



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

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Scope Inquiry
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June 10, 2009

MEMORANDUM TO:

John M. Andersen
Acting Deputy Assistant Secretary
for Import Administration

THROUGH:

Richard O. Weible
Director
AD/CVD Operations Office 7

Robert M. James
Program Manager
AD/CVD Operations Office 7

FROM:

Mark Flessner
Analyst
AD/CVD Operations Office 7

RE:

Hand Trucks and Certain Parts Thereof from the People's Republic of China (PRC): Scope Ruling on Safco's "StowAway" and "Stow and Go" Carts

SUMMARY:

On October 16, 2008, the Department of Commerce (the Department) received a request from Liberty Diversified Industries/Safco Products Co. (Safco) for a scope ruling on whether certain hand trucks are covered by the antidumping duty order on hand trucks and certain parts thereof from the People's Republic of China. *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). In accordance with 19 CFR 351.225(k)(1), we recommend the Department determine that Safco's "StowAway" and "Stow and Go" carts are not within the scope of the Order.

BACKGROUND:

On October 16, 2008, the Department received Safco's request for a scope ruling on whether its "StowAway" and "Stow and Go" carts are covered by the scope of the Order. In accordance with the Department's scope regulations, Safco provided a detailed description of its products and an explanation of why Safco believes the products are outside the scope of the Order. Although neither requested by the Department, nor required by our regulations, Safco provided



samples of its products to be placed on the record of this scope inquiry. Safco maintained that its “StowAway” and “Stow and Go” carts are practically identical to the WelCom Products Inc. (WelCom) “Magna Cart” and “Magna Cart MCX” carts, respectively, which were previously excluded from the scope of the Order. See Memorandum to Jeffrey A. May, Deputy Assistant Secretary for Import Administration, entitled “Scope Exclusion/Clarification Requests: Angelus Manufacturing; Custom Carts LLC; Illinois Tool Works, Inc.; Qingdao Hand Truck Co., Ltd.; WelCom Products Inc.; and LL King Corporation,” dated September 3, 2004¹ (“Magna Cart” Scope Determination) at pages 14-17; see also Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, entitled “Final Scope Ruling on the Antidumping Duty Order on Hand Trucks and Certain Parts Thereof from the People’s Republic of China: Request by WelCom Products (MCX Magna Cart)” dated May 14, 2008² (“Magna Cart MCX” Scope Determination). Safco also provided samples of the WelCom “Magna Cart” and “Magna Cart MCX” carts.

On November 7, 2008, WelCom filed comments concerning Safco’s request. WelCom asserted that Safco’s “Stow and Go” cart is identical (instead of “practically identical,” as stated by Safco) to its “Magna Cart MCX” cart. Nevertheless, WelCom recommended that the Department Safco’s scope request.

On November 10, 2008, petitioners, Gleason Industrial Products, Inc. and Precision Products, Inc. (collectively, Gleason) filed comments arguing that the “StowAway” and “Stow and Go” carts are within the scope of the Order. Gleason acknowledged that the Department had previously excluded WelCom’s “Magna Cart” and “Magna Cart MCX” carts but asserted that it “continues to disagree with those decisions.” Gleason maintained that the “StowAway” and “Stow and Go” carts do not meet the precise requirements of the exclusionary language for small luggage carts.

On November 17, 2008, Safco filed a rebuttal to WelCom’s comments and to Gleason’s comments. Safco maintained that Gleason could have challenged the “Magna Cart” Scope Determination and the “Magna Cart MCX” Scope Determination at the U.S. Court of International Trade, but did not. Safco stated that there were minor differences between its carts and the WelCom carts (*i.e.*, they were not absolutely identical), but that such differences were in characteristics not material to the scope determination. Safco maintained that WelCom’s comments support Safco’s assertion that its hand carts ought to be accorded similar treatment to Welcom’s excluded models.

On November 28, 2008, the Department initiated a formal scope inquiry based upon 19 CFR 351.225k(2). See Letter from Richard Weible, Director, AD-CVD Operations Office 7 to All Interested Parties, dated November 28, 2008. The initiation invited all parties to file comments with regard to whether the “StowAway” and “Stow and Go” carts fall within the exclusion for luggage carts within the scope of the Order (*i.e.*, (a) are small; b) are specifically designed for

¹ Attached to this memorandum as Appendix One.

² Attached to this memorandum as Appendix Two.

carrying loads like personal bags or luggage; (c) have frames made from telescoping tubular material; and (d) are made from material measuring less than 5/8 inch in diameter). In addition, the Department requested comments addressing: (i) the physical characteristics of the product; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the merchandise; (iv) the channels in which the product is sold; and (v) the manner in which the product is advertised and displayed, in accordance with 19 CFR 351.225(k)(2).

On January 5, 2009, Safco filed comments with regard to the formal scope inquiry. Safco expressed its belief that a formal scope inquiry was unnecessary. Safco reasserted its position that the "Magna Cart" and "Magna Cart MCX" Scope Determinations were dispositive, since its carts resemble the WelCom products in all relevant aspects. Safco argued that, if the Department were to find the Safco carts within the scope of the Order, it would be necessary to rescind the "Magna Cart" and "Magna Cart MCX" Scope Determinations. Safco presented exhibits addressing the physical characteristics, expectations of the ultimate purchasers, ultimate use, and the manner of advertisement and display of its hand carts.

On January 5, 2009, Gleason also filed comments with regard to the formal scope inquiry. Gleason reiterated its opposition to the Safco request. However, Gleason agreed with Safco that it could not oppose Safco's request without also challenging the rulings with regard to the WelCom carts. Gleason therefore requested that the Department reconsider the "Magna Cart" and "Magna Cart MCX" Scope Determinations. In accordance with the Department's request, Gleason presented exhibits addressing the physical characteristics, expectations of the ultimate purchasers, ultimate use, and the manner of advertisement and display of both Safco's and WelCom's hand carts.

On January 16, 2009, WelCom submitted a response to both the Safco and the Gleason submissions of January 5, 2009. WelCom's position was that its products were not the subjects of the instant scope determination.

On January 16, 2009, Safco filed rebuttal comments. Safco asserted that nothing on the administrative record distinguished WelCom's and Safco's hand carts in any meaningful way, and objected to the possibility that the Department might accord them unequal treatment.

On January 16, 2009, Gleason filed a reply to Safco's comments. Gleason agreed with Safco that, if Safco's "StowAway" and "Stow and Go" carts are within the scope of the Order, then so also must WelCom's "Magna Cart" and "Magna Cart MCX" carts be. Gleason defended the decision to proceed with a formal scope inquiry.

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 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 Safco'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, and prior determinations by the Secretary and the Commission are dispositive with respect to the Safco "StowAway" and "Stow and Go" carts. The Department agrees with Safco that a formal scope inquiry is not necessary because the criteria of 19 CFR 351.225(k)(1) are dispositive. Therefore, the Department has not considered the additional factors in 19 CFR 351.225(k)(2).

ANALYSIS

In their petition submitted on November 13, 2003, the 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 this scope language into its final form as reflected in the Order. That language has carried forward without any modifications or clarifications since its original publication in the *Federal Register*, and reads as follows:

The product covered by this 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 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 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 Hand Trucks and Certain Parts Thereof from the People's Republic of China; Final Results of 2005-2006 Administrative Review, 73 FR 43684 (July 28, 2008).

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.”

It is clear that none of the three interested parties from whom we have received comments disputes that the “StowAway” and “Stow and Go” carts have the physical features necessary to be considered hand trucks (and therefore covered by the scope of the Order) apart from the issue concerning whether or not they 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” (the luggage exclusion). Neither is claimed to be a motorized cart or a golf bag cart, nor do the Safco carts have the characteristics of either of these.

The Department notes that “the language of the order determines the scope of an antidumping duty order.” *Tak Fat Trading Co. v. United States*, 396 F.3d 1378, 1382 (Fed. Cir. 2005). The regulation directing the Department to consider additional criteria merely provides guidance to the Department during the scope determination. *Olympia Industrial, Inc. v. United States*, Slip Op. 2006-110 (CIT 2006) (noting that the language of the order controls the Department’s inquiry). Thus, although the Department requested parties to file comments on the criteria enumerated in 19 CFR.225(k)(2), the Department determines that the language of the Order and its prior scope determinations dictate that Safco’s “StowAway” and “Stow and Go” carts are excluded from the scope of the Order.

First, we agree with all parties that there is no relevant difference between the Safco “StowAway” cart and the WelCom “Magna Cart.” The WelCom “Magna Cart” was previously found to be outside the scope of the Order under the luggage exclusion. *See* Appendix One at pages 14-17. Therefore, for the same reasons discussed therein, we find that the Safco “StowAway” cart is not within the scope of the Order.

Second, we agree with all parties that there is no relevant difference between the Safco “Stow and Go” cart and the WelCom “Magna Cart MCX.” The WelCom “Magna Cart MCX” was previously found to be outside the scope of the Order under the luggage exclusion. *See* Appendix Two. Therefore, for the same reasons discussed therein, we find that the Safco “Stow

and Go” cart is not within the scope of the Order.


RECOMMENDATION

Based upon the preceding analysis, we recommend the Department find that the Safco “StowAway” and “Stow and Go” carts are not within the scope of the Order.

✓

Agree

Disagree



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

6/10/09

Date

