

A-570-504
Scope Review
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To All Interested Parties:

On October 15, 2002, the Department of Commerce (the Department) received a request from Spectrum Brands (Spectrum) for a scope ruling on whether five models of candles it plans to import (one "Cutter Citronella" candle, one "Cutter Holiday Bucket" candle, one "Cutter Triple Wick Citronella" candle, one "Cutter Outdoorsman Citronella" candle, and one "Cutter Weather-Proof Citronella" candle) 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 five of Spectrum's candles fall outside 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 U.S. Customs and Border Protection of this decision. If you have any questions, please contact Joshua Reitze at (202) 482-0666 or Jacky Arrowsmith at (202) 482-5255.

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);
Spectrum Brands

Summary

On October 15, 2002, the Department of Commerce (the Department) received a request from Spectrum Brands (Spectrum) for a scope ruling on whether five models of candles it plans to import (one "Cutter Citronella" candle, one "Cutter Holiday Bucket" candle, one "Cutter Triple Wick Citronella" candle, one "Cutter Outdoorsman Citronella" candle, and one "Cutter Weather-Proof Citronella" candle) 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 five of Spectrum's candles fall outside the scope of the antidumping duty order on petroleum wax candles from the PRC.¹

¹ 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

Spectrum filed its request for a scope ruling in proper form on October 15, 2002. On April 24, 2003, Spectrum provided the Department with a supplemental submission containing a U.S. Customs and Border Protection (Customs) classification decision pertaining to Spectrum's citronella candles.² The National Candle Association (NCA), petitioner and an interested party in this proceeding, did not file comments with respect to Spectrum's October 15, 2002 request. Further, no other interested parties in this proceeding filed comments regarding Spectrum's request.

Spectrum's Scope Request

Spectrum argues that its citronella candles are “. . . intended, designed, advertised, and purchased for outdoor use only.”³ Spectrum also argues that its citronella candles are properly classified under Harmonized Tariff Schedule of the United States (HTSUS) classification 3808.10.5000, the category used to classify “[i]nsecticides . . . put up in forms or packings for retail sale or as preparations or articles. . .”⁴ Spectrum further argues that the Department has previously determined that citronella candles are not covered by the scope of the Order, and that the candles in the instant request should similarly be found to be outside the Order's scope.

Specifically, Spectrum argues that the citronella candles in the instant request, like those of previous determinations by the Department, are not covered by the scope of the Order because they are purchased (at least in part) for a purpose other than providing light and decoration, *e.g.*, repelling insects.⁵ Spectrum further argues its candles are intended for outdoor use only, and therefore are not

² The Customs classification indicates that Spectrum's subject candles will be classified under HTSUS 3808.10.5000, which provides for insecticides.

³ See Spectrum's October 15, 2002 comments at page 2.

⁴ See Id. at page 4.

⁵ See Id. at pages 6-8, where Spectrum cites to previous determinations of the Department with respect to citronella candles. See also Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Target Stores (December 15, 1998) (Target Ruling); Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Boston Warehouse Trading Corp. (December 18, 1998) (BWT Corp. Ruling); Final Scope Ruling - Antidumping Duty Order on

“standard wax candles.” Spectrum provided black and white photographs of each of its candles with its October 15, 2002 request, as well as product literature for each of its five citronella candles.

Spectrum describes its candles as follows:

- 1) The “Cutter Citronella Candle” is “an 11-ounce citronella candle in a ceramic container.”
- 2) The “Cutter Holiday Bucket” is “a 28-ounce citronella candle in a decorative bucket with a patriotic design.”
- 3) The “Cutter Triple wick Citronella Candle” is a “26-ounce citronella candle in a metal bucket with vents. It contains three wicks ‘to provide maximum protection for outdoor gatherings.’”
- 4) The “Cutter Outdoorsman Citronella Candle” is a “10-ounce citronella candle in a tin with lid designed to be used for camping and backpacking.”
- 5) The “Cutter Weatherproof Citronella Candle” is a “10-ounce citronella candle in a ceramic container with a lid to keep candle ‘clean and dry’ from rain and other outdoor matter.”

On April 24, 2003, Spectrum also submitted a Customs classification decision pertaining to its citronella candles. The decision notes that Customs classifies these citronella candles under HTSUS 3808.10.5000, which is the category for insecticides.

Legal Framework

The regulations governing the Department’s antidumping scope determinations are found at 19 CFR 351.225 (2002). 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 International Trade 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

Petroleum Wax Candles From the People’s Republic of China (A-570-504); Meijer, Inc. (September 30, 1999) (Meijer Ruling); Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Fabri-Centers of America, Inc. (September 3, 1991) (FCA Ruling); and Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Star Merchandise Company (July 27, 1994) (SMC Ruling).

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 Spectrum'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.

See 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); and 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” See Determination of the Commission (final), USITC Publication 1888, August, 1986, at 4, note 5, and A-2 (Commission Determination). The Commission stated that “...we determine that the domestic like product shall consist only of petroleum wax candles.” See Commission Determination, at 9. In its discussion of like product, the Commission also stated:

Petroleum wax candles are those composed of over 50 percent petroleum wax, and may contain other waxes in varying amounts, depending on the size and shape of the candle, to enhance the melt-point, viscosity, and burning power.

See Commission Determination, at 4-5.

Also of relevance to the present scope inquiry is a notice issued to 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).

See CIE –212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987 (Customs Notice).

Analysis

With respect to the instant request, we find that, for the reasons outlined below, all five of Spectrum’s “citronella” candles fall outside the scope of the Order.

- 1. “Cutter Citronella” Candle**
- 2. “Cutter Holiday Bucket” Candle**
- 3. “Cutter Triple Wick Citronella” Candle**

4. “Cutter Outdoorsman Citronella” Candle
5. “Cutter Weather-Proof Citronella” Candle

As noted above, Spectrum describes these five candles as citronella candles and states that they are designed to be insect repellants. Spectrum later submitted a supplemental Customs ruling that supports these arguments for exclusion from the Order.

The Department agrees with Spectrum that the instant candles fall outside the scope of the Order, because these candles are not standard wax candles, but are, rather, citronella candles, which the Department has previously determined are not covered by Order's scope.⁶ In those cases, the Department determined that the presence of citronella oil changes a candle from a decoration or light source (*i.e.* a standard petroleum wax candle) into an insect repellent, and therefore should be excluded from the Order. For example, in Boston Warehouse Trading Corp., the Department ruled Boston's candle “...outside the scope of the Order because this candle contains citronella oil and is labeled as an outdoor candle, and is therefore not a standard petroleum wax candle covered by the scope of the Order” (see Final Scope Ruling - Antidumping Duty Order on Petroleum wax Candles From the People's Republic of China (A-570-504); Boston Warehouse Trading Corp. (December 18, 1998)).

In the instant case, we find that Spectrum's candles are not standard petroleum wax candles because they contain citronella oil, as noted in the product information submitted as part of Spectrum's October 15, 2002 scope request. Therefore, we find that the purpose of Spectrum's candles is that of an insect repellent. For the above reasons, we find that Spectrum's five “citronella” candles fall outside of the Order.

Summary

Spectrum's citronella candles fall outside the scope of the Order on petroleum wax candles from the People's Republic of China. 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.

⁶ See Target Ruling; see also FCA Ruling; SMC Ruling; Meijer Ruling; BWT Corp. Ruling; Star Ruling.

Recommendation

Based on the preceding analysis, we recommend that the Department find that Spectrum’s citronella candles fall outside 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

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

Date

Attachment