



A-570-891  
Scope Inquiry  
**PUBLIC DOCUMENT**  
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October 20, 2008

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

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

Robert James  
Program Manager  
AD/CVD Operations, Office 7

**FROM:** Mark Flessner  
Analyst  
AD/CVD Operations, Office 7

**RE:** Hand Trucks and Certain Parts Thereof from the People's Republic  
of China (PRC): Scope Ruling on Conair Corporation's  
"LadderKart"

**SUMMARY:**

On August 20, 2008, the Department of Commerce (the Department) received a submission from Conair Corporation (Conair) inquiring whether its product known as the LadderKart is included within the scope of the antidumping duty order on hand trucks and certain parts thereof (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) (the Order).*

In accordance with 19 CFR 351.225(k)(1), we recommend the Department determine that the Conair LadderKart is within the scope of the antidumping duty order on hand trucks from the PRC.

**BACKGROUND:**

On August 20, 2008, the Department received a submission from Conair inquiring into whether the product known as the LadderKart, which it imports from the PRC, is included within the



scope of the Order (Scope Inquiry Request). Conair provided a description of the LadderKart, which it terms "a step ladder with additional features that allow it to function in a manner similar to a hand truck." Conair maintained that the LadderKart ought to be excluded from the scope of the Order.

On September 12, 2008, petitioners Gleason Industrial Products, Inc. and Precision Products, Inc. (collectively, Gleason) filed comments on the Scope Inquiry Request opposing the exclusion of the LadderKart from the scope of the Order. On September 24, 2008, Conair submitted a reply to Gleason's opposition.

According to Conair, the LadderKart 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. See Conair's August 20, 2008, submission at 2. Conair describes the LadderKart as being a three step, folding aluminum stepladder with polypropylene steps which has "a hand cart function." *Id.*, at 1. In particular, Conair states that the LadderKart "toe plate" cannot slide under a load for purposes of lifting or moving a load." *Id.*, at 2. Conair contends that the LadderKart cannot slide under a load because its edge is composed of 5/8 inch tubular framing. *Id.*, at 2-3. Conair cites *Vertex International, Inc. v. United States*, Ct. No. 0500272, Slip Op. 06-10 (Ct. Int'l Trade, January 19, 2006) (*Vertex*) in support of its contention that the LadderKart is outside the scope of the Order. Conair maintains the Court of International Trade (CIT) found the *Vertex* product outside the scope of the Order partially because the stabilizing platform (analogous to a toe plate) was incapable of sliding under a load since it was a round steel wire rather than a beveled projecting edge. Conair claims the same logic applies to its LadderKart, which also has no beveled edge. *Id.*, at 3 and Exhibits 3 and 4. In responding to arguments raised by petitioners, Conair dismisses what it characterizes as petitioners' "Lift, Move and Place Concept," whereby the scope of the Order would encompass hand trucks requiring "a user to lift and maneuver an object onto a toe plate," rather than the toe plate sliding under the load. See Conair's September 24, 2008, submission at 2.<sup>1</sup> Conair points out that the Department has drawn a distinction between a projecting edge's ability to slide under a load and a projecting edge's ability to have a load slid across or onto it. *Id.* Conair states that none of the various definitions of the word "slide" indicate the positioning of something beneath a raised object. *Id.*, at 3-5.

Petitioners oppose exclusion of the LadderKart from the Order. See Gleason's September 12, 2008, submission at 1. Gleason maintains the LadderKart fits the general description of hand trucks covered by the Order, including a vertically disposed frame with a handle, 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, which can be used to slide under a load for purposes of lifting and moving the load." *Id.*, at 1-2. Gleason also insists the 5/8 inch tubular construction of the projecting edge does not place the LadderKart outside the scope of the Order, because nothing in the scope requires the projecting edge or toe plate to be solid, or precludes the use of tubular construction. Gleason likewise dismisses the 3/4 inch elevation of the tubular frame, as the Order defines the toe plate as being "perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame." *Id.*, at 3-4. Gleason states that if a user can position a

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<sup>1</sup> Conair's September 24, 2008, submission does not have numbered pages; we refer to the cover page as page 1.

hand truck's toe plate beneath a load by tipping the load, the fact that a toe plate is elevated or constructed out of tubing does not exclude the product from the Order. In support, petitioners cite *Gleason Indus. Prods., Inc. v. U.S.*, Ct. No. 0600089, Slip Op. 08-42 at 2-3 (Ct. Int'l Trade, April 14, 2008), in which the CIT affirmed the Department's finding that cylinder hand trucks with a 1 ¼ inch vertical edge propping the toe plate off the ground were nevertheless within the scope, noting the "projecting edge is elevated only slightly and not to the degree to render tipping a load to allow the projecting edge to slide under implausible." *Id.*, at 4 (Gleason's emphasis omitted). Gleason cites a related slip opinion of the CIT, *Gleason Indus. Prods., Inc. v. U.S.*, Ct. No. 0600089, Slip Op. 07-40 at 8-9 (Ct. Int'l Trade, March 16, 2007), to rebut Conair's reliance on *Vertex* in that Vertex International's "Garden Cart" product was drastically different from the cylinder hand cart being considered in that case. Likewise, Gleason contends that Vertex International's Garden Cart product "differs drastically" from Conair's LadderKart. *Id.*, at 5-6. Gleason also notes the LadderKart does not fall under the "small luggage carrier exception" to the scope of the Order. *Id.*, at 6-8.

### **Legal Framework**

The Department examines scope requests in accordance with the Department's scope regulations, which may be found at 19 CFR 351.225. 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 Conair's 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 dispositive with respect to Conair's LadderKart. Therefore, the Department has not considered 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 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.

During the less-than-fair-value investigation the Department clarified this scope language into its final form as reflected in the Order. That language has carried forward without any modifications or clarifications since its original publication in the *Federal Register*, and reads 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."

The Commission adopted a similar definition of the "like product" subject to its determinations, confirming that the investigations covered "finished hand trucks and hand truck parts described in Commerce's scope of investigation." See *Determination of the Commission in Investigation 731-TA-1059 (Final)*, USITC Publication 3737 (November 2004) (Final Determination) at 6. According to the Commission, hand trucks exhibit four general characteristics: (1) a frame; (2) a

handling area; (3) two or more wheels; and (4) a projecting edge or edges perpendicular, or at an angle, to the frame. *See* Final Determination at I-4.

It is clear from the record that neither party disputes that the LadderKart has the physical features necessary to be considered a hand truck, and therefore covered by the scope of the Order, apart from the issue concerning the projecting edge or toe plate. The LadderKart also does not fit within any exception in the scope language. The additional utility of a folding stepladder (even if this is the primary utility) in no way requires finding this product outside the scope of the Order because the scope explicitly covers products which are convertible or collapsible for other uses.

With regard to the specific issue of the projecting edge or toe plate, we find Conair's arguments unpersuasive because the LadderKart's projecting edge or toe plate in fact can slide under a load if that load is slightly tipped. *See* Memorandum to the File, "Hand Trucks and Certain Parts Thereof from the People's Republic of China (PRC): Testing of Conair Corporation's LadderKart," dated October 20, 2008 (Conair Test Memorandum), at Appendix Five. We agree with Gleason that the 3/4 inch elevation of the projecting edge or toe plate does not preclude the inclusion of the LadderKart within the scope of the Order because the elevation is only slight. Likewise, we agree with petitioners that the construction of a projecting edge or toe plate from 5/8 inch tubular material does not preclude the inclusion of the LadderKart within the scope of the Order because the LadderKart's projecting edge or toe plate can slide under a load.

In addition, we find Conair's reliance on the decision in *Vertex International v. United States* to be misplaced. First, as stated above, the LadderKart has a toe plate that is capable of sliding under a load and lifting it. We also find little similarity between the LadderKart and Vertex International's Garden Cart product. The LadderKart, unlike the Garden Cart, bears no warning about lifting heavy loads. In fact, Conair itself describes the LadderKart as having "a 250 lb. weight capacity for hand truck."<sup>2</sup> *See* Conair Test Memorandum at Appendix One. In contrast, the projecting edge of Vertex International's Garden Cart was designed to stabilize the cart, not bear loads, and the product bore specific warnings that the cart itself could not carry loads in excess of 150 pounds. *See Vertex*, Slip Op. 06-10 at 19. There is also no warning against pushing the LadderKart, or any indication that pushing the LadderKart (as required to use it in its hand truck mode) would be injurious to the operator or the product. In contrast, the Garden Cart included warnings that the product "is designed to be PULLED ONLY," and that pushing it "may damage the product *and even cause bodily injury*." *Id.*, quoting Vertex International's operating instructions (emphasis in original). Therefore, the constructions, designs, and intended uses of the LadderKart and the Vertex International Garden Cart are indeed drastically different, as Gleason maintains.<sup>3</sup>

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<sup>2</sup> Conair's self-description of the product is in no way dispositive of its status with regard to the scope of the Order; the reference here is used only to distinguish the load-bearing capacity of the LadderKart from that of Vertex International's Garden Cart.

<sup>3</sup> With regard to Conair's so-called "Lift, Move and Place Concept," *i.e.*, that Gleason is contending the ability to place (as opposed to slide) a load on the projecting edge or toe plate would qualify the product as being within the scope of the Order, we do not see such a claim raised either in Gleason's submission or in the various CIT slip

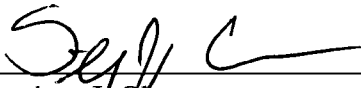
The combination of its physical characteristics leads us to conclude that the LadderKart meets the description of the merchandise in the scope of the Order.

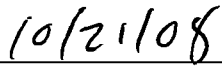
**Recommendation**

Based upon the preceding analysis, we recommend the Department find that Conair's LadderKart is within the scope of the Order.

  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Stephen J. Gaey  
Deputy Assistant Secretary  
for Import Administration

  
\_\_\_\_\_  
Date

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opinions. In that the LadderKart's projecting edge or toe plate can, in fact, slide under a load, this issue is not before the Department; accordingly, we take no position on it.