





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

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Scope Inquiry  
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June 8, 2011

MEMORANDUM TO: Christian Marsh  
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 April 16, 2011, the Department of Commerce ("Department") received a request from Olson Wire Products Co., Ltd. ("Olson") for a scope ruling on whether certain supermarket refrigerator shelving units and commercial oven 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").<sup>1</sup>

In accordance with 19 CFR 351.225(d), the Department has determined that certain of the supermarket refrigerator shelving units and commercial oven racks submitted by Olson are not merchandise covered by the scope of the Orders and certain of the supermarket shelving units and commercial oven racks submitted by Olson are merchandise covered by the scope of the Orders.

### Background

On April 14, 2011, the Department received a letter from Olson requesting a scope ruling that

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<sup>1</sup> See Letter with Attachments from Olson Wire Products Co., Inc. to the Secretary of Commerce (April 14, 2011) ("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").



certain supermarket refrigerator shelving units and commercial oven racks imported by Olson are outside the scope of the Orders ("Scope Ruling Request"). On April 20, 2011, the Department sent Olson a supplemental questionnaire requesting additional clarification regarding the physical characteristics of the shelves and racks covered by the Scope Ruling Request. On April 28, 2011, Petitioners<sup>2</sup> filed comments on Olson's Scope Ruling Request. On May 2, 2011, Olson submitted a response to the Department's questionnaire ("Olson Questionnaire Response") and on May 11, 2011, Olson submitted additional comments in response to the Petitioner's April 28, 2011 letter ("Olson Response to Petitioners"). On May 13, and May 26, 2011, Petitioners filed additional comments. On May 16, 2011, the Department issued a second supplemental questionnaire to Olson, and on May 23, 2011, Olson submitted its response ("Olson Supplemental Questionnaire Response").

### Scope of the Orders

The scope of this order 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 merchandise under order"). 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 merchandise under order 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 merchandise under order may be coated or uncoated and may be formed and/or welded. Excluded from the scope of this order is shelving in which the support surface is glass.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") statistical reporting numbers 8418.99.8050, 8418.99.8060,

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<sup>2</sup> Petitioners are Nashville Wire Products, Inc. and SSW Holding Company, Inc.

7321.90.5000, 7321.90.6090, 8516.90.8000 and 8419.90.9520. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

### **Olson's Scope Request and Comments**

In its Scope Ruling Request, Olson asks that the Department find certain PRC-origin supermarket shelving units and commercial oven racks imported and sold by Olson to be outside the scope of the Orders. According to Olson's scope request, the merchandise at issue are eight specific products imported and sold by Olson, including one supermarket shelf, four commercial oven racks, two commercial oven rack supports and one commercial support rod which is used in ovens.

Olson argues that the products included in its request are not subject merchandise because they are not "kitchen appliance" shelving or racks. Specifically, Olson argues that its supermarket shelving is used to display goods for sale in a refrigeration unit in a store and would not be used in a kitchen or recreational vehicle appliance. Similarly, Olson argues that the Department should find that its imported commercial oven racks are outside the scope of the Orders because this merchandise is for ovens only used for commercial applications and are also not sold for residential or recreational vehicle use. Olson argues that the sizes of the racks included in its request are specific to commercial use and should not be subject to the Orders, which, based on language in the Petitions,<sup>3</sup> are intended to cover residential kitchen appliances only.

Olson also provided in its April 14, 2011, Scope Ruling Request, a diversified products analysis of its imported shelves and racks based on the criteria set forth in 19 CFR 351.225(k)(2).<sup>4</sup> However, as noted above, the Department is making its determination in accordance with 19 CFR 351.225(d) and 19 CFR 351.225(k)(1). The Department only applies the criteria outlined in 19 CFR 351.225(k)(2) when the criteria outlined in 19 CFR 351.225(k)(1) are not dispositive. See Legal Framework section below. Therefore, we will not address Olson's comments relating to a 19 CFR 351.225(k)(2) in detail.

In its Questionnaire Response, Olson provided the following information to the Department concerning the eight products at issue: (1) width, depth, and height; (2) quality of steel used and whether the wire was drawn; (3) wire thickness; and (4) whether sheet metal was used in the production of the merchandise.

In its Supplemental Questionnaire Response, Olson provided additional information to the Department concerning: (1) whether two products are used in ovens including support ribs as a design feature or act as support frames for oven racks; and (2) how two products are installed and the purpose they serve in oven appliances.

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<sup>3</sup> See Antidumping Duty Petition: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China (in two volumes), dated July 31, 2008; see also Countervailing Duty Petition: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China (in two volumes), dated July 31, 2008 (collectively, "Petitions").

<sup>4</sup> See Scope Ruling Request at pages 5-10.

## Petitioners' Comments

Petitioners argue that the language in the scope of the Orders does not reference the end use of the covered products. They argue that there is not a "function test" included in the language of the scope. Petitioners argue that the use of the word "kitchen" as a shorthand reference is not intended to restrict the covered merchandise to that found in a residential kitchen. More specifically, Petitioners argue that the scope covers shelving, racks, baskets, side racks, and subframes used in many types of refrigerators, freezers and ovens, regardless of the location of the appliance.

Petitioners note that they sell the same type of coated and non-coated carbon and stainless wire shelves, racks, baskets, side racks, and subframes as Olson, and these products are sold to manufacturers that produce both residential and commercial ovens, which are often very similar. Therefore, Petitioners argue that whether a shelf or rack is used in a commercial or residential appliance or setting is not dispositive.

Additionally, Petitioners argue that the dimensions listed in the scope language of the Orders intentionally do not reference width, depth or height and therefore the scope language covers parts within the maximum and minimum ranges regardless of which measurement refers to width, height or depth.

## 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 "predicate" for the Department's interpretive process is whether the language of an antidumping duty order includes the merchandise which is the subject of a scope ruling request. See Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1096 (Fed. Cir. 2002). If the terms of the order are dispositive, then the order governs the Department's interpretation. See Cablesa S.A. de C.V. v. United States, 31 C.I.T. 252, 255 (2007). However, if the language of an order is not, by itself, dispositive, the Department's interpretive process is governed by 19 CFR 351.225(d), which directs the agency to determine whether it can make a scope ruling based on a scope ruling request and the sources listed by 19 CFR 351.225(k)(1) – i.e., the descriptions of merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the ITC. See id. at 255; and 19 CFR 351.225(k)(1); and Laminated Woven Sacks Comm. v. United States, 716 F.Supp.2d 1316, 1326 (Ct. Int'l Trade 2010) (citing Duferco, 296 F.3d at 1097). Finally, if, after reviewing these additional sources, the issue concerning whether particular merchandise is covered by the scope of an order is still unresolved – i.e., these sources are not "dispositive" – the Department will further consider the additional criteria enumerated by 19 CFR 351.225(k)(2). See generally Cablesa S.A. de C.V., 31 C.I.T. at 255 (2007). Specifically, the additional criteria the Department will consider are: (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 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.

## Analysis

As noted above, the scope of the Orders covers “certain kitchen appliance shelving and racks” meeting the following physical characteristics: (1) specific outside dimensions; (2) and composed of carbon or stainless steel wire of specific thickness. The only exclusion to the scope of the Orders is shelving in which the support surface is glass. Notably, the scope language in the Orders says nothing concerning the use of merchandise – i.e., whether the scope applies to merchandise used for residential appliances, commercial appliances, or both. Because the explicit language of the Orders is straightforward, we find that Olson’s arguments concerning end-use and the description of merchandise contained in the Petitions are misplaced. This is not a case where the Orders ambiguously refer to “residential” or “commercial” without defining the terms and in which the Department might need to consider the descriptions of merchandise in the sources described by 19 CFR 351.225(k)(1) or undertake additional analysis pursuant to 19 CFR 351.225(k)(2). Therefore, we find that the physical descriptions of in-scope merchandise contained in the Orders are dispositive concerning whether the eight items imported by Olson are within, or outside of, the scope.

To determine whether Olson’s imports were within scope, we reviewed the physical description of Olson’s imports on the record against the requisite characteristics of in-scope merchandise contained in the Orders. The scope of the Orders outlines the minimum and maximum dimensions for four types of products: shelving and racks, baskets, side racks, and subframes. Additionally, the scope language specifies a range of thicknesses for the wire used in subject merchandise.

Olson’s eight products<sup>5</sup> have the following dimensions:

Supermarket Bottom Shelf: 22.219” x 29.875” x 4.0”  
Commercial Oven Rack 1: 14.312” x 20.88” x 1.26”  
Commercial Oven Rack 2: 28.25” x 24.50” x 1.56”  
Commercial Oven Rack 3: 28.25” x 21.25” x 1.56”  
Commercial Oven Rack 4: 25.375” x 20.625” x 1.81”  
Commercial LH Rack Support: 18.644” x 19.989” x 1.125”  
Commercial RH Rack Support: 18.3125” x 19.989” x 1.125”  
Commercial Support Rod: 18.3125” x 1.75” x 1.75”

Olson has stated that all of the products in its scope request are comprised of carbon steel wire of thicknesses that range from .120 inch to .370 inch. The scope allows for thicknesses from 0.050 inch to 0.500 inch, therefore all of Olson’s products are comprised of steel wire that falls within the dimensions allowed for by the scope.

The first five products in the above list (Supermarket Bottom Shelf and Commercial Oven Racks 1-4) are shelving and racks. The scope language covers shelving and racks “with dimensions

<sup>5</sup> The part numbers that relate to each of these products are business proprietary. See Scope Request at pages 2-3.

ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches.” While the scope does not define which dimensions relate to the height, width and depth of a product, we find that all of these five products fit the description of the scope in makeup (carbon steel wire of a thickness within the definition of the scope), and in size.

The Commercial LH Rack Support and Commercial RH Rack Support are defined by Olson as “side rack {s} upon which open shelving sits.” Further, Olson has stated that these two racks “are not used in ovens that include support ribs.”<sup>6</sup> Therefore, the Department is treating these two products as side racks, which are defined by the language of the scope as “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.” The scope language states that the dimensions for side racks can range from 6 inches by 8 inches by 0.1 inch to 16 inches by 30 inches by 4 inches. Because both of these products include two dimensions that exceed the 16 inch maximum dimension included in the scope language, and the scope language does not define which dimensions relate to the height, width and depth of a product, we find that both of these products are outside the language of the scope of the Orders based on their dimensions.

The Commercial Support Rod is described by Olson as “a rod extending along the side of the oven and affixed by placed the end of the rod into holes in the oven.” Olson further states that the Commercial Support Rods “are not racks... nor are they a support frame.” The Commercial Support Rod is attached to the inside of an oven cavity that does not include support ribs as a design feature.<sup>7</sup> The Department notes that the minimum and maximum dimensions for a side rack are from 6 inches by 8 inches by 0.1 inch to 16 inches by 30 inches by 4 inches, and the minimum and maximum dimensions for a subframe are from 6 inches by 10 inches by 0.1 inch to 28 inches by 34 inches by 6 inches. The Commercial Support Rod as described by Olson has two dimensions below two inches (1.75 inch by 1.75 inch). Because these two dimensions, taken together, are smaller than the two smaller dimensions of both the side rack and subframe (as well as the dimensions of racks and baskets), we find that the Commercial Support Rod is outside the language of the scope of the Orders based on its dimensions regardless of whether it is a side rack or subframe.

We find that based on the product characteristics outlined in the language of the scope of the Orders, including wire thicknesses and height, width and depth minimum and maximum dimensions that the following five supermarket shelves and commercial oven racks imported by Olson are subject merchandise within the scope of the Orders: Supermarket Bottom Shelf (22.219” x 29.875” x 4.0”), Commercial Oven Rack 1 (14.312” x 20.88” x 1.26”), Commercial Oven Rack 2 (28.25” x 24.50” x 1.56”), Commercial Oven Rack 3 (28.25” x 21.25” x 1.56”), and Commercial Oven Rack 4 (25.375” x 20.625” x 1.81”). Further, we find that based on the same product characteristics as defined by the language of the scope the following three products imported by Olson are not subject merchandise within the scope of the Orders: Commercial LH Rack Support (18.644” x 19.989” x 1.125”), Commercial RH Rack Support (18.3125” x 19.989” x 1.125”), and Commercial Support Rod (18.3125” x 1.75” x 1.75”).

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<sup>6</sup> See Olson’s Supplemental Questionnaire Response dated May 23, 2011, at 2.

<sup>7</sup> See *id.*, at 3.

Even if we found that the scope language of the Orders was not dispositive concerning Olson's imports, we note that description of merchandise contained in the sources described by 19 CFR 351.225(k)(1) would not change our determination. Concerning Olson's citations to the Petition, we note that the suggested scope language included the following language:

Excluded from the scope of these investigations is shelving in which the support surface is glass. Also excluded are shelving and racks that do not meet the above listed physical descriptions (e.g. shelving and racks for outdoor grills and commercial appliances).

However, as we state above, the final scope of the Orders does not include the suggested scope language regarding exclusions for "outdoor grills and commercial appliances." Additionally, we find that the original suggested scope language indicates that the Petitioners' intention was to only exclude shelves that do not meet the physical descriptions listed in the scope. Further, we find that the ultimate use of the shelf or rack (e.g., for outdoor grills and commercial appliances), was referenced only as an example of the type of shelf or rack that may not fit the dimensions listed in the scope.

Next, we note that the ITC's final determination<sup>8</sup> describes the physical characteristics and uses of domestic like products and indicates that both refrigerator shelving and baskets, and oven racks, are used by original equipment manufacturers of "residential and recreational vehicle" appliances." Additionally, in its preliminary report,<sup>9</sup> the ITC considered arguments raised by interested parties concerning whether it should find a single like product expanded beyond the scope "to include all wire kitchen appliance shelving and cooking racks, defined as shelving and racks made from carbon or stainless steel wire for refrigerators, refrigerated display case freezers, refrigerator-freezers, cook-tops, ranges, ovens, and grills, regardless of whether such wire shelving and cooking racks are intended for uses in commercial or residential equipment."<sup>10</sup> The ITC declined to expand the domestic like product to include all commercial appliance parts. However it stated that:

The scope does not limit products that fall within the scope by any "residential" versus "commercial" distinction. Accordingly, a part that falls within the dimensions of the scope is included within the like product definitions regardless of whether it is characterized as "commercial" or "residential."<sup>11</sup>

The ITC further explained that although it declined to expand the domestic like product to include "commercial" parts, any shelving and racks that fit within the dimensions as dictated by the scope are already included, regardless of their use in "residential" or "commercial" applications.<sup>12</sup> No interested parties provided further comment on the like product issue prior to the ITC issuing its final determination.<sup>13</sup>

<sup>8</sup> See Certain Kitchen Appliance Shelving and Racks from China (Investigation No. 731-TA-1154 (Final), USITC Publication 4098, (August 2009) ("ITC Final Report").

<sup>9</sup> See Certain Kitchen Appliance Shelving and Racks from China Investigation Nos. 701-TA-458 and 731-TA-1154 (Preliminary); USITC Publication 4035, (September 2008) ("ITC Prelim Report").

<sup>10</sup> See ITC Prelim Report at 5-6.

<sup>11</sup> See *id.* at 11.

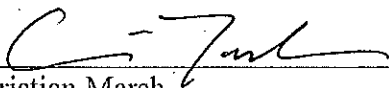
<sup>12</sup> See *id.* at 11.

<sup>13</sup> See ITC Final Report at footnote 12.

**RECOMMENDATION**

Based on the preceding analysis, we recommend that the Department find that the following five supermarket refrigerator shelving units and commercial oven racks submitted by Olson are subject merchandise covered by the scope of the Orders: Supermarket Bottom Shelf (22.219" x 29.875" x 4.0"), Commercial Oven Rack 1 (14.312" x 20.88" x 1.26"), Commercial Oven Rack 2 (28.25" x 24.50" x 1.56"), Commercial Oven Rack 3 (28.25" x 21.25" x 1.56"), and Commercial Oven Rack 4 (25.375" x 20.625" x 1.81"). Further, we recommend that the Department find that the following three commercial oven racks submitted by Olson are outside the scope of the Orders: Commercial LH Rack Support (18.644" x 19.989" x 1.125"), Commercial RH Rack Support (18.3125" x 19.989" x 1.125"), and Commercial Support Rod (18.3125" x 1.75" x 1.75"). If you agree, we will send the attached letter to the interested parties, and will notify U.S. Customs and Border Protection ("CBP") of our determination.

Agree                       Disagree

  
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Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

6/2/11  
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Date