



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration

Washington, D. C. 20230

A-570-941
Scope Inquiry
Public Document
IA/AD/CVD/9: KM

April 1, 2010

MEMORANDUM FOR: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: James C. Doyle
Director, Office 9
Import Administration

FROM: Katie Marksberry
International Trade Specialist, Office 9
Import Administration

SUBJECT: Final Scope Ruling: Antidumping and Countervailing Duty Orders
on Certain Kitchen Appliance Shelving and Racks from the
People's Republic of China

Summary

On March 9, 2010, the Department of Commerce ("Department") received a request from Custom BioGenic System, Inc. ("CBS") for a scope ruling on whether certain biomedical inventory control racks are covered by the antidumping and countervailing duty orders on certain kitchen appliance shelving and racks from the People's Republic of China ("PRC").¹

In accordance with 19 CFR 351.225(k)(1), the Department has determined that the certain biomedical inventory control racks submitted by CBS are not merchandise covered by the scope of the Orders.

Background

On March 9, 2010, the Department received a letter from CBS requesting a scope ruling that certain biomedical inventory control racks imported by CBS are outside the scope of the Orders. The Department has not received any comments from other interested parties, including the domestic industry, concerning this scope request. Currently, the Department's scope determination is due April 23, 2010.

¹ See Letter with Attachments from Custom BioGenic System, Inc. to the Secretary of Commerce (March 9, 2010) ("Scope Request"); see also Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order, 74 FR 46971 (September 14, 2009); see also Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Countervailing Duty Order, 74 FR 46973 (September 14, 2009) (collectively, "Orders").



CBS's Scope Request

In its scope request, CBS asks that the Department find certain biomedical inventory control racks to be outside the scope of the Orders.

According to CBS's scope request, the merchandise at issue are three categories of inventory control racks of various sizes that CBS indicates are for the storage of laboratory tubes, microtubes, microtiter plates, plasma boxes, and vials. CBS's request states that these racks are only used in specialized laboratory freezers, dewars, and liquid nitrogen systems. These racks are stand-alone items; they are not part of kitchen freezers and they are never installed or attached to kitchen freezers. All three of CBS's submitted product groups are currently classified under Harmonized Tariff Schedule of the United States ("HTSUS") heading 8418.99.8050.²

CBS argues that the International Trade Commission's ("ITC") final report³ describes the manufacturing process of covered refrigerator and oven racks as originating with "straightening and cutting of low carbon steel wire" and states that the manufacturing process of CBS's racks neither begins nor ends with straightening or cutting wire. Additionally, CBS argues that its racks do not resemble the written description of the products in the scope. Specifically, CBS states that none of the racks in question are comprised of carbon or stainless steel wire.⁴

Legal Framework

The Department examines scope requests in accordance with the Department's scope regulations, which may be found at 19 CFR 351.225. This scope determination may take place with or without a formal inquiry. See 19 CFR 351.225(d) and (e). 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 determinations of the Secretary (including prior scope determinations) and the ITC. See 19 CFR 351.225(k)(1). 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(d).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the five additional factors: (1) the physical characteristics of the merchandise; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of trade in which the product is sold; and (5) the manner in which the product is advertised and

² The article description for HTSUS 8418.99.8050 is "parts of combined refrigerator-freezers fitted with separate external doors and parts of household type refrigerators."

³ See Certain Kitchen Appliance Shelving and Racks from China, Publication 4098, August 2009, p. I-8.

⁴ See Scope Request; see also Memorandum to The File; from Katie Marksberry, International Trade Specialist, Office 9; regarding Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Phone Call Regarding Scope Request; dated March 19, 2010.

displayed. See 19 CFR 351.225(k)(2). 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 CBS's scope request in accordance with 19 CFR 351.225(k)(1) and finds that the descriptions of the product contained in the petition, the initial investigation, and the determinations of the Secretary and the ITC are dispositive with respect to CBS's product. Therefore, the Department finds it unnecessary to consider the additional factors set forth at 19 CFR 351.225(k)(2).

In its petition of July 31, 2008, the domestic industry described the covered merchandise as follows:

Certain kitchen appliance shelving and racks consist of shelving and baskets for refrigerators, freezers, combined refrigerator-freezers, and other refrigerating or freezing equipment and racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) for cooking stoves, ranges, and ovens. The subject merchandise meet the following dimension requirements:

-- shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or

-- baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or

--side racks from 6 inches by 8 inches by 0.1 inch to 16 inches by 30 inches by 4 inches; or

--subframes from 6 inches by 10 inches by 0.1 inch to 28 inches by 34 inches by 6 inches.

The subject merchandise is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include steel metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.2 inch. The subject merchandise may be coated or uncoated and may be formed and/or welded. Shelving and baskets are used by OEM manufacturers of residential and recreational vehicle appliances of refrigerators, freezers and refrigerator/freezers. Oven racks are used by OEM manufacturers of residential and recreational vehicle appliances of freestanding ranges and wall ovens.⁵

⁵ See Petition for the Imposition of Antidumping and Countervailing Duties: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China (in two volumes), dated July 31, 2008 ("Petition").

The Department defined the scope of the investigation in its Initiation Notices⁶ as follows:

The scope of this investigation consists of shelving and racks for refrigerators, freezers, combined refrigerator–freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens (“certain kitchen appliance shelving and racks” or “the subject merchandise”). Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions:

- shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or
- baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or
- side racks from 6 inches by 8 inches by 0.1 inch to 16 inches by 30 inches by 4 inches; or
- subframes from 6 inches by 10 inches by 0.1 inch to 28 inches by 34 inches by 6 inches.

The subject merchandise is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.2 inch. The subject merchandise may be coated or uncoated and may be formed and/or welded. Excluded from the scope of this investigation is shelving in which the support surface is glass.

The merchandise subject to this investigation is currently classifiable in the {HTSUS} statistical reporting numbers 8418.99.8050, 7321.90.5000, 7321.90.6090 and 8516.90.8000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

The scope of the investigation was unchanged in the Preliminary Determinations⁷ and the Final Determinations.⁸ The scope language in the Orders was identical to the language used in the Final Determinations.

⁶ See Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Initiation of Antidumping Duty Investigation, 73 FR 50596 (August 27, 2008); see also Notice of Initiation of Countervailing Duty Investigation: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, 73 FR 50304 (August 26, 2008) (collectively, “Initiation Notices”).

⁷ See Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 74 FR 9591 (March 5, 2009); see also Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary

The ITC's final determination in this case included language identical to that used by the Department as well as the following definition of the subject merchandise:

{kitchen appliance shelving and racks} consist of certain shelving and baskets for refrigerators, freezers, combined refrigerator freezers, and other refrigerating or freezing equipment and racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) for cooking stoves, ranges, and ovens. Shelving and baskets are used by {original equipment manufacturers ("OEMs")} of residential and recreational vehicle refrigerators, freezers, and refrigerator/freezers. Oven racks are used by OEMs of residential and recreational vehicle appliances of freestanding ranges and wall ovens.⁹

Analysis

We find that the biomedical inventory control racks imported by CBS are not subject merchandise within the scope of the Orders. These racks are not manufactured with, or comprised of, steel wire or carbon wire. In contrast, the descriptions of the merchandise in the Orders, the petition, and the ITC's final report all specify that merchandise covered by the scope of the Orders are manufactured with, and comprised of, stainless steel wire or carbon wire. As CBS's product is not made of stainless steel wire or carbon wire, we determine that the biomedical inventory control racks described in the request are different from the kitchen appliance shelving and racks which are covered by the Orders. Moreover, because the scope language is dispositive, we find the certain biomedical inventory control racks described by CBS to be outside the scope of the Orders. See 19 CFR 351.225(k)(1).

Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 74 FR 683 (January 7, 2009) (collectively, "Preliminary Determinations").

⁸ See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656 (July 24, 2009); see also Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009) (collectively, "Final Determinations").

⁹ See Certain Kitchen Appliance Shelving and Racks from China, Publication 4098, August 2009.

