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Scope Review  
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**PUBLIC**

MEMORANDUM TO: Barbara E. Tillman  
Acting Deputy Assistant Secretary  
for Import Administration

FROM: James C. Doyle *Best for JD*  
Director, Office 9  
AD/CVD Operations

SUBJECT: Scope Ruling: Taybek International

RE: Antidumping duty order on porcelain-on-steel cooking ware from  
the People's Republic of China

### Summary

On November 19, 2004, the Department of Commerce ("Department") received a request from Taybek International ("Taybek") for a scope ruling regarding whether the Pro Popper™ professional popcorn popper ("Pro Popper") is within the scope of the antidumping-duty order on certain porcelain-on-steel cooking ware ("POS") from the People's Republic of China ("PRC"). In accordance with section 351.225(k)(1) of the Department's regulations, we recommend that the Department determine that the Pro Popper is within the scope of the antidumping duty order on POS from the PRC.

### Background

On November 19, 2004, Taybek filed its request for a scope ruling from the Department in proper form. Columbian Home Products, LLC ("Columbian"), the only manufacturer in the United States of POS, filed comments regarding Taybek's request on December 22, 2004.

### Taybek's Scope Request

Taybek states that the Pro Popper consists of two components. The first is a handle-less steel kettle with a red, vitreous enamel coating on its exterior and a non-stick, silicone coating on its interior. The second is a combination crank-and-stirring-mechanism lid that attaches to metal clips riveted to the kettle's top. Taybek alleges that 54 percent of the Pro Popper's value is the kettle component and that the combination lid accounts for the rest of the value.



Taybek argues that only the exterior surface of the kettle component is porcelain-on-steel and this does not “constitute” the product. Taybek maintains that the kettle has no utility as cooking ware without the combination crank-and-stirring-mechanism lid, which is not made of porcelain-on-steel, because the corn would fly out without a lid and burn without a stirring mechanism. Also, Taybek asserts that the kettle without the combination lid clipped on cannot be manipulated since it has no handle.

Regarding the original investigation, Taybek claims that the petitioner, General Housewares Corporation (“GHC”), requested the United States International Trade Commission (“ITC”) to find the domestic industry consisting of all POS produced by GHC in its single facility in Terre Haute, Indiana. Taybek argues that GHC never has and does not produce currently any product directly competitive with the Pro Popper.

In addition, in making its argument, Taybek refers to the Department’s previous scope ruling that excluded stove-top grills and drip pans of Mr. Stove, Ltd. (“Mr. Stove”) from the scope of the antidumping duty order on POS from Taiwan. See Memorandum to Joseph A. Spetrini from Roland MacDonald: Recommendation Memo – Final Scope Ruling on the Request by Mr. Stove for Clarification of the Scope of the Antidumping Duty Order on Porcelain-on-Steel Cooking Ware from Taiwan, Scope Review, Inv. No. A-583-508; September 3, 1992 (“Mr. Stove Scope Ruling”). Taybek contends that the Department excluded the stove-top grills and drip pans from the order’s scope because of their Xylan or non-stick silicone coating. Since the Pro Popper has a non-stick, silicone coating on its interior surface, Taybek argues that the Pro Popper is also outside the scope of the order on POS.

### **Columbian’s Comments**

On December 22, 2004, Columbian filed a submission opposing Taybek’s request that the Department find the Pro Popper outside the scope of the antidumping duty order. Columbian argues that the scope language of the antidumping duty order clearly and unambiguously encompasses the Pro Popper. Regarding Taybek’s citation of the Mr. Stove Scope Ruling in arguing that the Pro Popper’s interior non-stick coating excludes it from the order’s scope, Columbian contends it is unfounded because the Mr. Stove products were not glazed or enameled with porcelain at all, on either the exterior or interior surface.

Columbian also claims that Taybek’s reference in its scope request to the product discussion of the ITC’s sunset review was irrelevant because the ITC was comparing porcelain-on-steel cooking ware to stainless-steel cooking ware. See Determinations and Views of the Commission, USITC Pub. No. 3286 (March 2000) at 5-9.

If the Department determined that the merchandise description of the petition, the initial investigation, and the rulings of the Department and the ITC are not dispositive in encompassing the Pro Popper, Columbian argues that the Pro Popper would still be subject to the order according to the five factors set forth at section 351.225(k)(2).

## The Department's Position

### *Legal Framework*

The regulations governing the antidumping scope rulings of the Department are found at section 351.225 (2001). On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the initial investigation and the rulings of the Secretary of Commerce (including prior scope determinations) and of the ITC. The Department may make a determination with or without a formal scope inquiry. 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 within the order. See section 351.225(d).

Conversely, where the descriptions of the merchandise are *not* dispositive, the Department will consider the five additional factors set forth at section 351.225(k)(2) of the Department's regulations:

- (i) the physical characteristics of the merchandise;
- (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 presented to the Department.

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 merchandise description in the original petition for antidumping investigation is as follows:

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

Petition for the Imposition of Antidumping Duties on Porcelain-on-Steel Cooking Ware from Taiwan, Mexico, and the People's Republic of China (December 4, 1985) at 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 determinations of sales at less than fair value and the eventual antidumping duty order:

[t]he products 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.

Porcelain-on-Steel Cooking Ware from the People's Republic of China: Determination of Sales at Less Than Fair Value, 51 FR 36419 (October 10, 1986) at 36420.

The ITC's final determination in this case provides the following definition of the subject merchandise:

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 . . . All of the most common articles of porcelain-on-steel cooking ware identified above are sold in a wide variety of shapes, sizes, configurations, steel thickness, colors, decorative patterns, trim, handle design (either wood, phenolic or various metals), and/or price ranges.

Porcelain-on-Steel Cooking Ware from Mexico, the People's Republic of China, and Taiwan, USITC Pub. No. 1911 (November 1986) ("ITC Final Determination") at A-4.

### *Analysis*

In the instant case, we have evaluated Taybek's request in accordance with section 351.225(k)(1) of the Department's regulations, and we find that the descriptions of the products contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and of the ITC are dispositive in this case.

With regard to Taybek's contention that the kettle component of the Pro Popper is not cooking ware without the combination crank-and-stirring-mechanism lid, we note that in prior scope determinations, the Department has found that cooking ware encompasses vessels and receptacles used in the cooking and heating of food, irrespective of shape or form. See, e.g., Mr. Stove Scope Ruling at 3; Memorandum to Holly A. Kuga from Melissa Skinner re: Recommendation Memo—Ruling on Request by Keanall Products, Inc. for Exclusion of a Deluxe Grill Topper, Porcelain Coated Grill Topper, and Wok Topper from the Scope of the Antidumping Duty Orders on Porcelain on Steel Cooking Ware from the People's Republic of China and Taiwan, Scope Inquiry, Inv. Nos. A-570-506 and A-583-508; April 13, 2001, at 4.

Further, the ITC stated, regarding like products, "Cooking ware is produced in a wide variety of configurations—each of which is primarily adapted to a particular cooking application. The differences in configuration and uses between teakettles and other porcelain-on-steel cooking ware are no greater than the differences between other forms of porcelain-on-steel cooking ware" (ITC Final Determination at 5). The marketing and use of the Pro Popper to pop corn does not exclude it from classification as cooking ware.

Taybek's assertion that the handle is attached to a part of the Pro Popper not constructed of porcelain-on-steel is also immaterial. The scope of the antidumping duty order contains no restrictions with respect to the number, design, material or location of handles. The order simply defines the scope as cooking ware constructed of steel glazed or enameled with porcelain. In addition, the ITC's final determination states that the subject merchandise is sold in a variety of configurations and handle designs. See ITC Final Determination at A-4.

Consistent the Department's prior decisions in this case, we find that the Pro Popper is a vessel intended for and capable of heating food on the stove top, irrespective of its handle construction. The Pro Popper therefore fits the description of cooking ware.

Regarding Taybek's assertion that the Department's ruling with respect to Mr. Stove implicitly excludes the Pro Popper, we find the scope ruling regarding the Mr. Stove stove-top grills and drip pans to be inapplicable to the case of the Pro Popper. Whereas the Mr. Stove stove-top grills and drip pans are not glazed or enameled with porcelain on any surface, Taybek itself acknowledges that the Pro Popper is enameled on its exterior surface. See Mr. Stove Scope Ruling at 4. In analyzing the merchandise descriptions pursuant to section 351.225(k)(1) of the Department's regulations, we find that the scope in this case makes no mention of encompassing only steel cooking ware with interior surfaces glazed or enameled with porcelain. In fact, the Department's final determination states that products within scope "are constructed of steel and are enameled or glazed with vitreous glasses." The limitation of the scope to cooking ware glazed or enameled on the interior, which Taybek alleges, is not present. Therefore, steel cooking ware with only exterior surfaces glazed or enameled with porcelain are not excluded.

As such, the antidumping duty order on POS from the PRC clearly encompasses the Pro Popper. In the case of Pro Popper, we have evaluated Taybek's request in accordance with section 351.225(k)(1) of the Department's regulations and we find that the descriptions of the products contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and of the ITC are dispositive in this case. Therefore, we determine it unnecessary to consider the additional factors set forth at section 351.225(k)(2).

