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**MEMORANDUM FOR:** Stephen J. Claeys  
Deputy Assistant Secretary  
For Import Administration

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

Robert Bolling  
Program Manager  
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**FROM:** Katharine G. Huang  
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**SUBJECT:** Final Scope Ruling on the Antidumping Duty Order on Hand Trucks and Certain Parts Thereof from the People's Republic of China: Request by WelCom Products (MCX Magna Cart)

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### Summary

On November 19, 2007, the Department of Commerce ("Department") received a scope ruling request from WelCom Products ("WelCom")<sup>1</sup> concerning whether WelCom's MCX Magna Cart ("MCX Magna Cart") is within the scope of the antidumping duty order on hand trucks from the People's Republic of China ("PRC").<sup>2</sup> We have determined that WelCom's MCX Magna Cart is

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<sup>1</sup> See Hand Trucks and Certain Parts Thereof From the People's Republic of China; WelCom Products – Further Scope Ruling Request, submitted by WelCom Products on November 19, 2007 ("2007 WelCom Scope Ruling Request").

<sup>2</sup> 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) ("PRC Hand Trucks Order").



outside the scope of the *PRC Hand Trucks Order* because WelCom's MCX Magna Cart is a smaller and lighter model of the 2004 Magna Cart, which we determined to be outside the scope of the *PRC Hand Trucks Order*.<sup>3</sup> Like the 2004 Magna Cart, the MCX Magna Cart is specifically designed for carrying loads like personal bags or luggage, and the MCX Magna Cart has a telescoping portion of the frame made from tubular material measuring less than 5/8 inch in diameter. Therefore, WelCom's MCX Magna Cart has met the exclusionary criteria specified in the scope of the *PRC Hand Trucks Order*.

## Background

On November 19, 2007, the Department received a scope ruling request from WelCom, arguing that its MCX Magna Cart imported from the PRC is outside the scope of the *PRC Hand Trucks Order*. On December 5, 2007, Gleason Industrial Products, Inc., and Precision Products, Inc. ("Petitioners"), the petitioners in the investigation, opposed WelCom's scope ruling request, arguing that WelCom's MCX Magna Cart is within the scope of the *PRC Hand Trucks Order*.<sup>4</sup> On January 8, 2008, WelCom submitted rebuttal comments on Petitioners' December 5, 2007 submission.<sup>5</sup> On January 25, 2008, Petitioners submitted rebuttal comments on WelCom's January 8, 2008 submission as well as provided a sample MCX Magna Cart.<sup>6</sup> On February 1, 2008, WelCom submitted second rebuttal comments on Petitioners' January 25, 2008 submission.<sup>7</sup> On April 7, 2008, WelCom submitted further comments.<sup>8</sup> On April 9, 2008, we

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<sup>3</sup> See Memorandum from Stephen Cho, et al. through Susan Kuhbach, Director, AD/CVD Operations, Office 1, to Jeffrey A. May, Deputy Assistant Secretary for Import Administration, titled "Scope Exclusion/Clarifications Requests: Angelus Manufacturing; Custom Carts LLC; Illinois Tool Works, Inc.; Qingdao Huatian Hand Truck Co., Ltd; WelCom Products Inc.; and LL King Corporation," dated September 3, 2004 ("2004 Magna Cart Scope Ruling").

<sup>4</sup> See Antidumping Duty Investigation of Hand Trucks and Certain Parts Thereof From the People's Republic of China: Opposition to WelCom Products Inc.'s Scope Request, submitted by Gleason Industrial Products, Inc., and Precision Products, Inc. on December 5, 2007 ("Petitioners' December 5, 2007 submission").

<sup>5</sup> See Hand Trucks and Certain Parts Thereof From the People's Republic of China; MCX Magna Cart: Reply to Petitioners' Response and Opposition, submitted by WelCom Products on January 8, 2008 ("WelCom's January 8, 2008 submission").

<sup>6</sup> See Antidumping Duty Investigation of Hand Trucks and Certain Parts Thereof From the People's Republic of China: Submission of Actual MCX Magna Cart for the Record and Continuing Opposition to WelCom's Exclusion Request, submitted by Petitioners on January 25, 2008 ("Petitioners' January 25, 2008 submission").

<sup>7</sup> See Hand Trucks and Certain Parts Thereof From the People's Republic of China; MCX Magna Cart: Reply to Petitioners' Response and Opposition, submitted by WelCom on January 8, 2008 ("WelCom's January 8, 2008 submission").

issued a questionnaire to WelCom requesting the precise measurements of its MCX Cart's rectangular-shaped telescoping tube. On April 11, 2008, WelCom provided the measurements of the telescoping tube.<sup>9</sup> On April 21, 2008, Petitioners submitted second rebuttal comments to WelCom's April 7, 2008 submission as well as WelCom's April 11, 2008 response to the Department's questionnaire.<sup>10</sup>

### Scope of the Order

The scope of the *PRC Hand Trucks Order* Defines the scope as:

“[T]he merchandise subject to this antidumping duty order 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

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<sup>8</sup> See Hand Trucks and Certain Parts Thereof From the People's Republic of China; MCX Magna Cart: Further Comments in Support of Scope Ruling Request, submitted by WelCom on April 7, 2008 (“WelCom's April 7, 2008 submission”).

<sup>9</sup> See Hand Trucks and Certain Parts Thereof From the People's Republic of China; MCX Magna Cart Scope Inquiry, submitted by WelCom on April 11, 2008 (“WelCom's April 11, 2008 response”).

<sup>10</sup> See Antidumping Duty Investigation of Hand Trucks and Certain Parts Thereof From the People's Republic of China: Continuing Opposition to WelCom's Scope Request – MCX Magna cart, submitted by Petitioners on April 21, 2008 (“Petitioners' April 21, 2008 submission”).

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 the *PRC Hand Trucks Order*.

### **Summary of WelCom's Scope Ruling Request**

In its November 19, 2007 scope ruling request, WelCom states that on September 3, 2004, the Department ruled that its Magna Cart ("2004 Magna Cart") imported from China was outside the scope of the *PRC Hand Trucks Order*. WelCom claims that its MCX Magna Cart is a smaller and lighter successor model of its 2004 Magna Cart and should not be found within the scope of the *PRC Hand Trucks Order*.

WelCom describes the MCX Magna Cart as being composed of aluminum tubing, an aluminum toe plate and plastic molded handle and connecting parts. The upper side portions of the main frame are composed of three sections of telescoping tubes. WelCom claims that its MCX Magna Cart weighs 7 lbs, and is designed for consumers seeking a light-weight luggage cart for traveling or moving light objects around the home. WelCom states that the advertisements on

the websites of Target, Amazon.com and Sam's Club all emphasize that the MCX Magna Cart is made of aluminum and is lightweight; that its narrow profile fits easily in an airplane's overhead compartment; and, therefore, that it is ideal for frequent travelers.<sup>11</sup>

WelCom compares the MCX Magna Cart to the 2004 Magna Cart, which the Department determined was outside the scope of the *PRC Hand Trucks Order*. WelCom claims that the maximum load capacity, the weight, the width of the frame and the wheel diameter of the MCX Magna Cart are all smaller than the 2004 Magna Cart. Specifically, the MCX Magna Cart is 2 lbs lighter than the 2004 Magna Cart; the MCX Magna Cart's carrying capacity is 150 lbs, while the 2004 Magna Cart's carrying capacity is 200 lbs; The MCX Magna Cart's wheel diameter is 5 inches, but 7 inches for the 2004 Magna Cart; and the width of the MCX Magna Cart is 15.25 inches, which is 4 inches less than the 2004 Magna Cart. Also, the length of the extended toe plate and wheels of the MCX Magna Cart is 16.5 inches, which is shorter than the 20 inches of the 2004 Magna Cart. Additionally, the 24.75 inches of folded height for the MCX Magna Cart is shorter than the 28 inches for the 2004 Magna Cart.

WelCom cites the reasoning from the Department's 2004 Magna Cart Scope Ruling that "{s}ince the scope exclusion does not specify that the frame be constructed of telescoping tubular material less than 5/8 inch in diameter, or further define which parts of the frame must telescope, a reasonable interpretation of the scope exclusion language is that the primary focus should be on the diameter of the tubular material comprising the telescoping section(s) of the frame."<sup>12</sup> WelCom contends that the width of the largest tube of the MCX Magna Cart (0.75 inch) is smaller than that of the 2004 Magna Cart (0.875 inch), that the width of the next telescoping tube is less than 5/8 inch, and the width of the third telescoping tube is 1/2 inch.<sup>13</sup> Therefore, WelCom argues that the MCX Magna Cart is outside the scope of the *PRC Hand Trucks Order*.

Also, WelCom argues that the 2004 Magna Cart is the basis for determining whether a hand truck is "small." WelCom maintains that for the 2004 Magna Cart Scope Ruling, the Department compared the Magna Cart with the pictorial examples of hand trucks in the petition for the less-than-fair-value investigation, and the Department determined that the Magna Cart was "small" because the Department found that none of those examples in the petition are collapsible, less than 10 lbs in weight or less than 39 inches in height, or have a load rating of

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<sup>11</sup> See 2007 WelCom Scope Ruling Request, at Exhibit 2.

<sup>12</sup> See 2007 WelCom Scope Ruling Request, at 4 (*citing* 2004 Magna Cart Scope Ruling, at 16).

<sup>13</sup> See 2007 WelCom Scope Ruling Request, at 3.

200 lbs or less; whereas, the Magna Cart weighs approximately 10 lbs, folds open to 39 inches high, collapses to 2 inches wide and 28 inches high, and can hold up to 200 lbs.<sup>14</sup>

Welcom claims that in the RuXXac Carts Scope Ruling, the Department used WelCom's 2004 Magna Cart as the example for a small hand truck. WelCom states that the Department determined that the RuXXac Carts are within the scope of the order because they have "dimensions and load capacity that are substantially larger than that of the Magna Cart" and that the RuXXac Carts were "not only taller, but also have a larger maximum load capacity than the Magna Cart."<sup>15</sup> Therefore, WelCom argues that the load capacity is one criterion the Department uses to determine whether a hand truck is small or not.

Welcom contends that the U.S. Court of International Trade ("Court") looked exactly at the load capacity in *Vertex International, Inc. v. United States*, and found that the Department erred in its determination to include Vertex's Garden Cart in the scope of the *PRC Hand Trucks Order*. WelCom cites the Court finding, which states "{u}nlike the garden cart, a hand truck is designed to carry heavy loads. Although the order does not specify a specific load capacity for hand trucks, the fact that hand trucks need to slide under a load before it can be lifted or moved indicates that hand trucks are designed to carry heavy loads.... In fact, Vertex specifically stated that its garden cart cannot carry a load over 150 pounds."<sup>16</sup> Thus, WelCom argues that the Court's finding indicates that in-scope hand trucks have to be capable of carrying heavy loads, at least heavier than Vertex's garden cart's maximum capacity of 150 pounds. WelCom argues that its MCX Magna Cart can carry no weight exceeding 150 lbs; therefore, it is outside the scope of the *PRC Hand Trucks Order*.

Citing *Sango International v. United States*,<sup>17</sup> WelCom argues that the U.S. antidumping laws protect U.S. producers against the less-than-fair-value sale of imports that result in the actual or threatened injury of a corresponding domestic industry; however, there exists no corresponding U.S. industry of small carts like the MCX Magna Cart. To support its claim, WelCom alleges that while Petitioners sell a kind of cart, which is identical to the MCX Magna Cart, under the trade name of "Milwaukee Truck", this product is in fact manufactured in Taiwan.<sup>18</sup>

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<sup>14</sup> See 2007 WelCom Scope Ruling Request, at 4 (citing 2004 Magna Cart Scope Ruling, at 16).

<sup>15</sup> See WelCom's January 8, 2008 submission, at 5 (citing Memorandum from Lilit Astvatsatryan, Case Analyst, through Wendy J. Frankel, Director, AD/CVD Operations, Office 8, and Robert A. Bolling, Program Manager, to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, titled "Final Scope Ruling: Faultless Starch/Bon Ami Co.," dated June 3, 2005 ("RuXXac Carts Scope Ruling"), at 9).

<sup>16</sup> See *Vertex International v. United States*, LEXIS 10, (Ct. Int'l Trade, 2006) ("*Vertex Garden Cart CIT 2006*").

<sup>17</sup> See *Sango International v. United States*, 484 F.3d 1371.

<sup>18</sup> See 2007 WelCom Scope Ruling Request, at Exhibit 3.

## Summary of Petitioners' Opposition to Welcom's Scope Ruling Request

In the December 5, 2007, submission, Petitioners argue that Welcom's MCX Magna Cart meets the precise definition of the subject merchandise covered by the scope of the *PRC Hand Trucks Order*, as it is a hand-propelled barrow with a vertical frame, a handle at the upper section of the frame, two wheels at the lower section of the frame, and a horizontal projecting edge perpendicular to the vertical frame at the lower section of the vertical frame.

Petitioners maintain that in the 2004 Magna Cart Scope Ruling, the Department's determination to exclude WelCom's Magna Cart is based on three criteria: (1) the Magna Cart is "small"; (2) it is "designed for carrying personal bags and luggage"; and (3) "the telescoping portion (and other parts) of the frame are made from tubular material measuring less than 5/8 inch in diameter."<sup>19</sup>

Applying these three criteria, Petitioners argue that the MCX Magna Cart is not small because it is 39 inches high when it is open, and the Department included hand trucks with similar heights in the scope of the *PRC Hand Trucks Order*. For example, citing the Slide-Flat Cart Scope Ruling,<sup>20</sup> Petitioners contend that the Department determined to include the slide-flat cart within the scope and the slide-flat cart measures 40 inches high by 18.75 inches wide by 19 inches deep when open. Also, citing the RuXXac Carts Scope Ruling,<sup>21</sup> Petitioners contend that the Department determined that the RuXXac Fold Flat Cart (40.6 inches high) and the RuXXac Fold Flat Cart Extra Long (44.5 inches high) did not conform to the definition of a "small" hand truck because the petition indicates "the range of hand truck heights is from 38 inches to 65 inches."<sup>22</sup> Thus, Petitioners contend that the MCX Magna Cart which is 39 inches in height is not small.

Also, Petitioners claim that the MCX Magna Cart is not designed for carrying personal bags and luggage because it is advertised as a general, all-purpose personal hand truck on the Amazon.com website.<sup>23</sup> Particularly, Petitioners claim that John J. Evanthes, the equity partner

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<sup>19</sup> See Petitioners' December 5, 2007 submission, at 5 (citing 2004 Magna Cart Scope Ruling, at 17).

<sup>20</sup> See Petitioners' December 5, 2007 submission, at 5 (citing Memorandum from Juanita H. Chen, Acting Special Assistant to the Senior Enforcement Director, China/NME Group, through Wendy J. Frankel, Director, AD/CVD Operations, Office 8, and Robert A. Bolling, Program Manager, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, titled "Hand Trucks and Certain Parts Thereof from the People's Republic of China: Scope Ruling on Stebco Portable Slide-Flat Cart," dated May 30, 2007 ("2007 Slide-Flat Cart Scope Ruling")).

<sup>21</sup> See Petitioners' December 5, 2007 submission, at 6 (citing RuXXac Carts Scope Ruling).

<sup>22</sup> See Petitioners' December 5, 2007 submission, at 6 (citing the Petition for the Imposition of Antidumping Duties Against Hand Trucks from the People's Republic of China (November 13, 2003), at Exhibit 1).

<sup>23</sup> See Petitioners' December 5, 2007 submission, at Exhibit 1.

of WelCom posted a review for WelCom's Magna Cart as "Personal Hand Cart" on "Customer Reviews" on the Amazon.com website.<sup>24</sup> Petitioners contend that on the website for the "beach chair superstore", WelCom's MCX Magna Cart is advertised as a "Beach Cart" with a photo showing that it can transport two big boxes and a box of 30 bottles of water.<sup>25</sup> Other photos show that the MCX Magna Cart can transport a tall potted plant, several suitcases, a garbage can, and beach luggage, including an ice chest, beach chair and three bags.<sup>26</sup> Therefore, Petitioners argue that the MCX Magna Cart is within the scope of the order because the *PRC Hand Trucks Order* covers hand trucks "suitable for any use."<sup>27</sup>

Additionally, Petitioners argue that the MCX Magna Cart is not made from telescoping tubular material, but rather from rectangular steel pieces, which cannot have a diameter as their measurement. Citing *Alton Industries, Inc., et al. Ruling*,<sup>28</sup> Petitioners state that the Department determined to include the Alton folding hand truck in the scope because there is no evidence in Alton's scope ruling request to indicate that its folding hand truck is manufactured from telescoping tubular material measuring less than 5/8 inch in diameter. Therefore, Petitioners argue that the MCX Magna Cart is within the scope because the *PRC Hand Trucks Order* only excludes the carts that are made of the telescoping tubular material measuring less than 5/8 inch in diameter.

#### **Summary of WelCom's Rebuttal Comments to Petitioners' Opposition**

In its January 8, 2008, rebuttal comments, WelCom alleges that Petitioners' December 5, 2007 comments failed to address WelCom's primary arguments that the scope language of the *PRC Hand Trucks Order* was never intended to include hand trucks having a similar size and design to WelCom's MCX Magna Cart. Once again, WelCom maintains that the Court's finding in *Vertex Garden Cart* CTF 2006 is based on the Court's acknowledgment that the Vertex Garden Cart was not designed to carry heavy loads over 150 lbs, citing the Court's finding that "Commerce's Final Scope Ruling refers to the petition which describes a hand truck's load

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<sup>24</sup> *Id.*

<sup>25</sup> See Petitioners' December 5, 2007 submission, at Exhibit 7.

<sup>26</sup> *Id.*

<sup>27</sup> See Petitioners' December 5, 2007 submission, at 7 (*citing the PRC Hand Trucks Order*).

<sup>28</sup> See Petitioners' December 5, 2007 submission, at 8 (*citing* Memorandum from Stephen Cho, Natalie Kempkey, Case Analysts, through Susan Kuhbach, Director, AD/CVD Operations, Office 1, to Jeffrey A. May, Deputy Assistant Secretary for Import Administration, titled "Scope Exclusion/Clarification Requests: Alton Industries, Inc.; Safco Products Company; A. J. Wholesale Distributors, Inc.; and Wilmar Corporation." dated October 6, 2004 ("Alton Industries, Inc., et al. Ruling"), at 5).



capacity as 'generally not exceeding 1000 pounds.' Although this description was not found in the Order, it is indicative of the weight that hand trucks are meant to carry." See *Vertex Garden Cart* CIT 2006<sup>29</sup>. Therefore, Welcom argues that the MCX Magna Cart should be outside the scope of the order because it cannot carry weight exceeding 150 lbs.

Welcom contends that Petitioners' arguments that the MCX Magna Cart is the same size as the Slide-Flat Cart and RuXXac Carts that the Department determined to include in the scope are puzzling because Petitioners actually only compared the heights of these carts. WelCom maintains that the Department has already determined that WelCom's Magna Cart has met the definition of "small" in the 2004 Magna Cart Scope Ruling. WelCom contends that in the RuXXac Cart Scope Ruling, the Department compared the RuXXac Carts with WelCom's Magna Cart, and determined that the RuXXac Carts have "dimensions and load capacity that are substantially larger than that of the Magna Cart" and that the RuXXac Carts were "not only taller, but also have a larger maximum load capacity than the Magna Cart."<sup>30</sup> WelCom contends that in the instant scope ruling request, it has provided the exact measurements and details of the MCX Magna Cart, and has shown that the MCX Magna Cart is even smaller and lighter in every respect in comparison with the 2004 Magna Cart. Thus, WelCom contends that Petitioners failed to provide any evidence to support their claim that the MCX Magna Cart is not "small."

WelCom states that the scope language describes the carrying loads for the excluded utility carts as "like" personal bags or luggage. WelCom argues that the scope language "like" does not mean to carry exclusively personal bags or luggage as Petitioners interpreted. WelCom contends that in terms of design and size, the MCX Magna Cart is similar to an attaché case that has a built-in handle and wheels and is designed for travelling.<sup>31</sup> Also, WelCom states that SkyMall, the world's leading inflight catalogue, sells the MCX Magna Cart as a luggage/travel item.<sup>32</sup> WelCom argues that because the MCX Magna Cart has a narrow frame, a handle mechanism and a maximum load capacity of 150 lbs, it can carry loads that are comparable to personal bags and luggage.

Additionally, WelCom rebuts Petitioners' arguments that the frame of the MCX Magna Cart is not made of telescoping tubular material. WelCom argues that "tubular material" can be of any shape as long as the inner and outer cross sections are concentric and have the same form and orientation, citing the meaning of aluminum "tubes and pipe" defined in the HTSUS:

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<sup>29</sup> See *Vertex Garden Cart* CIT 2006, at 18 note 11.

<sup>30</sup> See WelCom's January 8, 2008 submission, at 5, citing RuXXac Carts Scope Ruling, at 9.

<sup>31</sup> See WelCom's January 8, 2008 submission, at Exhibit 1a.

<sup>32</sup> See WelCom's January 8, 2008 submission, at Exhibit 1b.

“{h}ollow products, coiled or not, which have a uniform cross section with only one enclosed void along their whole length in the shape of circles, ovals, rectangles (including squares), equilateral triangles or regular convex polygons, and which have a uniform wall thickness. Products with a rectangular (including square), equilateral triangular or regular convex polygonal cross section, which may have corners rounded along their whole length, are also to be considered as tubes and pipes provided the inner and out cross sections are concentric and have the same form and orientation ”<sup>33</sup>

WelCom contends that the width of the uppermost telescoping tube is 0.5 inch, and is less than the 5/8 inch defined in the *PRC Hand Trucks Order* for excluded hand trucks.

WelCom states that it provided a sample of the MCX Magna Cart to U.S. Customs and Border Protection (“U.S. CBP”) at Long Beach, a port of entry in California, and that after examining the sample cart, the U.S. CBP “ascertained that, according to its understanding, the MCX Magna Cart was not within the scope” of the *PRC Hand Trucks Order*.<sup>34</sup>

### **Summary of Petitioners’ Rebuttal Comments**

In its January 25, 2008 submission, Petitioners submitted a MCX Magna Cart together with the box in which the MCX Magna Cart is packed when purchased. Petitioners state that the packaging box indicates that the weight of the MCX Magna Cart is 8.82 lbs, and its dimensions are 15.75 x 2.56 x 25.39 inches when collapsed. Petitioners contend the poster label on the sample MCX Magna cart advertises the product as a “personal hand truck”<sup>35</sup> and shows it is carrying three items stacked on top of each other: two file boxes and a carton of 30 bottles of water. Therefore, Petitioners argue that, while the poster label also states that the cart can be used for air travel, the photo actually shows that the product is perfect for home or office use as well. Moreover, Petitioners maintain that a review posted at Amazon.com by Mr. John Evanthes, a WelCom equity partner in charge of company sales, further indicates that the MCX Magna Cart is designed “for near every conceivable need around your home or office.”<sup>36</sup>

Citing the *PRC Hand Trucks Order*, which covers “hand trucks manufactured from any material, whether assembled or unassembled, complete or incomplete, suitable for any use, and certain

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<sup>33</sup> See WelCom’s January 8, 2008 submission, at Exhibit 4 (citing HTSUS, Chapter 76, Note 1(e)).

<sup>34</sup> See WelCom’s January 8, 2008 submission, at 9.

<sup>35</sup> See Petitioners’ January 25, 2008 submission, at 1.

<sup>36</sup> See Petitioners’ January 25, 2008 submission, at 5 (citing Petitioners’ December 5, 2007 submission, at Exhibit 1).

parts thereof,” Petitioners argue that the plain scope language indicates that the *PRC Hand Trucks Order* covers all hand trucks no matter what they are used for. Thus, Petitioners dispute WelCom’s argument that the MCX Magna Cart is designed for light objects and the *PRC Hand Trucks Order* only covers those hand trucks that carry heavy items, or loads that are dissimilar to personal bags and luggage.

In addition, Petitioners argue that the scope language of an antidumping duty order constitutes “the cornerstone’ of a[n] ... analysis of an order’s scope.”<sup>37</sup> Petitioners maintain that the language of the *PRC Hand Trucks Order* does not require a hand truck to be above a certain minimum load carrying capacity, or above a certain height in order to be within the scope. Also, Petitioners contend that the Department has already found that “hand truck load capacity is not a factor in the scope of the investigation.”<sup>38</sup> Therefore, Petitioners argue that the Department should not attach any importance to the WelCom’s argument that the MCX Magna Cart cannot carry loads greater than 150 lbs. Furthermore, Petitioners contend that the Department determined to include the Slide-Flat Carts and RuXXac Carts that are 40 inches and 40.6 inches in height, respectively. Therefore, the Department should not attach any importance to WelCom’s argument that the MCX Magna Cart is 39 inches high, and shorter than the Slide-Flat Carts and RuXXac Carts. Petitioners claim that if the Department makes a scope determination that conflicts with the order, or has interpreted an order in a way that changes the order’s scope, the courts will consider the agency’s ruling erroneous and reverse it. See *Eckstrom Indus., Inc. v. United States*.<sup>39</sup>

Furthermore, Petitioners argue that the Department should not be unduly influenced by the CIT’s finding in *Vertex Garden Cart CIT 2006*, cited by WelCom, that used the load capacity of the Vertex Garden Cart as a criterion in its ruling. Petitioners contend that in *Gleason Indus. Prod. Inc. v. United States*, the CIT found that the *Vertex Garden Cart CIT 2006* decision focuses “the attention of the agency and reviewing courts on the requirement that a hand truck must be able to slide under a load in order to fall within the purview of the Antidumping Duty Order, but it does

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<sup>37</sup> See Petitioners’ January 25, 2008 submission, at 2 (citing *Allegheny Bradford Corp. v. United States*, 342 F. Supp. 2d 1172, 1184 (Ct. Int’l Trade 2004) (citing *Duferco Steel*, 296 F. 3d 1087, 1097-98 (Fed. Cir. 2002) (citing *Eckstrom Indus., Inc., v. United States*, 254 F. 3d 1068, 1073 (Fed. Cir. 2001))).

<sup>38</sup> See Petitioners’ January 25, 2008 submission, at 2 (citing *Alton Industries, Inc. et al. Ruling*, at 5).

<sup>39</sup> See Petitioners’ January 25, 2008 submission, at 2 (citing *Duferco Steel*, 296 F. 3d 1095, 1097 (Fed. Cir. 2002) (citing *Eckstrom Indus., Inc., v. United States*, 254 F. 3d 1072 (Fed. Cir. 2001))).

not purport to answer that question for any product other than the garden cart at issue in the case.”<sup>40</sup>

### **Summary of WelCom’s Second Rebuttal Comments**

In its February 1, 2008 submission, WelCom reiterates its claims that Petitioners’ “foldable Luggage Cart” that is identical to WelCom’s MCX Magna Cart is made in Taiwan, not the United States.<sup>41</sup>

In its April 7, 2008 submission, WelCom maintains that the essential feature of WelCom’s MCX Magna Cart is its telescoping frame, which is a critical feature that distinguishes all luggage carts from all hand trucks subject to the *PRC Hand Trucks Order*. WelCom argues that the telescoping design on luggage carts allows for a light-weight frame that fulfills the first priority as a travel product, and the telescoping design substantially weakens the load capacity.<sup>42</sup>

### **Summary of Petitioners’ Second Rebuttal Comments**

In its April 21, 2008 submission, once again, Petitioners argue that the *PRC Hand Trucks Order* strictly pertains to circular material measuring less than 5/8 inch in diameter, and since the shape of the telescoping tube of the MCX Magna cart is not circular, the MCX Magna cart is within the scope of the order. Also, Petitioners contend that the length and the diagonal, two of three measurements of the rectangular telescoping tube of the MCX Magna Cart reported by WelCom, exceed 5/8 inch, and the surface area of the telescoping tube of the MCX Magna Cart is only about 1/166<sup>th</sup> square inches smaller than the circular frame with a 5/8 inch diameter. Petitioners contend that WelCom’s argument that the MCX Magna Cart has a smaller surface area of the telescoping tube is literally requesting the Department to rewrite the exclusion exception.

Additionally, Petitioners request that the Department apply “facts otherwise available” to WelCom’s April 11, 2008 questionnaire response because it only provided the measurements for the top portion of the rectangular tube, not all tubes of the frame as the Department required. Furthermore, Petitioners argue that the *PRC Hand Trucks Order* covers all hand trucks, and the International Trade Commission (“ITC”)’s final determination found “that there is no clear dividing line between different types of finished hand trucks corresponding to Commerce’s

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<sup>40</sup> See Petitioners’ January 25, 2008 submission, at 4 (citing *Gleason Indus. Prod. Inc. v. United States*, No. 06-00089, slip op. 07-40, at 10 (Ct. Int’l Trade March 16, 2007)).

<sup>41</sup> See WelCom’s February 1, 2008 submission, at 2 and Attachment 1.

<sup>42</sup> See WelCom’s April 7, 2008 submission, at 2.

scope of investigation” and treated all hand trucks “as a single domestic like product.”<sup>43</sup> Once again, Petitioners contend that if the Department arrives at a scope determination that conflicts with an order’s terms, or interprets an order in a way that changes the order’s scope, the Department’s scope ruling will be considered erroneous. *See Duferco Steel, Inc. v. United States*.<sup>44</sup>

## Legal Framework

The regulation governing the Department’s antidumping scope determinations is 19 CFR 351.225. On matters concerning the scope of an order, the Department’s initial basis for determining whether a product is included within the scope of an order is the descriptions of the product contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the ITC. *See* 19 CFR 351.225(d) and 351.225(k)(1). Such scope determinations may take place with or without a formal inquiry. *See* 19 CFR 351.225(d) and 351.225(e). If the Department determines that these descriptions are dispositive of the matter, it will issue a final scope ruling as to whether or not the merchandise in question is covered by the order. *See* 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise are not dispositive, normally upon initiation of a formal inquiry under 19 CFR 351.225(e), the Department will consider the five additional factors set forth in 19 CFR 351.225(k)(2). These criteria are: (i) the physical characteristics of the product; (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.

In this case, the Department has evaluated WelCom’s request in accordance with 19 CFR 351.225(k)(1), and the Department finds that the descriptions of the products contained in the petition, the initial investigation, and determinations of the Department (including prior scope determinations) and the ITC are, in fact, dispositive. Therefore, we find it unnecessary to consider the additional factors set forth in 19 CFR 351.225(k)(2).

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<sup>43</sup> *See Hand Trucks and Certain Parts Thereof From China, Inv. No. 731-TA-1059 (Final), Pub. 3737 (Nov. 2004), at 6.*

<sup>44</sup> *See* Petitioners’ April 21, 2008 submission, at 4 (*citing Duferco Steel, Incl. v. United States*, 296 F.3d 1087, 1095 and 1097 (Fed. Cir. 2002) (*citing Eckstrom Indus. Inc. v. United States*, 254 F.3d 1068, 1072 (Fed. Cir. 2001); *Wheatland Tube Co., v. United States*, 161 F.3d 1365, 1370 (Fed. Cir. 1998)).

## Analysis

The scope language of the *PRC Hand Trucks Order* states that “{e}xcluded 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.”<sup>45</sup> In the 2004 Magna Cart Scope Ruling, the Department determined that “{s}ince the scope exclusion does not specify that the frame be exclusively constructed of telescoping tubular material less than 5/8 {inch} in diameter, or further define which parts of the frame must telescope, a reasonable interpretation of the scope exclusion language is that the primary focus should be on the diameter of the tubular material comprising the telescoping section(s) of the frame.”<sup>46</sup> Additionally, in the 2004 Magna Cart Scope Ruling, the Department found that the Magna Cart, which weighs approximately 10 lbs., folds open to 39 inches high, collapses to 2 inches wide x 28 inches high, and can hold up to 200 lbs, met the criteria for being considered “small.”<sup>47</sup> Further, the Department found that while the Magna Cart may be used for other light duty applications, information on the record indicated that it was specifically designed for carrying loads like personal bags or luggage.<sup>48</sup> Based on the scope of the order’s exclusionary language, our 2004 Magna Cart Scope Ruling, and the specifications of the MCX Magna Cart, we have determined that the MCX Magna Cart is outside the scope of the *PRC Hand Trucks Order*.

Webster’s II New Riverside University Dictionary defines the word diameter as “width,” and in mathematical terms, the word diameter means a straight line segment passing through the center of a figure, especially a circle or sphere.<sup>49</sup> We find that the use of the word “especially” in the definition does not limit the applicability of the diameter dimension to only a circle or sphere. In determining whether the term “tubular material” applies to shapes other than circles, we find illustrative the meaning of aluminum tubes and pipe from the HTSUS: “products with a rectangular (including square), equilateral triangular or regular convex polygonal cross section, which may have corners rounded along their whole length, are also to be considered as tubes and pipes provided the inner and outer cross sections are concentric and have the same form and

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<sup>45</sup> See *PRC Hand Trucks Order*.

<sup>46</sup> See 2004 Magna Cart Scope Ruling, at 16.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> See Webster’s II New Riverside University Dictionary 373 (1984) (“diameter: 1. Math. a. A straight line segment passing through the center of a figure, esp. of a circle or sphere, and terminating at the periphery. b. The length of such a segment. 2. Width or thickness.”).

orientation.”<sup>50</sup> Based on this description, we find that the term “tube” may apply to shapes other than a circle or a sphere, such as rectangles. Because the diameter aspect of this scope exclusion is tied to tubular material and tubular material includes shapes such as rectangles, the telescoping rectangular tubular sections of the MCX Magna Cart are considered tubular material for purposes of examining whether the telescoping sections of the MCX Magna Cart are less than 5/8 inch in diameter.

The MCX Magna Cart frame is comprised of two telescoping sections. Welcom has reported the exact dimensions of the tubular telescoping for the upper telescoping section and the width of the lower telescoping section of the MCX Magna Cart. The lower telescoping section, which telescopes into a fixed tubular frame, is comprised of rectangular tubing with a width of 0.75 inch (*i.e.*, 3/4 inch)<sup>51</sup> and a length of 7/8 inch by our measuring of the sample. The upper telescoping section, which telescopes into the lower telescoping frame, is comprised of rectangular tubing with a width of 7/16 inch and a length of 11/16 inch, and a frame surface area of 0.30078 *inch squared*.<sup>52</sup> In the 2004 Magna Cart Scope Ruling, we determined that “since the scope exclusion does not specify that the frame be exclusively constructed of telescoping material less than 5/8 {inch} in diameter, or further define which parts of the frame must telescope, a reasonable interpretation of the scope exclusion language is that the primary focus should be on the diameter of the tubular material comprising the telescoping section(s) of the frame.” Consistent with the 2004 Magna Cart Scope Ruling, the primary focus for the MCX Magna Cart is on the two telescoping sections of the frame and since both telescoping sections are integral components of the frame, and we have determined that the frame does not have to be exclusively constructed of telescoping material less than 5/8 inch in diameter, it is reasonable to focus our analysis on whether either telescoping section of the frame is less than 5/8 inch in diameter.

Because the scope only refers to a single diameter and the MCX Magna Cart telescoping tubing is rectangular, with two or more diameters, it is necessary to establish a reasonable benchmark for determining whether the tubular material is less than 5/8 inch in diameter. The only shape with a consistent 5/8 inch diameter is a circle. Accordingly, as a benchmark for measuring 5/8 inch diameter, we have determined that it is reasonable to apply the area of a circle, 0.3068 *inch squared*,<sup>53</sup> as the benchmark. As no dimension of the lower telescoping section tubular material

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<sup>50</sup> See HTSUS (2008) (Rev. 2), Chapter 76, Aluminum and Articles Thereof, at Note 1(e).

<sup>51</sup> See WelCom’s April 7, 2008 submission, at Attachment 1.

<sup>52</sup> See WelCom’s April 11, 2008 response, at 1.

<sup>53</sup>  $\text{Area} = \pi R^2$ , *i.e.*,  $(5/8 \div 2)^2 \times 3.1415962 = 0.3068$  *inch squared*.

is less than 5/8 inch in diameter, the lower section of the telescoping frame has an area greater than 0.3068 *inch squared* and thus is greater than our benchmark. However, the upper telescoping section has an area of 0.30078 *inch squared* and is less than our benchmark. Therefore, the MCX Magna Cart satisfies the diameter aspect of the exclusionary language of the scope of the order, as it is “tubular material measuring less than 5/8 inch in diameter.”

After analyzing record evidence, we have also determined that the MCX Magna Cart is a smaller and a lighter model of the 2004 Magna Cart in almost every dimension. The maximum load capacity, the weight, the width of the frame, the wheel diameter, the length of the extended toe plate and wheels and the folded height of the MCX Magna Cart are all smaller than the 2004 Magna Cart. Only the extended height of the MCX Magna Cart is the same as the 2004 Magna Cart, and the length of the MCX Magna Cart’s toe plate and the wheels when folded is slightly longer than the 2004 Magna Cart. Specifically, the MCX Magna Cart’s carrying capacity is 150 lbs, while the 2004 Magna Cart’s carrying capacity is 200 lbs; the MCX Magna Cart is 2 lbs lighter than the 2004 Magna Cart; the width of the frame of the MCX Magna Cart is 4 inches less than the 2004 Magna Cart; and the wheel diameter is 2 inches shorter than the 2004 Magna Cart; the length of the extended toe plate and wheels of the MCX Magna Cart is 3.25 inches shorter than the 2004 Magna Cart; and the folded height of 24.75 inches for the MCX Magna Cart is 3.25 inches shorter than the 2004 Magna Cart. On the basis of comparing the MCX Magna cart to the 2004 Magna Cart, we have determined that the MCX Magna Cart meets the definition of “small” because the majority of the MCX Magna Cart’s characteristics are smaller than the 2004 Magna Cart.

The lightweight, small design of the MCX Magna Cart demonstrates it was intended for smaller loads like personal bags and luggage, that is, containers with personal items like clothing, sports equipment, books, etc. Although it may be possible to carry a load like a filing cabinet or a garbage can without breaking the MCX Magna Cart, the size and construct demonstrate that such loads are not intended by the design. Also, while Petitioners argue that the MCX Magna Cart is advertised as a beach cart, submitting advertisements which show that the MCX Magna Cart is not exclusively used or advertised to carry personal bags or luggage, we find that the exclusionary language “like” in the scope of the order does not limit its use only to personal bags or luggage. Our analysis of the MCX Magna Cart indicates that the design is smaller and more limited than the 2004 Magna Cart, which we determined was “specifically designed for carrying loads like personal bags or luggage.”<sup>54</sup> Thus, we have determined that the MCX Magna Cart was specifically designed for carrying loads like personal bags or luggage.

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<sup>54</sup> See Magna Cart Scope Ruling, at 16.





