

A-570-504
Scope Review
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By Certified Mail, Return Receipt Requested

To All Interested Parties:

On September 19, 2001, the Department of Commerce (the Department) received two requests from Atico International, Inc. (Atico) for scope rulings on whether two types of candles it imports, one “Filled Paraffin Wax Gel” candle (Item No. C78H-0356), and one “Tier Disk Heart-Shaped” candle (Item No. C78H-0257), 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 both of these candles are within 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 Julio Fernandez at (202) 482-0961.

Sincerely,

Barbara E. Tillman
Director
Office of AD/CVD Enforcement VII
Import Administration

Enclosure

MEMORANDUM FOR: Joseph A. Spetrini
Deputy Assistant Secretary
for Import Administration, Group III

FROM: Barbara E. Tillman
Director
Office of AD/CVD Enforcement VII

SUBJECT: Final Scope Ruling; Antidumping Duty Order on Petroleum Wax
Candles From the People's Republic of China (A-570-504); Atico
International, Inc.

Summary

On September 19, 2001, the Department of Commerce (the Department) received two requests from Atico International, Inc. (Atico) for a scope ruling on two types of candles, one "Filled Paraffin Wax Gel" candle (Item No. C78H-0356), and one "Tier Disk Heart-Shaped" candle (Item No. C78H-0257) to determine if they are within the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) (Petroleum Wax Candles from the PRC: Final Determination of Sales at Less Than Fair Value, 51 FR 25085 (July 10, 1986) (Final Determination); 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 both of these candles are within the scope of the antidumping duty order on petroleum wax candles from the PRC.¹

¹ The Department has developed an internet website that allows interested parties to access prior scope determinations regarding the antidumping duty Order on Petroleum Wax Candles from the People's Republic of China. 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.

Background

Atico filed its requests for scope rulings in proper form on September 19, 2001. The National Candle Association (NCA), an interested party in this proceeding, filed comments on Atico's requests on November 16, 2001, November 28, 2001, and February 4, 2002.

On February 15, 2002, the Department contacted Atico, in writing, providing Atico an opportunity to submit rebuttal comments to the NCA's November 28, 2001 and February 4, 2002 submissions, no later than February 22, 2002. Atico did not submit rebuttal comments in response to the NCA's submissions. A memorandum regarding the Department's decision to extend the 45-day deadline for this scope inquiry has been placed on the record. See Memorandum to the File through Sally C. Gannon from Brett L. Royce, Petroleum Wax Candles from the People's Republic of China: Change in Practice Regarding Scope Reviews as a Result of the JCPenney Purchasing Corporation Ruling (Nov. 28, 2001).

In its November 16, 2001, and November 28, 2001, comments regarding Atico's candles, the NCA requested that Atico submit empirical evidence regarding the exact composition of Atico's paraffin wax gel candle. On December 28, 2001, the Department contacted Atico and requested that Atico provide test results regarding the composition of its filled paraffin wax gel candle (Item No. C78H-0356) no later than January 25, 2002. Atico submitted test results for its filled paraffin wax gel candle on January 24, 2002.

The regulations governing the Department's antidumping scope determinations are found at 19 CFR 351.225 (2001). 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 International Trade Commission (the Commission). 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 within the order. See 19 CFR 351.225(d).

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) 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 consideration of all evidence presented to the Department.

In the instant case, the Department has evaluated Atico's request in accordance with 19 CFR 351.225(k)(1), and the Department 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 Commission, are, in fact, dispositive. Therefore, 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 deemed relevant by the Department to this scope ruling 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:

[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

(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); Preliminary Determination of Sales at Less Than Fair Value, 51 FR 6016 (February 19, 1986); Final Determination; See also Order.

The Commission adopted a similar definition of the "like product" subject to its final determination, noting that the investigations did not include "birthday, birthday numeral and figurine type candles" (Determination of the Commission (Final), USITC Publication 1888, August 1986, at 4, note 5, and A-2 (Commission Determination)).

Also of relevance to the present scope inquiry is a notice issued to the U.S. Customs Service in connection with a July 1987 scope determination concerning an exception from the Order for novelty candles, which 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), (CIE –212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987) (Customs Notice) (emphasis added).

Below is a description of the products for which Atico requested a scope ruling, as well as a summary of the interested party comments, and our analysis of those comments.

Atico's Scope Request

Regarding its "Filled Paraffin Wax Gel" candle, Atico argues that the models subject to this inquiry are not covered by the Order's scope because their majority component is not petroleum wax, but instead is paraffin wax gel. Atico argues that its "Filled Paraffin Wax Gel" candle (Item No. C78H-0356) is not within the Order's scope because it is "made of 100% Paraffin Wax Gel, not in Petroleum Wax." With respect to its "Tier Disk Heart-Shaped" candle (Item No. C78H-0257), Atico argues this candle is not within the scope of the Order because it is "a tier disk heart shape, not in a column shape."² Atico did not include a sample of each candle with its request. However, the Department obtained, via e-mail, color photographs of each candle in lieu of actual samples.³

The National Candle Association's Comments

² See Atico's September 19, 2001 submissions, at 1.

³ See Memorandum to the File through Sally C. Gannon from Matthew Renkey, Petroleum Wax Candles from the People's Republic of China: Scope Inquiry from Atico International USA, Inc., (October 23, 2001).

In its November 28, 2001 comments, the NCA retraces the history of this antidumping duty order, including the import surges and resultant injury suffered by domestic manufacturers which prompted the original September 1985 antidumping petition. Turning specifically to Atico's request, the NCA asserts that, with respect to the novelty exception, "the Department narrowly limited the novelty candle exception to figurine candles, candles shaped in the form of identifiable objects, and candles specifically designed for use only in connection with the holiday season" (NCA's November 28, 2001 comments at 4). The NCA further argues that nothing inherent in the design of Atico's subject candles limits their use to the Christmas holiday season, adding that "[s]cenes or symbols of the winter season alone are not included in the holiday exception" (NCA's November 28, 2001 comments at 6).

With respect to Atico's "Tier Disk Heart-Shaped" candle, the NCA asserts that this candle is made from petroleum wax, contains a wick in the candle's center, and is in the shape of a pillar (NCA's November 28, 2001 comments at 4). The NCA further asserts that this candle, when viewed from the side, cannot be recognized as a heart, but rather, appears to be a pillar, a shape specifically covered by the Order. Additionally, the NCA citing to 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) argues that the Department has previously held "that the novelty design or shape of a candle must be capable of being seen from multiple angles."⁴ The NCA further asserts that "[h]eart designs do not contain scenes or symbols specifically related to any holiday, nor are their uses attributed solely to any holiday." See Russ Berrie & Co. v. United States, 57 F. Supp. 2d 1184 (CIT July 1999); see also Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Russ Berrie & Company, Inc. (Russ Berrie & Co.) (September 25, 1997).

Turning to Atico's "Filled Paraffin Wax Gel" candle, the NCA argues that this candle is a wax-filled container, a shape that is clearly identified in the scope of the Order. It also asserts the NCA's position that ". . . gel wax and paraffin wax are the same or similar to petroleum wax," incorporating by reference all of its submissions in the pending scope inquiry requested by Burlington Toiletries, Ltd., on its "gel" candle model 70184 (received by the Department on August 8, 2000) (NCA's November 28, 2001 comments at 6).

The NCA argues that Atico's candles compete in the same channels of trade as the candles subject to the Order, and that their sale in the absence of the antidumping duty will severely injure the U.S. candle producers. The NCA notes what it characterizes as the long-standing efforts of candle importers to "expand the 'novelty candle' loophole in the Order through a continuing stream of scope requests, causing the Order on PRC candles to be subjected to over seventy Final Scope Rulings and many more requests." The NCA maintains that the success of the scope requests in eroding the Order has resulted in large increases in the volume of PRC candles coming into the United States. The NCA

⁴ See the NCA's November 28, 2001 comments at 5.

further notes that “[i]f the Department grants Atico’s requests, it will severely damage the efficacy of the Order” (NCA’s November 28, 2001 comments at 7).

In its February 4, 2002 supplemental comments, the NCA asserts that the empirical information submitted by Atico regarding this candle indicates that Atico’s “filled paraffin wax gel” candle is made entirely from paraffin wax, *i.e.*, petroleum wax. In support of its argument that paraffin wax is equivalent to petroleum wax, the NCA includes excerpts from Candle Crafting From an Art to a Science,⁵ in which the author states that “[p]etroleum wax is a mixture of hydrocarbons, known as paraffins,” and from Industrial Waxes,⁶ in which the author states that “[t]he United States Pharmacopeia defines paraffin wax as a purified mixture of solid hydrocarbons obtained from petroleum. . .” (NCA’s February 4, 2002 comments at 1). The NCA further argues that the heart-shaped decoration at the top of the candle does not qualify this candle for a novelty candle exception, adding that the “. . . Department has consistently held that heart symbols or designs are not holiday designs” (*Id.* at 2).

Analysis

When determining whether or not a particular product claimed as a novelty candle is within the scope of the antidumping duty order, the Department’s first line of inquiry is whether the shape of the candle falls within those shapes listed by the inclusive language of the Order’s scope, *i.e.*, “tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers.” If a candle falls within one of the above delineated shapes, it will be determined to be within the Order’s scope. Candles of a shape not listed by the inclusive language of the Order’s scope will then be evaluated to determine whether they are “scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.”

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 July 1987 novelty candle exception (Customs Notice), it will fall outside the scope of the Order. In order for a candle to qualify for this 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 exclusion from 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-

⁵ Nussle, William, *Candle Crafting From an Art to a Science*, New York: A.S. Barnes and Company, 1971.

⁶ Bennett, H., *Industrial Waxes (Volume 1)*, New York: Chemical Publishing Company, Inc., 1975.

specific design is not identifiable from most angles, or if the design or characteristic is minimally decorative, the Department may determine that the candle does not qualify for exclusion from the Order under the novelty candle exception. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); JCPenney Purchasing Corp. (May 21, 2001) (JCPenney Corp.); San Francisco Candle Co. (Feb. 12, 2001) (SFCC); Endar Corp. If a candle does not possess characteristics set out in the July 1987 novelty candle exception, and it is a scented or unscented petroleum wax candle made from petroleum wax and having fiber or paper-cored wick, the Department will determine that the candle is within the scope of the Order.

With respect to the instant request by Atico, we find that, for the reasons outlined below, both of Atico’s candles are within the scope of the Order.

1. Filled Paraffin Wax Gel Candle (Item No. C78H-0356)

This item is approximately 2 inches in diameter and 3 inches in height, and is a wax-filled glass container with a lid. The top of the candle’s lid contains a heart-shaped decoration. As outlined in the “Background” section above, the Department requested that Atico submit empirical evidence regarding the composition of this candle. Atico submitted test results for this candle, obtained from an independent testing facility, on January 24, 2002. The results illustrate that the “[u]pper gel type layer of the candle was identified as mainly paraffin wax with a small amount of unidentified components. The lower layer in the glass candle holder was identified as a paraffin wax.” See test results submitted by Atico on January 24, 2002.

We agree with the NCA that the heart decoration on the top of Atico’s candle does not qualify this candle for the novelty exclusion. Based on the information on the record, we conclude that Atico’s Filled Paraffin Wax Gel candle does not contain scenes or symbols specifically related to a holiday or other special event and that its use is not attributed solely to the Valentine’s Day season. See Russ Berrie & Co. We agree with the NCA that the testing documentation provided by Atico with respect to this candle illustrates the candle is made almost entirely from paraffin wax. In its request, Atico did not provide support that this candle is not within the scope of the Order because it is made of 100 percent paraffin wax gel, not of petroleum wax (Atico’s September 11, 2001 comments at 1). Therefore, nothing on the record of this scope inquiry disputes the NCA’s assertion that paraffin wax is equivalent to petroleum wax. Given the evidence presented on the record of this scope ruling, we find the paraffin wax contained in Atico’s candle to be petroleum-derived. Furthermore, this candle is clearly composed of a glass container containing paraffin wax. Since the scope of the Order includes “. . . various wax-filled containers,” we find that this candle falls within the scope of the Order. We find that this item should be included within the scope of the Order notwithstanding the July 1987 novelty candle exception, because only the top of the candle’s lid contains a heart-shaped decoration, and as such the decoration is only minimally decorative since it is small in comparison to the majority of the candle and is singularly placed in the center of the lid. The majority of the candle is comprised of a wax-filled container, and therefore should be included within the scope of the Order.

2. Tier Disk Heart-Shaped Candle (Item No. H74Q-8470)

This candle is approximately 3 inches in height and length, contains a wick in the top of the candle's center, and is made from petroleum wax. We disagree with Atico that this candle's shape, when viewed from most angles, can be clearly identified as a heart. Only when viewed from the top is the heart-shape apparent; when viewed from multiple side angles, this candle's shape appears to be that of a pillar. See Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Endar Corp.

(April 7, 1999). By the language of the Order, a "pillar" is specifically included within the scope. In addition, the Department has ruled in the past that heart-shaped candles not containing "scenes or symbols specifically related to a holiday or other special event" are within the scope of the Order, because their use is not attributed solely to the Valentine's Day season.⁷ Because the Department has previously ruled that heart-shaped candles that do not contain scenes or symbols which are specifically related to a holiday or other special event are within the scope, and because the "heart" shape of Atico's candle is only apparent when viewed from the top, this candle should be included within the scope of the Order.

Summary

Atico's "Filled Paraffin Gel Wax" candle, measuring approximately 3 inches in height, is made entirely from paraffin wax, which the record indicates is equivalent to petroleum wax. Atico's "Tier Disk Heart-Shaped" candle, which measures approximately 3 inches in height and length, resembles a pillar, which is one of the delineated shapes outlined in the Order. Therefore, these products should be determined to be within the scope of the Order. This conclusion is consistent with the scope of the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations), the Commission, and the Order.

Recommendation

Based on the preceding analysis, we recommend the Department find that both of Atico's candles, as described above, are within the scope of the antidumping duty order on petroleum wax candles from the PRC.

⁷ See Russ Berrie & Co.

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
for Import Administration, Group III

Date

Attachment