



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

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A-570-891

Scope Inquiry
IA / Office 7: DC
Public Document

MEMORANDUM TO: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

THROUGH: Richard Weible *RW*
Director
AD/CVD Operations, Office 7

Robert James *RJ*
Program Manager
AD/CVD Operations, Office 7

FROM: David Cordell *DC*
Analyst Office 7

RE: Hand Trucks and Certain Parts Thereof from the People's Republic
of China (PRC): Scope Ruling on Fiskars Brands, Inc.
"Allbarrows"

SUMMARY:

On July 25, 2008, the Department of Commerce (Department) received a submission from Fiskars Brands, Inc. (Fiskars) inquiring whether its products known as Allbarrows are included within the scope of the antidumping duty order on hand trucks and certain parts thereof (hand trucks) from the PRC.¹

In accordance with 19 CFR 351.225(k)(1), we recommend the Department determine that the Fiskars' Allbarrows are not within the scope of the antidumping duty order on hand trucks from the PRC.

¹ Initially Fiskars filed its request on July 11, 2008. However, Fiskars' counsel omitted the certification required under 19 CFR 351.303(g). See Memo to the File from David Cordell dated July 23, 2008. Fiskars filed the required certification on July 25, 2008, and the request became properly filed as of that date.



BACKGROUND:

On July 11, 2008, the Department received a submission from Fiskars inquiring into whether the wheelbarrows known as Allbarrows it is planning to import from the PRC are included within the scope of the Order (Scope Inquiry Request). Fiskars provided a description of the wheelbarrows known as Allbarrows. Neither Petitioners (Gleason Industrial Products, Inc. and Precision Products, Inc.) nor any other party filed comments on the scope request.

According to Fiskars, the Allbarrow is not within the scope of the order because it lacks the requisite physical characteristics of the merchandise described by the scope of the order. In particular, Fiskars notes there is no "vertically disposed frame" and no "horizontal projecting edge or edges or toe plate, perpendicular or angled to the vertical frame, at or near the lower edge of the vertical frame."

According to Fiskars, the Allbarrow is composed of a steel tray or barrow, mounted on two horizontal wooden handles, to which are also attached two steel legs and a metal cross bar to which two wheels and a bumper are attached. Fiskars claims the Allbarrow is a wheelbarrow, which is used to transport loads horizontally in the barrow. Fiskars notes the load is dumped by placing the Allbarrow in a vertical position. Fiskars believes the Allbarrow to be classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 8715.80.5090.

Fiskars contends the Allbarrow is outside the scope of the order because the frame is horizontally disposed and is only used vertically when the contents of the barrow are being dumped. Secondly, Fiskars maintains there is no horizontally protruding edge or toe plate, nor is the bumper perpendicular or angled to the frame. According to Fiskars, the bumper cannot slide under a load for purpose of lifting or moving the load.

Legal Framework

The Department examines scope requests in accordance with the Department's scope regulations, which may be found at 19 CFR 351.225 (2008). This determination may take place with or without a formal inquiry. 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 and the International Trade Commission (the Commission). See 19 CFR 351.225(k)(1). 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 has evaluated Fiskars' request in accordance with 19 CFR 351.225(k)(1) and finds that the descriptions of the product contained in the petition, the initial investigation, the determinations by the Secretary and the Commission are, in fact, dispositive with respect to Fiskars' Allbarrow. Therefore, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2).

Analysis

With respect to the instant request, we find that for the reasons outlined below, this product is not within the scope of the Order.

In their petition submitted on November 13, 2003, the petitioners requested that the investigation cover:

{h}and trucks made primarily or exclusively from steel, aluminum or other metals, as well as those made from nylon or plastic, whether assembled or unassembled, complete or incomplete, suitable for residential, industrial or commercial use, and specific parts thereof, namely the frame, the handling area and the projecting edges or toe plate, and any combination thereof. A hand truck is a hand-propelled barrow consisting of a frame having at one end a handle or pair of handles and at the other end two or more wheels and a projecting edge or edges to slide under a load. The subject hand trucks are typically imported under heading 8716.80.5010 ("Trailers and semi-trailers: other vehicles, not mechanically propelled; and parts thereof; other vehicles; other; industrial hand trucks") of the HTSUS, although they may also be imported under heading 8716.80.5090 (Trailers and semi-trailers: other vehicles, not mechanically propelled; and parts thereof; other vehicles; other; other). Although the HTSUS subheadings are provided for convenience and for the purposes of the U.S. Bureau of Customs and Border Protection (Customs), 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 (of subheading 8716.80.5020, HTSUS); 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; and wheels and tires used in the manufacture of hand trucks.

See Antidumping Petition (November 13, 2003) at 9.

On December 2, 2004, the Department published the antidumping duty order on hand trucks from the 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). The scope language in the Order has carried forward without any modifications or clarifications, and is as

follows:

The 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. 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. 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. 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.

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.

The scope of the order defines a complete or fully assembled hand truck as “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 transporting the load.”

Based on the record evidence, the Allbarrow does not have the physical features necessary to be considered a hand truck and therefore covered by the scope of the Order. First, the Allbarrow does not have a “vertically disposed frame” and is only placed in a vertical position when the contents of the Allbarrow are being dumped. Secondly, it is clear from the product description that there is no sliding projecting edge or toe plate, which would be used to slide under a load for purposes of lifting and transporting the load. Furthermore, while the Allbarrow has a bumper at the end of the wheelbarrow, it is not perpendicular or angled to the frame. Rather, it is in line horizontally with the frame and cannot slide under a load for purposes of moving or lifting the load. These physical characteristics lead us to conclude that the Allbarrow does not meet the description of the merchandise in the Petition or in the scope of the AD Order.

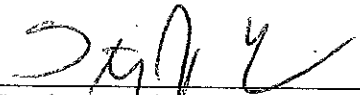
Recommendation

Based upon the preceding analysis, we recommend the Department find that Fiskar’s Allbarrow is not within the scope of the Order.

✓

Agree

Disagree



Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

8/13/06

Date

