

DEC 15 1998

A-570-504  
Scope Inquiry  
Public Document  
Enforcement Group III: JBT

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On July 2, 1998, Target Stores, A Division of Dayton-Hudson, ("Target") requested that the Department of Commerce (the Department) issue a scope ruling on whether the "cache box" candles containing citronella oil it imports are covered by the anti dumping duty order on petroleum wax candles from the People's Republic of China (PRC).

On August 17, 1998 the Department initiated a scope inquiry under 19 CFR 351.225(e).

In accordance with 19 CFR 351.225(k)(2), the Department has determined that Target's "cache box" candles containing citronella oil are 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 the U.S. Customs Service of this decision. If you have any questions, please contact John Totaro at (202) 482-1374.

Sincerely,

Roland L. MacDonald  
Office Director  
AD/CVD Enforcement Group III

Enclosure

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MEMORANDUM      Joseph A. Spetrini  
FOR:                Deputy Assistant Secretary  
                      AD/CVD Enforcement Group III

FROM:              Roland L. MacDonald  
                      Executive Director  
                      Office Seven

SUBJECT:          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

#### SUMMARY

On July 2, 1998, Target Stores, A Division of Dayton-Hudson ("Target") requested that the Department of Commerce (the Department) issue a scope ruling finding its "cache box" candle containing citronella oil outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). Based upon an analysis of the information on the record, as defined below, and in accordance with 19 CFR 351.225(l)(1), we recommend that the Department determine that Target's "cache box" candle containing citronella oil is 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 candle covered by the scope of the order.

#### BACKGROUND

In its July 2, 1998 request for a scope ruling (Request), Target maintains that "cache box" candle containing citronella oil should be excluded from the scope of the order because the candles are "marketed explicitly for outdoor use ... function as outdoor insect repellants ... [and] have little utility as light sources. Rather, they are ignited to disperse the citronella odor." Request at 2. The

National Candle Association filed comments on Target's Request.

#### ANALYSIS

The regulations governing the Department's antidumping scope determinations can be 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, the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (the Commission). See 19 CFR 351.225(k)(1). 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(d).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the 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 purchaser; 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 Department applies these criteria when the product descriptions contained in the petition, the determinations of the Secretary and the Commission, the investigation and the order are ambiguous or unclear. 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 determined that a formal inquiry was warranted to determine whether or not Target's "cache box" candle containing citronella oil is covered by the scope of the order. We have evaluated this request in accordance with 19 CFR 351.225(k)(2) because the descriptions of the products contained in the petition, the final determinations of the Secretary and the Commission, and the antidumping duty order are not dispositive as to the inclusion of this product within the scope of the order.

Documents and parts thereof from the underlying investigation deemed relevant by the Department to the scope of the outstanding order are 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:

candles [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 (emphasis added).

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.

Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty Investigation, 50 FR 39743 (September 30, 1985). Emphasis added: see also Preliminary Determination of Sales as Less Than Fair Value, 51 FR 6016 (February 19, 1986); Final Determination, 51 FR 25085 (July 10, 1986) and Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China 51 FR 30686 (August 28, 1986). The ITC 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 Determinations of the Commission (Final), USITC Publication 1888, August 1986, at 4, note 5, and A-2 (emphasis added).

Target describes its product as a candle containing 1 ½ percent citronella oil manufactured by casting molten paraffin and citronella in a colored glass jar with a closable lid that resembles a mason jar. Target states that this type of candle is known as a "cache box" and that the wax is permanently enclosed within the jar. Target states that these cache box candles are marketed for outdoor use in Target Stores' Lawn and Garden Department and are labeled "for outdoor use only."

Target asserts that these cache box candles "function as outdoor insect repellants because they contain concentrated citronella oil," and states that the candles' scent is "overpowering" when lit indoors. According to Target, the glass jars protect the lit candle from the wind, and the "opaque" colored glass diminishes the light from the flame of the lit candle. Target argues that these candles are "ignited to disperse the citronella aroma." The U.S. Custom Service classified Target's citronella-scented cache boxes under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 3406.00.00, as "[c]andles, tapers and the like."

Target believes that its product falls outside the scope of the order because (1) previous scope rulings have found that citronella candles are outside the scope, (2) the candles "contain citronella oil in sufficient quantity to qualify them as an insect repellant", (3) they are marketed for outdoor use and thus are sold through a different channel of distribution than that used for other candles, (4) a Target customer would consider these candles insect repellants, not articles for "decorative or lighting purposes," (5) the intended use is as an insect repellant, and (6) the product is advertised and displayed as an outdoor product, and in a manner that "is likely to appeal to potential purchasers seeking an outdoor insect repellant" because "citronella is well known as an insect repellant." Target concludes that, "[t]heir citronella content, coupled with their lack of utility as lighting sources, limits the cache boxes' use to mosquito repellence."

(i) The Physical Characteristics of the Product

(a) Analysis of the Product Sample

The first step in the scope analysis is to determine whether the product imported is in fact a candle. The Department has determined that the product in question is a candle. Target has not claimed that its product is not a "wax-filled container" within the meaning of the order. As described above, both the petition and the order specifically cover wax-filled containers. Moreover, the Department examined a similar container, a glass mason jar containing a candle, and found that product was a candle within the scope of the order. *Morris Friedman & Co.*, June 24, 1996.

We note, however, that Target argues that its cache boxes have little utility as lighting sources -- apparently a reference to the "generally used...for...lighting or purposes" language of the petition -- because their glass containers are "opaque." Based on our inspection of the sample cache box provided by Target to the Department, we find this statement inaccurate. The glass container is blue colored and clouded, but it is not opaque. In fact, the container is sufficiently transparent that the printing on a label inside the glass is visible from outside the unlit container. At the very least, the glass of the cache box is translucent. Therefore, it is unlikely that this candle's utility as a lighting source is diminished because of the material of its container. The Department rejects Target's assertion that these cache box candles have little utility as lighting sources. Further, the Department has found on numerous occasions that opaque wax-filled containers are within the scope of the order. See, e.g., *Final Scope Ruling, Request Meijer, Inc.* (September 8, 1997) (Department found four terra cotta wax-filled containers within the scope of the order).

We also note that the cache box bears three descriptive labels: one hanging from the lid of the container, one affixed to the base of the candle, and one inserted into the wax of the candle. The hanging label states that the product is a "citronella candle," and that it is "citronella scented," and "for outdoor use only." The other two labels state that the candle is "citronella scented," and "for outdoor use only." All three labels contain safety precautions applicable to all types of candles.

Both the petition and the scope of the order cover scented candles, and citronella is used as a perfume or scent. Therefore, if, as Target states, its candles are ignited to disperse an aroma, this would not necessarily bring this product outside the scope of the order. Moreover, the fact that these candles are intended for outdoor use does, on its own, bring these candles outside of the scope of the order. In fact, candles for outdoor use specifically are addressed in the petition: "[t]hese candles

may be scented or unscented ... and are generally used by retail consumers in the home or yard for decorative or lighting purposes." Emphasis added. The ITC noted that the candles within the scope are those intended to be used "so as to give light, heat, or scent or used for celebration or votive purposes." USITC Pub. No. 1768 at A1-A2 (Prelim.). Neither these descriptions nor the Department's scope language exclude candles intended for outdoor use from the scope of the order.

#### (b) Citronella Oil

Target stated in its request that because of their citronella scent, its products are used as insect repellents rather than as sources of lighting or decoration. Target stated that its products contain "1 ½ percent citronella oil," and that the products "function as outdoor insect repellants because they contain concentrated citronella oil," and contain "citronella oil in sufficient quantity to qualify them as an insect repellent." Request at 1, 2, and 8.

The Department analyzed a citronella-scented candle in an earlier scope ruling, and stated that the petition, the Department's investigation and the ITC preliminary determination do not address "whether candles containing citronella oil which are allegedly used for repelling insects outdoors, rather than for any of the purposes noted [in those documents]" are within the scope of the order. *Fabri-centers of America, Inc.*, September 3, 1991 at 6 ("Fabri-centers"). However, the Department has found in that earlier scope ruling that the fact that a candle contained citronella oil distinguished it from those candles examined in Department and ITC scope proceedings to that point.

In its analysis in *Fabri-centers*, the Department referred to the "known insect repellent properties" of citronella oil, and stated that the presence of citronella oil in these candles "indicates that these candles do have an additional use as compared to the candles subject to the order: as an insect repellent." *Id.* At 7. The Department also noted in that case that, based on the strong odor and thick smoke produced by the subject candle, the candle was properly used outdoors. The U.S. Customs Service had classified the citronella candles in that case as insecticide for import purposes, and the Department concluded 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'" *Id.* The Department concluded that the candles were not standard wax candles and ruled them outside of the scope.

In the only subsequent scope ruling addressing a citronella-scented candle, the Department found a candle to be outside the scope of the order. *Star Merchandise Company, Inc.*, July 27, 1994 ("Star"). The Department in *Star* cited statements from the *Fabri-centers* that "the presence of citronella oil in the candles results in the candles' use as an insect repellent" and that "citronella candles are not standard wax candles and, therefore, are outside the scope of the antidumping order." *Star* at 4; *Fabri-centers* at 8. In light of these statements, the Department concluded that the citronella candles examined in *Star* "would by definition, fall outside the scope of the order." *Star* at 4.

In the instant case, the U.S. Customs Service has classified the subject citronella-scented candle as a candle, not as an insecticide. The labels affixed to Target's candle do not state or imply that the candle has any insect-repellent properties. Also, Target has submitted no information demonstrating that this candle performs any insect repellent functions, and provided no documentation on the standard under which its candles supposedly contain a "sufficient quantity [of citronella oil] to qualify them as an insect repellent." Target's request indicates that it markets this candle as an "adjunct to outdoor furniture." Request at 12. As stated above, the petition specifically envisioned outdoor-use candles as within the scope.

Also, in its comments, the domestic industry' submitted information indicating that citronella oil is a naturally-derived oil used as perfume in household products, including insecticides. See Comments submitted by the National Candle Association (August 7, 1998) at Exhibit 1. This same source notes the "masking power" of citronella oil, and states that insecticides are often perfumed with citronella oil. *Id.* Finally, both parties cited information published by the U.S. Environmental Protection Agency

("EPA") relating to that agency's classification of products containing citronella oil, under strictly delineated circumstances, as "minimal risk pesticides."

While much of the public information on the record of the instant scope ruling was not available to the Department in Fabri-centers, and while Target's candle is not identical in every respect to the candle analyzed in that case, the ruling in Fabri-centers is nonetheless instructive in this case. We find especially persuasive the Department's statement in Fabri-centers that "it is likely that customers purchase these candles with the expectation of using them for repelling insects." *Id.* Whether a candle containing citronella oil is labeled an insecticide is not necessarily dispositive as to the purchaser's expectations of the function that candle will perform. Even if the candle lacks labeling stating that it is an insecticide, buyers may purchase the candle for this purpose. Similarly, neither EPA requirements to determine whether a product is subject to its regulation nor U.S. Customs import classifications are likely to affect the expectations of the purchaser of this candle. Further, as noted above, a candle that is intended for outdoor use would not necessarily fall outside of the scope of the order, but, as with the candle examined by the Department in Fabri-centers, it is significant to our analysis that the subject candle is both an outdoor-use candle and a candle containing citronella oil. *Id.*

(ii) The Expectations of the Ultimate Purchaser

The expectations of the ultimate customer are affected by the labeling of this candle. The fact that labels attached to and affixed to the candle state that: (1) the candle is for outdoor use only; and (2) the candle contains citronella is significant in this case. As the domestic industry has stated in its comments, citronella oil is a fragrance that is used in a variety of products, including candles for indoor use, soap, etc. However, there exist popular perceptions that citronella oil can act as an insect repellent, and that burning candles containing citronella oil outdoors is an effective means of repelling insects. Therefore, the ultimate purchaser could expect after reading the label attached to Target's cache box candle that burning the candle outdoors will repel insects, and could purchase the candle intending to use it for this function.

(iii) The Ultimate Use of the Product:

As stated in the physical description analysis of this determination, this candle can be used for light and decoration as envisioned in the scope of the order. The ultimate use of this product is for outdoor use. As stated elsewhere in this determination, candles for outdoor use specifically are addressed in the petition: "[t]hese candles may be scented or unscented ... and are generally used by retail consumers in the home or yard for decorative or lighting purposes." *Emphasis added.* Neither this description nor the Department's scope language excludes candles from the scope of the order solely because they are intended for outdoor use.

However, as stated above, the purchaser of Target's candle also could expect, based on the labels attached to the candle, that the ultimate use of this candle is an insect repellent. Therefore, in this case where a candle intended for outdoor use also contains citronella oil, a combination of facts which affect the expectations of the purchaser as to the ultimate use of the candle, the ultimate use of this product is dispositive as to whether Target's candle is outside the scope of the order.

(iv) The Channels of Trade in Which the Product Is Sold:

Target's candles are sold in the same store as its other candles, but in a different department – the outdoor department as opposed to the candle department. Target argues that the outdoor department constitutes a different channel of trade. See Target's September 15, 1998 comments at 2. NCA does not counter this contention. Department examined similar circumstances in Fabri-Centers, and did not counter Fabri-Centers' argument that offering candles for sale as outdoor use products could be considered a separated channel of trade. The circumstances are substantially

similar in this case. However, as stated above, candles for outdoor use specifically are addressed in the petition, and neither the petition scope nor the Department's scope language excludes candles intended for outdoor use from the scope of the order. Therefore, although the marketing in the outdoor department is relevant to the candles' use as an insecticide, this marketing alone does not bring the candle outside the scope. Thus, the channels of trade in which the product is sold is not dispositive as to whether Target's candle is outside the scope of the order.

(v) The Manner in Which the Product Is Advertised and Displayed:

Target's candles are advertised and displayed as candles for outdoor use. The facts presented do not indicate that this product was marketed as a pesticide. As stated above, candles for outdoor use specifically are addressed in the petition, and neither the petition scope nor the Department's scope language excludes candles intended for outdoor use from the scope of the order. Therefore, while this is relevant to our analysis, the manner in which the product is advertised and displayed is not dispositive as to whether Target's candle is outside the scope of the order.

Conclusion

While the mere presence of citronella oil in a candle might not bring that product outside the scope of the order, those candles that the purchaser reasonably could expect to have an insect repellent function (for example, most candles labeled for outdoor use which also contain citronella oil) are not candles within the scope of the order. The reason for this distinction is that these candles are purchased, at least in part, for a purpose other than providing light or decoration, namely, repelling insects. Based on the information submitted by Target and NCA, the Department's precedent in Fabri-centers and Star, and our analysis of the expectations of the ultimate customer in this candle, we find that because this candle both (1) contains citronella oil and (2) is labeled for outdoor use, it is not a standard petroleum wax candle and, therefore, is outside the scope of the order on petroleum wax candles from the PRC.

RECOMMENDATION

We recommend the Department find Target's product, described as a candle containing 1 ½ percent citronella oil, manufactured by casting molten paraffin and citronella in a colored glass jar with a closable lid that resembles a mason jar, known as a "cache box" outside the scope of the antidumping duty order on petroleum wax candles from time PRC.

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  
AD/CVD Enforcement Group III

12-15-98

Date