

By Certified Mail, Return Receipt Requested

To All Interested Parties

Dear Sir or Madam:

On November 13, 1990, the U.S. Department of Commerce (the Department) received a request for clarification of the scope of the antidumping duty order on petroleum wax candles from the Peoples Republic of China (PRC). Specifically, Fabri-centers of America, Inc. (Fabri-centers), requested a scope inquiry to determine whether citronella candles, as well as the decorative ceramic pots containing citronella candles, which they import, are outside the scope of the order on petroleum wax candles from the PRC.

Based on an analysis of the record, the Department has determined that the citronella oil, commonly known as an insect repellent, which the candles contain 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 in the candles results in the candle's use as an insect repellent. The candles are purchased by consumers for that purpose, and are marketed by retailers as insect repellent candles for outdoor use only. The Department concludes that Fabri-centers' citronella candles are not standard wax candles and, therefore, are outside the scope of the antidumping duty order on petroleum wax candles from the PRC. Enclosed is a memorandum explaining our decision.

We will notify the U.S. Customs Service of this decision.

If you have any questions, please contact Melissa Skinner or Anna Snider at (202) 377-4851.

Sincerely,

Edward Yang  
Director, Division I  
Office of Antidumping Compliance  
Enclosures

MEMORANDUM FOR: Joseph A. Spetrini  
Deputy Assistant Secretary  
for Compliance

FROM: Roland L. MacDonald Director  
Office of Antidumping Compliance

SUBJECT: Recommendation Memo - Scope Inquiry on Petroleum Wax Candles From  
the People's Republic of China (A-570-504)

#### ISSUE

On November 13, 1990, the U.S. Department of Commerce (the Department) received a request for clarification of the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). Specifically, Fabri-centers of America, Inc. (Fabri-centers), requested a scope inquiry to determine whether citronella candles, as well as the decorative ceramic pots containing citronella candles, imported by Fabri-centers are outside the scope of the order on petroleum wax candles from the PRC.

#### CRITERIA

The regulations governing antidumping scope determinations are found at §352.29 of the Department's regulations (19 C.F.R. 1991). Because the product descriptions contained in the petition and prior determinations of the Department and the International Trade Commission (ITC) are not dispositive as to whether the citronella candles imported by Fabri-centers are within the scope of the antidumping duty order on petroleum wax candles from the PRC, we consider the four additional criteria listed in §353.29 (i)(2) of the Department's regulations: (1) the physical characteristics of the product; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; and (4) the channels of trade.

The Department solicited comments from all interested parties. Comments were received from counsel to the National Candle Association (NCA) on January 25, 1991. Rebuttal comments were received from Fabri-centers on February 13, 1991. Documents from the underlying proceeding deemed relevant by the Department to the scope of the outstanding order were made a part of the record in the instant scope review. Documents that were not presented to the Department, or placed by it on the record, do not constitute part of the administrative record attendant to this scope proceeding.

#### BACKGROUND

The original investigation of petroleum wax candles from the PRC arose from a petition filed in 1985 by NCA. NCA alleged that petroleum wax candles from the PRC were being sold at less than fair value as provided for in section 735 of the Tariff Act of 1930, as amended.

The petition described the imports intended to be included in the scope of the investigation as "candles.. .made from petroleum wax, containing paper or fiber-cored wicks," sold in the following shapes: "tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars; votives; and various wax filled containers." NCA added that "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 on Behalf of the National Candle Association, September 3, 1985, at 6-7.

In October 1985, the ITC completed a preliminary determination in which a candle was defined as "a molded or dipped mass.. .wholly or chiefly of petroleum wax.., containing a wick that may be burned so as to give light, heat, or scent or used for celebration or votive purposes." Candles from the People's

Republic of China: Determination of the Commission, Investigation No. 731-TA-282 (Prelim) USITC Pub. No. 1768, October 1985, at AI-A2.

The Department's preliminary determination defined the scope of the products under investigation as "certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks..," sold in the shapes cited previously in the petition. Preliminary Determination of Sales at Less than Fair Value, 51 F.R. 6016, February 19, 1986.

The Department's final determination on July 10, 1986, was identical to its preliminary determination with respect to the scope of the products under investigation. See 51 Fed. Reg. 25085. Similarly, the final ITC determination in August 1986 encompassed the imports covered in the ITC preliminary report. See USITC Pub. No. 1888, August 1986.

The need for scope clarification arose on several occasions prior to this scope determination request. Upon receiving notification of the investigation, the U.S. Customs Service questioned the Department as to whether the scope of the investigation included certain party candles. In a telex to Customs, dated March 20, 1986, the Department clarified that "birthday, birthday numeral, and figurine-type candles" were outside the scope of the investigation. The Department based this conclusion on differences in use and in physical characteristics between that type of candle and those described in the original investigation. See "Petroleum Wax Candles from the PRC: Clarification of the Scope of the Investigation," Telex, March 20, 1986.

In 1987, Global Marketing Services requested exclusion from the scope of the order of its hand-painted Santa Claus figurine candles. The Department determined that the Christmas candles were outside the scope of the order because:

the specialized decor of the candles in question distinguishes them physically from other decorative candles. The ultimate use of these candles and the expectations of the ultimate purchaser are necessarily limited to decorative use during the Christmas holiday season. The candles may be sold in the same channel of trade as the candles covered by the antidumping duty order because retail establishments that sell candles on a regular basis may also sell Christmas novelty candles. Nevertheless, such candles may also be sold during a specific limited time period and some merchants who do not normally sell candles may sell these candles in conjunction with holiday gift materials and decorations.

See Department letter from T. Bergan, Director, Office of Compliance, to L. Baker, Burditt, Bowles & Radzius, Ltd., July 13, 1987, at 2.

In a notice to the U.S. Customs Service, the Department further clarified that "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 N-212/85, September 21, 1987.

On November 13, 1990, the Department received the request at issue, dated August 22, 1990, forwarded by the U.S. Customs Service, for a scope ruling from Fabri-centers. Fabri-centers requested exclusion of its citronella candles, as well as the decorative ceramic pots containing the citronella candles.

Fabri-centers submitted samples of its product for examination by the Department. As noted in the memorandum to the file, the samples were found to have the following descriptions:

\*Earthenware pot with citronella candle

\*Earthenware bird with citronella candle

\*Round citronella refill candles with fiber wicks for the earthenware containers

See Memorandum from case Analyst-to the File, March 28, 1991.

A Customs laboratory analysis, dated July 30, 1990, indicated that the candle portion is of (petroleum) paraffin wax containing oil of citronella, which the lab analyst noted is an oil often used as an insect repellent. See U.S. Customs Service, Laboratory Report, July 30, 1990.

The U.S. Customs Service also stated to the Department that it classified the candles in question as insecticide and the containers as earthenware for import purposes. In a letter to Joseph Spetrini, Deputy Assistant Secretary for Compliance, Samuel Banks, Assistant Commissioner of the U.S. Customs Service, explained that "the essential character of these articles is invariably the decorative article and the products are classified as other than candles." See U.S. Customs Service letter, November 13, 1990, at 1.

## ARGUMENTS

In its request for exclusion from the antidumping duty order covering petroleum wax candles from the PRC, Fabri-centers argues that its product differs substantially from candles that are subject to the order.

Fabri-centers states that the presence of citronella "gives (the candles) a unique characteristic and use, setting them apart from standard wax candles." Fabri-centers Comments, February 9, 1991, at 2. Fabri-centers notes that "the principal use of citronella candles is to repel bugs." *Id.* Fabri-centers contends that the candles "are not used specifically as a light source," though they emit light. *Id.* at 1. In addition, Fabri-centers states that the citronella candles are "unsuitable for use indoors due to the volatile odor they emit for repelling insects," and thus, they are "marketed for outdoor use only." *Id.*

Fabri-centers further contends that the decorative container in which the candle sits distinguishes it from standard wax candle imports as well. Fabri-centers maintains that the "chief value... is the earthenware," which has a potential for reuse, and can be used as something other than a candle container (e.g., use as a planter). *Id.* at 2.

In addition, Fabri-centers notes that the U.S. Customs Service has issued a ruling that the two elements of these candles, the decorative container and the citronella candle, are to be classified separately as earthenware and insecticide, respectively.

NCA argues that the Fabri-centers candles are identical to those subject to the antidumping duty order. NCA states that "the citronella candles and citronella candles in containers are petroleum wax candles from the PRC." NCA Comments, January 25, 1991, at 1.

NCA alleges that the citronella candles are made with "a relatively low-level (possibly 1% or 2%) of citronella mixed with the petroleum wax." *Id.* at 2. NCA states that:

The nominal part of these candles which citronella comprises does not change the fact that they are candles, perform the functions of candles and have the same characteristics and uses as petroleum wax candles subject to the antidumping order

NCA then states that "the subject candles, like all other votive/container filled candles, can be used outdoors and indoors and are a source of light." *Id.*

NCA further argues that the earthenware container has no distinctive value, as it contends that the U.S. Customs Service has incorrectly determined that the essential character of the item is the decorative article. NCA explains that:

The essential character of this product is the candle; it is being purchased to perform the function of a candle. The container is specifically designed to be a component part of the candle which has no chief use other than to hold the primary product, the candle.

*Id.* at 3.

NCA adds that "the acquisition of the container's contents, the candle, is foremost in the mind of the purchaser." Id.

## ANALYSIS

In accordance with §353.29(i)(1) of the Department's regulations, in analyzing the scope request and comments on the record in this proceeding, the Department took into account the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Department and the ITC.

In its final determination, the Department defined the products covered by the scope of the investigation as "certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks," sold in a variety of shapes and sizes, and in wax-filled containers. Only the petition and the ITC determinations addressed the intended uses of the subject candles. The petition stated that "these candles . . . are generally used by retail consumers in the home or yard for decorative or lighting purposes." Petition at 7. The ITC noted that the subject candles were intended to be used "so as to give light, heat, or scent or used for celebration or votive purposes." USITC Pub. No 1768 at AI-A2 (Prelim). However, none of the relevant documents addresses whether candles containing citronella oil which are allegedly used for repelling insects outdoors, rather than for any of the purposes noted above, are within the scope of the antidumping duty order on wax candles from the PRC. Because the descriptions of the covered merchandise contained in the sources noted above are not dispositive of this question, we consider the additional criteria listed at §353.29(i)(2) of the regulations.

### Physical Characteristics:

With regard to physical characteristics, the parties do not dispute that the candle element in the Fabri-centers candles do follow the basic form of standard candles meant to be encompassed in the scope of the order on candles from the PRC; they consist of petroleum wax and they have paper-cored wicks. However, the candles under review in this inquiry contain citronella oil, which the U.S. Customs Service noted in its July 30, 1990 lab report is often used as an insect repellent. This inclusion of citronella oil distinguishes these candles from those described in the previous Department and ITC scope proceedings discussed above.

The Department agrees with NCA that the fact that the candles are imported together with earthenware containers is not grounds for excluding these candles from the scope of the antidumping duty order. The scope of the order specifies that candles imported in "various wax-filled containers" are included.

### Ultimate Use:

Fabri-centers contends that its citronella candles are characterized by the "volatile odor they emit for repelling insects," and that the citronella "gives [the candles] a unique characteristic and use, setting them apart from standard wax candles." Fabri-centers comments, February 9, 1991, at 2. Fabri-centers maintains that the intended use is "exclusively as an insecticide to rid areas of bugs and insects." Id. at 1.

NCA maintains that "citronella candles are nothing more than votive candles with a small amount of citronella added." NCA Comments, January 25, 1991, at 3. NCA explains also that the presence of citronella oil in the Fabri-centers candles does not change the fact that they share the same uses as the candles subject to the order.

The Department agrees with Fabri-centers' contention that the presence of citronella oil in the candles, and its known insect-repellent properties, indicates that these candles do have an additional use as compared to the candles subject to the order: as an insect repellent. In addition, the Department agrees with Fabri-centers that the subject candles are unsuitable for indoor use. During the course of this scope inquiry, Department officials lit and burned several samples of Fabri-centers' citronella candles, both indoors and outdoors. The candles emitted a thick, dark smoke with a pungent odor which made their use indoors intolerable. See Memorandum from Anna Snider, Analyst to File, August 12, 1991.

The Department further notes that in its petition, NCA stated that the PRC candles for which it sought relief "are generally used by retail consumers in the home or yard for decorative or lighting purposes." Petition at 7. The record in this scope inquiry indicates that the citronella candles at issue are not used for "decorative or lighting purposes," and are not suitable for indoor use, but rather are used outdoors to repel insects.

Expectations of the Ultimate Purchaser:

The Department again notes that these candles contain citronella oil, known to be an insect repellent, and that NCA does not refute the Fabri-centers contention that these candles emit a "volatile odor" which makes them "unsuitable for indoor use." Fabri-centers Comments, February 9, 1991, at 2. In addition, the U.S. Customs Service has classified these candles as insecticide.

Thus, the Department concludes that it is likely that customers purchase these candles with the expectation of using them for repelling insects, rather than for "decorative or lighting purposes."

Channels of Trade:

As noted above, Fabri-centers maintains that the burning of these candles results in a "volatile odor" which makes them "unsuitable for indoor use," and thus, they are "marketed for outdoor use only." Id. Also, citronella oil is a common insect repellent. The logical conclusion of these statements is that these candles would be sold as insect repellent for outdoor use.

Department officials contacted several retail outlets which sold citronella candles. All the outlets which sold citronella candles displayed them as insect-repellent candles. Employees of the outlets contacted stated that the citronella oil in the candles made them insect repellent, and that the candles were intended for outdoor use. See Memorandum from Anna Snider, Analyst to File, August 28, 1991.

NCA does not counter Fabri-centers' contentions, but again simply states that the presence of citronella oil in these candles does not change the characteristics, use, and manner in which they are sold.

Conclusion:

Because the product descriptions contained in the petition, the initial investigation, and the determinations of the Department and the ITC are not dispositive of whether candles containing citronella oil which are used outdoors to repel insects are within the scope of the antidumping duty order on wax candles from the PRC, we considered the four additional criteria section 353.29(i)(2) of the Department's regulations. 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. The candles are purchased by consumers for that purpose, and are marketed by retailers as insect-repellent candles for outdoor use only.

Our analysis of the record of this proceeding within the context of the four additional criteria, provided in §353.29(i)(2) of the Department's regulations, lead the Department to conclude that these citronella candles are not standard wax candles and, therefore, are outside the scope of the order on petroleum wax candles from the PRC.

RECOMMENDATION

That we determine that the citronella candles imported by Fabri-centers are outside the scope of the antidumping duty order on petroleum wax candles from the PRC.

Agree:  Disagree:

If you agree, we recommend sending the attached letter notifying interested parties of this decision.

Agree:  Disagree:

Joseph A. Spetrini  
Deputy Assistant Secretary  
for Compliance

September 3, 1991

Date