



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration

Washington, D.C. 20230

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Scope Inquiry
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IA/NME: JEH

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

THROUGH Wendy Frankel/Edward C. Yang
Office Director/Senior Enforcement Coordinator
China/NME Unit
Import Administration

FROM: Julia Hancock
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Import Administration

SUBJECT: Hand Trucks and Certain Parts Thereof from the People's Republic
of China: Final Scope Ruling on the High-Axle Torch Cart

SUMMARY

Based on the analysis below, we recommend finding that the product subject to this scope ruling is outside the scope of the order on hand trucks and certain parts thereof 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 ("Order"), 69 FR 70122 (December 2, 2004).

Background

On December 2, 2004, the Department of Commerce ("Department") published the Order on hand trucks from the People's Republic of China. On February 16 and March 27,¹ 2007, the Department received submissions from Northern Tool & Equipment Co. ("Northern Tool") inquiring whether the High-Axle Torch Cart, item #164771 ("High-Axle Cart"), which it imports from the PRC, is included within the scope of the Order. On April 19, 2007, Gleason Industrial Products, Inc., and Precision Products, Inc. (collectively, "Petitioners") submitted comments opposing Northern Tool's request to find the High-Axle Cart outside the scope of the Order and on May 31, 2007, Northern Tool submitted supplemental information to its scope request.

¹ On March 15, 2007 the Department issued a letter to Northern Tool & Equipment Co., requesting that it re-file its request for a scope ruling on the High-Axle Cart (item #164771), in order to properly serve all interested parties.



Petitioners then submitted rebuttal comments to Northern Tool's scope request on May 31, 2007, with additional comments on June 13, 2007, and August 15, 2007.²

APPLICABLE REGULATIONS

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 351.225. The determination may take place with or without a formal inquiry. See 19 C.F.R. 351.225(d) and (e). On matters concerning the scope of an antidumping order, our initial basis for determining whether a product is included within the scope of an order is the description of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary and the U.S. International Trade Commission ("ITC"). See 19 CFR 351.225(k)(1). If the Department determines that these descriptions are dispositive of the matter, it will issue a final scope ruling as to whether or not the merchandise in question 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 additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: i) the physical characteristics of the product; 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. These factors are known commonly as the *Diversified Products* criteria.³ 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 record evidence before the Department.

For this case, the Department has evaluated Northern Tool's request pursuant to 19 CFR 351.225(k)(1) and finds the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary and the ITC to be dispositive with respect to Northern Tool's High-Axle Cart. Therefore, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2).

COMMENTS

According to Northern Tool, the High-Axle Cart is not within the scope of the Order because the projecting edge of the High-Axle Cart cannot "slide" under a cylinder with a smooth continuous motion, nor can the cylinder coast over the 2.4" front edge in accordance with the scope language. Northern Tool explains that the cylinders cannot be "rolled" onto the platform because of the High-Axle Cart's 2.4" edge. Therefore, Northern Tool explains, the only way to load a cylinder is to tilt it on edge and use the edge of the welding cart as a fulcrum to tip it in, or to lift the tank completely over the edge of the platform. Specifically, Northern Tool describes the High-Axle Cart as: "a heavy duty cart on 20" pneumatic tires measuring 28" wide by 48" high. The cart is made of 14-gauge steel and is specially designed to hold acetylene and oxygen

² Petitioners' comments were filed before the Central Purchasing case was concluded on October 22, 2008, on substantially the same cart.

³ See Error! Main Document Only. *Diversified Products Corp. v. United States*, 572 F. Supp. 883 (Ct. Int'l Trade 1983).

cylinders and features a self-leveling tool box for safe transportation of torch supplies. The platform on which the cylinders rest has a front lip, measuring 1.2” high to stabilize the cylinders.”⁴

Petitioners contend that the scope of the Order clearly states that “names commonly used to reference hand trucks are hand truck, convertible hand truck appliance hand truck, cylinder hand truck...” and because Northern Tool’s High-Axel Cart is a cylinder hand truck, it is within the scope of the Order. Petitioners explain that a hand truck that transports cylinders that contain pressurized gas used in welding, such as the High-Axle Cart, should encourage and assist users to slide the toe plate of the hand truck under the cylinder by rolling the cylinder on its bottom edges. Petitioners explain further, that to prevent accidents, cylinders that contain pressurized gasses used for welding “should {always} be moved by tilting and rolling them on their bottom edges.”⁵ Petitioners conclude that the 1.2” edge on the open side of the High-Axle Cart’s toe plate ensures that the user moves the cylinders onto the hand truck by tilting and rolling the cylinders on their bottom edges.

Petitioners also contend that the evidence confirms the toe plate of the High-Axle Torch Cart can be placed into a position beneath a load so the toe plate can slide under the load. The scope of the hand truck Order does not require that the projecting edge or edges, or toe plate, slide under a load in a smooth continuous motion, nor does it require a load to coast over the front lip of the hand truck’s projecting edge or edges, or toe plate.

ANALYSIS

With respect to the instant request, we find that for the reasons outlined below, Northern Tool’s High-Axel Cart 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

⁴ Northern Tool’s Comments, dated March 23, 2007, at 1.

⁵ Petitioners’ Comments, dated June 13, 2007, at pg 2 and Exhibit 2 (citing *Naval Ships’ Technical Manual*, at 74-92, and 074-10.3.1 (Section 10: Safety Precautions; Gas Cylinders) (August 23, 1999)).

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 and reads as follows:

“The product covered 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 for 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 operation 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 ITC 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.

On July 14, 2008, the Department filed its Final Results Pursuant to Court Remand in Gleason Industrial Prod. v. United States, Court of International Trade No. 06-00089 ("Central Purchasing Remand") concluding upon remand that Central Purchasing's Model 43615 was outside the scope of the Order. Specifically, the Department concluded that "because the toe plate has a 1 ¼ inch raised lip, it is not capable of sliding under a load, as required by the scope of the order." See Central Purchasing Remand at 1.

On October 1, 2008, the Department released its final scope results regarding Central Purchasing's Welding Cart Item Number 65939. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary, Scope Ruling Central Purchasing, LLC (Central Purchasing) "Welding Cart Item Number 65939" (Welding Cart), dated October 1, 2008. In that scope ruling, the Department concluded that the Welding Cart lacked a projecting edge "which can slide under a load for purposes of lifting and/or moving the load" and the "4-inch steel front guard welded to two tall steel side bars parallel to the vertical frame, constrain how the cart will be used." Id. at 5.

Based on record evidence, the Northern Tool High-Axle Cart is very similar to the Central Purchasing welding carts described above and excluded by the Department from the scope of the Order. Specifically, with regard to Central Purchasing Model 43615, the Department's scope redetermination concluded that the 1.25" lip on the toe plate of Model 43615 prevented the cart from sliding under a load for the purpose of transporting the load. Furthermore, the Department

