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February 28, 2007

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IMPORT ADMINISTRATION

PUBLIC DOCUMENT

BY HAND DELIVERY

David M. Spooner
Assistant Secretary for Import Administration
Attn: APO Regulations
Central Records Unit Room 1870
U.S. Department of Commerce
14th Street and Pennsylvania Ave., NW
Washington, D.C. 20230

Re: AD/CVD Proposed Amendments to Rules Re: APO Proceedings

Dear Mr. Spooner:

On January 8, 2007, the Department of Commerce ("the Department") published proposed revisions to the regulations governing document submission procedures and Administrative Protective Orders.¹ We hereby submit these comments for the Department's consideration. While we largely agree with the Department's proposed changes, we disagree with one particular revision.

The Department proposes a change to 19 C.F.R. §351.305(d) in order to address situations where an importer has requested a scope inquiry for a product that it intends to import. Commerce has proposed that, since a Customs Form 7501 will not be available for merchandise that has yet to be imported, other documentation will be acceptable to support the designation of the importer as an

¹ See Proposed Rule for Document Submission Procedures, APO Procedures, 72 FR 680 (Jan. 8, 2007).



interested party. We are perplexed by the Department's proposal, because Commerce has regularly declined to initiate scope inquiries or make scope rulings for products that are yet to be imported. Commerce should not alter this regular practice.

For example, in response to a scope request by Olympia Group, Inc., Commerce refused to initiate a scope inquiry for a product that had yet to be produced because, among other reasons, Olympia could not provide the HTS classification as required under 19 C.F.R. §351.225(c)(1)(i).² Likewise, Commerce refused to initiate a scope request by the ESM Group Inc., because "ESM has requested the Department to provide a scope ruling on a product and factual situation which is prospective and hypothetical."³ Moreover, in its decision, Commerce decisively states that it simply "does not issue advance rulings regarding the application of the Trade and Tariff Act of 1930, as amended ("the Act") and the regulations to particular factual scenarios,"⁴ citing to the preamble of the regulations at 27331.⁵ In another recent scope ruling on candles, Commerce declined to rule on a product that had not yet been imported.⁶ Thus, it would appear

² See Attachment 1.

³ See Attachment 2.

⁴ See Attachment 2.

⁵ See *Antidumping/Countervailing Duty Final Rule* 62 Fed. Reg. 27,296, 27331 (May 19, 1997).

⁶ See Attachment 3.



that Commerce's proposed amendment to its regulations is in conflict with both its past practice and 19 C.F.R. §351.225.

While Commerce has the ability to change its regulations and practices with regard to advance letter rulings in scope inquiries, it should do so through a more formal rulemaking procedure that is distinct from the other proposed changes to the APO regulations. Indeed, Commerce itself states in the preamble: "Nevertheless, we intend to continue the dialogue with persons having an interest in a possible letter ruling procedure. In addition, if a sufficient number of persons indicate interest, we will convene a hearing on this topic."⁷ In keeping with this statement, we ask that the Department either modify its proposed change to the APO regulations or initiate a concurrent formal rulemaking process with respect to 19 C.F.R. §351.225.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan H. Price".

Alan H. Price
Timothy C. Brightbill

⁷ *Id.*



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

FOR PUBLIC FILE

A-570-803

Scope Inquiry

Public Document

IA/NME/IX: JB

March 7, 2005

Olympia Group, Inc.
c/o Robert T. Hume
Hume & Associates PC
1924 N Street, NW
Washington, DC 20036

Re: Scope Review: Heavy Forged Hand Tools from the People's Republic of China (Prybars)

Dear Mr. Hume:

This letter concerns your November 4, 2004 scope request on behalf of Olympia Group Inc. ("Olympia"), an importer of merchandise subject to the antidumping duty orders on heavy forged hand tools (HFHTs) from the People's Republic of China (PRC).

As you know, on December 20, 2005, the Department of Commerce ("the Department") responded to your request by initiating a scope inquiry on prybar products. The Department subsequently issued Olympia a request for information on February 4, 2005. On February 11, 2005, Olympia submitted a timely response to the Department's questionnaire. In it, Olympia stated that the "particular" item included in the request is one that Olympia intends to sell if the Department determines it is not within the scope of the antidumping order on bars/wedges. Olympia stated that it could provide neither a sample nor model number of the particular product in the request as it is not in production (but instead provided a sample of a supposedly "similar/comparable" product). Further, Olympia stated that it could not provide names of producers, exporters, or importers of the particular product since 2002 as, to Olympia's knowledge, the particular item has not been previously produced, exported or imported.

Section 351.225(c)(1)(i) of the Department's regulations requires that a party submit a description of the particular product, including its current U.S. Tariff Classification number. Neither Olympia's request nor its questionnaire response identify the applicable U.S. Tariff Classification number, as requested and required by the Department. Instead Olympia points to U.S. Tariff Classification numbers of purportedly "similar" products.

Section 351.225(f)(2) states that the Secretary may issue questionnaires and verify submissions received, where appropriate. The absence of a physical product that has actually been produced, exported, or imported prevents the Department from verifying the information provided, and thus reaching its determination.




Therefore, we have decided to terminate this inquiry for the following reasons: 1) Olympia's failure to provide a sample of the particular product; 2) Olympia's failure to provide the particular product's U.S. Tariff Classification number; and 3) the inability of the Department able to verify the information on the record.

If you have any questions on this matter please feel free to contact me or Javier Barrientos at (202) 482-3208 and (202) 482-2243, respectively.

Sincerely,



 for Alex Villaneuva
Program Manager
China/NME Unit, Office 9

ATTACHMENT 2



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

A-570-864

Scope Inquiry
Public Document
IA/NME/08: LRL/HL

September 22, 2005

ESM Group Inc.
Frederick P. Waite
Vorys, Sater, Seymour and Pease LLP
1828 L Street, NW, Eleventh Floor
Washington, DC 20036

Re: Scope Review Request: Pure Magnesium in Granular Form from the People's Republic of China

Dear Mr. Waite:

This letter concerns your August 3, 2005 scope review request on behalf of ESM Group Inc. ("ESM"), an interested party in the antidumping duty order on pure magnesium in granular form ("granular magnesium") from the People's Republic of China ("PRC").

An examination of your August 3, 2005, letter requesting a scope ruling on atomized magnesium produced in the PRC from pure magnesium manufactured in the United States reveals that the product for which ESM is requesting a scope ruling is not in production at the current time.¹ The preamble to the Department's regulations explains that the Department does not issue advance rulings regarding the application of the Trade and Tariff Act of 1930, as amended ("the Act") and the regulations to particular factual scenarios.²

The Department has determined not to issue a scope ruling under 19 CFR 351.225(d) or to initiate a formal scope inquiry under section 19 CFR 351.225(e) at this time because ESM has requested the Department to provide a scope ruling on a product and factual situation which is prospective and hypothetical.

¹See letter from Vorys, Sater, Seymour and Pease LLP, Pure Magnesium in Granular Form from the People's Republic of China: Request for Scope Ruling, at 2, (August 3, 2005) ("Scope Ruling Request") (explaining that ESM "*proposes* to purchase pure magnesium ingots in the United States and ship the ingots to China where U.S.-origin ingots would be processed . . . into atomized particles") (emphasis added).

²See Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27331 (May 19, 1997).



If you have any questions on this matter please feel free to contact Laurel LaCivita at (202) 482-3434 or Hua Lu at (202) 482-6478, respectively.

Sincerely,

Wendy J. Frankel
Wendy J. Frankel
Director
AD/CVD Enforcement, Office 8
China/NME Unit

ATTACHMENT 3