



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

DEC 03 2009

A-570-891

Scope Inquiry
IA / Office 7: DC
Public Document
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MEMORANDUM TO: John Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

Robert Janes *RJ*
Program Manager
AD/CVD Operations, Office 7

FROM: *DC*
David Cordell
Analyst, Office 7

RE: Hand Trucks and Certain Parts Thereof from the People's Republic
of China (PRC): Scope Ruling- Simon, Evers & Co., GmbH

SUMMARY:

On October 22, 2009, the Department of Commerce (Department) received a submission from CSI International Chicago Inc. (CSI), on behalf of Simon, Evers & Co., GmbH (Simon & Evers) inquiring whether five products manufactured by Jianonan City Huayan Wood Co LTD (Huayan) are included within the scope of the antidumping duty order on hand trucks and certain parts thereof (hand trucks) from the PRC.¹ The products are: Relius Solutions Aluminum Fold Away Truck (Fold-Away Truck), Relius Tray Shelf Utility Carts (Shelf Utility Carts), Solid Platform Dollies, Economical Steel Carts, and Flush Platform Dollies.

In accordance with 19 CFR 351.225(k)(1), we recommend the Department determine that all five products produced by Huayan and requested by Simon & Evers are not within the scope of the Order.

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) (Order)



BACKGROUND:

On October 22, 2009, the Department received a submission from CSI, on behalf of Simon & Evers, inquiring into whether the five products Huayan exports from the PRC are included within the scope of the order covering hand trucks from the PRC (Scope Inquiry Request).² Satisfying the requirements of 19 CFR 351.225(c)(1)(i), CSI provided a detailed description of the five products, including their current tariff classification. Neither the petitioners (Gleason Industrial Products, Inc. and Precision Products, Inc.), nor any other party filed comments on the scope request.

According to CSI, the products are not within the scope of the Order because they lack the requisite physical characteristics of the merchandise described by the scope of the Order. In particular, CSI notes "none of these carts has a 'a projecting edge or edges or toe plate perpendicular or angled to the vertical frame at or near the lower section of the vertical frame or a projecting edge or edges or toe plate, slides under a load for purpose of lifting and or moving the load.'" See Scope Inquiry Request at 1, quoting 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. 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, 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 CSI's request in accordance with 19 CFR 351.225(k)(1) and finds the descriptions of the product contained in the petition, the initial

² The scope inquiry was first submitted to the Department on October 6, 2009, but due to the poor quality of the photographs provided, the Department instructed CSI to re-submit it. This CSI did on October 22, 2009. Although the re-submitted photographs were still of poor quality we accepted CSI's request. We simply accessed the same web site, www.chdist.com, used by CSI to obtain clearer copies of these photographs. See Attachment 1 for photographs.

investigation, and the determinations by the Department and the Commission are, in fact, dispositive with respect to CSI's five requested products. 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, these products are 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 was 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.”

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, the five products (detailed descriptions listed below) do not have the physical features necessary to be considered a hand truck covered by the scope of the Order.

Fold-Away Trucks:

The Fold-Away Trucks feature a four-wheeled platform mounted on a vertical frame that is designed to haul/transport packages. The image of the Fold-Away Trucks suggests they could be within the scope of the order for hand trucks because of the horizontal edge perpendicular to a vertical frame and the fact that it has four wheels. However, Fold-Away Trucks lack a sliding edge or toe plate, which disqualifies them from being able to slide under a load for purposes of lifting and/or transporting the load. Furthermore, according to the product description, the Fold-Away Trucks are mounted on four four-inch wheels, making the horizontal platform incapable of sliding under packages in order to lift them even if one were to tilt the packages. See “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’s Compact Luggage Cart and American-Tourister Swing Wheel Cart,” dated May 29, 2009. These physical characteristics, particularly evident in the photograph on the website, lead the Department to conclude that Fold-Away Trucks do not meet the description of the merchandise in the petition or in the scope of the Order.

Shelf-Utility Carts:

The Shelf Utility Carts have four four-inch wheels, two vertical frames, and two horizontal trays spaced 19 inches apart. The product picture and description indicates there is no sliding projecting edge or toe plate which could be used to slide under a load for purposes of lifting and transporting a load in accordance with the scope language. Therefore, the Department concludes that the Shelf Utility Carts do not meet the description of the merchandise in the petition or in the scope of the Order.

Economical Steel Carts:

The Economical Steel Carts are similar to the Shelf Utility Carts with four wheels and two trays

spaced 19 inches apart. For the same reasons listed with respect to the Shelf Utility Carts, the Department finds that the Economical Steel Carts do not meet the description of the merchandise in the petition or in the scope of the Order.

Solid Platform Dollies:

The Solid Platform Dollies have neither a vertical frame nor a structure against which to rest a load for transport. Further, the dolly platform is mounted on four wheels measuring either three or four inches in height. The product photograph and the description indicate there is no sliding projecting edge or toe plate which could be used to slide under a load for purposes of lifting and transporting the load. Because there is no vertical frame and the horizontal surface cannot slide under a load for the purpose of lifting or moving that load, we conclude that the Solid Platform Dollies do not meet the description of the merchandise in the petition or in the scope of the Order.

Flush Platform Dollies:

Flush Platform Dollies are similar to the Solid Platform Dollies, but instead of a solid platform there is a hole in the center of the platform. For the same reasons described for the Solid Platform Dollies, the Department finds that Flush Platform Dollies do not meet the description of the merchandise in the petition or in the scope of the Order.

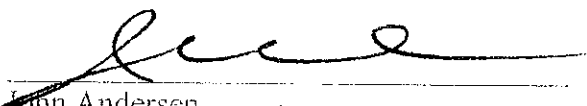
Recommendation

Based upon the preceding analysis, we recommend the Department find that the five products listed in the request by CSI, which are produced by Huayan and imported by Simon & Evers (Fold-Away Truck, Shelf Utility Carts, Solid Platform Dollies, Economical Steel Carts, and Flush Platform Dollies) are not within the scope of the Order.

✓

Agree

Disagree



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

12/3/09

Date