



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

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

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: David Cordell
Analyst Office 7

RE: Hand Trucks and Certain Parts Thereof from the People's Republic of China (PRC): Scope Ruling - Invacare's E-Cylinder Cart (Model Number HP5001)

SUMMARY:

On April 27, 2009, the Department of Commerce (Department) received a submission from Expeditors Tradewin, LLC (Tradewin) on behalf of its client Invacare Corporation (Invacare) inquiring whether its product known as an "E-Cylinder Cart" (Model Number HP5001) is included within the scope of the antidumping duty order on hand trucks and certain parts thereof (hand trucks) from the PRC. In accordance with 19 CFR 351.225(k)(1), we recommend the Department determine that Invacare's E-Cylinder Cart (Model Number HP5001) is not within the scope of the antidumping duty order on hand trucks from the PRC.¹

BACKGROUND:

On April 27, 2009, the Department received a submission on behalf of Invacare inquiring whether the E-Cylinder Cart (Model Number HP5001) it imports from the PRC is included within the scope of the Order (Scope Inquiry Request). Invacare provided a description and

¹ See Antidumping Duty Order: Hand Trucks and Certain Parts Thereof from the People's Republic of China, 69 FR 70122 (December 2, 2004) (Order)



photographs of the E-Cylinder Cart in question. Petitioners (Gleason Industrial Products, Inc. and Precision Products, Inc.) provided no comments on this request. No other party filed comments on the scope request.

According to Invacare, the E-Cylinder Cart is intended to provide persons in need of oxygen (e.g., those suffering from chronic respiratory ailments) improved mobility by providing a convenient means for transporting an oxygen tank while out of the home. Invacare claims the E-Cylinder Cart is intended to carry a “size E” oxygen cylinder for the patient’s personal use. Invacare argues the E-Cylinder Cart in question 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, Invacare notes “Invacare’s E-Cylinder Cart possesses a base made of two tubular ‘legs,’ which allow it to remain in a vertical position, and a circular ring designed to support a gas cylinder. Invacare contends that the base does not meet the definition of a ‘projecting edge or toe plate.’” See Scope Inquiry Request at 5. Moreover, according to Invacare, the base is not capable of sliding under a load for the purpose of moving or lifting the load. Id. Invacare cites to scope decisions concerning Central Purchasing LLP’s “Welding Cart” and Ameristep Corporation’s “Deer Cart” to substantiate its claim that both of those products had neither “a projecting edge nor a toe plate which can slide under a load for purposes of lifting and/or moving the load.” Id. at 4. Invacare also references the use of the cart to transport personal oxygen cylinders to distinguish it from subject hand trucks.

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, and 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 Invacare’s request in accordance with 19 CFR 351.225(k)(1) and finds the descriptions of the product contained in the petition, the initial investigation, and the determinations by the Secretary and the Commission are, in fact, dispositive with respect to Invacare’s E-Cylinder 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 scope inquiry, we find 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:

Hand 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 Order. The scope language in the Order had been clarified to read 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.” See Order.

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 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.

Based on the record evidence, we find Invacare’s E-Cylinder Cart does not have all the physical features necessary to be considered a hand truck and therefore covered by the scope of the Order. The E-Cylinder Cart, in common with subject hand trucks, does have a vertically disposed frame having a handle at the upper section of the vertical frame. Also like subject hand trucks, the E-Cylinder Cart has two wheels at the lower section of the vertical frame. However, the E-Cylinder Cart lacks a “projecting edge or toe plate” which can slide under a load for purposes of lifting and/or moving the load. See Order. Moreover, “two tubular legs and circular ring” mean that the E-Cylinder Cart cannot be slid under loads in order to lift and/or move them. See Scope Inquiry Request at 3. Based on our review of the product description, the load, in this case oxygen cylinder tanks, must be lifted by hand or by some other hoisting device and placed onto the E-Cylinder Cart. These factors result in a product that is outside the scope of the Order. Additionally, the Department agrees with Invacare that it has excluded a similar cart from the Order. See the Department’s Scope Ruling on Central Purchasing LLP’s “Welding Cart” Request, dated October 1, 2008. Since Invacare’s E-Cylinder Cart lacks the physical prerequisites of a subject hand truck described above, and is similar to previously excluded carts, we conclude Invacare’s E-Cylinder Cart (Model Number HP5001), is outside the scope of the Order pursuant to 19 CFR 351.225(k)(1).

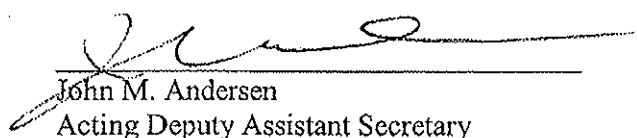
Recommendation

Based upon the preceding analysis, we recommend the Department find that E-Cylinder Cart (Model Number HP5001), is not within the scope of the Order.

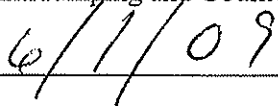


Agree

Disagree



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



Date