



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

A-570-891
Scope Inquiry
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November 6, 2008

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

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

Robert Bolling
Program Manager
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FROM: Sergio Balbontin
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RE: Hand Trucks from the People's Republic of China: "Collect It
Garden Waste Remover" Final Scope Ruling.

Summary

On January 23, 2008¹, the Department of Commerce ("Department") received a submission from American Lawn Mower Company ("ALMC") requesting a scope determination on whether its product known as the "Collect-It Garden Waste Remover" ("Collect-It") is outside the scope of the antidumping order on hand trucks from the People's Republic of China ("PRC"). See Notice of Antidumping Duty Order: Hand Trucks and Certain Parts Thereof From the People's Republic of China, 69 FR 70122, December 2, 2004 ("Order").

In accordance with 19 CFR 351.225(k)(1), we recommend the Department determine that ALMC's Collect-It is not within the scope of the Order on hand trucks from the PRC.

¹ Initially, ALMC filed its request on March 28, 2007. However, the Department rejected ALMC's request as the product was not yet being produced. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27331 (May 19, 1997).



Background

On January 23, 2008, ALMC submitted a request seeking a determination that its Collect-It is outside the scope of the Order (“ALMC Request”). Pursuant to the requirements of 19 CFR 351.225, ALMC provided a detailed description of the Collect-It and why it believed it is outside the scope of the Order. Neither petitioners (Gleason Industrial Products, Inc. and Precision Products, Inc.) nor any other party filed comments on the scope request.

ALMC states that the Collect-It is a device designed for picking up leaves and doing other yard maintenance. ALMC states that although the basic shape, “vertically oriented frame with an integral handle at the top and two axle-mounted wheels,” resembles a hand truck, it is not and cannot be used as one. See ALMC Request at 3. ALMC argues that the projecting edge or toe plate at 4.23 inches high is not designed to slide under a load and has a “large, round, fold out platform.” See ALMC Request at 3 and 8. The plastic platform includes a soft-sided plastic or canvas basket that is designed to expand to roughly the size of a trash can to collect the yard waste. The basket is secured by fabric loops to keep it upright. This basket, when not being used, can then collapse back into the round platform at the base. The bottom platform can then fold flat against the vertical frame for storage. There is also a scoop or dust pan attached to the top of the vertical frame that can also be used in channeling leaves into a waste basket. See ALMC Request at 3.

ALMC argues that although the Collect-It meets part of the criteria set forth in the scope of the Order as far as possessing a vertical frame with wheels near the bottom, the Collect-It cannot “slide” under boxes and similar items for the purpose of lifting and moving them. See ALMC Request at 6. ALMC argues that the projecting edge and lip at 4.23 inches is too bulky to slide under a load and prevents loads from sliding onto it. ALMC contends that this lip goes around the outside of the projecting edge creating an uneven surface further preventing an object from sitting evenly and prohibiting the stacking of multiple items. ALMC also states that the projecting edge is collapsible and would break if used to leverage or carry heavy objects. See ALMC Request at 9.

Additionally, ALMC argues that the construction of the device is light-weight and designed to be lifted by the user to empty the waste. Because of this, the frame is made of thin steel and is not reinforced. ALMC further states that the open construction of the back frame, “without cross members or any structure other than the two vertical rails” makes it ineffective as a hand truck. See ALMC Request at 11. The projecting edge is locked in place by a plastic crown which would break if too much weight was put on the projecting edge. This light-weight construction also includes the wheels, which ALMC states are hollow molded plastic and as such could not support loads in the same manner as heavy duty wheels that are typically found on hand trucks. ALMC contends that the wheels on the Collect-It are suitable for yard work, but not for the typical tasks of hand trucks. ALMC further states that the open construction of the back frame, “without cross members or any structure other than the two vertical rails,” makes it ineffective as a hand truck. See ALMC Request at 11.

ALMC states that the expectations and ultimate use of the product are to collect and remove yard waste. ALMC also states that the channels of trade for the Collect-It are through various

hardware, home and garden, and department stores and that it will be displayed and advertised in a manner consistent with garden tools.

Citing Vertex International, Inc. v. United States Slip Op. 06-10, Court of International Trade (CIT 2006) (“Vertex”), ALMC states that the CIT found that in order to be a hand truck under the scope of the Order the projecting edge had to slide under a load and that the cart must possess a central frame against which a load could be balanced securely. ALMC states that the Collect-It is outside the scope of the Order, as was the product from Vertex, because it does not slide under a load and its central frame is not secure.

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. See 19 CFR 351.225(k)(2). 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 inquiry, the Department evaluated ALMC’s request in accordance with 19 CFR 351.225(k)(1) and finds that the description 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 ALMC’s Collect-It. Therefore, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2).

Analysis

With respect to ALMC’s request, we find that for the reasons outlined below, this product is not within the scope of the order.

The scope of the order is:

[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 Order.

The ITC adopted a similar definition of the “like product” subject to its determination, confirming that the investigation 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 ITC, hand trucks exhibit four general physical 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.

Record evidence (*i.e.*, photographs and computer design illustration) indicates that the Collect-It has a 4.23 inch vertical lip that encompasses the entire circular projecting edge. See ALMC Request at 8. In a 2004 scope ruling, the Department found a hand truck not to be within the scope of the Order because the hand truck had a projecting edge with a 2-inch vertical edge or lip on the handling area that prevented it from sliding under a load for purposes of lifting and/or moving the load. See Memorandum to the file from Team to Jeffrey A. May, Scope Exclusion/Clarification Requests: Angelus Manufacturing; Custom Carts LLC; Illinois Tool Works, Inc.; Qingdao Huatian Hand Trucks Co., Ltd; WelCom Products Inc.; and LL King Corporation (September 3, 2004) at 7, 8. The Department also previously found in a 2008 scope ruling that a hand truck with a 1.25 inch raised vertical edge on the toe plate was outside the scope of the Order because it also prevented loads from sliding onto the hand truck. See “Final Results of Redetermination Pursuant to Remand: Central Purchasing Welding Cart Model 43615” (July 14, 2008) at 11. Both of these cases presented similar impediments for sliding the load onto the projecting edge (*i.e.*, a vertical lip on the projecting edge) and both hand trucks had a much smaller lip on the projecting edge than the Collect-It. Based on record evidence, we find that the height of the 4.23 inch lip which surrounds the entire toe plate or projecting edge prevents the Collect-It from sliding under a load for the purposes of lifting and/or moving the load as stipulated in the scope of the Order. The height of the 4.23 inch lip also prevents a load from being tipped or tilted in order to slide onto the projecting edge. Therefore, the Collect-It does not meet the description of the merchandise contained in the petition, prior determinations, or scope of the Order.

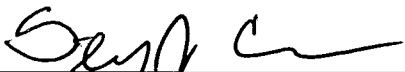
Recommendation

Based upon the foregoing analysis, the Department finds that pursuant to 19 CRF 351.225(k)(1) the ALMC Collect-It is outside the scope of the order covering hand trucks and certain parts thereof from the People's Republic of China.

✓

Agree

Disagree



Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

11/10/08

Date