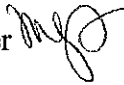




UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-506
Scope Review
Public Document
DAS G:II/O:VI/GM

MEMORANDUM FOR: Holly A. Kuga
Acting Deputy Assistant Secretary
for Import Administration

FROM: Melissa G. Skinner 
Director
Office of AD/CVD Enforcement VI

SUBJECT: Final Scope Ruling: Antidumping Duty Order on Porcelain-on-Steel Cooking Ware from the People's Republic of China

Summary

On March 18, 2003, the Department of Commerce (the Department) received a request from Target Corporation (Target) for a scope ruling on an enamel-clad beverage holder and dispenser to determine whether it is covered by the antidumping duty order on porcelain-on-steel (POS) cooking ware from the People's Republic of China (PRC) (See Antidumping Duty Order: Porcelain-on-Steel Cooking Ware from the People's Republic of China, 51 FR 43414 (December 2, 1986)(Order)). In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that Target's enamel-clad beverage holder and dispenser is not included in the scope of the antidumping duty order on POS cooking ware from the PRC.

Background

On March 18, 2003, Target submitted its request for a scope ruling with respect to an enamel-clad beverage holder and dispenser imported and marketed by Target, which is produced in several colors, including red, cream, blue, and green. As outlined in Target's submission, Target argues that this product should be excluded from the scope of the antidumping duty order of POS cooking ware from the PRC because it is not designed for, or susceptible for use as, cooking ware.

On April 16, 2003, counsel for Columbian Home Products, LLC (Columbian), a U.S. manufacturer and interested party in this proceeding, filed comments regarding Target's request. Target filed additional comments on May 23, 2003. However, Target's May 23, 2003 comments were untimely filed. Additionally, the Department's regulations do not allow for the submission of Target's surrebuttal pursuant to 19 CFR 351.301. Therefore, we have disregarded Target's May 23, 2003 comments in making our scope ruling determination.



Target's Scope Request

The scope inquiry pertains to a beverage holder and dispenser that is imported and marketed by Target. Target provided the Department with a color photograph of the beverage holder and dispenser and two samples of its product. The beverage holder and dispenser is sold in four different colors (red, cream, blue, and green), to which Target has assigned the following product numbers: "06509-3273" and "06509 1968," "1968," and "1970." Target describes its imported product in its scope ruling request as follows:

The subject articles are composed of stainless steel and clad in enamel with a porcelain finish, are circular in shape, weigh approximately 5 pounds, and are approximately 11 inches high and 12 inches in diameter. Each has a handled, removable porcelain-on-steel top cover that fits over the opening but is not attached by straps or other means, as well as two permanent handles toward the top of the dispenser on directly opposite sides. Each also has a spigot at its bottom, composed of stainless steel, a plastic-handled turning mechanism, and a rubber gasket to provide a seal against leakage. The spigot assembly is attached to the article by an internal metal washer.

See Target's March 18, 2003 letter (Target's Comments) at page 2.

Target's Comments

Target asserts that its beverage holder and dispenser is labeled and advertised solely as a beverage holder and dispenser. Target argues that the beverage holder and dispenser is not advertised with, or as, cookware. Instead, its beverage holder and dispenser is advertised and displayed with kitchenware designed for outdoor use. Specifically, Target states that the beverage holder and dispenser is advertised as picnicware, along with such items as picnic baskets and related tableware, as part of its "American Picnic" and "The General Store" lines of products.

Target argues that the ultimate use of Target's beverage holder and dispenser is completely different than that of cookware. Target contends that cookware, by definition, is designed and used for cooking purposes. In contrast, Target argues that the beverage holder and dispenser cannot safely or practically be used for cooking because the materials used in its beverage holder and dispenser are not suited to the temperatures associated with cooking. Specifically, Target states that the gasket between the spigot and the beverage holder and dispenser cannot withstand the effects of high temperatures which would result from cooking. The high temperatures would cause the gasket to warp and result in liquids to leak from the bottom of the beverage holder and dispenser.

Target states that its beverage holder and dispenser contains permanent warning statements stamped into the bottom of the product which would deter a consumer interested in cooking ware from purchasing them. Specifically, the product includes the following warnings and statement:

Not microwaveable safe
Not convection oven safe
For serving only
Not fit for use on stove top
Intended for use as a beverage dispenser
Made in China

In support of its arguments, Target provides a test report performed by Merchandise Testing Laboratories (H.K.) Ltd., Taiwan Branch, which states that “the sample demonstrates unsatisfactory effect of boiling water test with leakage at metal spout area when water boiling.” See Target’s Comments at Exhibit D.

Target argues that the beverage holder and dispenser falls outside of the scope of the order, as outlined in the petition, in the investigation (see Porcelain-on-Steel Cooking Ware from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 51 FR 36419 (October 10, 1986) (Final Determination)), in the U.S. International Trade Commission (ITC) injury determination (see Porcelain-on-Steel Cooking Ware from Mexico, the People's Republic of China, and Taiwan, Inv. Nos 701-TA-265 and 731-TA-297-999. USITC Pub. 1911 (November 1986) at page 31 (ITC Final Determination)), and the Order, because the product is not designed for, or susceptible for use as, cooking ware. Target states that the product is a form of POS kitchenware that the ITC noted was outside the scope of the merchandise subject to its material injury investigation. Specifically, Target references the ITC Final Determination which defined subject merchandise as follows:

Porcelain-on-steel cooking ware are articles of porcelain-coated steel used as receptacles in the cooking and heating of food. Related items of porcelain-coated steel used only to handle or process food, i.e., porcelain-on-steel kitchen ware, such as mixing bowls and colanders, are not included . . .

See ITC Final Determination at page A-4. Moreover, Target states that in a prior scope ruling, the Department adopted the ITC's distinction by concluding that kitchenware articles, such as basins and bowls, that are only used to handle or process food are outside the scope of the order. See Ruling on Request by CGS International for Clarification of the Scope of the Antidumping Duty Order on Porcelain-on-Steel Cooking Ware from the People's Republic of China (January 30, 1991) (CGS Scope Ruling). Therefore, Target argues that the beverage holder and dispenser fits within the definition of excluded kitchenware because the subject beverage holder and dispenser is used to handle liquids, not to heat or otherwise cook liquids. Target notes that in a recent ruling by the U.S. Customs and Border Protection (CBP), CBP classified Target’s beverage holder and dispenser under Harmonized Tariff Schedule of the United States (HTSUS) subheading 7323.94.00.80, as “table, kitchen, or other household articles, of iron or steel, enameled, other,” rather than as “cooking ware” under HTSUS subheadings 7323.94.00.21 or

7323.94.00.26. See New York Customs Ruling Letter J81612 (March 11, 2003) and Target's Comments at Exhibit E.

Both petitioner (Columbian) and respondent (Target) in this proceeding submitted comments addressing the factors outlined under 351.225(k)(2), including the physical characteristics of the product, the expectations of the ultimate purchasers, the ultimate use of the product, the channels of trade in which the product is sold, and the manner in which the product is advertised and displayed. However, these comments are not relevant to the instant case because the Department is making its determination under 351.225(k)(1). Therefore, we will not specifically address these comments, as they are not necessary to our analysis.

Columbian's Comments

Columbian contends that there is nothing in Target's description of its imported POS product that excludes it from the scope of the Order. Columbian states that the beverage holder and dispenser is constructed of steel and clad in enamel with a porcelain finish. The Department's scope of the original investigation refers to POS products "constructed of steel" without specifying the type of steel, therefore, Columbian argues that the scope of the Order includes products irrespective of whether the product contains a stainless steel or carbon steel substrate. See Order.

Columbian argues that by its description alone, it is evident that Target's beverage holder and dispenser is included in the scope of the Order. Specifically, Columbian argues that Target's beverage holder and dispenser resembles a "lobster pot" and was referenced as a lobster pot by Target's vendor in "various commercial documents." See Target's Comments at page 3. In addition, Columbian asserts that Target recognized the beverage holder and dispenser's resemblance to a stock pot. Columbian states that the petition specifically included stock pots in the description of the imported merchandise, therefore, Target's beverage holder and dispenser has been explicitly included in the scope of the Order.

Columbian rebuts Target's claim that a "piece of cookware would not be equipped with a spigot" by providing an exhibit of a cookware product referred to as a "clam steamer" which is manufactured in the U.S. and sold by Columbian. See Columbian's Opposition To Scope Request Filed by Target Corporation (April 16, 2003) (Columbian's Comments) at Exhibit 2. The clam steamer has a spigot attached, approximately one inch from the bottom of the pot, which is used to drain the broth that is collected for use in cooking clam chowder. Columbian compares the clam steamer to Target's beverage holder and dispenser and states that, like Target's beverage holder and dispenser, Columbian's clam steamer also has a rubber gasket seal in the spigot assembly. Columbian rebuts Target's statement that cooking temperatures would cause the gasket of Target's beverage holder and dispenser to warp and result in liquid leakage from the bottom of the item. Specifically, Columbian argues that their company has never received any complaints about leakage in regards to the rubber gasket in the spigot assembly of its clam steamer.

Columbian challenges Target's claim that the beverage holder and dispenser cannot withstand intense heat from a stove top because the steel has not received the appropriate treatment. Specifically, Columbian states that the porcelain coating on steel must be applied in a furnace in which the temperature is approximately 1800° F, which exceeds the temperature of a stove top. Columbian argues that even at this very high temperature, the steel does not buckle or otherwise become damaged. Therefore, Columbian concludes that Target's product is able to withstand the significantly lower temperatures associated with cooking.

Columbian argues that the physical characteristics of Target's beverage holder and dispenser are different from those typically associated with a beverage holder and dispenser. Specifically, the product does not resemble a beverage dispenser and lacks any insulation to maintain the temperature of a beverage. In addition, Columbian argues that the faucet on Target's beverage holder and dispenser is not situated in a position that would allow it to easily dispense liquids. Therefore, Columbian concludes that the characteristics of Target's beverage holder and dispenser do not encourage its use as a beverage holder and dispenser and do not preclude its use as cookware.

Columbian rebuts Target's assertion that product labeling is a determinative factor of a product's intended use. Columbian contends that the U.S. Court of International Trade (CIT) has held that product labeling cannot be regarded as conclusive evidence of a product's intended use. See Ipsco v. United States, 715 F. Supp. 1104, 1108 (CIT 1989). Specifically, Columbian argues that "there would be a huge loophole in the antidumping law if an importer were able to import a product subject to an order and merely label or market the product as non-subject merchandise in order to successfully evade antidumping duties." See Columbian's Comments at page 10.

Regulatory Framework & Analysis

The regulations governing the Department's antidumping scope ruling are found at 19 CFR 351.225 (2002). On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the determinations of the Secretary (including prior scope determinations) and the ITC, the initial investigation and the antidumping order. See 19 CFR 351.225(d). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. See 19 CFR 351.225(k)(1).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the five 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.

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 evidence before the Department.

In the instant case, the Department has evaluated Target's request in accordance with 19 CFR 351.225(k)(1) and the Department finds that the descriptions of the products contained in the petition, the final determination of the Secretary (including prior scope determinations) and the ITC, and the antidumping duty order are dispositive. Therefore, the Department finds it unnecessary to consider the additional factors set forth in 19 CFR 351.225(k)(2).

Documents, and parts thereof, from the underlying investigation deemed relevant by the Department to this scope ruling were made part of the record of this determination and are referenced herein. Documents that were not presented to the Department, or placed by it on the record, do not constitute part of the administrative record for this scope determination.

The Porcelain-on-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation submitted a petition on behalf of the domestic manufacturers of POS cooking ware on December 4, 1985. The petition requested that the investigation cover a product described as follows:

The imported merchandise consists of non-electric porcelain-on-steel cooking ware, including, without limitation, skillets, fry pans, sauce pans, double boilers, stock-pots, dutch ovens, steamers, canners, blanchers, coffee pots, egg poachers, teakettles, broiling pans, and roasters. The imports are either marketed as individual "open stock" items or in cookware sets.

See Petition For the Imposition of Antidumping Duties On Porcelain-on-Steel Cooking Ware From Taiwan, Mexico, And The People's Republic of China, Porcelain-on-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation, December 4, 1985, at page 6.

The Department defined the scope of the investigation in its notice of initiation. This scope language carried forward without change through the preliminary and final determination of sales at less than fair value and was included in the antidumping duty order:

Imports covered by this investigation are porcelain-on-steel cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are currently provided for in items 654.0815, 654.0824, and 654.0827 of the

Tariff Schedules of the United States Annotated (TSUSA).¹ Kitchenware, currently reported under item 654.0828 of the TSUSA, is not subject to this investigation.

See Porcelain-on-Steel Cooking Ware from the People's Republic of China: Initiation of Antidumping Duty Investigation, 50 FR 53352 (December 24, 1985); Porcelain-on-Steel Cooking Ware from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 51 FR 18469 (May 20, 1986). See also Final Determination and Order.

The ITC's final determination states:

Articles of porcelain on steel cooking ware are primarily identified according to the kind of cooking they are designed to perform and/or the kind of food they are designed to heat. Among the most common of such articles are skillets, frypans, sauce pans, double boilers, dutch ovens, stock pots, steamers, canners, blanchers, coffee pots, egg poachers, teakettles, broiling pans, and roasters . . . Most articles of porcelain on steel cooking ware are sold individually.

See ITC Final Determination at page 31.

As a result of the Department's review of Target's scope clarification request, we conclude that this particular type of POS product was expressly addressed in the ITC Final Determination. Specifically, the ITC defined the merchandise subject to the Order as follows:

Porcelain-on-steel cooking ware are articles of porcelain-coated steel used as receptacles in the cooking and heating of food. Related items of porcelain-coated steel used only to handle or process food, *i.e.* porcelain-on-steel kitchen ware, such as mixing bowls and colanders, are not included . . .

Consistent with the ITC's determination to exclude kitchenware articles, such as POS mixing bowls and colanders, the Department issued a scope ruling which concluded that kitchenware articles, such as basins and bowls, that are used to handle or process food are outside the scope of the order. See Recommendation Memo – Ruling on Request by CGS International for Clarification of the Scope of the Antidumping Duty Order on Porcelain-on-Steel Cooking Ware from the People's Republic of China (January 30, 1991) (CGS Ruling) at pages 3-4.

Based on the ITC's determination to exclude kitchenware articles and the Department's reliance on this distinction in its prior scope ruling, we believe that Target's beverage holder and dispenser is not included in the scope of the Order. Target's request is similar to the CGS Ruling concerning products not specifically designed for cooking purposes. While the item in question

¹ For clarification purposes, the Tariff Schedules of the United States Annotated (TSUSA) was replaced with the HTSUS subsequent to the original investigation of this proceeding. As a result of the modification to the Tariff Schedules, the merchandise covered by the scope of the antidumping duty order is currently classified under HTSUS subheading 7323.94.00.

may resemble other forms of cooking ware, Target has provided evidentiary support through a testing report that identifies results which refute Columbian's assertion that Target's beverage holder and dispenser is susceptible for use in cooking applications. As a result of the pot's documented inability to hold liquids in cooking applications, we conclude that the designated use of Target's beverage holder and dispenser is to hold and dispense liquids.

Columbian failed to provide a source to support its allegation that "the porcelain coating on steel must be applied in a furnace in which the temperature is approximately 1800° F, which exceeds the temperature of a stove top. Even at this very high temperature, the steel does not "buckle" or otherwise become damaged. Thus, the steel in Target's product obviously is able to withstand the much-lower heat generated by cooking." However, we note that even if the porcelain coating on the pot could withstand cooking temperatures, the test report referenced above indicates that as a result of the product's construction, it still cannot be used for cooking purposes. See Columbian's Comments at page 8.

Regarding product labeling and advertising, Target has provided evidence to show that its beverage holder and dispenser is labeled and advertised solely as a beverage holder and dispenser. According to Target, it is also significant that the pot is permanently labeled with a warning that the pot is not suitable for use on a stove top. While the mere labeling of a product is not dispositive of the product's intended use, we find that such factors as the product's construction, test performance and the manner in which it is advertised and promoted when taken together with the product's permanent labeling suggest that a consumer would purchase this item for the purpose of holding and dispensing beverages and not for the purpose of cooking. As a result, we conclude that Target's beverage holder and dispenser does not meet the definition of "cooking ware" and, therefore, should not be included within the scope of the Order.

Recommendation

Because the description of subject merchandise contained in the determinations of the Department and the ITC provide a sufficient basis for making a determination, we recommend determining that no inquiry is warranted.

✓

Agree

Disagree

We further recommend determining that Target's specific model of beverage holder and dispenser is not included within the scope of the antidumping duty order on POS cooking ware from the PRC. In advising the CBP of this decision, we recommend that the instructions specifically describe the article in the following manner:

