



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

A-570-891
Scope Inquiry
IA / Office 7: MB
Public Document

May 29, 2009

MEMORANDUM TO: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

Robert James
Program Manager
AD/CVD Operations, Office 7

FROM: Maryanne Burke
International Trade Compliance Analyst, Office 7

RE: Hand Trucks and Certain Parts Thereof from the People's Republic of China (PRC): Scope Ruling on E&B Giftware, LLC's Samsonite Micro Mover Fold-Away Carry-on Cart, Samsonite Compact Luggage Cart, American Tourister Swing Wheel Luggage Cart.

Summary

On March 20, 2009, the Department of Commerce (Department) received a submission from E&B Giftware, LLC (E&B Giftware) inquiring whether the following items: (i) the Samsonite Micro Mover Fold-Away Carry-on Cart; (ii) the Samsonite Compact Luggage Cart; and (iii) the American Tourister Swing Wheel Luggage Cart are included within the scope of the antidumping duty order on hand trucks and certain parts thereof (hand trucks) from the People's Republic of China (PRC).¹ 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).

¹ Initially E&B Giftware filed its request on February 26, 2009. However, E&B Giftware's counsel omitted the certification required under 19 CFR 351.303(g). See Memorandum to the File from David Cordell dated March 16, 2009. E&B Giftware filed the required certification on March 20, 2009, and we consider the request properly filed as of that date.



In accordance with 19 CFR 351.225(k)(1), we recommend the Department determine that the Samsonite Micro Mover Fold-Away Carry-on Cart and American Tourister Swing Wheel Luggage Cart are within the scope of the antidumping duty order on hand trucks from the PRC. We also recommend that the Department find the Samsonite Compact Luggage Cart outside the scope of the antidumping duty order on hand trucks from the PRC.

Background

On February 26, 2009, the Department received a submission from E&B Giftware inquiring into whether three items it is planning to import from the PRC, the Samsonite Micro Mover Fold-Away Carry-on Cart, Samsonite Compact Luggage Cart and American Tourister Swing Wheel Luggage Cart, are included within the scope of the Order. See “Scope Review of Personal Luggage Carts,” dated February 26, 2009 (Scope Inquiry Request). In accordance with the Department’s regulations, E&B Giftware provided a description of the three items and argued that each item is a luggage cart that lacks the requisite physical characteristics of the subject merchandise described in the Order. E&B Giftware submitted samples of all three products for the record. On April 13, 2009, counsel for petitioner, Gleason Industrial Products, Inc. and Precision Products, Inc. inspected the three samples at the Commerce main building. See Memorandum to the File, dated April 14, 2009. Petitioner did not file any comments with the Department.

E&B Giftware’s Scope Request

a. Product Descriptions

Samsonite Micro Mover Fold-Away Carry-on Cart

The Samsonite Micro Mover Fold-Away Carry-on Cart consists of an aluminum and plastic frame. This cart employs two separate sections at the base of the frame which, when deployed, serve to carry the load. These two sections fold up into the frame for storage. Both incorporate textile fiber straps which are threaded through the ends of the sections to secure the load to the cart. When the cart is fully extended for use it measures 12 ¾ inches in width by 35 ¾ inches in height with approximately an 8-inch gap between the two protruding sections. When collapsed, the cart measures 6 inches by 15 inches. E&B Giftware claims its maximum load capacity is 50 pounds. See Scope Inquiry Request at 2.

Samsonite Compact Luggage Cart

E&B Giftware describes its Samsonite Compact Luggage Cart as having an iron frame of tubular telescoping sections measuring ½ inch and 9/16 inch in diameter. Id. The cart also features two wire “wings” at the base of the frame which flip-outward to the side and are intended to hold the load in place. There is also a third wire section which serves as a “kickstand” and flips downward to provide stability to the cart when in an upright position. When open, the cart measures approximately 13 5/8 inches by 35 3/5 inches. When closed the cart measures

approximately 12 ¼ inches by 20 ¼ inches. Id. at 3. E&B Giftware states the Compact Luggage Cart carries a maximum load of 75 pounds.

American Tourister Swing Wheel Luggage Cart

Similarly, E&B Giftware describes the American Tourister Swing Wheel Luggage Cart as having an iron frame of round tubular telescoping sections measuring 9/16 inch in diameter. The frame also incorporates a U-shaped tubular section at the base of the frame which points downward at an angle in order to rest on the ground to enable a loaded cart to stand upright and level. Id. at 3. When fully opened for use the cart measures approximately 13 inches wide by 39 ¼ inches high. When closed the cart measures approximately 13 inches by 25 inches. Id. E&B Giftware states the cart has a maximum load capacity of 100 pounds.

b. Scope Request

E&B Giftware raises two arguments common to the three items for which it requests a scope determination. First, E&B Giftware maintains all three items are not hand trucks, but are personal luggage carts which are excluded from the scope of the Order. In particular, E&B Giftware states United States Custom and Border Protection classifies all three products as personal baggage and luggage carts in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 8716.80.5020, and not under any of the subheadings specific to hand trucks and their parts, as listed in the Order. Id. at 6.

Second, E&B Giftware asserts all three items at issue lack the requisite toe plate, otherwise identified as “a projecting edge capable of sliding under a load.” E&B Giftware cites the Court of International Trade’s (CIT) decision in Gleason Industrial Products Inc., v. United States, Slip Op. 08-115, (October 22, 2008) which states:

A hand truck covered by this order must possess four design elements: (1) a vertical frame; (2) a handle or handles; (3) two or more wheels; and (4) a projecting edge capable of sliding under a load.

See Scope Inquiry Request at 6. E&B Giftware argues the Department has concluded in other scope determinations that the lack of even one required criterion excludes the item from the scope of the Order. Id. at 7.

With respect to the Samsonite Micro Mover Fold-Away Carry-on Cart, E&B Giftware argues that the cart lacks a toe plate because the 8-inch gap between the two foldable sections prevents any possibility of the cart being able to slide under a load. Rather, the cart’s design requires luggage be lifted and placed onto the protruding sections of the cart, thereby restricting the width of a load. E&B Giftware further maintains the textile straps through the ends of each protruding section inhibit sliding and lifting, as well as a load being slid onto the sections. Id. at 8.

Similarly, E&B Giftware maintains the Samsonite Compact Luggage Cart does not incorporate a toe plate, stating the cart's design and construction render it unable to slide under and lift, or have a load slid onto it. In particular, the cart's "kick stand" and the height of the platform where luggage is placed is 5 inches off the ground, thereby preventing the cart from contacting the ground in order to slide under and lift a load, or having a load slid onto it. Id. As such, E&B Giftware asserts that users must manually lift or hoist luggage onto the cart. Id.

According to E&B Giftware, the American Tourister Swing Wheel Luggage Cart also lacks a toe plate capable of sliding under and lifting luggage or a load. E&B Giftware attests that as the cart's tubular U-shaped section at the base of the frame is pointed downward it pushes luggage away, which forces the user to manually lift and place the load onto the cart.

Finally, E&B Giftware states that the frames of the Samsonite Compact Luggage Cart and the American Tourister Swing Wheel Luggage Cart are both constructed from telescoping tubular material measuring less than 5/8 inch in diameter, as provided in the exclusion provision of the Order.

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 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 E&B Giftware'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, in fact, dispositive with respect to the Samsonite Micro Mover Fold-Away Carry-on Cart, Samsonite Compact Luggage Cart and American Tourister Swing Wheel Luggage Cart. 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, the Samsonite Micro Mover Fold-Away Carry-on Cart and American Tourister Swing Wheel Luggage Cart are both within the scope of the Order, while the Samsonite Compact Luggage Cart is not within the scope of the Order.

In their petition submitted on November 13, 2003, 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 the scope language into its final form as reflected in the Order. That language 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 Commission 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 Commission, 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.

Samsonite Micro Mover Fold-Away Carry-on Cart

Based on the written descriptions, photographs and samples provided by E&B Giftware, we find the Samsonite Micro Mover Fold-Away Carry-on Cart has the physical characteristics of a hand truck as covered by the scope of the Order. Specifically, the cart exhibits the following characteristics: 1) a vertical frame; 2) a handle; 3) two wheels; and 4) a projecting edge or edges, (toe plate) capable of sliding under a load. Thus, record evidence indicates the Samsonite Micro Mover Fold-Away Carry-on Cart is able to lift and move loads, as required by the Order.

The Samsonite Micro Mover Fold-Away Carry-on Cart has two projecting edges, described by E&B Giftware as individual rectangular protruding sections. The scope of the order specifically provides that subject hand trucks may have "a horizontal projecting edge or edges, or toe plate," (emphasis added). See Order. While the Micro Mover Fold-Away Carry-on Cart does not have a monolithic toe plate, it does have "projecting edges," plural, specifically mentioned in the scope of the Order. In addition, E&B Giftware has not placed on the record any evidence showing that the projecting edges restrict a load from being tilted so that the projecting edges can be slid under the load for purposes of lifting or moving the load. See memorandum "Hand Trucks and Certain Parts Thereof from the PRC: Scope Ruling on Corporate Express Luggage Carts: Models CEB 31210 and CEB31490," dated February 11, 2009. (Corporate Express Memorandum). Consequently, we conclude the Samsonite Micro Mover Fold-Away Carry-on Cart possesses all of the characteristics of a hand truck as described in the scope of the Order.

American Tourister Swing Wheel Luggage Cart

Based on record evidence we find the American Tourister Swing Wheel Luggage Cart exhibits the essential characteristics of a hand truck, as described in the Order. We reject E&B Giftware's assertion that the cart lacks the requisite toe plate and find it exhibits the following characteristics: 1) a vertical frame; 2) a handle; 3) two wheels; and 4) a projecting edge or toe plate capable of sliding under a load. Thus, record evidence indicates the American Tourister Swing Wheel Luggage Cart is able to lift and move loads, as required by the Order.

The American Tourister Swing Wheel Luggage Cart clearly has a horizontal projecting edge (or toe plate) located at the lower section of the vertical frame. E&B Giftware has not placed on the record any evidence showing the projecting edge restricts a load from being tilted onto, or sliding under the load for purposes of lifting or moving the load. See Corporate Express Memorandum. The characteristic of the downward-positioned edge is also not a basis for finding the American Tourister Swing Wheel Luggage Cart outside the scope of the order. In particular, 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.” See Order. Therefore, we find the American Tourister Swing Wheel Luggage Cart possesses all of the characteristics of a hand truck as described in the Order.

Contrary to E&B Giftware’s assertion, we also determine that the American Tourister Swing Wheel Luggage Cart does not meet the small luggage cart exception of the Order. Specifically, the luggage cart exemption specifies a cart’s “frame (must) be made from telescoping tubular material measuring less than 5/8 inch in diameter.” Rather, the American Tourister Swing Wheel Luggage Cart consists of separate pieces of tubular material which are connected by two plastic braces positioned at both sides of the vertical frame. When fully extended for use, one tubular piece rests atop the other tubular piece and both are locked into place by a metal clip. Also, when the cart is collapsed, the brace enables the two tubular pieces to slide alongside each other. The Department considers the term telescoping to require that one piece of the frame fits or slides into the other piece. While the two tubular pieces measure approximately 5/8 inch in diameter the frame has no capacity to telescope and, as a result, does not meet this criterion of the exclusionary scope language.

Samsonite Compact Luggage Cart

While the Samsonite Compact Luggage Cart appears to exhibit the essential characteristics of a hand truck as described in the Order (i.e., a vertical frame, a handle, two wheels, a projecting edge), we find the Samsonite Compact Luggage Cart falls outside the scope of the Order. Based on record evidence, we find that the Samsonite Compact Luggage Cart’s projecting edge is incapable of maintaining the integrity of a horizontal position when sliding beneath a load.

The Order states that a hand truck 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 found that the Samsonite Compact Luggage Cart’s projecting edge cannot maintain its horizontal integrity because it collapses when sliding under a load, thus hindering its projecting edge’s ability to lift and/or move its load. Therefore, because the Samsonite Compact Luggage Cart cannot perform this function of a hand truck as described in the scope of the Order, and the projecting edge does not maintain its horizontal integrity when sliding under a load. See Corporate Express Memorandum. We find it does not meet all of the characteristics of a hand truck listed in the scope of the Order. Accordingly, we find the Samsonite Compact Luggage Cart outside the scope of the Order.

Finally, we determine E&B Giftware’s contention that all three items subject to its scope inquiry are classified under an HTSUS number different than that listed in the scope of the Order to be irrelevant. The Department’s consistent practice is to rely on the scope as written and the HTSUS numbers are merely instructive and not controlling, as E&B Giftware attests.


Recommendation

Based upon the preceding analysis, we recommend the Department find the Samsonite Micro Mover Fold-Away Carry-on Cart and American Tourister Swing Wheel Luggage Cart to be within the scope of the Order. We also recommend the Department find the Samsonite Compact Luggage Cart to be outside of the scope of the Order.

✓

Agree

Disagree



John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date

2/29/07