

April 18, 2011

MEMORANDUM FOR: Gary Taverman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: James C. Doyle
Director AD/CVD Operations, Office 9
Import Administration

SUBJECT: Final Scope Ruling: Antidumping Duty Order on Petroleum Wax
Candles From the People's Republic of China ("PRC")

SUMMARY

On March 4, 2011, the Department of Commerce ("Department") received a request from R&D Chemicals, Inc. ("R&D") for a scope ruling to determine whether its "Bite-Lite" brand candles are outside the scope of the antidumping duty order on petroleum wax candles from the PRC. See 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 find that R&D's Bite-Lite candles are outside the scope of the Order.¹

Background

R&D filed its request for a scope ruling in proper form on March 4, 2011. The National Candle Association ("Petitioner"), an interested party in this proceeding, did not file comments regarding R&D's request.

Product Description

The candles involved in this request consist of 4 categories:

1. Bite-Lite Candle Luminary ("Luminary"): The Luminary is described by R&D as being tall and cylindrical in shape, measuring 3.9 inches in diameter by 5.1 inches in height, with a net weight of 8 ounces. Affixed to the side and bottom of the Luminary are labels

¹ The Department has an internet website that allows interested parties to access prior scope determinations regarding the Order. 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/index.html> and is updated periodically to include newly issued scope determinations.

stating that the candle is a citronella candle and that the candle is a “natural mosquito repellent.” Listed on the bottom label is that the Luminary is for outdoor use. Also listed on the Luminary labels are the active ingredients: (1) 2.30 percent by weight of lemongrass oil, 2.30 percent by weight of mint oil, and 0.25 percent by weight of citronella oil as the active ingredients; and (2) the remaining 95.15 percent by weight consist of the inert ingredients—paraffin wax and/or hydrogenated vegetable oil, vanillin, and vitamin E.

2. Bite-Lite Candle Tin (“Tin”): The Tin is described by R&D as a candle contained in a round metal tin measuring 2.7 inches in diameter by 1.7 inches in height, with a net weight of 3 ounces. Affixed to the top, side, and bottom of the Tin are labels stating that the candle is a lemongrass and mint soy candle and that the candle is a “natural mosquito repellent.” Listed on the side label is that the Tin is for outdoor use. The ingredients of the candle are listed on the side: (1) 3.10 percent by weight of mint oil, 3.10 percent by weight of lemongrass oil, and 0.33 percent by weight of citronella oil (active ingredients); and (2) the remaining 93.47 percent by weight consist of the inert ingredients—hydrogenated vegetable oil and vitamin E.
3. Bite-Lite Candle Jar (“Jar”): The Jar is described by R&D as a candle contained within a glass jar with a metal lid, and which measures 2.9 inches in diameter by 4.8 inches in height, with a net weight of 9.20 ounces. Labels affixed to the Jar state that it is a natural mosquito repellent lemongrass and mint soy candle with citronella oil. It is also noted on the bottom label that the Jar is for outdoor use. Labeled is that the active ingredients of the Jar are: (1) 3.10 percent by weight of mint oil, 3.10 percent by weight of lemongrass oil, and 0.33 percent by weight of citronella oil; and (2) that the remaining 93.47 percent by weight consist of the inert ingredients—hydrogenated vegetable oil and vitamin E.
4. Bite-Lite Votives (“Votive”): The Votives, as described by R&D, are a grouping of three votives per package, with each votive measuring 1.7 inches in diameter by 1.8 inches in height, with a net weight of 5.46 ounces. The label affixed to the packaging of the Votives states that it is a natural mosquito repellent lemongrass and mint candle with citronella oil using. Labeled on the bottom of the packaging is that the Votives are for outdoor use. As labeled, the active ingredients of the Votives are: (1) 3.10 percent by weight of lemongrass oil, 3.10 percent by weight of mint oil, and 0.33 percent by weight of citronella oil; and (2) the remaining 93.47 percent by weight consist of the inert ingredients—paraffin wax and vitamin E.

R&D’s Scope Request

R&D notes that because two of its candles, the Tin and the Jar, contain no petroleum wax, they are not within the scope of the Order. See R&D’s scope ruling request, at 12. While R&D notes that only two of its four candles contain no petroleum wax, it contends that all four candles fall outside the scope of the Order, regardless of wax content, because they contain insect-repellant ingredients and are labeled as an insect-repellant for outdoor use. In other words, the Bite-Lite candles are not the “standard candles” that the scope of the Order covers, because they are

“purchased with an expectation for repelling insects outdoors, and are labeled as such for channels of trade.” See R&D’s scope ruling request, at 2-4.

To support its argument, R&D cites a scope ruling where it claims the Department found a similar candle outside the scope of the Order because it served as an insect repellent, was intended for outdoor use, and was for purposes other than providing lighting or decoration. See Recommendation Memo – Scope Inquiry on Petroleum Wax Candles from the People’s Republic of China (A-570-504) (Sept. 3, 1991) (“Fabri-centers Ruling”). R&D continues that the Department found the candles of the Fabri-centers Ruling were outside of the scope of the Order under the premise that the presence of citronella oil, a known insect repellent, affected the candles’ physical characteristics, ultimate use, expectations of the ultimate purchaser, and the channels of trade in which they were sold. R&D contends that as such, the Department found in the Fabri-Centers ruling that the presence of citronella oil resulted in the candles being marketed by retailers as insect-repellent candles for outdoor use only, and in being purchased by consumers for insect repellent purposes. R&D continues that a citronella candle in the Target² Ruling was found outside of the scope for identical reasons.

To further bolster its argument, R&D discusses the Lamplight³ Ruling, in which the Department found that a candle containing two percent lemongrass oil was outside the scope not only for the same reasons as in Fabri-centers and Target Rulings, but also because the labels explicitly listed the candle’s insect-repellent properties, and the requestor provided a laboratory report on the efficacy of lemongrass oil as an insect repellent.

Legal Framework

The regulations governing the Department’s antidumping scope determinations are found at 19 CFR 351.225. 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 U.S. International Trade Commission (“ITC”). 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 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: (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. 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.

² See Final Affirmative Scope Ruling, Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China (A-570-504); Target Stores, A Division of Dayton-Hudson (December 15, 1998) (“Target Ruling”)

³ See Final Scope Ruling, Lamplight Farms, Inc.’s Tiki Mosquito Candle with the Power of Black Flag (December 13, 2007) (“Lamplight Ruling”).

In this case, the Department has evaluated R&D's request in accordance with 19 CFR 351.225(k)(1) and 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 ITC are dispositive with respect to R&D's Bite-Lite candles.⁴ Therefore, for these candles, 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 that the Department deemed relevant to this scope ruling were made part of the record of this determination and are referenced herein. Documents that neither the Department nor the parties placed on the record do not constitute part of the administrative record for this scope determination.

In its September 4, 1985 petition, the NCA 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); and Order.

⁴ The Department also notes that this product will not be impacted by our on-going scope proceeding addressing our treatment of novelty candles and candle shapes under the Order. See Petroleum Wax Candles from the PRC: Preliminary Results of Request for Comments on the Scope of the Petroleum Wax Candles from PRC Antidumping Duty Order, 75 FR 49475 (Aug. 13, 2010).

In the 2006 LDM Anticircumvention Determination, the Department found that a mixed-wax candle⁵ containing any amount of petroleum was subject to the Order (unless the candle contains 50 percent or more of beeswax). See Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 71 FR 59075 (October 6, 2006) ("LDM Anticircumvention Determination").

Analysis

With respect to this request, we find that, for the reasons outlined below, R&D's four insect repellent candles are outside the scope of the Order in accordance with section 351.225(k)(1) of the Department's regulations, because the descriptions of the products contained in the petition, the initial investigation, final determinations of the Secretary (including prior scope rulings), and the Order are dispositive. Therefore, for these candles, the Department finds it unnecessary to consider the additional factors set forth in 19 CFR 351.225(k)(2).

We note that because two of R&D's candles, the Tin and the Jar, contain no petroleum wax, they are not petroleum wax candles and, thus, are outside the scope of the Order. As such, an analysis of insect repellent properties of the Tin and Jar is unnecessary. With regard to the other two candles in question, the Luminary and the Votive, we note that the Department has referred to the insect repellent properties of certain oils, including citronella oil in previous scope rulings. Specifically, under a k(2) analysis, the Department found the candles in the Fabri-Centers Ruling to be insect repellent candles, and therefore outside the scope of the Order because:

“The record indicates that the presence of citronella oil, a known insect repellent, in the candles affects the physical characteristics, ultimate use, expectations of the ultimate purchaser, and the channels of trade in which the candles are sold. The presence of citronella oil results in the candles' use as an insect repellent.”

In subsequent scope rulings, the Department has found that citronella candles are outside the scope of the Order because they have the function of repelling outdoor insects. See, e.g., Lamplight Ruling. Additionally in the Lamplight Ruling, which was conducted under a (k)(1) analysis, the Department found that lemongrass oil has the same insect repellent qualities as citronella oil in candles.

Here, as in those cases, record evidence demonstrates that R&D's two petroleum wax Bite-Lite candles possess the same characteristics, namely the presence of citronella and lemongrass oils, as those candles found outside of the Order in the Fabri-Centers and Lamplight Rulings. Thus, the same reasoning in those cases applies in this case.

⁵ Mixed-wax candles are those that contain a mixture of petroleum and other types of wax, such as vegetable-based wax.

Conclusion

We find that the Tin and the Jar are not petroleum wax candles because they do not contain petroleum wax. With regard to R&D's other two candles, the Luminary and the Votive, our analysis of these candles' descriptions shows that they contain citronella and lemongrass oils, the presence of which has been the basis of exclusion from the scope of the Order in previous petroleum wax candles scope rulings.

RECOMMENDATION

Because the Tin and Jar are not petroleum wax candles, and the Luminary and Votive contain citronella and lemongrass oils, we recommend the Department find all four candles in R&D's request (Bite-Lite brand Luminary, Tin, Jar, and Votive), described supra, to be outside the scope of the Order.

If you agree, we will send the attached letter to the interested parties, and will notify CBP of our determination.

Agree_____

Disagree_____

Gary Taverman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date