



A-570-504
Scope Ruling Request
Public Document
E&C/V: AK

DATE: October 9, 2015

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

FROM: James C. Doyle
Director
AD/CVD Operations, Office V

SUBJECT: Antidumping Duty Order on Certain Petroleum Wax Candles from
the People's Republic of China: Final Scope Ruling for the Scope
Request from PriceSmart, Inc.

Summary

Based on the analysis below, we recommend finding the flameless LED (“light emitting diode”) candles as described by the interested party, PriceSmart, Inc. (“PriceSmart”), in its scope ruling request are not covered by the antidumping duty (“AD”) order on petroleum wax candles from the People’s Republic of China (“PRC”).¹

Background

On August 28, 2015, pursuant to 19 CFR 351.225, PriceSmart requested a ruling by the Department of Commerce (“Department”) to determine whether flameless LED candles that are manufactured in the PRC, are covered by the Order pertaining to petroleum wax candles from the PRC.² On September 1, 2015, the Department issued a letter requesting comments from interested parties and set a deadline for comments.³ No interested parties submitted comments on PriceSmart’s request.

¹ See Petroleum Wax Candles, From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order, 51 FR 30686 (August 28, 1986) (“Order”).

² See PriceSmart Scope Request at 1, submitted August 28, 2015.

See Memorandum to the File from Alex Komisar, International Trade Analyst, re: “Flameless LED Candles, from the People’s Republic of China: Request for Scope Ruling Regarding Petroleum Wax Candles; Administrative Protective Order,” dated September 1, 2015; See Memorandum to the File from Alex Komisar, International Trade Analyst, re: “Flameless LED Candles, from the People’s Republic of China: Request for Scope Ruling Regarding Petroleum Wax Candles; Comments on PriceSmart,” dated September 1, 2015.



Description of Merchandise

PriceSmart states that its flameless LED candles are produced in the PRC and are classified in the Harmonized Tariff System of the United States (HTSUS) under subheading 9405.40.8000, which provides for “Electric light sets and light sculptures from China.”⁴ Each candle is a hollow wax form, except for the LED feature and a battery slot.⁵ It has a plastic wick and the LED light that flickers for a candlelight effect. The candles can be turned on by a switch on the bottom of the candle or by remote control.⁶

Scope of the Order

The merchandise covered by the Order are certain 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. The products were originally classifiable under the Tariff Schedules of the United States item 755.25, Candles and Tapers. The products are currently classifiable under the Harmonized Tariff Schedule (“HTSUS”) item number 3406.00.00. The HTSUS item numbers are provided for convenience and customs purposes. The written description of the scope of the Order remains dispositive.

PriceSmart’s Comments

According to PriceSmart, the flameless LED candles are outside the scope of the Order because the Order only includes candles that have a fiber or paper-cored wick, and these candles have a black plastic wick that does not burn.⁷

Additionally, PriceSmart cites to a previous Department scope ruling that addressed an LED candle. That scope ruling found that the LED candle under examination was within the scope because it had fiber or paper-cored wicks.⁸ PriceSmart states that this case is distinguishable because the wicks in its LED candles are plastic.

Legal Framework

When a request for a scope ruling is filed, we examine the scope language of the order at issue and the description of the product contained in the scope ruling request.⁹ Pursuant to the Department’s regulations, we may also examine other information, including the description of the merchandise contained in the petition, the record from the investigation, and prior scope determinations made for the same product.¹⁰ If we determine that these sources are sufficient to

⁴ See PriceSmart Scope Request at 2.

⁵ See PriceSmart Scope Request at 2.

⁶ Id. at 2.

⁷ See PriceSmart Scope Request at 3.

⁸ See “Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the PRC (A-570-504); Request by Design Ideas, Ltd.” (March 21, 2006) (“Design Ideas”), available at <http://enforcement.trade.gov/download/candles-prc-scope/candles/20060321-design-ideas.pdf>.

⁹ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

¹⁰ See 19 CFR 351.225(k)(1).

decide the matter, we will issue a final scope ruling as to whether the merchandise in question is covered by an order.¹¹

Conversely, where the descriptions of the merchandise in the sources described in 19 CFR 351.225(k)(1) are not dispositive, we will consider the five additional factors set forth in section 351.225(k)(2) of the Department's regulations. 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 careful consideration of all evidence before the Department.

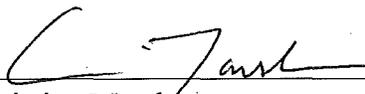
Department's Position

The description of the covered merchandise contained in the scope of the Order defines subject merchandise, in part, as "scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks."¹² Based on the language of the Order, the candles fall outside the scope because the wicks are plastic rather than fiber or paper-cored, which is required by the scope language. Because we find that the scope language of the Order is dispositive, we did not analyze PriceSmart's products, as described, pursuant to 19 CFR 351.225(k)(1) or (k)(2).¹³

Recommendation

For the reasons discussed above, we recommend finding that PriceSmart's LED candles as described in PriceSmart's scope ruling request are not subject to Order based on the scope language.

Agree Disagree



Christian Marsh

Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

10/9/15

Date

¹¹ See 19 CFR 351.225(d).

¹² See AD Order, 51 FR at 30686.

¹³ See Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1098 (Fed. Cir. 2002).