or near the lower section of the vertical frame). Based on Black & Decker's description and pictorial exhibits of its merchandise, the 525 and 500 models have the following characteristics: (1) a handle, (2) at least two wheels, (3) a vertical frame, and (4) a horizontal edge in the lower section of the vertical frame (a toe plate) that can slide under a load in addition to the parts that comprise the work center. See Response, at 7-9 and Attachment A. In addition, the 525 and 500 models are certified to bear loads up to 200 pounds and 125 pounds, respectively. See Scope Request at Exhibits 1 and 2. Thus, the 525 and 500 models are able to lift and move loads, as required by the scope. In fact, product information shows the 525 and 500 models moving objects, such as boxes, a plant, cinder blocks, and tool boxes. See Scope Request at Exhibits 1-3. Also, a Home Depot ad, "Moving Made Easy," shows the 525 model moving a box. See Petitioners' Additional Evidence at 3. Therefore, we find that the 525 and 500 models possess all of the characteristics of a hand truck, as described in the scope of this order.

Black & Decker also argues that its models are portable project centers with additional hand truck features and, thus are outside the scope of the order. See Response, at 3. However, the scope of the order states that hand trucks 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, and these additional characteristics are not a basis for exclusion. See Order. In addition, the pictures demonstrate that virtually all of the pieces form part of the hand truck frame. For example, even the workbench piece functions as a flat surface that the loads rest against when being transported. See Scope Request at Exhibits 2-3. Therefore, the presence of additional features, such as the work center and clasp mechanism, do not necessarily remove the 525 and 500 models from the scope of the order.

Black & Decker also argues that because the 525 and 500 models function primarily as a workbench, they should be found outside the scope. Simply because a product has multiple uses does not, in and of itself, exclude such products from the scope of the order. The Department assesses whether a product is an in-scope hand truck, regardless of whether it can also be used as a workbench. The scope of this order also explains that additional characteristics are not a basis for exclusion. In addition, hand trucks "suitable for any use" are specifically included. This means that hand trucks with specialized uses are also covered by the scope. Thus, simply because the hand truck can convert to a workbench does not necessitate finding it to be outside the scope.

Black & Decker states that the 525 and 500 models, along with all other Workmates, are imported under the HTSUS number 7326.90.85. The Department agrees that the subject merchandise covered by this order is often classified as 8716.80.50.10, 8716.80.50.90, and 8716.90.50.60. However, the scope of this order clearly states that although "HTSUS subheadings are provided for convenience and for customs purposes, the Department's written description of the scope is dispositive." Therefore, the fact that these models are classified under a different HTSUS number does not necessarily mean that they are outside the scope of this order.

