



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

A-570-803
Scope Review
Public Document
IA/NME/IX: HNZ

Oct. 14, 2005
ruling

MEMORANDUM FOR: Gary Taverman
Acting Deputy Assistant Secretary
for Import Administration

FROM: James C. Doyle
Office Director, Office 9
for Import Administration

SUBJECT: Final Scope Ruling: Antidumping Duty Order on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China

Summary

On March 10, 2005, the Department of Commerce ("the Department") received a request from Avalanche Industries ("Avalanche") for a scope ruling to determine whether the "Mean Green Splitting Machine" (also known as the "Smart Splitter") is included within the scope of the antidumping duty orders on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles ("HFHTs") from the People's Republic of China ("PRC"). Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles from the PRC, 56 FR 6622 (February 19, 1991) ("the HFHTs Orders"). In accordance with 19 CFR 351.225(k)(2), the Department finds that the "Mean Green Splitting Machine" is within the scope of the HFHTs Orders.

Background

On March 10, 2005, the Department received a letter from Neville Peterson LLP on behalf of Avalanche requesting a scope ruling on whether the "Mean Green Splitting Machine," imported by Avalanche from the PRC, is covered by the HFHTs Orders. On March 18, 2005, the Department requested additional and clarifying information from Avalanche regarding its scope request. On March 25, 2005, Avalanche partially responded to the Department's supplemental questionnaire. On March 30, 2005, Avalanche submitted the remainder of its responses to the Department's supplemental questionnaire. On May 2, 2005, the Department requested additional and clarifying information from Avalanche regarding whether the various parts of the "Mean Green Splitting Machine" are forged or cast. On May 6, 2005, Avalanche submitted additional information regarding the various parts of its log-splitting device.

On May 12, 2005, the Department informed all interested parties that it was initiating a formal scope inquiry pursuant to section 351.225(k)(2) of the Department's regulations. See The



Department's May 12, 2005, Letter to All Interested Parties. On June 1, 2005, Avalanche submitted comments regarding its scope request. On August 2, 2005, the Department requested further information from Avalanche regarding the "Mean Green Splitting Machine." No other interested parties submitted comments regarding the scope request submitted by Avalanche.

AVALANCHE'S COMMENTS

A. Avalanche's March 10, 2005, submission requests that the Department find that its imported log-splitting device, known as the "Mean Green Splitting Machine," is outside the scope of the antidumping duty order for HFHTs. Avalanche describes the "Mean Green Splitting Machine" (also known as the "Smart Splitter") as a patented log-splitting device approximately 40 inches in height and 7 pounds in weight which can be attached to a number of working surfaces including a workbench or tree stump. The log-splitting device consists of a parallel steel support and guide shafts which are permanently attached to a splitting element,¹ as well as a striking weight which is placed on the guide shaft. Avalanche explains that the "Mean Green Splitting Machine" works by allowing the striking weight to descend the guide shaft and strike the upper surface of the splitting wedge which is then driven into a log placed beneath the wedge's cutting edge. According to Avalanche, this provides a user of such a device the ability to split logs without using a maul to drive a splitting wedge. Avalanche notes that the "Mean Green Splitting Machine" and replacement wedges for this item are sold to customers via mail order sales, internet sales and other forms of direct marketing. Avalanche also states that this product is classified under the Harmonized Tariff System ("HTSUS") subheading 8201.40.60.

Avalanche argues that the description of the merchandise in the investigation and the HFHTs Orders excludes the "Mean Green Splitting Machine." Avalanche notes that the initial investigation and HFHTs Orders all describe, *inter alia*, "steel wood splitting wedges" as part of the "bars/wedges" class or kind of imported merchandise. According to Avalanche, even though the "Mean Green Splitting Machine" incorporates a steel wedge as part of its mechanism, the "Mean Green Splitting Machine" is not a wedge but rather a complete wood splitting device that uses gravity rather than human-originated force and is thus not covered by the scope of the HFHTs Orders. Avalanche asserts that in construing the scope of HFHTs Orders, the Department has recognized that imported articles that are "substantially more than" the items covered in an order are outside the scope. See Final Scope Ruling: Clarification of the Antidumping Duty Order on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Isuzu Motors America, Inc., (March 12, 2000). Avalanche maintains that this scope determination rationale is equally applicable to the "Mean Green Splitting Machine." Avalanche argues that because the "Mean Green Splitting Machine" contains numerous attachments and augmentations that significantly and unalterably change the use of the wedge, uses a gravity driven weight to strike the wedge rather than human force, and contains a

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1. The splitting element contains: a splitting wedge with a lower sharpened cutting edge and an upper flat striking surface; a threaded bore that extends into the splitting wedge from the upper striking surface; a conduit with a longitudinal bore to hold the support shaft; and a pair of connector bars that attach the support shaft conduit with the splitting edge.

small wedge that cannot be removed from the splitter's structure, it is "substantially more than" a wedge, and is therefore outside the scope of the HFHTs Orders.

Furthermore, Avalanche argues that the "Mean Green Splitting Machine" is specifically outside the scope of the bars/wedges Order based on the criteria set forth in Section 351.225 (k)(2) of the Department's Regulations because the physical characteristics of the "Mean Green Splitting Machine" are different from those of a steel wedge, that these different physical characteristics affect the expectations of the ultimate purchasers of the "Mean Green Splitting Machine", that the "Mean Green Splitting Machine" is sold exclusively by mail and internet orders, and that the "Mean Green Splitting Machine" is advertised and displayed in a different fashion than wedges.

In response to the Department's May 10, 2005, request for additional and clarifying information, Avalanche provided the Department with the model number, HTSUS number and total value of imports since 2002 for the "Mean Green Splitting Machine," as well as information regarding the manufacturer of this product and the names of U.S. companies who have imported the "Mean Green Splitting Machine" into the United States from the PRC. Furthermore, Avalanche supplied the Department with a Customs Form 7501 for the importation of the "Mean Green Splitting Machine" and the number of units imported since 2002.

In response to the Department's April 14, 2005, request for additional and clarifying information, Avalanche provided information pertaining to axe heads, which were listed on the Customs Form 7501 submitted in Avalanche's March 30, 2005, supplemental comments. Moreover, in response to the Department's May 2, 2005, request for additional and clarifying information, Avalanche described whether the various parts of the "Mean Green Splitting Machine" were cast or forged.

The Petitioners' filed no pre-formal scope inquiry comments.

B. Avalanche's June 1, 2005, submission in response to the Department's initiation of a formal scope inquiry on the "Mean Green Splitting Machine" on May 12, 2005, again requests that the Department find that the "Mean Green Splitting Machine" is outside the scope of the HFHTs Orders. As it did in its March 10, 2005, scope request, Avalanche begins its comments by maintaining that the description of the merchandise in the investigation and the HFHTs Orders exclude the "Mean Green Splitting Machine." Avalanche addresses the criteria set forth in section 351.225(k)(2) of the Department's Regulations, also known as the Diversified Products criteria. See Diversified Products Corporation v. United States, 572 F. Supp. 883 (September 27, 1983).

1. Physical Characteristics

Avalanche first asserts that the physical characteristics of the "Mean Green Splitting Machine" are distinct from those of a steel wedge. First, Avalanche argues that the "Mean Green Splitting Machine" is longer, heavier, and costlier than a wedge. Second, Avalanche contends that the "Mean Green Splitting Machine," unlike a wedge, relies on gravity as opposed to human power to split logs. Third, Avalanche argues that the wedge component of the "Mean Green Splitting Machine" cannot be disengaged from the product's structure, meaning that a purchaser of this product cannot use it as a free-standing wedge, even if he or she wanted to. Fourth, Avalanche contends that, unlike a conventional hand tool, which can be used to strike an object at any angle,

and which can be utilized on virtually any work surface, the "Mean Green Splitting Machine" strikes the workpiece at a fixed angle, determined by the guideshaft, and can only be used on objects that are compatible with the "Mean Green Splitting Machine's" dimensions. Finally, Avalanche argues that the "Mean Green Splitting Machine," unlike a conventional hand tool, such as a wedge, is more limited in use (*i.e.*, it can only be used to split logs) and is incapable of being used in the same freestyle manner as most other hand tools.

2. Expectations of Ultimate Users

Avalanche contends that the unique physical characteristics of the "Mean Green Splitting Machine" undoubtedly affect the expectations of the ultimate purchaser(s) of this product. Avalanche suggests that a person contemplating buying a "Mean Green Splitting Machine" would choose this particular product, rather than a wedge, for the benefit of its unique gravity-driven striking capability, which provides a safer, less physically demanding method for splitting logs. Furthermore, Avalanche argues that a person buying a "Mean Green Splitting Machine" need not purchase any other tools for striking purposes as this product combines both the striking and splitting elements in one package. Finally, Avalanche explains that a purchaser of the "Mean Green Splitting Machine" would also expect to pay more for such a product, in fact thirteen times more. According to Avalanche, the "Mean Green Splitting Machine" retails for approximately \$99.99 (plus \$39.95 for the optional base) whereas a wedge retails for about \$7.74.

3. Use of Merchandise

Avalanche contends the ultimate use of the "Mean Green Splitting Machine" is different from that of a wedge. Avalanche acknowledges that both wedges and the "Mean Green Splitting Machine" split logs. Nevertheless, Avalanche argues that the means by which these two products split wood is so fundamentally different (*i.e.*, one uses human force while the other uses the force of gravity) so as to make their ultimate uses dissimilar. Furthermore, Avalanche argues that a wedge can be brought to bear on a number of different objects (*i.e.*, fell a tree, etc.), whereas the "Mean Green Splitting Machine" can only be brought to bear on objects that are compatible with the machine's dimensions.

4. Channels of Marketing

Avalanche states that it is the only U.S. importer which has imported the "Mean Green Splitting Machine" into the United States from 2002 until the present. Avalanche notes that it imported the product directly from the Chinese manufacturer. Avalanche further explains that it sells its "Mean Green Splitting Machine" directly to customers and to specialized outlets like Plow and Hearth (an internet and catalog retailer of "rural items") and QVC (a television and internet retailer). Avalanche notes that it also advertises in magazines, on television and radio stations, at state and county fairs, and at trade shows. In Avalanche's observation, wedges are typically sold in hardware stores and sometimes through hardware catalog retailers. Furthermore, Avalanche notes that in the ITC's final material injury determination report, four channels of distribution for HFHTs, including wedges, were highlighted. See Heavy Forged Hand Tools From the People's Republic of China, Inv. No. 731-TA-457, USITC Pub. 2357 (Feb. 1991), at 114. Avalanche asserts that the ITC's final material injury determination report does not contemplate the distribution channels that Avalanche used (*i.e.*, Avalanche does not sell its "Mean Green

Splitting Machine” to hardline wholesalers, merchandising groups, independent retail hardware stores or general mass merchandisers.)

5. Manner of Advertising and Display

Finally, Avalanche argues that the whole thrust of its advertising campaign was to distinguish its “Mean Green Splitting Machine” from a wedge and the traditional manner of splitting logs using the maul and wedge system. Avalanche notes that it directed its advertising at customers who are looking for a safer and less physically demanding method of splitting wood. Furthermore, Avalanche highlights the considerable amount of time and money it spent on advertising its product, arguing that wedges are typically not advertised.

In response to the Department’s August 2, 2005, request for additional clarifying information, Avalanche provided the Department with pricing information for the “Mean Green Splitting Machine” as well as for wedges. Avalanche also discusses the channels of trade for the “Mean Green Splitting Machine” and compares those channels with those of a wedge. Finally, Avalanche discusses advertising and marketing strategies for both the “Mean Green Splitting Machine” and wedges.

ANALYSIS

The Department finds that the “Mean Green Splitting Machine” is included in the antidumping duty order on HFHTs from the PRC. In arriving at this conclusion, the Department considered the descriptions of heavy forged hand tools in the petition, investigation, and prior proceedings, as well as the range of issues presented by Avalanche. See 19 CFR 351.225(k)(1). As demonstrated below, these descriptions are not dispositive. Therefore, the Department further considered the “Mean Green Splitting Machine” under the Diversified Products criteria set forth in section 351.225(k)(2) of the Department’s regulations. Section 351.225(k)(2) of the regulations provides that when the criteria identified in 351.225(k)(1) are not dispositive the Department will further consider (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 displayed and advertised. While no single element of the Diversified Products criteria is dispositive, the Department has determined, after a thorough review of the “Mean Green Splitting Machine” against each of the five criteria noted above, that this product is covered by the scope of the HFHTs Orders. Specifically, the Department determined that the physical characteristics, ultimate use and channels of marketing and trade for both the “Mean Green Splitting Machine” and a wedge are all essentially the same.

Descriptions of Scope from the Petition and Prior Proceedings

The April 4, 1990, petition described the covered merchandise as follows:

- (1) hammers and sledges, with or without their handles, with heads over 1.5 kg (3.25 pounds) each;
 - (2) crowbars, track tools, and wedges;
 - (3) picks and mattocks;
 - and (4) axes, adzes, and hewing tools other than machetes.
- See Antidumping Petition of Woodings-Verona Tool Works, Inc. for the Imposition of Antidumping Duties on Heavy Forged

Hand Tools, with or without Handles, from the People's Republic of China, dated April 4, 1990 ("Petition"), at 11. The Petition also identifies certain types of HFHTs that are specifically excluded from the scope. According to the Petition, the products excluded are (1) hoes and rakes in HTSUS 8201.30.00 are not heavy forged hand tools and are not subject to investigation, and (2) bars eighteen inches and under in HTSUS 8205.59.30 are not heavy hand tools and are not subject to investigation. Id.

Lastly, the Petition also stated that:

This Petition covers products imported with or without handles, whether painted or unpainted....This Petition covers merchandise even if it is transhipped through third countries, where it is finished, by painting, handle insertion, and other minor finishing operations. The process of attaching a handle and painting a head is a minor assembly and finishing operation.

See Petition at 12. Additionally, the Petition describes the production process for HFHTs as follows: "{Heated steel} is formed to final shape on forging equipment such as drop hammers, mechanical forging presses or upsetters using closed dies, or a straight side forging press using open dies." See Petition at 14.

The Department's antidumping duty orders on HFHTs from the PRC define the scope of these orders as follows:

The products covered by these investigations are HFHTs comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) ("hammers/sledges"); (2) bars over 18 inches in length, track tools and wedges ("bars/wedges"); (3) picks and mattocks ("picks/mattocks"); and (4) axes, adzes and similar hewing tools ("axes/adzes").

HFHTs include heads for drilling hammers, sledges, axes, mauls, picks and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and **steel wood splitting wedges** (emphasis added). HFHTs are manufactured through a hot forge operation in which steel is sheared to the required length, heated to forging temperature and formed to the final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently provided for under the following [Harmonized Tariff System] ("HTS") subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded from these investigations are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. See HFHTs Orders.

ITC Determinations

The ITC stated in its final injury analysis that:

The HFHTs included in the scope of this investigation consist of the following products, finished or unfinished, with or without handles: (1) hammers, sledges, and mauls . . . ; (2) bars of over 18-inches in length . . . (3) picks and mattocks. . . ; (4) axes, adzes, and similar hewing tools . . .

See Heavy Forged Hand Tools from the People's Republic of China, Determination of Injury, USITC Publication 2357, February 1991 (“ITC Final Report”) at A. The ITC Final Report mentions wedges. Id., at 15. However, the record does not discuss specifically the “Mean Green Splitting Machine” or similar products. Therefore, the ITC record, is not dispositive as to whether the “Mean Green Splitting Machine” was intended to be included in the HFHTs Orders.

Although the Department has issued several scope rulings under the antidumping duty order on HFHTs from the PRC, the Department has not specifically addressed whether the “Mean Green Splitting Machine” is subject to the HFHTs Orders. Therefore, an examination of the petition and investigation up to the present reviews, reflects that the scope of the HFHTs Orders has remained unchanged in pertinent part, and encompasses the same product description. Therefore, as the petition, investigation, the HFHTs Orders, previous scope rulings, or previous reviews do not address the “Mean Green Splitting Machine” specifically, the description of the merchandise contained in these proceedings is not dispositive as to whether the “Mean Green Splitting Machine” was intended to be included in the HFHTs Orders or, particularly the bars/wedges Order.

Diversified Products Analysis

1. Overall Physical Characteristics

Avalanche makes a number of arguments regarding the overall physical differences between the “Mean Green Splitting Machine” and a wedge. The Department acknowledges that the “Mean Green Splitting Machine” is longer and heavier than a typical, unmodified wedge, that it relies on gravity as opposed to human power to split logs, that the wedge component of the “Mean Green Splitting Machine” cannot be disengaged, that it can only strike a workpiece at a fixed angle and that it is more limited in use. However, despite these physical differences, the “Mean Green Splitting Machine” fundamentally remains a wood-splitting wedge, which is expressly covered by the bars/wedges Order. Further, Avalanche acknowledges that the “Mean Green Splitting Machine” is produced by forging. Avalanche argues that the Department has previously recognized that imported articles that are “substantially more than” the items covered in an order are outside the scope. See Final Scope Ruling: Scope Clarification of the Antidumping Duty Order on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Isuzu Motors America, Inc., at 6 (March 13, 2000). In that decision the Department determined that “the fan center assembly Isuzu imports is comprised of several components containing attachments and augmentations which advance the function and value of the bearings

significantly, resulting in the fan center assembly being substantially more than a bearing.” Id. The “Mean Green Splitting Machine” contains various augmentations and advancements; however, while these attachments and augmentations may increase the price of the product and/or make it easier to chop wood, they do not result in the product being anything more than a wedge of a type specifically listed in the scope.

2. Expectations of Ultimate Users

Avalanche contends that the unique physical characteristics of the “Mean Green Splitting Machine” undoubtedly affect the expectations of the ultimate purchaser(s) of this product. The Department finds that the expectations of the ultimate users of a product like the “Mean Green Splitting Machine” are different from those of customers who choose to purchase a wedge. While both the “Mean Green Splitting Machine” and a wedge can be used to split wood, a wedge can be used for a larger array of spreading applications. Therefore, the expectations of the ultimate purchasers of the “Mean Green Splitting Machine” are necessarily limited, whereas those for a simple wedge are less so.

3. Use of Merchandise

Avalanche acknowledges that both wedges and the “Mean Green Splitting Machine” split logs; however, Avalanche contends that the means by which these two products split wood is so fundamentally different as to make their ultimate uses dissimilar. However, the Department finds that the “Mean Green Splitting Machine” and a wedge have significantly overlapping ultimate uses. While the means may be different, the end result is the same: the “Mean Green Splitting Machine” may only be used to split wood and a wedge is principally used to split wood.

4. Channels of Marketing

Avalanche argues that the channels of trade and marketing it used to sell its “Mean Green Splitting Machine” were different than those used for selling wedges. The Department, however, finds that the channels of trade that Avalanche used to sell its “Mean Green Splitting Machine” are not unique to this product. While Avalanche argues that the distribution channels that it used to sell its “Mean Green Splitting Machine” were not contemplated in the ITC’s Final Report, the Department has determined that “merchandising groups” and “general mass merchandisers” may be interpreted to include outlets like websites and the cable channel, QVC, where the “Mean Green Splitting Machine” is both marketed and sold. Furthermore, now that Avalanche has sold its remaining supply of “Mean Green Splitting Machines,” there is no way of knowing whether the remaining products are or will be sold in hardware stores or hardware catalog retailers, where wedges are typically sold. Thus, the Department has determined that Avalanche’s channels of trade and marketing are similar to those channels used for wedges.

5. Manner of Advertising and Display

Avalanche maintains that the whole thrust of its advertising campaign was to distinguish its "Mean Green Splitting Machine" from a wedge and the traditional manner of splitting logs using the maul and wedge system. The Department finds that the manner in which the "Mean Green Splitting Machine" is advertised and displayed is significantly different from that of a wedge. Of particular note is the fact that Avalanche, via various media mediums like television and print, emphasizes the "Mean Green Splitting Machine's" safety and comfort advantages over a wedge. Wedges, on the other hand, are seldom advertised. Thus, the Department has determined that the manner of advertising and display for the "Mean Green Splitting Machine" is distinguishable from that of wedges.

Conclusion

The Department has determined that the "Mean Green Splitting Machine" is subject to the HFHTs Orders from the PRC. Specifically, the Department finds that this product is fundamentally a wood-splitting wedge, which itself is subject to the bars and wedges Order. Using the criteria outlined in Diversified Products, the Department finds that the expectations of the ultimate users and the manner of advertising and display of the "Mean Green Splitting Machine" appear to differ from those products clearly within the scope of the HFHTs Orders. Nevertheless, the Department also finds that the physical characteristics, ultimate use and channels of marketing for the "Mean Green Splitting Machine" are largely similar to those of other wedges. While no single element of the Diversified Products criteria is dispositive, the Department has concluded, after a thorough review of the "Mean Green Splitting Machine" under Diversified Products, that this product is a wedge and is thus covered by the scope of the bars and wedges Order.

