

Expectations of the Ultimate Purchaser

Both parties agree that the expectation of the ultimate purchaser of the forgings at issue is to produce a TRB or an AFB. Timken submits that since the goal of the forging process is to come as close as possible to the shape of the finished part and thus to reduce the amount of scrap metal, the expectation of the purchaser is the same as that of any other unfinished TRB part, which is to produce a finished bearing.

Koyo argues that this criterion is, at best, unhelpful, since the expectation of purchasers of articles that are admittedly outside the scope is also to incorporate them into TRBs.

The Department's Position

All parties agree that the expectation of purchasers of the forgings in question is to incorporate them into TRBs, or, in some cases, AFBs. Although other products, such as raw materials, may be imported with the same expectation, this does not negate the argument that importers of forgings expect to use them in a limited range of model numbers. Forgings are imported into the United States tagged with the specific model number or numbers of TRB parts to be manufactured from the forging. Therefore, this criterion also indicates that forgings are within the scope.

Ultimate Use

Koyo argues that since some forgings, especially tower forgings, are sometimes used for items outside the scope of the order, this criterion indicates that forgings are outside the scope. Koyo argues that forgings are not dedicated to use in the same manner as green rings, which are agreed to be within the scope. Koyo argues that the Department may not base a finding that merchandise is within the scope on the ultimate-use criterion when there is evidence that the product is not dedicated for use solely in merchandise within the scope of the order.

Timken argues that there are no significant alternate uses for these forgings other than the manufacture of TRBs. Although it is possible to make both an AFB and a TRB from a single tower forging, the use of these tapered forgings to produce AFBs or other non-scope merchandise is unusual and not cost-effective. Timken suggests that Koyo knows how the forgings will ultimately be used at the time they are produced, and that Koyo could easily identify which forgings are destined for TRBs and which are for AFBs.

Koyo submits that, regardless of whether the use of these forgings for anything other than TRBs is cost-

effective, a forging is not dedicated to use until it is green-machined. This is particularly true of a tower forging, which must be separated into two rings.

The Department's Position

The forgings in question will almost certainly be made into finished cups and cones for TRBs. Although other uses such as incorporation into AFBs are possible, they are merely alternatives to the main use. We agree with Timken that multiple-use forgings are not cost-effective on a commercial scale. We also note that other examiners of the product, such as Customs inspectors, recognize that the essential dedication of these forgings to use in the production of a TRB defines them as TRB parts. For example, in a 1990 ruling on similar forgings manufactured by another company, the U.S. Customs Service stated:

After importation, the articles will be processed into inner and outer rings for bearings by cutting and forming operations . . . there is no evidence or claim that the forgings have any other use . . . The forgings, which must be cut and machined after importation, are blanks which are unfinished inner and outer rings and classified as parts of ball or roller bearings in subheading 8482.99.10 or 8482.99.30, HTSUSA, depending on whether they are blanks for ball bearings or for tapered roller bearings. (Customs Classification Letter of April 26, 1990, to Robert E. Burke, Esq., of Barnes, Richardson & Colburn (HQ 085579).)

Although classifications decisions by Customs are not determinative of the scope of an antidumping duty order, they can be indicative; this ruling provides perspective on the ultimate-use criterion, and, therefore, merits consideration. The ultimate-use criterion dictates that forgings fall within the scope.

Effective Date

Koyo argues that if the Department concludes in its final determination that forgings are within the scope, the determination must be effective prospectively, as of the date of publication in the **Federal Register**. Timken did not comment on this issue.

Department's Position

A scope determination is, by law, a clarification of what the scope of the order was at the time the order was issued. Therefore, the Department will incorporate this decision into all pending reviews of this order as well as all future reviews.

Conclusion

Based primarily on the physical characteristics of the forgings, their ultimate use, the expectations of the

ultimate purchaser, and the channels of trade, the Department determines that Koyo's rough forgings, defined above and including hot forgings, cold forgings, and tower forgings, are within the scope of the order.

Dated: January 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

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President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of a closed meeting.

SUMMARY: The President's Export Council (Council) is holding its inaugural meeting. The meeting must be closed to the public to discuss classified material. The Council will discuss issues relating to relations with our trading partners, export controls and other sensitive matters properly classified under Executive Order 12356. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979 to advise the President on matters relating to U.S. export trade. It was most recently renewed on September 30, 1993, by Executive Order 12689.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6204, U.S. Department of Commerce, 202-482-4115.

DATES: February 13, 1995, from 9:00 a.m.-12:30 p.m.

ADDRESSES: Indian Treaty Room, Old Executive Office Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Jane Siegel, President's Export Council, room 2015B, Washington, DC 20230.

Dated: January 26, 1995.

Jane Siegel,

Staff Director and Executive Secretary, President's Export Council.

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