



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

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Scope Ruling
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MEMORANDUM TO:

John M. Andersen
Acting Deputy Assistant Secretary
for Import Administration

THROUGH:

Wendy Frankel
Director
AD/CVD Enforcement, Office 8

Edward Yang
Senior Enforcement Coordinator
China/NME Group

FROM:

Tim Lord
Analyst, AD/CVD Enforcement,
China/NME Unit

RE:

Hand Trucks and Certain Parts Thereof from the People's
Republic of China: Scope Ruling on Corporate Express
Luggage Carts: Models CEB 31210 and CEB31490

SUMMARY

On January 30, 2008, Corporate Express, Inc. ("Corporate Express") filed a scope ruling request concerning whether two of the luggage cart models it imports, (i.e., CEB 31210 and CEB 31490) are within the scope of the antidumping duty 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"). On March 24, 2008, the Petitioners in the antidumping duty investigation, Gleason Industrial Products, Inc., and Precision Products, Inc. (collectively, "Gleason"), submitted comments regarding the scope request filed by Corporate Express. While Gleason agrees with Corporate Express that Model CEB 31490 is outside the scope of the Order, they contend that Model CEB 31210 is within the scope of the Order. On September 26, 2008, the Department of Commerce ("Department") issued both Corporate Express and Gleason a supplemental questionnaire



requesting that both parties provide a detailed explanation regarding whether models CEB 31210 and CEB 31490 are capable or incapable of sliding under a load. We also requested that the parties provide a more detailed explanation regarding whether a load can or cannot be tilted onto both models. On October 7, 2008, Corporate Express submitted its response to our supplemental questionnaire ("Corporate Express' SQR"). Gleason did not respond to the supplemental questionnaire.

In accordance with 19 CFR 351.225(k)(1), we recommend that the Department find that Model CEB 31210 is within the scope of the Order, and that Model CEB 31490 is outside of the scope of the Order.

BACKGROUND

Description of Merchandise

Model CEB 31210

Corporate Express describes Model CEB 31210 as a fully collapsible luggage cart consisting of steel tubing forming vertically disposed frames with a single telescopic handle. The cart has two 5.51 inch wheels, and a projecting platform¹ (measuring 25.39 inches x 15.16 inches) that is perpendicular to the frame. The projecting platform has a permanently curved foot giving the platform 3.5 inches in ground clearance (i.e., the platform is 3.5 inches above the ground). When the cart is fully extended, it is 42.5 inches tall. Its steel tubing has a .94 inch outside diameter and .85 inch inside diameter. When collapsed the cart measures 25.5 inches by 12 inches. The maximum load capacity of Model CEB 31210 is 200 pounds (lbs).

Model CEB 31490

Corporate Express describes Model CEB 31490 as being 42 inches tall when fully extended and as having steel tubing with a .71 inch outer diameter and .631 inch inner diameter. This model has "two handles at the top of the vertical handle," as well as 4 wheels and a platform measuring 21.25 inches x 11 inches. The platform has a permanent foot attached giving it 4.25 inches in ground clearance (i.e., the platform is 4.25 inches above the ground). The platform also has three folding wings (two side wings and one front wing) that allow for larger luggage to be put on the cart. The platform is normally 8 inches x 10.5 inches, and with the wings extended the

¹ Corporate Express uses the terms "projecting platform" or "platform" as opposed to the written scope language of "projecting edges or toe plate." We have taken Corporate Express' terminology for the terms platform or projecting platform to be synonymous with projecting edges or toe plate. For example, in arguing that Models CEB 31210 and 31490 are outside the scope of the Order, Corporate Express states, "Both models have (...) a projecting platform, which is perpendicular to the frame; however, both models should be exempt under the itemized exclusions for small (...) luggage carts." See Corporate Express' Scope Ruling Request, January 30, 2008, at 2 ("Corporate Express' January 30 Request"). Gleason, however, uses the terminology "toe plate" with regard to these models.

platform is 13.75 inches across and 5.75 feet front to back. The maximum load capacity of this model is 140 lbs.

Arguments Raised by the Parties

Model CEB 31210

Corporate Express

Corporate Express argues that Model CEB 31210 is a small luggage cart and as such is outside the scope of the Order. Corporate Express does acknowledge, however, that the tubular frame of Model CEB 31210 is greater than .625 inch (i.e., 5/8 inch) in diameter.² Nevertheless, Corporate Express contends that this attribute is “imperceptible to the consumer” and that this “extremely small difference between the tubing dimension cited in the scope exclusion” and that of Model CEB 31210 is insufficient to place the cart within the scope.³ Corporate Express argues that Model CEB 31210’s platform height of 3.5 inches, as well as its permanently curved foot make the model incapable of sliding under loads. As a result, Corporate Express contends that a user of Model CEB 31210 must manually pick up and place loads onto the cart. Corporate Express also states that a load cannot be safely tilted onto Model CEB 31210 “without danger of the luggage cart tipping over and possibly hurting the loader.”⁴ Lastly, Corporate Express states that Model CEB 31210 is not marketed in the section of its catalogue devoted to hand trucks, but rather is only marketed in its catalogue as a luggage cart.

Gleason

Gleason argues that Corporate Express failed to place on the record any evidence to support its contention that Model CEB 31210 is not capable of sliding under a load. In support of its argument, Gleason states that simply because the toe plate rises above the ground does not mean that Model CEB 31210 cannot slide under a load. Gleason also disagrees that the platform height of Model CEB 31210 prevents it from sliding under a load. Specifically, Gleason contends that: 1) the forward edge of Model CEB 31210’s platform bends downward to the ground, which assists the user in sliding the toe plate under a load; and 2) the projecting platform can indeed be slid under a load in various fashions because “the hand truck order does not stipulate how a user must operate a hand truck.”⁵ In addition, while Corporate Express maintains

² The scope of the Order excludes utility carts in which the frame is made from telescoping tubular material measuring less than 5/8 inch in diameter.

³ See Corporate Express’ January 30, 2008, Request at 4.

⁴ See Corporate Express’ SQR.

⁵ See Gleason’s March 24, 2008, Submission at 4.

that Model CEB 31210 is exempt from the Order because it is a small luggage cart, Gleason argues that the Department has previously found that hand trucks comparable in size to Model CEB 31210 are not small.⁶

Model CEB 31490

Corporate Express

Corporate Express argues that Model CEB 31490 is a small luggage cart and as such is outside the scope of the Order. Corporate Express does acknowledge, however, that the tubular frame of Model CEB 31490 is greater than .625 inches (i.e., 5/8 inch) in diameter. Nevertheless, Corporate Express contends that this attribute is “imperceptible to the consumer” and that this “extremely small difference between the tubing dimension cited in the scope exclusion” and that of Model CEB 31490 is insufficient to place the cart within the scope.⁷ Corporate Express argues that Model CEB 31490’s platform height of 4.25 inches makes the model incapable of sliding under loads. As a result, Corporate Express contends that a user of Model CEB 31490 must manually pick up and place loads onto the cart. Additionally, Corporate Express maintains that the small tubing diameter of Model CEB 31490’s three folding platform wings, which have a .62 inch outer diameter and a .5 inch inner diameter, as well as the front wing’s distance above the ground, make the platform unsuitable for sliding underneath loads. Corporate Express also states that a load cannot be safely tilted onto Model CEB 31490 “without danger of the luggage cart tipping over and possibly hurting the loader.”⁸ Lastly, Corporate Express states that Model CEB 31490 is not marketed in the section of its catalogue devoted to hand trucks, but rather is only marketed in its catalogue as a luggage cart.

Gleason

Gleason argues that Corporate Express failed to place on the record any evidence to support its contention that Model CEB 31490 is not capable of sliding under a load. In support of its argument, Gleason states that simply because the toe plate rises above the ground does not mean

⁶ Gleason asserts the Department found the Stebco Portable Slide-Flat Cart within the Order even though it measures 40 inches high, by 18.75 inches wide, by 19 inches deep (when open), and 30 inches high, by 18.75 inches wide, by 2 5/8 inches deep, when folded. See “Scope Ruling on Stebco Portable Slide-Flat Cart,” Memorandum from Juanita H. Chen, Acting Special Assistant to the Senior Enforcement Director, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, May 30, 2007, at 3. Gleason also states that the Department held that RuXXac and RuXXac Long hand trucks do not conform to the definition of a “small” hand truck even though they are 40.6 inches and 44.5 inches in height, respectively. See Final Scope Ruling: Faultless Starch/Bon Ami Co., Memorandum from Lilit Astvatsatrian, Case Analyst, to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, June 3, 2005, at 8.

⁷ See *id.*

⁸ See Corporate Express’ SQR.

that it cannot slide under a load. While Corporate Express maintains that Model CEB 31490 is exempt from the Order because it is a small luggage cart, Gleason argues that the Department has previously found that hand trucks comparable in size to Model CEB 31490 are not small.⁹ However, Gleason agrees with Corporate Express that CEB 31490 is outside the scope of the Order because CEB 31490's toe plate "fails to maintain the integrity of a horizontal position when being placed beneath a load, which compromises its ability to slide under a load."¹⁰

Scope of the Order

On December 2, 2004, the Department published the antidumping duty order on hand trucks from the PRC.¹¹ 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

⁹ See footnotes 6 and 7.

¹⁰ See Gleason's March 24, 2008, Submission at 4.

¹¹ See Order.

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.

Legal Framework

The Department examines scope requests in accordance with the Department's scope regulations, which are found at 19 CFR 351.225. This determination may take place with or without a formal inquiry. See 19 CFR 351.225(d) and (e). 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 ("ITC"). 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 Corporate Express' request in accordance with 19 CFR 351.225(k)(1) and finds that the descriptions of the products contained in the request, the initial investigation, and the determinations by the Secretary and the Commission, are dispositive with respect to Corporate Express luggage cart models CEB 31210 and CEB 31490. Therefore, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2).

Analysis

Model CEB 31210

Based on the written descriptions, technical drawings, and photographs provided by Corporate Express, we find that Model CEB 31210 is within the scope of the Order because it exhibits the essential characteristics of a hand truck, as described in the Order (i.e., a handle, at least two wheels, a vertical frame, a horizontal projecting edge at or near the lower section of the vertical frame). Based on record evidence, we find that Model CEB 31210 exhibits the following characteristics: 1) a vertical frame; 2) a handle; 3) projecting edge(s) or toe plate(s);¹² and 4) two or more wheels. Additionally, record evidence indicates that the maximum load capacity of Model CEB 31210 is 200 lbs. Thus, record evidence indicates that Model CEB 31210 is able to lift and move loads, as required by the Order.

While Model CEB 31210's projecting platform is 3.5 inches above the ground, the scope of the Order does not state that the horizontal projecting edge must be flush with the ground, only that the horizontal projecting edge be at or near the lower section of the vertical frame. Furthermore, Corporate Express has not placed on the record any evidence showing that the distance from the ground of Model CEB 31210's projecting platform restricts a load from being tilted so that the projecting platform can be slid under the load. The characteristic of the permanently-curved foot on Model CEB 31210's projecting platform is also not a basis for finding Model CEB 31210 outside of the scope of the Order, as the scope language states, "(the existence of) 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." In addition, Corporate Express also has not placed on the record any evidence showing that the permanently curved foot of Model CEB 31210's projecting platform restricts a load from being tilted so that the projecting platform can be slid under the load. Therefore, we find that Model CEB 31210 possesses all of the characteristics of a hand truck as described in the scope of the Order.

Further, we have determined that Model 31210's telescoping tubular material diameters are such that the model cannot meet the "small luggage cart exception" of the Order. In order to be considered as a small luggage cart and thus excluded from the Order, a cart's "frame (must) be

¹² As stated in footnote 2, Corporate Express uses the terms "projecting platform" or "platform" to mean "projecting edges/toe plate."

made from telescoping tubular material measuring less than 5/8 inch (i.e., .625 inch) in diameter." Model CEB 31210's telescoping tubular material has an outer diameter of .94 inch and an inner diameter of .85 inch, making it larger than the scope language's maximum accepted diameter of .625 inch. Therefore, we find that Model CEB 31210 does not meet this criterion of the exclusionary scope language.

Model CEB 31490

Based on the written descriptions, technical drawings, and photographs provided by Corporate Express, we find that Model CEB 31490 falls within the parameters of the scope definition because it exhibits the essential characteristics of a hand truck as described in the Order (i.e., a handle, at least two wheels, a vertical frame, a horizontal projecting edge at or near the lower section of the vertical frame). However, based on record evidence, we find that the Model CEB 31490's projecting platform is incapable of maintaining the integrity of a horizontal position when sliding beneath a load.

The Order states that a handtruck must possess a "projecting edge or edges, or toe plate (that slides under a load for purposes of lifting and/or moving the load)." We have found that Model CEB 31490's projecting edge cannot maintain its horizontal integrity because it collapses when it slides under a load. Thus, we find that this circumstance hinders the projecting edge's ability to slide under a load and lift and/or move the load. Therefore, since Model CEB 31490 cannot perform this function of a hand truck, as described in the scope of the Order, and because its projecting edge does not maintain its horizontal integrity when sliding under a load, we find that this model does not meet all of the characteristics listed in the scope of the Order. Accordingly, we find Model CEB 31490 outside the scope of the Order.

Recommendation

Model CEB 31210

We recommend that the Department find that Model CEB 31210 is within the scope of the Order because Model CEB 31210 possesses: 1) a vertical frame; 2) a handle; 3) projecting edge(s) or toe plate(s); and 4) two or more wheels. Additionally, we find that Model CEB 31210's telescoping tubular material diameters are too large to allow the cart to be considered a non-subject small luggage cart. Lastly, we find that Model CEB 31210's projecting platform height does not prevent the platform from sliding under a load for the purpose of lifting and/or moving the load.

Model CEB 31490

We recommend that the Department find that Model 31490 is outside the scope of the Order because Model CEB 31490's projecting edge collapses when sliding underneath a load. As such,

Model CEB 31490 does not possess a projecting edge capable of sliding under a load for the purpose of lifting and/or moving the load.

✓

Agree

Disagree

for John M. Andersen

John M. Andersen
Acting Deputy Assistant Secretary
for Import Administration

2/11/09
Date

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