

April 29, 2009

By U.S. Postal Service Certified Mail Notification

To All Interested Parties:

On February 23, 2009, the Department of Commerce (“Department”) received a request from America’s Gardening Resource (“AGR”) for a scope ruling on whether its citronella rope candles 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)(1), the Department has determined that AGR’s citronella rope candles fall 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 U.S. Customs and Border Protection (“CBP”) of this decision. If you have any questions, please contact Javier Barrientos at (202) 482-2243.

Sincerely,

James C. Doyle  
Director, Office 9  
Import Administration

Enclosure

April 29, 2009

MEMORANDUM FOR: John M. Andersen  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

FROM: James C. Doyle  
Director, Office 9  
Import Administration

SUBJECT: Antidumping Duty Order on Petroleum Wax Candles from the  
People's Republic of China: Final Scope Ruling, America's  
Gardening Resource Citronella Rope Candles

### **Summary**

On February 23, 2009, the Department of Commerce ("Department") received a request from America's Gardening Resource ("AGR") for a scope ruling on whether its citronella rope candles are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China ("PRC"). See Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986) ("Order"). In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that AGR's citronella rope candles fall outside the scope of the Order.<sup>1</sup>

### **Background**

AGR filed its request for a scope ruling in proper form on February 23, 2009. On April 9, 2009, the Department extended the deadline for its determination to April 30, 2009. The National Candle Association ("Petitioner"), an interested party in this proceeding, did not file comments regarding AGR's request.

### **Product Description**

The candles involved in this request consist of a cotton wick, dipped in light yellow wax that is coiled vertically. The candles are mixed wax candles made of palm oil and paraffin wax and contain 6 percent citronella oil. AGR states the candles are sold either with a candle holder or individually as replacement citronella candles. The top of the rope is fed through the holder's

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<sup>1</sup> The Department has developed an internet website that allows interested parties to access prior scope determinations regarding the Order. This website lists all scope determinations from 1991 to the present. It can be accessed at <http://ia.ita.doc.gov/download/candles-prc-scope/>, and will be updated periodically, to include newly-issued scope determinations.

vise and a holder's clamp holds the end in place for burning.

The citronella candle comes in two sizes. The small candle measures 5 ¾" in height, has a 78" rope and will burn for a claimed 30 hours. The large candle measures 7" in height, has a 250" rope and will burn for a claimed 95 hours. Both candles come with a hurricane glass for protection against wind. The candles contain part numbers 35-961 and 35-960, respectively. According to AGR, the candles are classified under Harmonized Tariff Schedule of the United States ("HTSUS") # 3808.50.1000.

### **AGR's Scope Request**

AGR argues that the citronella rope candles are excluded from the order because the candles contain citronella oil and are intended for outdoor use. AGR maintains that the citronella rope candle is advertised and marketed via gardening catalogs and a gardening website. AGR states that as the candles are intended to be used outdoors during the spring and summer season, the candles are only advertised in their spring and summer catalogs. AGR argues that their claim is consistent with previously issued scope determinations holding that citronella candles fall outside the scope of the Order.

In support of its argument, AGR cites a scope ruling where it claims the Department found a similar candle outside the scope of the Order because it served as an insect repellent, was intended for outdoor use, and was for purposes other than providing lighting or decoration. See Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Target Stores (December 15, 1998) ("Target Ruling"). AGR argues that in the Target Ruling, the Department analyzed a candle containing 1-1/2 percent citronella oil labeled for outdoor use and found that candle to be outside the scope of the Order. AGR further notes that in the Target Ruling, the Department found that candles that the purchaser reasonably could expect to have an insect repellent function are not candles within the scope of the Order because these candles are purchased, at least in part, for a purpose other than providing light or decoration, namely, repelling insects. See Target Ruling at 8. AGR also claims that the Department applied similar reasoning in another ruling regarding citronella garden torches. AGR claims that because these citronella garden torches were labeled for outdoor use and labeled as containing citronella oil, the Department found them to be substantially similar to the candles that it analyzed in the Target Ruling, not standard petroleum wax candles and, thus, outside the scope of the Order. See Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Boston Warehouse Trading Corp. (December 18, 1998) ("Boston Ruling").

No other party provided comments.

### **Legal Framework**

The regulations governing the Department's antidumping scope determinations are 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 and the determinations of the Secretary (including prior scope determinations) and the U.S. International Trade Commission (“ITC”). 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 the subject merchandise is covered by the Order. See 19 CFR 351.225(k)(1).

Conversely, 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: (1) the physical characteristics of the merchandise; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of trade in which the product is sold; and (5) 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 evaluated AGR’s request in accordance with 19 CFR 351.225(k)(1) and finds that the descriptions of the products contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the ITC are dispositive with respect to AGR’s citronella rope candles. Therefore, for these candles, the Department finds it unnecessary to consider the additional factors set forth at 19 CFR 351.225(k)(2).

Documents and parts thereof from the underlying investigation that the Department deemed relevant to this scope ruling were made part of the record of this determination and are referenced herein. Documents that neither the Department nor the parties placed on the record do not constitute part of the administrative record for this scope determination.

In its petition of September 4, 1985, the NCA requested that the investigation cover:

{c}andles {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.

See Antidumping Petition (September 4, 1985), at 7.

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.

See Petroleum Wax Candles from the People’s Republic of China: Initiation of Antidumping Duty Investigation, 50 FR 39743 (September 30, 1985); 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 Order.

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 Candles from the People’s Republic of China: Determination of the Commission in Investigation No. 731-TA-282 (Final), Publication 1888 (August 1986), at 4, note 5, and A-2.

Also of relevance to the present scope inquiry are the Department’s instructions to the U.S. Customs Service (now renamed U.S. Customs and Border Protection) (“CBP”). See Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987 (“CBP Notice”) issued in connection with a July 1987 scope determination concerning an exception from the Order for novelty candles, that states:

The Department of Commerce has determined that certain novelty candles, such as Christmas novelty candles, are not within the scope of the antidumping duty order on petroleum-wax candles from the People’s Republic of China (PRC). Christmas novelty candles are candles specially designed for use only in connection with the Christmas holiday season. This use is clearly indicated by Christmas scenes and symbols depicted in the candle design. 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 CBP Notice (emphasis added).

In November 2001, the Department changed its practice on the issue of candle shapes. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); J.C. Penney (November 9, 2001) (“J.C. Penney Ruling”). In this ruling, the Department reviewed the text of the scope of the Order, beginning with the text of the first sentence of the scope which covers “[c]ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.” See Order. The text following this broad inclusive sentence provides a list of shapes; this list is not modified by any express words of exclusivity. The result of our prior practice of not including within the scope of the Order candles of a shape other than those specifically listed in the Order was inconsistent with the fact that the candles were “scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.”<sup>2</sup> In the J.C. Penney Ruling, the

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<sup>2</sup> See, e.g., Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Endar Corp. (January 11, 2000) (“Endar”) (the Department found a “dragonfly” candle, in the shape of a rough-hewn stone with a dragonfly carved on top, to not be within scope because it is of a shape not listed by the scope), and Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); American Drug Stores, Inc. (March 16, 1998) (the Department found a sphere or ball-shaped candle to not be within scope because it is a shape not listed by the scope).

Department determined to revise this practice because it had the effect of narrowing the broad coverage of the first sentence of the Order's scope. The list of shapes in the second sentence of the Order's scope does not provide a textual basis for such a narrowing of the coverage of the first sentence of the Order's scope. Accordingly, to give full effect to the first sentence of the inclusive language of the scope, the Department now will normally evaluate whether candles of a shape not listed by the inclusive language of the Order's scope are scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.

This approach of evaluating such candles in light of the entire text of the Order's scope is in keeping with the opinion of the Court of International Trade ("CIT"), noting that a better approach in scope rulings is to avoid subjective issues of intent and, instead, look to the petition's language to determine whether the class or kind of merchandise at issue was expressly included. Duferco Steel, Inc. v. United States, 146 F. Supp. 2d 913 (May 29, 2001) ("Duferco Steel"). Such an approach is a departure from past CIT precedent that required the Department to give ample deference to the petitioner's intent when examining a petition's description of the subject merchandise. See, e.g., Torrington Co. v. United States, 995 F. Supp. 117, 121 (CIT 1998).

Although the specific scope decision in Duferco Steel has been overturned by the United States Court of Appeals of the Federal Circuit ("CAFC") in Duferco Steel, Inc. v. United States, 296 F.3d 1087 (Fed. Cir. 2002), we do not believe that the CAFC's decision undermines the Department's decision in the J.C. Penney Ruling. The plain language of the Order clearly states "{c}ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks . . . sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers" are included within the scope of the Order. Thus, the Order offers a descriptive list of the shapes of candles included within the Order, but, as the courts have recognized, there is no requirement that every single product covered must be identified in the scope. More specifically, the CAFC has stated that "the petitions that led to the issuance of the order did not need to specifically identify the {product} in order to cover {it}; our precedent, to say nothing of the regulations, makes clear that neither a petition nor an antidumping or countervailing duty order requires that level of specificity."<sup>3</sup> The CAFC further stated "{a}s a matter of law, a petition need not list the entire universe of products . . . in order {for the petition} to cover those products."<sup>4</sup> Thus, as applied to this Order, there is no requirement, nor is it possible, for all the shapes of candles to be listed.<sup>5</sup> In fact, if the list were exhaustive, there would have been no need for the Department to

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<sup>3</sup> Novosteel SA v. United States, 284 F.3d 1261, 1264 (Fed. Cir. 2002).

<sup>4</sup> Id.

<sup>5</sup> See Petroleum Wax Candles from China, USITC Pub. No. 3226 Investigation No. 731-TA-282 (Review) (August 1999), at 18 ("Candles come in a wide variety of shapes and sizes. Major U.S. candle manufacturers reportedly will offer 1,000 to 2,000 varieties of candles in their product lines.").

determine whether any other candle that was not explicitly listed as a shape in the scope of the Order. However, the Department did render the novelty candle exception that offered a narrowly construed exception, leaving all other petroleum wax candles from the PRC covered by the Order.

If the Department determines that the candle is made from petroleum wax and has a fiber or paper-cored wick, but the candle possesses characteristics set out in the CBP Notice, it will not fall within the scope of the Order. In order for a candle to qualify for the novelty candle exception, the characteristic which is claimed to render it a novelty candle (i.e., the shape of an identifiable object or a holiday-specific design) should be easily recognizable in order for the candle to merit not being included within the scope of the Order. Specifically, among other determining factors, the Department will examine whether the characteristic is identifiable from most angles and whether or not it is minimally decorative, e.g., small and/or singularly placed on the candle. If the identifiable object or holiday-specific design is not identifiable from most angles, or if the design or characteristic is minimally decorative, the Department may determine that the candle is included within the scope of the Order. See J.C. Penney Corp. Ruling; Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); San Francisco Candle Co. (February 12, 2001); and Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Endar Corporation. If a candle does not possess the characteristics set out in the July 1987 novelty candle exception, and it is a scented or unscented candle having fiber or paper-cored wick, the Department will determine that the candle is within the scope of the Order.

## **Analysis**

With respect to the instant request, we find that, for the reasons outlined below, AGR’s citronella rope candles fall outside the scope of the Order in accordance with section 351.225(k)(1) of the Department’s regulations, because the descriptions of the products contained in the petition, the initial investigation, final determinations of the Secretary (including prior scope rulings), and the Order are dispositive. Therefore, for these candles, the Department finds it unnecessary to consider the additional factors set forth in 19 CFR 351.225(k)(2).

First, we note that the Department has referred to the insect repellent properties of certain oils in previous cases, such as 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.” See Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Fabri-Centers of America, Inc. (September 3, 1991) (Fabri-centers Ruling). In the Fabri-centers Ruling, the Department also stated that the citronella oil candles were marketed as insect repellent candles for outdoor use only and found them to be outside the scope of the Order. Id. In subsequent scope rulings, the Department has found that citronella (and lemongrass) candles are outside the scope of the Order, because they have insect repellent properties and are labeled as outdoor

candles.<sup>6</sup>

Here, as in those cases, the record evidence demonstrates that the citronella rope candles are used for repelling insects rather than for “decorative or lighting purposes.” See, e.g., Target Ruling; Fabri-center Ruling and Star Ruling. While AGR’s citronella rope candles are not identical in every respect to the candles analyzed in the previous citronella cases, the reasoning in those cases is the same as in the instant case. Similar to the prior citronella/lemongrass candle scope rulings, the record evidence here demonstrates that the citronella rope candles function as an insect repellent and are for outdoor use only.

AGR is a catalog/internet retailer and thus, the citronella rope candles are advertised and marketed via catalogs and the internet. AGR markets these products through its *Gardener’s Supply Company* catalogs and website [www.gardeners.com](http://www.gardeners.com). In AGR’s catalogs, the depiction and description of the subject citronella candles are identical throughout all the different catalogs. See AGR’s scope request at Exhibits 1-4. As the candles are intended to be used outdoors during the spring and summer season, the candles are only advertised in the spring and summer catalogs.

The product is described, in relevant part, as follows:

- Product is described in the catalog and on the website as containing citronella. The internet description provides the percentage of citronella oil (6 percent) contained in the candle.
- Product is identified in the catalog under the caption “You are Invited to a Delightful Garden Soirée – Bugs are Not!!”
- Product is identified on the internet website as “The Perfect Candle for a Delightful Garden Soirée.” In addition, the description states that the hurricane glass, which is included, protects the citronella candle’s flame from wind
- Photographs of the candles in the catalogs depict the product in an outdoor setting
- The instruction page that accompanies the citronella candle identifies the candle as containing citronella and specifically identifies “outdoor use” in Step 6 of the Instruction Sheet (see Exhibit 4).

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<sup>6</sup> See, e.g., Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China: Final Scope Ruling, Lamplight Farms, Inc.’s Tiki® Mosquito Candle with the Power of Black Flag (December 13, 2007) (Lamplight Ruling); Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Target Stores (December 15, 1998) (Target Ruling); Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Boston Warehouse Trading Corp. (December 18, 1998) (Boston Ruling); Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Meijer, Inc. (September 30, 1999) (Meijer Ruling); and Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Star Merchandise Company (July 27, 1994) (Star Ruling).



- The catalog depicting the citronella candles includes only products for outdoor use with the exception of two pages. The vast majority of the items included on AGR's website consists of products for outdoor use.

The design, advertisement, depiction, and instructions of these candles is significant in this case because it clearly indicates that (1) the candles are for outdoor use only and (2) the candles indicate that they are to be used as an insect repellent, and are marketed as such. Moreover, the amount of citronella is greater than that found in the out of scope Target Ruling candle, i.e., 1-1/2 percent citronella (as compared to 6 percent in the instant candles). Finally, we note that Petitioner did not address any of AGR's arguments.

Therefore, consistent with our prior scope rulings, and based on the record evidence in this case, we find that the citronella rope candles are outside the scope of the Order because they are insect repellent candles for outdoor use only.

### **Conclusion**

Based on the information submitted by AGR, the Department's precedent, and our analysis of the candle's function/depiction for the citronella rope candles, we find that because this candle both (1) contains and advertises an insect repellent function; and (2) is intended for outdoor use, it is not a standard petroleum wax candle and, therefore, is outside the scope of the Order.

### **RECOMMENDATION**

We recommend the Department find AGR's product, described as consisting of a cotton wick, dipped in light yellow wax (made of palm oil and paraffin wax and containing at least 6 percent citronella oil ) that is coiled vertically outside the scope of the Order.

If you agree, we will send the attached letter to the interested parties, and will notify CBP of our determination.

\_\_\_\_\_ Agree

\_\_\_\_\_ Disagree

\_\_\_\_\_  
John M. Andersen  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

\_\_\_\_\_  
Date