

A-570-504  
Scope Review  
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By Certified Mail, Return Receipt Requested

To All Interested Parties:

On February 20, 2002, the Department of Commerce (the Department) received a request from Garden Ridge (Garden) for a scope ruling on whether nine types of candles it imports are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

In accordance with 19 CFR 351.225(k)(1), the Department has determined that all of Garden's candles fall within the scope of the antidumping duty order on petroleum wax candles from the PRC.

Enclosed is a memorandum containing the Department's analysis. We will notify the U.S. Customs Service of this decision. If you have any questions, please contact Sally Gannon at (202) 482-0162 or Julio Fernandez at (202) 482-0961.

Sincerely,

Barbara E. Tillman  
Director  
Office of AD/CVD Enforcement VII  
Import Administration

Enclosure

MEMORANDUM FOR: Joseph A. Spetrini  
Deputy Assistant Secretary  
for Import Administration, Group III

FROM: Barbara E. Tillman  
Director  
Office of AD/CVD Enforcement VII

SUBJECT: Final Scope Ruling: Antidumping Duty Order on Petroleum Wax  
Candles From the People's Republic of China (A-570-504);  
Garden Ridge

### **Summary**

On February 20, 2002, the Department of Commerce (the Department) received a request from Garden Ridge (Garden) for a scope ruling on nine types of candles, including one orange "Cheetah-Print" candle (Style 194735-A), and one black and white "Zebra-Print" candle (Style 194736-D), to determine if they are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986) (Order). In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that all nine of Garden's candles fall within the scope of the antidumping duty order on petroleum wax candles from the PRC.<sup>1</sup>

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<sup>1</sup> The Department has developed an internet website that allows interested parties to access prior scope determinations regarding the antidumping duty Order on Petroleum Wax Candles from the People's Republic of China. This website lists all scope determinations from 1991 to the present. It can be accessed at <http://ia.ita.doc.gov/download/candles-prc-scope/>, and will be updated periodically, to include newly-issued scope determinations.

## **Background**

Garden filed its request for a scope ruling in proper form on February 20, 2002. On July 12, 2002, the National Candle Association (NCA), petitioner and an interested party in this proceeding, filed comments on Garden's request. On August 9, 2002, Russ Berrie & Company, Inc. (Russ Berrie) a United States importer and interested party in this proceeding, filed a rebuttal to the comments submitted by the NCA on July 12, 2002.

## **Garden's Scope Request**

Garden argues that its nine styles of candles, including its orange "Cheetah-Print" candle (style 194735-A), and one black and white "Zebra-Print" candle, (style 194736-D), imported under the HTSUS classification 3406.00.0000, are not subject to the scope of the Order because the candles' majority component is palm oil, not petroleum wax. Garden included two samples (one for style 194735-A, its "Cheetah-Print" candle, and another for style 194736-D, its black and white "Zebra-Print" candle) with its request.

## **The National Candle Association's Comments**

In its comments, the NCA retraces the history of this antidumping duty order, including the import surges and resultant injury suffered by domestic manufacturers which prompted the original September 1985 antidumping petition. The NCA contends that the antidumping statute and antidumping duty orders are remedial in nature and exceptions to them should be construed as narrowly as possible to preserve the efficacy of the Order. In support of its assertion, petitioner cites a Court of International Trade (CIT) conclusion, with regard to the novelty exception, that ". . . a candle must be specifically designed for use only in connection with a religious holiday or special event to fall within the novelty candle exception." See Russ Berrie & Co., Inc. v. United States, 57 F. Supp. 2d 1184, 1194 (CIT July 13, 1999) (Russ Berrie). Thus, the NCA argues that the Department narrowly limited the novelty candle exception to figurine candles, candles shaped in the form of identifiable objects, and candles specifically designed for use only in connection with the holiday season.

With regard to the "Cheetah-Print" and "Zebra-Print" candles, the NCA first notes that Garden describes its candles as pillars and as rounds, and having fiber or paper-cored wicks; thus, the NCA believes these candles fall explicitly within the shapes delineated by the Order. Moreover, the NCA asserts that these candles are not in the shape of identifiable objects and are also not designed for use in connection with the holiday season, therefore, falling within the scope of the Order. Garden claims that these candles should be excluded from the Order because they are 52 percent palm oil in content.

The NCA counters by stating that the test results submitted by Garden are not acceptable because the tests were not conducted using the appropriate United States Customs tests.<sup>2</sup> The NCA adds that the test used by the laboratory is unreliable because the two waxes in Garden's candles are miscible (e.g., capable of being mixed) and cannot be separated easily. In addition, the NCA argues that, even if the separation was accomplished, "GC/MS methods would be needed to verify the separation."<sup>3</sup>

Moreover, the NCA points out that the laboratory tests submitted by Garden indicate combinations of paraffin wax and palm oil wax which add up to 100 percent of the candle, stating that this is impossible since candles contain scents, color dye, a wick, and/or other additives which compose a significant part of the candle. Thus, the NCA maintains, the laboratory tests only refer to what percent of the wax in the candle is paraffin or palm wax, but do not determine what percent of the total candle is palm wax. Therefore, the NCA argues that the Department should require Garden to provide U.S. laboratory test results that determine the percentages of palm oil wax and petroleum wax in the candle.

The NCA next argues that, even if Garden's candles were 100 percent palm oil wax, they would fall within the scope of the Order. It is the NCA's position that Garden's palm wax candles have similar chemical composition and the same range of essential physical characteristics of petroleum wax candles and, therefore, must be included within the scope of the Order.<sup>4</sup> The NCA points out that palm oil alone cannot be used as a candle wax because palm oils are liquids at room temperature. The NCA asserts that in order to make candles from palm oil, Garden had to change the chemical structure of the oil in its candles so that it was no longer palm oil. The NCA explains that through a process of hydrogenation, the palm oil is substantially transformed into a new product that has similar chemistry to, and the same physical characteristics of, petroleum-derived waxes.

Consequently, the NCA argues that the effect of the chemical conversion essentially turns the palm oil into the same product as petroleum wax. The NCA further asserts that the term "petroleum wax" in the Order is not limited to the derivation of the wax, but rather the chemical composition and physical

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<sup>2</sup> In its February 20, 2002 request for a scope determination, Garden provided the Department with test results obtained from an independent testing facility in the United States. As with prior requests for scope determinations, the Department has reviewed the information contained in the testing certificate supplied by Garden to determine the relative petroleum wax content in each candle. The testing certificate did not indicate the testing methodology employed.

<sup>3</sup> See the NCA's July 12, 2002 submission at 4. Gas chromatography/mass spectrometry (GC/MS) procedures are testing methods that have the ability to break down very complex mixtures into component parts.

<sup>4</sup> See the NCA's comments submitted with respect to scope reviews requested by Leader Light, Ltd. on September 10, 2001, and Fleming International, Ltd. on October 24, 2001.

characteristics and uses of the wax. Therefore, the NCA argues that, by substantially changing the chemical composition of palm oil into essentially similar chemical composition and the same physical characteristics of petroleum wax, Garden brought its candles within the scope of the Order.

In addition, the NCA argues that the International Trade Commission (the Commission) has consistently defined “like product” as a product which is like, or in the absence of like, most similar in characteristics and uses with the article subject to the investigation. . . .<sup>5</sup> The NCA goes on to state that like products have the “same intrinsic qualities and essential characteristics and uses as the subject imports.”<sup>6</sup> Next, the NCA asserts that any minor differences in the chemical composition or physical characteristics of Garden’s candles cannot lead to the conclusion that Garden’s candles are not like the candles covered by the Order.<sup>7</sup> Furthermore, the NCA maintains that Garden’s candles have the same intrinsic qualities and essential characteristics of petroleum wax candles and, therefore, are “like” petroleum wax candles. The NCA also argues that Garden’s candles are the same class or kind of merchandise as are the candles subject to the Order, and are covered by the same HTSUS tariff provision; consequently, all of Garden’s candles fall within the scope of the Order.

To support its position, the NCA cites Bohler-Uddeholm Corporation v. United States, where the Court of Appeals for the Federal Circuit held that the respondent’s two products, based on their physical and chemical characteristics and uses, were included in the class of merchandise within the 1973 antidumping finding in Stainless Steel Plate from Sweden, 38 Fed. Reg. 15079 (Treasury Department 1973), even though the products were not specifically mentioned by name.<sup>8</sup> More specifically, in Bohler, two of the respondent’s products were not specifically mentioned in either the petition, or in the antidumping determination. However, the Court rejected this fact as a basis for exclusion. The Court concluded that:

To require that antidumping determinations be limited to the products they name would be inconsistent with the statutory requirements, then in force, that antidumping duties be imposed upon a “class or kind” of merchandise found to be injurious to domestic industry. While the trade names of BU’s products were not used in the 1973 finding, there is sufficient evidence to support Commerce’s conclusion that Stavax and Ramax

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<sup>5</sup> Petroleum Wax Candles from the People’s Republic of China (Final), USITC Pub. 1888 (Aug. 1986) at 3-4.

<sup>6</sup> Id., at 4, n.4.

<sup>7</sup> See id.; See also Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, From the United Kingdom, 58 Fed. Reg. 3253, 3254 (January 8, 1993).

<sup>8</sup> 1999 U.S. App. LEXIS 34552 (Fed. Cir. 1999) (Bohler).

were nevertheless identified by, among other things, their physical and chemical attributes, and by the applications for which they are used.<sup>9</sup>

The NCA argues that for the same reasons, the physical and chemical attributes and the applications for which Garden's candles are used are the same as the class or kind of merchandise subject to the Order.

The NCA attached as an exhibit to its July 12, 2002 comments, a memorandum from Dr. Eric G. Wigg which the NCA argues establishes the scientific evidence as to the similarity of chemical composition and physical characteristics of palm oil wax candles compared to petroleum wax candles. However, the NCA does not claim that Garden's candles are petroleum-derived. Instead, the NCA claims that these candles have been engineered to have the same physical and burning properties as that of petroleum wax candles with the sole intent to be excluded from the scope of the Order. In fact, the NCA argues, the goal of the development of vegetable wax candles was to "develop vegetable lipid-based candles which are comparable to traditional petroleum wax candles in appearance and performance."<sup>10</sup> Thus, the NCA maintains that, in order for the vegetable wax candles to compete against petroleum wax candles, they must be the same or similar in terms of the important characteristics related to candle performance.

Next, the NCA argues that consumers will have no knowledge of the chemistry of Garden's candles and petroleum wax candles because palm wax and petroleum wax candles have the same physical appearance and functions. The NCA points out that the essential physical characteristics of palm wax and petroleum wax candles will be in the same range of melt point, color, odor and viscosity and that both palm and petroleum wax candles are made of wax and have a wick. The NCA adds that palm wax and petroleum wax candles can be engineered to have higher or lower melt points. Moreover, the NCA maintains that it is the alkane-like part (e.g., of any numerous saturated hydrocarbons) of the palm wax molecule, to which 90 percent of the carbon atoms are associated, which makes these palm waxes have the same physical characteristics and function as candle waxes in general, i.e., with physical and combustion properties similar to those of petroleum waxes, the primary standard for candle wax. Therefore, the NCA argues that it is through the hydrogenation process that the substantial transformation takes place to yield these alkane-like structures.

As part of its July 12, 2002 comments, the NCA states that the consumer will compare the physical characteristics and performance of the palm wax candles to petroleum wax candles, which is the standard in the marketplace. In addition, the NCA asserts that, if Garden's palm wax candles do not have the same intrinsic qualities and essential characteristics of petroleum wax candles, consumers will not buy them. Therefore, the NCA argues, Garden has engineered its candles so that they are the same

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<sup>9</sup> Id., at 34554 (Emphasis added).

<sup>10</sup> See Bernard Y. Tao, Development of Vegetable Lipid-Based Candles, attached as Exhibit 2 to the NCA's July 12, 2002 Comments on Garden Ridge's Scope Request.

or similar to the candles which are subject to the Order.

The NCA maintains that the issue which merits consideration in the instant request is not whether Garden's candles are petroleum-derived, but rather whether they have the same or similar intrinsic qualities and essential characteristics of petroleum wax candles. The NCA argues that the Department has never previously conducted an in-depth investigation of the chemical composition and physical characteristics of palm wax candles. To support its position, the NCA again cites Bohler, where the Court concluded that it is not the name of the product, but rather the physical and chemical attributes and applications for which they are used that are determinative.<sup>11</sup>

The NCA argues that the only candle that was excluded by the Commission, other than novelty candles, was the beeswax candle because the Commission determined that beeswax candles had different characteristics and uses. In that instance, the Commission found that 94 percent of beeswax shipments were for wax-filled glass containers used in religious observances and "other" miscellaneous candles, such as straight-sided altar and sanctuary candles. The NCA adds that the Commission concluded that, "based on different characteristics and uses for petroleum and beeswax candles, we determine that beeswax candles should not be included within the scope of the domestic-like product."<sup>12</sup> The NCA maintains that the term "petroleum wax" in the Order is not limited to the derivation of the wax, but rather the chemical composition and physical characteristics and uses of the candles.

As discussed above, it is the NCA's assertion that Garden's candles have the same intrinsic qualities and essential characteristics and uses as the subject imports, which are the criteria used by the Commission to determine like product. Moreover, the NCA argues, in contrast to beeswax candles, palm wax candles have similar chemical composition and the same physical characteristics and uses as petroleum wax candles. The NCA quotes Russ Berrie's expert, Mr. Roger J. Crain, from the memorandum attached to Russ Berrie's comments in the Leader Light scope investigation, who concedes that "vegetable wax and petroleum (paraffin) wax are similar. . . ."<sup>13</sup> Nevertheless, the NCA maintains, the essential characteristics for which Garden's candles are purchased and used (to provide light, heat, or scent) remain the same.

The NCA argues that the Department's reference to candles composed of 50 percent petroleum wax

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<sup>11</sup> See 1999 U.S. App. LEXIS 34552 (Fed. Cir. 1999).

<sup>12</sup> Determination of the Commission (Final), USITC Publication 1888, August 1986, note 5 (Commission Determination).

<sup>13</sup> See Mr. Roger Crain's memorandum at 6, submitted as part of Russ Berrie's August 8, 2002 submission to the Department; see also Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China (A-570-504), Leader Light, Ltd., (Dec 12, 2002) (Leader Light).

can only apply to candles that are over 50 percent beeswax. The NCA claims that the 50 percent rule was based upon the Commission's beeswax exclusion, and further asserts that it does not apply to other waxes that were not excluded and have the same intrinsic qualities and physical characteristics and uses as petroleum wax candles. The NCA argues that the Commission's conclusion was based on the following:

They [beeswax candles] are manufactured by U.S. producers principally for religious and specialty markets, and are priced considerably higher than petroleum wax candles. Ninety-five percent of beeswax candle shipments from 1983 to 1985 were to churches and religious dealers. The remaining 5 percent were beeswax dinner candles. Ninety-four percent of the domestic beeswax shipments were for wax-filled glass containers used in religious observances and "other" miscellaneous candles, such as straight-sided altar and sanctuary candles.... Based on different characteristics and uses for petroleum and beeswax candles, we determine that beeswax candles should not be included within the scope of the domestic like product.<sup>14</sup>

The NCA notes that, in contrast to beeswax candles, Garden's palm wax candles have the same physical characteristics and uses as petroleum wax candles and, therefore, were not excluded from the scope of the domestic-like product.

The NCA next points out the considerations for determining "like product" as discussed by the Commission:

The legislative history of title VII makes it clear that "the requirement that a product be 'like' the imported article should not be interpreted in such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under investigation."<sup>15</sup> The Commission has consistently defined "like product" as one having the same intrinsic qualities and essential characteristics and uses as the subject imports.<sup>16</sup>

The NCA claims that of primary importance to the Commission in its exclusion was that beeswax candles were principally used in religious and speciality markets. Moreover, the NCA alleges that only five percent of the beeswax candles competed against the subject products; thus, sales of beeswax candles were limited to a very special niche in the candle market.

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<sup>14</sup> Commission Determination at 5-6.

<sup>15</sup> S. Rep. No. 249, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. 90-91 (1979).

<sup>16</sup> See Commission Determination at 4, n.4 (Emphasis added).



The NCA also recommends that the Department open a formal inquiry to consider the additional criteria under section 351.225(k)(2).<sup>17</sup> The NCA asserts that, with Garden's attempt to circumvent the Order and the disagreement over physical characteristics, the Department should investigate the additional criteria under subparagraph (k)(2).

The NCA concludes its comments by noting that Garden's candles compete in the same channels of trade as the candles subject to the Order, and that their sale without the antidumping duty will severely injure the U.S. candle producers. The NCA further notes what it characterizes as the long-standing efforts of candle importers to "expand the 'novelty candle' loophole in the Order through a continuing stream of scope requests, causing the Order on PRC candles to be subjected to over seventy final scope rulings and many more requests." Petitioner maintains that the success of the scope requests in eroding the Order has resulted in increases in the volume of PRC candles coming into the United States. The NCA concludes by stating that Garden is now asking the Department to narrow the scope of the Order so that it excludes everyday candles, claiming that they are novelty candles, and that the Department does not have such legal authority.

### **Russ Berrie's Comments**

In its August 9, 2002 comments, Russ Berrie argues that while the Department "... has inherent authority to define the scope of an antidumping duty order. . . ," the Department "... does not have authority to alter, amend, or expand the scope of an antidumping duty order."<sup>18</sup> Russ Berrie further argues that the Department's regulations regarding scope inquiries direct the Department to look to "[t]he description of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission."<sup>19</sup> Based on this, Russ Berrie asserts, sufficient information exists with respect to Garden's candles for the Department to make a determination without initiating a formal scope inquiry in accordance with 19 C.F.R. § 351.225(e).

As part of its arguments, Russ Berrie asserts that "... palm oil is derived from the fruit of certain types of palm trees," and is, therefore, of vegetable origin. Russ Berrie also argues that the NCA only included candles made from petroleum wax in its petition, adding that the Commission also considered

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<sup>17</sup> The NCA cites Russ Berrie's August 9, 2002 comments at 6.

<sup>18</sup> See Russ Berrie & Company, Inc. v. United States, 57 F. Supp. 2d 1192-93 (CIT 1993) (citing to Koyo Seiko Co., Ltd v. United States, 834 F. Supp. 1401, 1402 (CIT 1993) and UST, Inc. v. United States, 9 CIT 352 (1985)).

<sup>19</sup> See 19 C.F.R. § 351.225(d) and (k)(1).

the PRC's ability to produce petroleum wax in issuing its determination of material injury. In addition, Russ Berrie asserts that the Commission's definition of domestic like product, as well as prior scope determinations issued by the Department and the scope used in the original investigation, are clear, also noting that ". . . they are dispositive in this case and Commerce should "end the scope review without opening a formal inquiry and considering any additional criteria."

Regarding comments made by Dr. Wigg, and submitted by the NCA in support of its assertions that palm oil is similar to petroleum wax, Russ Berrie included as part of its August 9, 2002 comments a submission from Roger J. Crain, chemist, and President, Customs Services, Inc. In that submission, Mr. Crain asserts that palm oil and petroleum wax are not similar. Specifically, Russ Berrie points to Mr. Crain's statement that "[p]alm wax consists of saturated triglycerides while paraffin wax consists of saturated straight-chain hydrocarbons. They are not the same thing." (Russ Berrie's August 9, 2002 comments at 8). Further, Russ Berrie argues that the Department has previously determined that candles containing more than 50 percent palm oil are not within the scope of the Order, citing to Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China (A-570-504), JCPenney Purchasing Corporation, (May 21, 2001); see also Leader Light.

Russ Berrie also argues that, in the original investigation, the Commission defined the domestic like product as petroleum wax candles, and that the domestic industry consisted of producers of petroleum wax candles (Russ Berrie's August 9, 2002 comments at 10).

## **Analysis**

The regulations governing the Department's antidumping scope determinations are found at 19 CFR 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 determinations of the Secretary (including prior scope determinations) and the Commission. This determination may take place with or without a formal 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 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 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 before the Department.

In the instant case, the Department has evaluated Garden'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 initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission are dispositive. Therefore, the Department finds it unnecessary to consider the additional factors set forth at 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

In its petition of September 4, 1985 the National Candle Association requested that the investigation cover:

[c]andles [which] are made from petroleum wax and contain fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars; votives; and various wax-filled containers. These candles may be scented or unscented ... and are generally used by retail consumers in the home or yard for decorative or lighting purposes

(Antidumping Petition, September 4, 1985 at 7).

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:

[c]ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers.

See Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty Investigation, 50 FR 39743 (September 30, 1985); Petroleum Wax Candles from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 51 FR 6016 (February 19, 1986); Petroleum Wax Candles from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 51 FR 25085 (July 10, 1986) (Final Determination); See also Order.

The Commission adopted a similar definition of the "like product" subject to its determinations, noting that the investigations did not include "birthday, birthday numeral and figurine type candles" (Commission Determination, at 4, note 5, and A-2).

Also of relevance to the present scope inquiry is a notice issued to the U.S. Customs Service

(Customs) in connection with a July 1987 scope determination concerning an exception to the Order for novelty candles, which states:

The Department of Commerce has determined that certain novelty candles, such as Christmas novelty candles, are not within the scope of the antidumping duty order on petroleum-wax candles from the People's Republic of China (PRC). Christmas novelty candles are candles specially designed for use only in connection with the Christmas holiday season. This use is clearly indicated by Christmas scenes and symbols depicted in the candle design. Other novelty candles not within the scope of the order include candles having scenes or symbols of other occasions (*e.g.*, religious holidays or special events) depicted in their designs, figurine candles, and candles shaped in the form of identifiable objects (*e.g.*, animals or numerals).

Petroleum-Wax Candles from the People's Republic of China - Antidumping - A-570-504; C.I.E. -212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987 (Customs Notice) (emphasis added).

With respect to the instant request, the Department finds that for the reasons outlined below, Garden's nine styles of candles, including its "Cheetah-Print" and "Zebra-Print" candles, fall within the scope of the Order.

- (1) **Orange "Cheetah-Print" Candle: Style 194735-A**
- (2) **Orange "Cheetah-Print" Candle: Style 194736-A**
- (3) **Orange "Cheetah-Print" Candle: Style 194768-A**
- (4) **Orange "Cheetah-Print" Candle: Style 194735-C**
- (5) **Orange "Cheetah-Print" Candle: Style 194736-C**
- (6) **Orange "Cheetah-Print" Candle: Style 194778-C**
- (7) **Black and White "Zebra-Print" Candle: Style 194735-D**
- (8) **Black and White "Zebra-Print" Candle: Style 194736-D**
- (9) **Black and White "Zebra-Print" Candle: Style 194768-D**

Garden argues that its orange "Cheetah-Print" candle, a round pillar measuring approximately 6 inches in height and 3 inches in width, and its black and white "Zebra-Print" candle, a round pillar which measures approximately 4 inches in height and in width, should be excluded from the Order's scope on the basis of their composition. Specifically, Garden argues, these candles' majority component is not petroleum wax. In its February 20, 2002 submission, Garden provided the Department with test results obtained from an independent testing facility in the United States.

Although the test results submitted by Garden indicate that these candles are composed of 52 percent palm oil and 48 percent petroleum wax, the testing laboratory does not indicate in its results what

testing method it used to analyze Garden's candles.<sup>20</sup> The NCA argues in its comments that the test results submitted by Garden are not acceptable because the tests were not conducted using the appropriate U.S. Customs tests. Pursuant to the NCA's comments, Garden did not supplement the record to clarify or indicate what test method the laboratory used to conduct its tests. In past rulings, test results determined to be acceptable by the Department were pursuant to certain U.S. Customs testing methods (specifically methods 34-07 and 34-08). See Leader Light; see also Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China (A-570-504), Atico International, Inc., (November 1, 2002) (Atico International). According to the NCA, and unrebutted by other parties in these scope proceedings, testing methods other than the Customs tests noted are not sufficient to properly analyze the wax composition of a certain candle.

The testing certificate submitted as part of Garden's February 20, 2002 scope request, did not indicate the testing methodology employed. Specifically, the Department is unable to ascertain whether Garden's candles were analyzed in accordance with Customs Method 34-07 (Quantitation of Paraffin in Beeswax and Other Waxes By High Temperature Capillary Gas Chromatography) or Customs Method 34-08 (Quantitative Analysis of Paraffin in Beeswax By Column Chromatography). Both of these methodologies employ gas chromatography and mass spectrometry, procedures that have the ability to break down very complex mixtures into component parts. Further, the test results submitted by Garden may have been obtained by Fourier Transform Infrared Spectroscopy (the measurement of the absorption of infrared radiation at different wavelengths), a methodology that does not separate the individual components of the test sample. The above mentioned methodologies are widely used and accepted in the industry, and we find that these test results are reliable and accurate.

Despite the Department's express requests, Garden did not provide further clarification of what testing method was used, or why the testing method employed in the instant case was indeed appropriate. Accordingly, the Department has determined that it is appropriate to include Garden's candles within the scope of the Order. Sufficient information is not available on the record to establish that these candles are of majority palm-oil content such that they should be excluded from the Order. See also Atico International, where the Department faced a similar scenario and found the candles to be within the scope of the order.<sup>21</sup>

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<sup>20</sup> On February 20 and 21, 2002, the Department contacted Garden, via telephone, regarding its request for a scope determination. Specifically, the Department requested that Garden provide additional information with respect to the testing methodology used to analyze Garden's candles. The Department did not receive a response to its inquiries. See Memorandum to the File through Sally C. Gannon from Julio A. Fernandez, Scope Inquiry: Petroleum Wax Candles from the People's Republic of China - Garden Ridge (June 27, 2002); see also the testing certificate included as part of Garden's February 20, 2002 request.

<sup>21</sup> In this scope determination, the Department determined that test results submitted by Atico International, Inc. (Atico), for samples of its "beeswax" candles ". . . do not illustrate with certainty the percent composition of beeswax in the subject candles. These results indicate only that the candles do

**Summary**

Garden’s nine styles of candles, including its “Cheetah-Print” and “Zebra-Print” candles, fall within the scope of the Order. This conclusion is consistent with the scope of the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations), the Commission, and the scope of the Order.

**Recommendation**

Based on the preceding analysis, we recommend that the Department find that Garden’s “Cheetah-Print” (styles 194735-A, 194736-A, 194768-A, 194735-C, 194736-C, and 194778-C) and “Zebra-Print” (styles 194735-D, 194736-D, and 194768-D) candles fall within the scope of the Order.

If you agree, we will send the attached letter to the interested parties, and will notify the U.S. Customs Service of our determination.

\_\_\_\_\_ Agree                      \_\_\_\_\_ Disagree

\_\_\_\_\_  
Barbara E. Tillman  
Deputy Assistant Secretary  
Import Administration, Group III

Acting  
for

\_\_\_\_\_  
Date

\_\_\_\_\_

contain beeswax. Furthermore, we agree that the respective paraffin contents of the tested candles raise more questions than are answered.” Similarly, the test results submitted by Garden indicate only that the subject candles do contain palm oil, however, these test results make no mention of the testing methodology employed to arrive at that determination.

Attachment