



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

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

MEMORANDUM TO: John 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: Scott Hoefke
Analyst, Office 7

RE: Hand Trucks and Certain Parts Thereof from the People's Republic
of China (PRC): Scope Ruling – Packard Professional Distribution

SUMMARY:

On January 27, 2010, the Department of Commerce (Department) received a submission from Packard Professional Distribution (Packard) inquiring whether its Foldable Hand Truck, model number FHT200, produced by Yangjian Shunhe Industrial Company (Yangjian) in the PRC is included within the scope of the antidumping duty order on hand trucks and certain parts thereof (hand trucks) from the PRC.¹

In accordance with 19 CFR 351.225(k)(1), we recommend the Department determine that the Foldable Hand Truck produced by Yangjian and imported by Packard is 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 February 4, 2010, the Department received a submission from Packard, inquiring into whether the Foldable Hand Truck, model number FHT200, exported from the PRC is included within the scope of the order covering hand trucks of the PRC (Scope Inquiry Request).^{2,3} Satisfying the requirements of 19 CFR 351.225(c)(1)(i), Packard submitted a detailed product description (including current tariff classification), product picture, and sample product for the record of the product.

Neither the petitioners (Gleason Industrial Products, Inc. and Precision Products, Inc.), nor any other party filed comments on the scope request.

According to Packard, the products are not within the scope of the Order because the carts should be classified under heading 8716.80.50.90 (other) of the Harmonized Tariff Schedule of the United States (HTSUS) instead of heading 8716.80.50.10 (industrial hand trucks).

According to Packard the hand trucks are “extremely light weight; they are not intended for industrial, heavy duty applications.” Additionally, “these carts have only 2 wheels and have a telescoping tubular handle which is not conductive [*sic*] for Industrial use.” See Scope Inquiry Request at 2.

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 scope 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: (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

² The scope inquiry was first submitted to the Department on January 26, 2010, but due to missing information pertaining to the model name and number, the Department contacted Packard requesting the missing information. Packard provided the necessary information on January 27, 2010. See Memorandum to File “Hand Trucks and Certain Parts Thereof from the People’s Republic of China (PRC): Scope Ruling – Packard” dated January 27, 2010.

³ On January 28, 2010, the Department discovered that Packard had not properly served copies of its request on interested parties. The Department contacted Office Manager Tammy Massy at Packard informing her that she needed to serve a copy of the submission to all parties on the APO Service List and provide the Department with a Certificate of Service. On February 4, 2010, the Department received the Certificate of Service. See Memorandum to File “Hand Trucks and Certain Parts Thereof from the People’s Republic of China (PRC): Scope Ruling – Packard” dated February 4, 2010. Accordingly, the Department deems Packard’s submission filed in proper form on February 4, 2010.

trade in which the product is sold; and (v) the manner in which the product is advertised and displayed. See 19 CFR 351.225(k)(2). 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 Packard'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 Department and the Commission are, in fact, dispositive with respect to Packard's requested product. 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 8716.80.50.10 ("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 8716.80.50.90 (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 8716.80.50.20, 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 through the course of the investigation 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 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.

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 {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.

The sample provided by Packard to the Department has a vertical handle, with a toe plate, tubular frame, and two wheels, all of which can be collapsed in on itself for storage. These physical characteristics would appear to match the description of merchandise covered by the Order. However, Packard’s Foldable Hand Truck, model number FHT200, is virtually identical to products from two previous scope inquiries: the Safco “StowAway” and Welcom’s MCX Magna Cart. See “Hand Trucks and Certain Parts Thereof from the People’s Republic of China: Scope Ruling on Safco’s “StowAway” and “Stow and Go” Carts,” dated June 10, 2009; see also “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 12, 2008.

A comparison of Safco’s “StowAway” cart and Packard’s Foldable Hand Truck shows no major discernable differences; however, there are two minor differences between the two carts. First, the Safco’s “StowAway” cart has the word “SAFCO” in raised letters on the black plastic horizontal crossbar that is in the middle of the cart. Second, the pattern that is cut into the toe plate of each cart is of a slightly different design. Other than those two minor differences between the two carts, the Department has determined that Packard’s Foldable Hand Truck, Safco’s “StowAway” cart, and (by transitive relation) Welcom’s MCX Magna Cart, are identical. Since the WelCom “MCX Magna Cart” was previously found to be outside the scope of the Order under the luggage exclusion.


The Federal Circuit has noted that “the language of the order determines the scope of an antidumping duty order.” See Tak Fat Trading Co. v. United States, 396 F.3d 1378, 1382 (Fed. Cir. 2005). Accordingly, the regulation directing the Department to consider additional criteria merely provides guidance to the Department during the scope determination. See Olympia Industrial, Inc. v. United States, Slip Op. 06-110 at 9-10 (CIT 2006) (noting that the language of the order controls the Department’s inquiry).

Since the WelCom “MCX Magna Cart ” and the Safco “StowAway” cart were previously found to be outside the scope of the Order under the luggage exclusion. See “Hand Trucks and Certain

Parts Thereof from the People's Republic of China: Scope Ruling on Safco's "StowAway" and "Stow and Go" Carts," dated June 10, 2009; see also "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 12, 2008. Therefore, for the same reasons discussed therein, we find that the Packard's Foldable Hand Truck is excluded from the scope of the Order.

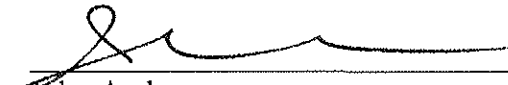
Recommendation

Based upon the preceding analysis, we recommend the Department find that the Packard Foldable Hand Truck, model number FHT200, is not within the scope of the Order.



Agree

Disagree



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

3/26/10

Date