



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
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A-570-891

Scope Inquiry
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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
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 ML6275C Personal Luggage Cart

Summary

On December 24, 2009, the Department of Commerce (Department) received a submission from E&B Giftware, LLC (E&B Giftware) inquiring whether its ML6275C Personal Luggage Cart (ML6275C Luggage Cart) is 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). 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 the ML6275C Luggage Cart is within the scope of the antidumping duty order on hand trucks from the PRC.

Background

On December 24, 2009, the Department received a submission from E&B Giftware inquiring whether the ML6275C luggage cart it is planning to import from the PRC is included within the



scope of the Order. See “Scope Review of ML6275C Personal Luggage Cart” dated December 22, 2009 and filed on December 24, 2009, (Scope Inquiry Request). In accordance with the Department’s regulations, E&B Giftware provided a description of the ML6275C Luggage Cart and argued that it lacks the requisite physical characteristics of the subject merchandise described in the Order. See 19 CFR 351.225(c). E&B Giftware submitted a sample of the product for the record. Petitioner, Gleason Industrial Products, Inc. and Precision Products, Inc. did not file any comments with the Department.

E&B Giftware’s Scope Request

a. Product Description

E&B Giftware describes the ML6275C Luggage Cart as having an iron frame of round tubular telescoping sections measuring approximately 9/16 inch in diameter. E&B Giftware describes the frame as “featur[ing] an inverted ‘V’-shaped arch front which prevents luggage or other items from being stuck or pushed onto or off the cart.” See Scope Inquiry Request at 2. A 42 inch long bungee cord is attached at both ends to secure the luggage. Id. When fully opened for use, the cart measures approximately 12 7/8 inches wide by 39 1/2 inches high. When collapsed for storage, the cart measures approximately 12 7/8 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 maintains the ML6275C Luggage Cart is not a hand truck, but is a personal luggage cart which is excluded from the scope of the Order. In particular, E&B Giftware states its product is classifiable as a personal baggage and luggage cart 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 2.

Second, E&B Giftware asserts the ML6275C Luggage Cart lacks the requisite toe plate or projecting edge capable of sliding under a load. Furthermore, E&B Giftware assert that the ML6275C Luggage Cart is not designed to permit luggage to be slid or pushed on to it, thereby excluding it from the class of merchandise encompassed by anti-dumping order A-570-891.

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 CIT has held all of the criteria are required in order for a hand truck to be subject to anti-dumping duties. E&B Giftware argues

that a physical examination of the product, as well as a review of the literature and affidavit provided in the request, “clearly establishes that the personal luggage cart is not designed or intended to be slid or pushed under a load, nor is it designed for a load to be pushed or slid onto the cart.” *Id.* (Original emphasis omitted.) In addition, E&B Giftware maintains “the inverted ‘V’ arch design of the product and the tendency of its handle to collapse if pushed while loading or standing level require objects to be manually lifted and placed onto the cart.” *Id.* E&B Giftware thus distinguishes the ML6275C Luggage Cart from hand trucks in which there is a toe plate lying flush with the ground and which are capable of sliding under, or having loads slid onto them. Furthermore, E&B Giftware cites to the weight load restrictions of 100 pounds as evidence that the cart is not designed or intended for use as a hand truck.¹ E&B Giftware further elaborates that the inverted ‘V’ arch at the front of the cart functions as a lip, creates a physical barrier that “clearly prevents bags and other packages from being slid or pushed onto the cart and also functions to prevent bags from slipping or falling off of the cart.” *Id.* at 7. E&B Giftware concludes that “the subject cart does not possess a projecting edge or edges, or toe plate, that slides under a load for purposes of lifting and /or moving a load and that the cart is designed for loading by having luggage lifted and placed onto it.” *Id.* (Original emphasis omitted.)

Furthermore, E&B Giftware maintains the Department has concluded in numerous previous scope determinations that the lack of even one required criterion excludes the item from the scope of the Order. *Id.* at 7 and n.1. E&B Giftware cites to the Yukon Track Folding Sportsman’s Cart Scope Ruling dated October 16, 2008, “Hand Trucks and Certain Parts Thereof from the People’s Republic of China (PRC): Scope Ruling-Ardisam, Inc. Sportsman’s Cart”, (Yukon Track Folding Sportsman’s Cart Scope Ruling), in which the Department found there was no sliding projecting edge or toe plate which would be used to slide under a load and that the user of the cart must lift or hoist the load (a deer taken in the field) onto the cart. E&B Giftware claims that luggage must be manually lifted or hoisted onto the ML6275C Luggage Cart, as it is not designed to slide under a load. Furthermore, E&B Giftware asserts that loads cannot slide onto the cart because the loads are limited in depth due to the arch.

E&B Giftware also cites to the Department’s Corporate Express Scope Determination dated February 11, 2009, “Hand Trucks and Certain Parts Thereof from the People’s Republic of China (PRC): Scope Ruling on Corporate Express Luggage Carts: Models CEB 31210 and CEB 31490” (Corporate Express Scope Ruling) in which the Department determined that one of the carts in question (CEB 31490) was not within the scope of the antidumping order. E&B Giftware summarizes the message issued to Customs and Border Protection in which Commerce’s ruling was explained. E&B Giftware reiterates that the weight capacity of the ML6275C Luggage Cart is restricted, that it features an arched leading edge for holding luggage instead of a projecting edge that is capable of sliding under and lifting a load. As a result, E&B Giftware insists that the cart in question is not covered by the Order.

Finally, E&B Giftware cites to Bond Street, Ltd. v. United States, Slip-Op. 09-95, 2007 (CIT)

¹ E&B Giftware cites to both the warning label affixed to the product and an affidavit appended to E&B Giftware’s request by the manager of the Engineering Department as evidence of the weight limit and intended use of the luggage cart.

September 8, 2009, (Bond Street) and to Vertex Int'l, Inc. v. United States, 30 CIT 73, 79 (2006) (Vertex) to support its contention that Commerce must give effect to the scope language that the projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load. E&B Giftware notes that Vertex's garden cart could not slide under a load and that the product was designed to be pulled only. Similarly, in this case, E&B Giftware argues that the design of the subject personal luggage cart and the documentary evidence enclosed in the scope request support a finding that the ML6275C Personal Luggage Cart is excluded from the scope 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 (2009). This determination may take place with or without a formal inquiry. See 19 CFR 351.225(d). 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 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 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 ML6275C Luggage Cart. Therefore, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2).

Analysis

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.

We note the ML6275C Luggage Cart incorporates a vertical frame, a handle and at least two wheels. Thus, the fundamental question that must be answered is whether the ML6275C possesses a projecting edge or edges, or toe plate, which slides under a load for purposes of lifting and/or moving the load. After evaluating E&B Giftware's request, and the evidence on the record, in accordance with 19 CFR 351.225(k)(1), we find the ML6275C's horizontal frame constitutes a toe plate or projecting edge, as defined by the Order.

E&B Giftware claims that the inverted "V" arch² design of the product and the tendency of its handle to collapse if pushed while loading or standing level require objects to be manually lifted

² The "inverted 'V' arch" may more accurately be described as a gently-curved upended 'C'.

and placed onto the cart. However, when Department officials slid a filing cabinet (14 inches wide X 19 inches deep X 26 inches high) onto the cart, the officials found the handle did not collapse, but indeed supported the load. We were easily able to slide the load onto the cart, with minimal tilting of the load. We proceeded to transport the load from an office on one floor of the building to another office on a different floor, moving the load on and off elevators and traveling a distance greater than a city block. The ML6275C luggage cart moved this load with facility, whether being pulled or pushed. The Department officials then repeated the task of sliding other loads, such as a standard 10 ream box of paper, on and off the cart with the same effect. The fact that E&B Giftware places a warning label on the cart and discusses the design and uses of the cart in the affidavit does not negate the fact that the cart can be used as a hand truck and that the cart can be pulled and pushed while loaded without any untoward results. Furthermore, although loads can be lifted onto the cart, Department officials were also able to easily slide the cart under a load, and the "inverted arch" did not prevent such loading. Thus, the Department concludes that the ML6275C luggage cart operates and functions in the manner required by the scope of the Order.

E&B Giftware cites to a large number of cases in which the Department ruled that such carts were unable to be slid under the load for purposes of lifting or moving of the load. See Scope Inquiry Request at 7 n.1. However, testing of the ML6275C luggage cart demonstrates that it can, in fact, be slid underneath a load. This distinguishes the ML6275C luggage cart from those carts that have been previously excluded.

E&B Giftware cites to additional prior scope decisions to support its argument that the ML6275C luggage cart is outside the scope of the order. However, these prior scope determinations are distinguishable from this scope inquiry. With respect to the Yukon Track Folding Sportsman's Cart, the evidence was clear that the cart was not designed as a hand truck and could not be slid under the load. The Department therefore, appropriately, excluded the Deer Cart because the cart requires the deer to be manually lifted or hoisted onto the cart. See the Department's October 16, 2008 Yukon Track Folding Sportsman's Cart Scope Ruling. With respect to the Corporate Express cart, E&B Giftware cites the summary of the decision in the Customs & Border Protection (CBP) message but does not cite to the actual decision issued by the Department. See the Department's February 11, 2009 Corporate Express Scope Ruling. Had it done so, E&B Giftware would have noted that the reason the cart was excluded was because it was unable to maintain its horizontal integrity when sliding under a load and, therefore, could not perform the essential function of a hand truck covered by the scope of the Order.

With respect to the Bond Street case, the Court remanded the case to Commerce because Commerce failed to make a determination as to whether the cart in question can slide under a load for purposes of lifting and or moving the load. In the case of the ML6275C Luggage Cart, the Department has made the determination that the cart can slide under a load by actually testing the cart to see whether it could do so. In addition, unlike the Vertex case cited by E&B Giftware, this product does not have a metal wire stabilizing plate but rather a tubular horizontal frame that was able to be slid under a load in order to transport the load. Furthermore, unlike the Vertex case, the ML6275C Luggage Cart was pushed toward the load and slid under it when tested by

the Department. Therefore the Vertex case has a different fact pattern than the case in question.

Finally, the Department notes that E&B Giftware previously submitted a scope ruling request for the American Tourister Swing Wheel Luggage Cart. The Department issued a final scope ruling on May 29, 2009. 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 Compact Luggage Cart, American Tourister Swing Wheel Luggage Cart,” dated May 29, 2009. (E&B Giftware Scope Ruling 1). The Department found the American Tourister Swing Wheel Luggage Cart to be within the scope of the Order. The Department notes the American Tourister Swing Wheel Luggage Cart and the ML6275C Luggage Cart appear to be identical in construction with the exception of the handle and the fact that the “inverted arch” on the ML6275C Luggage Cart is not present on the American Tourister Swing Wheel Luggage Cart. However, as described above, such an arch does not prevent the cart from being slid under a load in order to move the load.

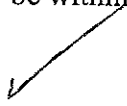
The ML6275C Luggage Cart has a horizontal projecting edge (or toe plate) located at the lower section of the vertical frame. E&B Giftware’s claims that the design of the projecting edge prevents it from sliding under the load for purposes of lifting or moving the load is not supported by the Department’s own testing of the product to see whether the ML6275C Luggage Cart can slide under a load if the load is tilted. The characteristic of the “inverted arch” leading edge is also not in and of itself grounds for finding the ML6275C 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 ML6275C Luggage Cart possesses all of the characteristics of a hand truck, including the operational requirements, as described in the Order.

We also determine that the ML6275C Luggage Cart does not meet the small luggage cart exception of the Order. Specifically, the luggage cart exemption specifies the cart’s “frame (is) made from telescoping tubular material measuring less than 5/8 inch in diameter.” Rather, the ML6275C 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. See E&B Giftware Scope Ruling 1 at 8. The frame has no capacity to telescope. Therefore, this criterion of the exclusionary scope language is moot.

Finally, we determine E&B Giftware’s contention that the ML6275C Personal Luggage Cart subject to its scope inquiry is 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 suggests.

Recommendation

Based upon the preceding analysis, we recommend the Department find the ML6275C Luggage Cart to be within the scope of the Order.



Agree

Disagree

[Handwritten signature]

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

2/3/10

Date

