



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 Import Administration

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 XPO120 Wheeled
Oxygen Concentrator Cart

SUMMARY:

On May 13, 2009, the Department of Commerce (Department) received a submission from Tradewin on behalf of its client Invacare Corporation (Invacare) inquiring whether its product known as an "XPO120 Wheeled Oxygen Concentrator Cart" 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 XPO120 Wheeled Oxygen Concentrator Cart is not within the scope of the antidumping duty order on hand trucks from the PRC.¹

BACKGROUND:

On May 13, 2009, the Department received a submission from Invacare inquiring whether the XPO120 Wheeled Oxygen Concentrator Cart it imports from the PRC is included within the scope of the Order (Scope Inquiry Request). Invacare provided a description and photographs of

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)



the XPO120 Wheeled Oxygen Concentrator 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 XPO120 Wheeled Oxygen Concentrator Cart 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. Invacare claims the XPO120 Cart is intended to transport its XPO₂ brand of oxygen concentrator. Oxygen concentrators deliver a high oxygen air supply to individuals with medical conditions impairing their lung capacity. In particular, Invacare notes the XPO120 Wheeled Oxygen Concentrator Cart “possesses a base, or platform, which is significantly above the ground, such that it requires a folding stand in order to remain upright.” See Invacare’s Scope Request dated May 13, 2009, at 5. Invacare cites to its website to show that the “{e}levated platform keeps the XPO₂ up and off the ground” and notes that “because of its position relative to the ground, as well as the rounded (as opposed to sharp or angular) shape of its leading end, the base is clearly not capable of sliding under a load for the purpose of moving or lifting the load, whether that load is an oxygen concentrator (the intended load) or some other object.” 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.” Invacare also references the use of the cart to transport oxygen concentrators to distinguish it from hand carts.

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 XPO120 Wheeled Oxygen Concentrator 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, 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 g8716.80.5020, 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, Invacare’s XPO120 Wheeled Oxygen Concentrator Cart does not have the physical features necessary to be considered a hand truck and therefore covered by the scope of the Order. First, the XPO120 Wheeled Oxygen Concentrator 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, the Department agrees with Invacare that the base is attached to the frame at a distance above the wheels and the XPO120 Wheeled Oxygen Concentrator Cart is incapable of sliding under a load for the purposes of lifting it. Furthermore, based on our review of the product description, the load, in this case the XPO₂, must be lifted and placed on the base support by the user before it can be transported on the XPO120 Wheeled Oxygen Concentrator Cart. These factors taken together indicate that Invacare’s XPO120 Wheeled Oxygen Concentrator Cart is outside the scope of the order. Since the XPO120 Wheeled Oxygen Concentrator lacks the physical prerequisites of a subject hand truck described above, we conclude Invacare’s XPO120 Wheeled Oxygen Concentrator Cart, is outside the scope of the Order.

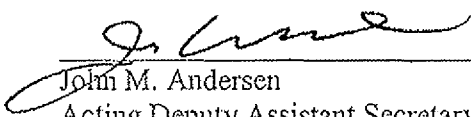
Recommendation

Based upon the preceding analysis, we recommend the Department find that Invacare's XPO120 Wheeled Oxygen Concentrator Cart, is not within the scope of the Order.

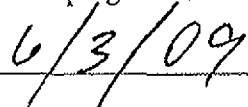


Agree

Disagree



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



Date