



John P. Donohue  
Direct Dial 215 640 8528  
Email: jdonohue@thorpreed.com

ATTORNEYS AT LAW SINCE 1895

October 25, 2012

Hon. Dave Camp  
Chairman, House Committee On Ways and Means  
1102 Longworth House Office Building  
Washington, D.C. 20510

and

Hon. Sander M. Levin  
Ranking Member - Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, D.C. 20510

Re: Response by Conair Corp. to Comments on S 2893 and HR 5323

Dear Chairman Camp and Ranking Member Levin:

On July 9, 2012 Regal Ware Worldwide Inc., a Wisconsin Corporation, offered objections to HR 5323 and S 2893, which are proposed provisions of law directing reliquidation of entries of cookware by Act of Congress and further directing a refund of antidumping duties overpaid. That bill was prepared and offered at the request of our client, Conair Corporation of Stamford Connecticut and East Windsor, New Jersey. It did not seek a grant of duty-free treatment, as is ordinarily the case in most MTB legislation. It did not seek a return of all antidumping duties paid. It does not even request refund with interest. It sought only a refund of duties overpaid as a result of a clerical error. The company was required to pay between .9% and 1.67% *ad valorem* antidumping duties, and in error it paid approximately 7% *ad valorem*. It seeks only the difference between the amount legally due and the amount overpaid. By any standard, the company's request is reasonable.

We address each of the objections raised by Regal Ware to our attempt to correct an error.

Pittsburgh  
Philadelphia  
Wheeling  
Wilmington  
Princeton

1. Regal Ware states that they are unaware of any mistakes that were made in the liquidation of the entries. While this may be true, with the minor exception of section 516 of the 1930 Tariff Act, we know of no process by which any company has a right of review of the liquidation of an entry of another importer. The payment of customs duties, and the extent of a citizen's (corporate or otherwise) legitimate debt to the United States is between the customs duty payer and the government, and Regal Ware would have no more right to review the accuracy of a Conair liquidation than it would have a right to review the accuracy of a Conair tax return. The objection raised by Regal Ware is fictional in its assumptions and irrelevant in its consequences.

2. Regal Ware states that there are "rules" in place to challenge an assessment and they were not followed. While the company does not use the term precisely we assume that the reference is to the protest process under section 514 of the 1930 Tariff Act, as

Thorpe Reed & Armstrong, LLP  
One Commerce Square  
2005 Market Street  
Suite 1000  
Philadelphia, PA 19103-7041  
215 640 8500  
215 640 8501 Fax

October 25, 2012

Page 2

amended. While of course that is so, as both Committees well know, the protest period of 180 days is extremely short and is frequently missed. Indeed the protest period prior to 1994 was only 90 days and the period caused so much difficulty for the trading community that the protest period was extended. However, the protest period continues to be troublingly short and continues to cause administrative problems for all involved. We understand that there are numerous reliquidation requests in the current MTB, only underscoring the difficulty facing the trade community as a whole in forming a proper response to either governmental errors or bona fide disputes. That should not be the basis for an objection to this bill.

The second reason that this objection fails is that it assumes that the protest was the only form of remedy to correct the error. The reliquidation by operation of law process that we propose is precisely the "rule", to use Regal's terminology that is being followed here. We acknowledge that the reliquidation by operation of law process is rarely invoked, but it is clearly permissible. Congress never told Conair that it could not take up the matter. It can, precisely because there is a process in place to do so.

3. The real objection raised by Regal Ware is that the company appears to fear that a refund of antidumping duties may prompt a clawback attempt by Customs for the return of payments made to Regal Ware under the now-repealed Continued Dumping and Subsidy Offset Act of 2000. In our mind Regal Ware's concern is probably much misplaced but it must be respected if Customs were, in fact, to consider a clawback action.

We believe we can allay that concern. First we note the obvious position that the reason CDSOA was repealed was because the WTO ruled that domestic producers were themselves twice remunerated in antidumping proceedings – once when the antidumping duties were imposed on their import-competitors and then again when the payments were made to the domestic parties under CDSOA. It therefore is a questionable position for Regal Ware to advance that they would be adversely affected by a Federal clawback when the WTO ruled that it was the domestic industry that was impermissibly advantaged by CDSOA in the first place. That having been said, however, we know of no Federal policy that would require a clawback for CDSOA payments for entries reliquidated by MTB legislation, and certainly Conair neither requests payment from clawbacked funds nor does it expect any action in clawback. We assume that the Federal position is that any clawback proceeding would be highly inefficient and would likely be determined by our government not to be in its interests.

We appreciate the opportunity to present our view, and we hope that they have been helpful.



Page 3

October 25, 2012

Very truly yours,

  
John P. Donohue

JPD/