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UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-951

Scope Inquiry
IA / Office 4: DJ
Public Document

April 14, 2011

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: Abdelali Elouaradia *AE*
Director, Office 4
AD/CVD Operations

for Howard Smith *DJ*
Program Manager, Office 4
AD/CVD Operations

FROM: Drew Jackson *DJ*
International Trade Compliance Analyst
AD/CVD Operations, Office 4

RE: Certain Woven Electric Blankets from the People's Republic of
China: Scope Ruling on Eurow & O'Reilly Corporation's
Knitted Fleece Automotive Electric Blankets

Summary

Based on the analysis below, we recommend finding that the product subject to this scope request is not covered by the scope of the antidumping duty order on certain woven electric blankets ("woven electric blankets") from the People's Republic of China.¹

Background

On December 20, 2010, Eurow & O'Reilly Corporation ("Eurow") requested a ruling by the Department of Commerce ("the Department") to determine whether the product it imports and describes as an automotive fleece electric blanket ("automotive blanket") is outside the scope of the Woven Electric Blankets Order.² On January 7, 2011, Eurow filed an amendment to its Scope Request; however, the Department rejected this submission because it was not filed in accordance with 19 CFR 351.303.³ On January 19, 2011, the Department issued a

¹ See Antidumping Duty Order: Certain Woven Electric Blankets From the People's Republic of China, 75 FR 50991 (August 18, 2010) ("Woven Electric Blankets Order").

² See Eurow's December 20, 2010 Scope Request ("Scope Request") at 1; see also Woven Electric Blankets Order.

³ See Letter from Howard Smith, Program Manager, AD/CVD Operations, Office 4, to Eurow, dated January 25,



supplemental questionnaire to Eurow. On January 28, 2011, Eurow filed an amendment to its Scope Request.⁴ On February 1, 2011, the Department informed Eurow that it would consider the date that Eurow filed its scope amendment to be the filing date for its scope request and, accordingly, the deadline for issuing the scope ruling would be March 14, 2011. On February 4, 2011, Eurow filed its response to the Department's January 19, 2011, supplemental questionnaire. On February 17, 2011, the Department issued a second supplemental questionnaire to Eurow. On March 2, 2011, Eurow filed a partial response to the Department's second supplemental questionnaire and, on March 8, 2011, Eurow submitted a revised partial response to this supplemental questionnaire. On March 11, 2011, Eurow filed the remainder of its response to the Department's second supplemental questionnaire.⁵ On March 15, 2011, the Department informed Eurow that it would consider the date that Eurow filed its final supplemental questionnaire response (i.e., March 11, 2011) to be the filing date for its scope request and, accordingly, the deadline for issuing the scope ruling would be April 25, 2011.

No other interested parties have commented on Eurow's scope ruling request.

Description of Merchandise

Eurow describes the product as a fleece automotive electric blanket (item number FB12VDPB-61).⁶ Eurow states that its automotive blanket has an electronic controller with variable temperature settings.⁷ Eurow explains that the power cord of the automotive blanket is 7.5 feet long and only fits a 12 volt outlet such as an automotive cigarette lighter.⁸ Eurow further states that its automotive blanket is only used in motor vehicles equipped with a 12 volt adapter.⁹ Eurow states that the fabric shell is constructed of knitted fleece, which is produced by a weft knitting machine.¹⁰ Eurow includes the results of an analysis performed by a professor of textile science that indicates that the fabric shell is knitted.¹¹ Eurow explains that its automotive blanket has a polyester non-woven liner, and contains a silicon wire heating element.¹² Eurow states that its automotive blanket is classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 6301.10.0000.¹³

2011. In this letter, the Department also notified counsel for Eurow that it was rejecting its January 21, 2011, request for an extension of time because it was improperly filed.

⁴ Eurow's scope request amendment, which was received by the Department on January 28, 2011, is dated January 26, 2011.

⁵ Eurow's second supplemental questionnaire, which was received by the Department on March 11, 2011, is dated March 9, 2011.

⁶ See Scope Request at 1.

⁷ See *id.* at 1 and 2.

⁸ See *id.* at 2.

⁹ See *id.*

¹⁰ See Eurow's January 26, 2011, scope request amendment at 1 and 2.

¹¹ See Eurow's March 9, 2011, submission at Exhibit A.

¹² See Scope Request at 2.

¹³ See *id.*

Scope of the Order

The scope of the order covers finished, semi-finished, and unassembled woven electric blankets, including woven electric blankets commonly referred to as throws, of all sizes and fabric types, whether made of man-made fiber, natural fiber or a blend of both. Semi-finished woven electric blankets and throws consist of shells of woven fabric containing wire. Unassembled woven electric blankets and throws consist of a shell of woven fabric and one or more of the following components when packaged together or in a kit: (1) wire; (2) controller(s). The shell of woven fabric consists of two sheets of fabric joined together forming a "shell." The shell of woven fabric is manufactured to accommodate either the electric blanket's wiring or a subassembly containing the electric blanket's wiring (e.g., wiring mounted on a substrate).

A shell of woven fabric that is not packaged together, or in a kit, with either wire, controller(s), or both, is not covered by this order even though the shell of woven fabric may be dedicated solely for use as a material in the production of woven electric blankets.

The finished, semi-finished and unassembled woven electric blankets and throws subject to the order are currently classifiable under subheading 6301.10.0000 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, only the written description of the scope is dispositive.

Legal Framework

The Department examines scope requests in accordance with its regulations at 19 CFR 351.225. Under 19 CFR 351.225(k)(1), the Department first examines the description of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations) and the International Trade Commission ("ITC"). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether the merchandise is covered by the order.¹⁴

Where the descriptions of the merchandise are not dispositive, the Department will consider the following factors, as provided under 19 CFR 351.225(k)(2): 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.

For this proceeding, the Department evaluated Eurow's request in accordance with 19 CFR 351.225(k)(1) and finds that the description of the product contained in the petition, the initial investigation, the determinations by the Secretary (including prior scope determinations) and the ITC are, in fact, dispositive with respect to Eurow's automotive blanket. Therefore, we find it unnecessary to consider the additional factors found in 19 CFR 351.225(k)(2).

¹⁴ See 19 CFR 351.225(d).

Interested Party Comment and Analysis

Eurow argues that its automotive blanket is not within the scope of the Woven Electric Blankets Order.¹⁵ Eurow argues that the physical characteristics of the automotive blanket are unlike those of the woven electric blankets under consideration during the investigation. Specifically, Eurow argues that the petitioner's website does not advertise an automotive blanket and that the power cord of the automotive blanket is dissimilar to other electric blankets.¹⁶ Eurow further argues that, during the investigation, while the ITC considered a request by interested parties to include knitted electric blankets in its like product analysis, no party requested that the investigation include automotive blankets.¹⁷ Eurow argues that the ITC made reference to woven electric blankets in connection with resting, sleeping, beds, and couches but that the automotive blanket could never be used in a home's power outlet.¹⁸ Eurow further states that its automotive electric blanket is generally not used in connection with resting, sleeping, or beds.¹⁹

Eurow also provides information regarding the factors found in 19 CFR 351.225(k)(2).²⁰

As noted above, no other interested parties have commented on Eurow's request for a scope ruling.

Analysis

As explained above, when determining whether a specific product is within the scope of an antidumping and/or countervailing duty order under 19 CFR 351.225(k)(1), the Department reviews the descriptions of the subject merchandise contained in the petition, the investigation, and the determinations of the Secretary (such as prior scope rulings) and the ITC.²¹ While the descriptions of the subject merchandise contained in these documents are useful, in discussing the interpretive process that the Department should follow in making scope rulings pursuant to 19 CFR 351.225(k)(1), the Court of Appeals for the Federal Circuit ("CAFC") stated:

The critical question is not whether the petition covered the merchandise or whether it was at some point within the scope of the investigation. The purpose of the petition is to propose an investigation.... A purpose of the investigation is to determine what merchandise should be included in the final order. Commerce's final determination reflects the decision that has been made as to which merchandise is within the final scope of the investigation and is subject to

¹⁵ See Scope Request at 2.

¹⁶ See *id.*

¹⁷ See Scope Request at 3.

¹⁸ See *id.* at 3 and 4.

¹⁹ See *id.* at 4.

²⁰ See *id.* at 4 and 5. Because the Department has based its determination on 19 CFR 351.225(k)(1), this information has not been summarized or addressed.

²¹ See 19 CFR 351.225(k)(1).

the order... Thus, the question is whether the {final scope of the order} included the subject merchandise.²²

The CAFC also stated that “a predicate for the interpretative process {in a scope inquiry} is language in the order that is subject to interpretation.”²³ Through these statements, the CAFC found that the appropriate place to begin the analysis as to whether a product is within the scope of an antidumping duty order is to review the scope language of the antidumping duty order itself.

In accordance with 19 CFR 351.225(k)(1) and Duferco, the Department first examined the language of the scope of the Woven Electric Blankets Order, including any exclusions, to determine whether Eurow’s product is within the scope of the Woven Electric Blankets Order. As noted above, the scope of the Woven Electric Blankets Order covers “finished, semi-finished, and unassembled woven electric blankets.” Thus, the plain language of the scope indicates that electric blankets that are not made from woven fabric are not covered by the scope of the Woven Electric Blankets Order. Moreover, information from the original petition and the ITC’s investigation indicates that knitted electric blankets are different than woven electric blankets covered by the scope of the Woven Electric Blankets Order. The petition defined woven fabric as a “fabric formed by the interlacing and/or intersecting of the warp (length) and weft (cross) yarns.”²⁴ By contrast, evidence on the record of this proceeding defines knitted fabric as “{a} cloth structure manufactured by using needles to form a series of interlocking loops from one or more ends of yarn or set of yarns.”²⁵ Further, we note in the final phase of its investigation, the ITC made a clear distinction between subject woven electric blankets and knitted electric blankets, which it found to be outside the scope of its investigation.²⁶ Accordingly, the plain language of the scope of the Woven Electric Blankets Order, information contained in the petition, and the determination of the ITC indicate that knitted electric blankets are excluded from the scope of the order.

As indicated in the “Description of the Merchandise” section, above, Eurow’s automotive blanket is made from knitted fleece fabric with a non-woven fabric liner. Therefore, Eurow’s automotive blanket is not constructed of woven fabric within the meaning of the language of the scope of the Woven Electric Blankets Order.

Recommendation

In accordance with 19 CFR 351.225(k)(1), based upon the above analysis, we recommend the Department find that the knitted fleece automotive electric blanket subject to this request does

²² See Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1096 (Fed. Cir. 2002) (“Duferco”).

²³ See id. at 1097.

²⁴ See Petition for the Imposition of Antidumping Duties: Certain Woven Electric Blankets from the People’s Republic of China. This definition was also reproduced in a supplemental questionnaire issued to Eurow on January 19, 2011, at Attachment 1.

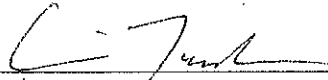
²⁵ See Eurow’s March 9, 2011, submission to the Department at Exhibit A.

²⁶ See, e.g., USITC Pub. 4177, Inv. No. 731-TA-1163 (Aug. 2010)

not meet the description of merchandise covered by the scope of the order and, therefore, is not subject to the Woven Electric Blankets Order.

✓

Agree Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

4/14/11

Date