

DEC 18 1998

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

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On October 20, 1998, Boston Warehouse Trading Corp. ("Boston") requested that the Department of Commerce (the Department) issue a scope ruling on whether the citronella garden torches 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)(l), the Department has determined that Boston's citronella garden torches 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 FOR: Joseph A. Spetrini  
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); Boston Warehouse Trading Corp.

#### SUMMARY

On October 20, 1998, Boston Warehouse Trading Corp. ("Boston") requested that the Department of Commerce (the Department) issue a scope ruling finding its citronella garden torches 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(k)(l), we recommend that the Department determine that Boston's 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 October 20, 1998 request for a scope ruling (Request), Boston maintains that its citronella garden torches should be excluded from the scope of the order because (1) the candles do not fit within the candle shapes described in the scope, (2) the candles have a strong citronella scent and are intended for outdoor use, (3) the candles are not wax-filled containers, (4) its candles are outside of the scope as a novelty candle, and (5) because the candles contain citronella oil. Request at 5-8. The National Candle Association filed comments on Boston'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 determinations of the Secretary and the International Trade Commission (ITC), the initial investigation, and the order. 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).

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 determined that no formal inquiry is warranted to determine whether or not Boston's candles are covered by the scope of the order. We have evaluated this request in accordance with 19 CFR 351.225(k)(1) because the descriptions of the product contained in the petition, the initial investigation, the final determinations of the Secretary and the ITC, and the antidumping duty order are, in fact, dispositive.

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

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 initial 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.

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Investigation, 50 FR 39743 (September 30, 1985) (emphasis added); see also 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 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).

Boston describes its product generally as citronella garden torches, and specifically as Boston Warehouse styles 20126 (a Rainbow Tall Torch), 20124 (a Rainbow Mini Torch), 20139, (a rainbow

Stripe Tall Torch), 20141 (a Rainbow Stripe Mini Torch), 20140 (a Black & White Stripe Tall Torch) and 20142 (a Black & White Stripe Mini Torch). Boston states that these candles each contain 2% citronella oil. They consist of a bamboo stake and fiber wick dipped in petroleum wax. Each product contains tags stating that the candles are "For outdoor use only," that the products contain citronella, and that the products are "An Outdoor Candle Torch for Garden, Patio, Beach and Snow." Boston claims that the 2% concentrated citronella oil allows its products "to function as an outdoor insect repellent." Request at 3. Boston states that these candles "would be used by the consumer to repel insects from outdoor gatherings...The torch shape also lends a festive atmosphere to a gathering, reminiscent of tropical luaus." Id.

Boston argues that its citronella garden torches fall outside the scope of the order because (1) the candles do not fit within the candle shapes described in the scope, (2) the candles have a strong citronella scent and are intended for outdoor use, (3) the candles are not wax-filled containers, (4) its candles are outside of the scope as a novelty candle, and (5) the candles contain citronella oil. Request at 5-8. For the following reason, we have determined that the subject product is outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China.

First, while we agree that the citronella garden torches are not wax-filled containers, the shapes of these products do not bring them outside the scope of the order. These torches are cylindrical shapes which taper at one end, and "tapers" are explicitly included within the scope of the order. The Department previously analyzed candles mounted on bamboo stakes in Sun-it Corp. (May 16, 1995). In that determination, the Department found the products to be outside the scope, but on the basis that the wax portion of the candle was shaped in the form of an "identifiable object," a partially furled flag or a flower. Sun-it Corp., at 3-4. Boston argues that the wax portion of its candles are shaped to represent the shape of a flame of a torch when unlit, and should therefore be excluded from the scope consistent with Sun-it Corp. See Request at 7. We find that Boston's candles are tapered cylindrical shapes which do not resemble a flame or any other identifiable object. Therefore, Boston's citronella garden torches are not outside of the scope based on the exception to scope coverage for novelty candles.

The Department analyzed a candle containing citronella oil labeled for outdoor use in response to a request by Target Stores, A Division of Dayton-Hudson (December 15, 1998) (hereinafter "Target"), and found that candle to be outside the scope of the order. Specifically, the Department found that:

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.

Target at 8. Because Boston's citronella garden torches are also candles labeled for outdoor use and labeled as containing citronella oil, those candles are substantially similar to the candles the Department analyzed in Target. Therefore, we find that Boston's candle is not a standard petroleum wax candle and that this candle is outside the scope of the order on petroleum wax candles from the PRC. See also Star Merchandise Company, Inc., July 27, 1994 and Fabri-centers of America, Inc., September 3, 1991 (candles containing citronella oil found to be outside the scope of the order on petroleum wax candles from the PRC).

## RECOMMENDATION

We recommend the Department find Boston's products, described as petroleum wax candles of various colors and sizes containing 2 percent citronella oil and mounted on bamboo stakes, outside the scope of the antidumping duty order on petroleum wax candles from the 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

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Date