

forgings, the language in the petition is not sufficiently clear on this point to be used as a basis for making a scope determination in this case.

2. Language of the Order and Determinations of the Department

Under this heading we have examined arguments relating to the conduct of the Department's LTFV investigation and the scope language of the Department's determinations and order. Although not determinative of scope, we have also addressed here arguments regarding subsequent administrative reviews of the order, which Koyo urges should inform our interpretation of the record of the LTFV investigation.

With respect to the LTFV investigation, Timken argues that Koyo's actions during the investigation indicate that forgings were considered to be within the scope of the investigation because it reported forgings. Specifically, Koyo reported inner rings for two part numbers that were cold-forged. Koyo did not argue during the Department's investigation that forgings should not be considered unfinished parts, but argued more generally that unfinished parts should be outside the scope of the order. At the Department's investigation hearing, in referring to raw material which it considered out of scope, Koyo referred only to steel coil.

Koyo contends that its inclusion of the two cold-formed models in its response to the questionnaire in the LTFV investigation was due to its attempts to be over-inclusive in submitting any information the Department might need, and that this position is supported by the fact that once the scope of the order was defined, Koyo consistently treated forgings as outside the scope. Although not clear from the record of the investigation, Koyo also noted at the public hearing on this scope proceeding that these two cold-formed models had been machined, and that its inclusion of these models in its questionnaire response was therefore not relevant to the question of whether forgings which had not been machined were within the scope of the investigation.

The products covered by the preliminary and final LTFV determinations and the order as it was published in 1987 are

tapered roller bearings and parts thereof, currently classified under Tariff Schedules of the United States (TSUS) item numbers 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings, currently classified under TSUS item number 661.10; and tapered roller housings (except pillow blocks)

incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under TSUS item number 692.32 or elsewhere in the TSUS. Products subject to the outstanding antidumping duty order covering certain tapered roller bearings from Japan (T.D. 76-227, 41 FR 34974) were not included within the scope of this investigation." (see Antidumping Duty Order: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, 52 FR 37352, October 6, 1987).

Koyo argues that, because there is no disclaimer indicating otherwise, this language includes as parts of TRBs only articles classified under the list of specific tariff provisions. At the time of the investigation and the order, Koyo classified its forgings under a tariff number not listed in the order. Koyo disagrees with the Department's statement in the preliminary scope determination that the classification categories from the Tariff Schedules of the United States (TSUS) listed in the determinations and the order are provided for reference only, and are not definitional.¹ Koyo points out that the Department's determinations contain no disclaimers that would indicate that parts imported under other tariff classification numbers might also be included; the only such disclaimer in the description of the scope appears with respect to tapered roller housings. Koyo argues that if the Department had meant to include items imported under classifications other than those listed, it would have stated so. In Koyo's view, however, because the Department relied specifically on TSUS numbers to define the merchandise, Koyo claims that the classification numbers listed in the scope description with respect to TRB parts are dispositive and exhaustive.

Timken counters that the language of the scope sections in the determinations and in the order should be analyzed in conjunction with the language of the petition, which states that the list of items named in the petition is not intended to be exhaustive. Timken also argues that the fact that Koyo classified the items in question under a provision for forgings and not under any provision mentioned in the order is irrelevant, since the classification was selected by Koyo rather than by Customs. Timken points out that, despite respondents' vigorous arguments during the investigation for the exclusion of unfinished parts, including forgings, from the like-product definition, the ITC

and the Department made no move to exclude these items from the scope.

Koyo also argues that, if the Department had believed that these forgings were within the scope of the order, it would have requested Koyo to report the forgings in subsequent administrative reviews. However, Koyo maintains, although Koyo consistently stated in the course of five administrative reviews that it did not report its imported forgings because it considered them to be outside the scope, neither the Department nor Timken ever questioned this practice or asked for further clarification prior to the 1990-92 reviews. Koyo suggests that the fact that Timken never asked for information on Koyo's forgings casts considerable doubt on Timken's claim that forgings have been within the scope since the time the order was issued. Koyo contends that it is impossible that the Department could have been unclear as to "what form the imports took", as the Department performed a further-processing verification of Koyo in 1990.

Timken counters that a verification only involves information reported by the respondent; because Koyo submitted no sales information regarding forgings, Koyo cannot rely on this verification to support a conclusion that the Department was aware of the nature of the imported forgings and yet did not seek to include them within the merchandise examined in the administrative reviews. Furthermore, Timken argues that, because the scope was determined at the time of the LTFV investigation, Koyo's decision not to report forgings in subsequent reviews cannot change the scope of the order.

The Department's Position

A respondent's decision during the proceeding to report or not to report particular items does not define whether or not those items are within the scope. Koyo's reporting of two "cold-formed models does not imply its acceptance that forgings are within the scope; rather, it may have been an attempt to comply with the investigation by providing as much information as possible on U.S. further manufacturing. By the same token, Koyo's subsequent decision not to report its forgings does not establish that those forgings were not within the scope. We note that another respondent, NTN, does not share Koyo's view that forgings are excluded from the order and has reported its imports of forgings in its questionnaire responses.

Moreover, the "forgings" to which Koyo refers in subsequent administrative reviews and in the current scope inquiry were not clearly

¹ The Department notes that the TSUS, which was converted to the Harmonized Tariff Schedule in 1989, was in effect at the time the Department issued the order.