

A-570-504
Scope Review
PUBLIC DOCUMENT
DAS III (7): BLR

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On February 26, 2002, the Department of Commerce (the Department) received a request from T S Group, Inc. for a scope ruling on whether eight types of candles it plans to import 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 all eight candles fall 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 Brett L. Royce at (202) 482-4106.

Sincerely,

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

Enclosure

MEMORANDUM FOR: Joseph A. Spetrini
Deputy Assistant Secretary
Enforcement 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);
T S Group, Inc.

Summary

On February 26, 2002, the Department of Commerce (the Department) received a request from T S Group, Inc. (T S Group) for a scope ruling on eight candles (a 3.5 inch white "utility" candle; a 3.75 inch white "utility" candle; a 5 inch white "utility" candle; a 5.5 inch beige "spiraled utility" candle; a 5 inch white and blue "utility" candle; a 5 inch orange "utility" candle; a 5 inch blue "utility" candle; and a 3.75 inch pink "utility" candle) to determine if they are covered by the antidumping duty order April 5, 2002 on petroleum wax candles from the People's Republic of China (PRC) (the Order). Petroleum Wax Candles from the PRC: Final Determination of Sales at Less Than Fair Value, 51 FR 25085 (July 10, 1986) (Final Determination). In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that all eight candles fall within the scope of the Order.

Background

Section 351.103(b) of the Department's regulations states that "no document will be considered as having been received by the Secretary unless it is submitted to the Central Records Unit (CRU) with the date and time of receipt." On February 15, 2002, the Department received a letter from T S Group requesting a scope ruling that was not submitted to the CRU in proper order. The Department subsequently contacted T S Group, who requested that the Department retain the enclosed sample and allow T S Group to submit a request in proper order. T S Group's ensuing request for a scope ruling was received directly by the analyst and not by the CRU. It was filed by a Department analyst with the CRU on February 26, 2002.

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 determinations of the Secretary and the International Trade Commission (the Commission), the initial investigation and the antidumping duty 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(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: 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 evaluated T S Group's requests in accordance with 19 CFR 351.225(k)(1) and the Department finds that the descriptions of the products contained in the petition, the final determinations of the Secretary (including prior scope determinations) and the Commission, the initial investigation and the antidumping duty order 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. 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; and Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986).

The Commission 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” (Determinations 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 United States 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 N-212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987) (emphasis added).

T S Group's Scope Request

T S Group argues that all candles subject to this inquiry (a 3.5 inch white “utility” candle; a 3.75 inch white “utility” candle; a 5 inch white “utility” candle; a 5.5 inch beige “spiraled utility” candle; a 5 inch white and blue “utility” candle; a 5 inch orange “utility” candle; a 5 inch blue “utility” candle; and a 3.75 inch pink “utility” candle) are household-utility candles, which are not covered by the scope of the Order. T S Group included a sample of each candle with its scope request.

The National Candle Association's Comments

In its 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. Petitioner contends that the antidumping statute and antidumping duty orders are remedial in nature and exceptions to them should be construed as narrowly as possible to preserve the efficacy of the Order. In support of its assertion, petitioner cites a Court of International Trade conclusion, with regards to the novelty exception, that “. . . a candle must be specifically designed for use only in connection with a religious holiday or special event to fall within the novelty candle exception.” See Russ Berrie & Co., Inc. v. United States, 57 F. Supp. 2d 1184, 1194 (CIT July, 1999) (Russ Berrie). Thus, petitioners argue that 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. The NCA commented on three of the five candles submitted by T S Group.

The NCA contends that the subject candles are either tapers or pillars made from petroleum wax in the PRC and have a wick, thus falling within the scope of the Order. According to the NCA, “T S Group does not allege that its candles contain any designs which would make these candles specifically designed for use only in connection with a holiday, nor are they in the shapes of identifiable objects” (NCA comments at 4). Furthermore, the NCA holds that the sole basis for the respondent's claim for exclusion is its allegation that the subject candles are utility candles. The NCA also goes on to argue that tapers and pillars come in various sizes including under 6 inches in height and 0.75 inches in diameter. Examples were provided by the NCA in Exhibit 1 of its comments.

The NCA further states that utility candles are not defined by height (6 inches) and (diameter) (0.75 inches). The NCA states that, “[t]he household utility candle is a functional candle only designed for giving light...they do not have any scent, nor any decoration, and are only white in color” (NCA comments at 4). The NCA requests that the 0.75 inch diameter white candles be tested to determine if they have a scent and whether they only come in the color of white.

The NCA notes that T S Group's candles compete in the same channels of trade as the candles subject to the Order, and that their sale without the antidumping duty will severely injure the U.S. candle producers. It further 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.” Petitioner maintains that the success of the scope requests in eroding the Order has resulted in geometric increases in the volume of PRC candles coming into the United States. Petitioner concludes by stating that T S Group is now asking the Department to narrow the scope of the Order so that it excludes everyday candles, claiming that they are novelty candles, and that the Department does not have such legal authority.

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."¹ If the Department determines that the candle is made from petroleum wax and has a

¹ The Department has changed its practice on this issue. In past scope rulings, the Department has determined that candles not of a shape listed by the language of the Order's scope were outside the scope. See, e.g., Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Ender Corp. (Jan. 11, 2000) (Ender Corp.) ("dragonfly" candle, in the shape of a rough-hewn stone with a dragon fly carved on top, not within scope because it is of a shape not listed by the scope); American Drug Stores, Inc. (Mar. 16, 1998) (sphere or ball shaped candle not within scope because it is 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); San Francisco Candle Co. (June 10, 1993) (ball shaped candle not within scope because it is of a shape not listed by the scope). The reason for the change is that, upon review of the text of the scope of the Order, the text of the first sentence of the scope covers "scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks." The text following this broad inclusive sentence provides a list of shapes, which list is not modified by any express words of exclusivity. The result of our prior practice of excluding candles of a shape other than those listed was inconsistent with the fact that such candles were "scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks." We have now determined that this practice was incorrect 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, in order to give full effect to the first sentence of the inclusive language of the scope, the Department normally will 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. 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) (JC Penney Ruling).

This approach of evaluating such candles in light of the entire text of the 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

fiber or paper-cored wick, but the candle possesses characteristics set out in the July 1987 novelty candle exception, it will fall outside the scope of the Order. In order for a candle to qualify for this exception, the characteristic(s) which are claimed to render it a novelty candle must be visible from most angles, as opposed to minimally visible. 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); San Francisco Candle Co. (Feb. 12, 2001); Endar Corp. (Jan. 11, 2000). 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, we find that for the reasons outlined below, the following candles fall within the scope of the Order.

3.5 Inch White “Utility” Candle (M3)

T S Group contends that this candle is an unscented white taper, measuring 3.5 inches in height and 0.69 inches in diameter with a fiber-wick. T S Group further argues that the subject candle is a household utility candle, as it is under 6 inches in height and 0.75 inches in diameter. T S Group cites to the Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Simcha Candle Co. (February 12, 1993) (Simcha Candle). The Department disagrees with T S Group’s argument as our practice has changed subsequent to that ruling. See JC Penney Ruling. In addition, under the new practice, the Department no longer considers the intent of the petitioner, *i.e.*, the alleged use of the candle for household utility. Pursuant to the new language, we find that the subject candle is a taper, a shape listed by the inclusive language of the Order’s scope, unscented, made from petroleum wax and having a fiber cord wick. Thus, this candle falls within the scope of the Order.

3.75 Inch White “Utility” Candle (ABE1)

T S Group contends that this candle is an unscented white taper, measuring 3.75 inches in height and 0.69 inches in diameter with a fiber-wick. T S Group further argues that the subject candle is a household utility candle, as it is under 6 inches in height and 0.75 inches in diameter. T S Group cites to See Simcha Candle. The Department disagrees with T S Group’s argument as our practice has changed subsequent to that ruling. See JC Penney Ruling. In addition, under the new practice, the Department no longer considers the intent of the petitioner, *i.e.*, the alleged use of the candle for household utility. Pursuant to the new language, we find that the subject candle

Steel, Inc. v. United States, 146 F. Supp. 2d 913 (CIT 2001). Such an approach is a departure from past CIT precedent that required Commerce 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).

is a taper, a shape listed by the inclusive language of the Order's scope, unscented, made from petroleum wax and having a fiber cord wick. Thus, this candle falls within the scope of the Order.

5 Inch White "Utility" Candle (APP1)

T S Group contends that this candle is an unscented white taper, measuring 5 inches in height and 0.69 inches in diameter with a fiber-wick. T S Group further argues that the subject candle is a household utility candle, as it is under 6 inches in height and 0.75 inches in diameter.

T S Group cites to See Simcha Candle. The Department disagrees with T S Group's argument as our practice has changed subsequent to that ruling. See JC Penney Ruling. In addition, under the new practice, the Department no longer considers the intent of the petitioner, *i.e.*, the alleged use of the candle for household utility. Pursuant to the new language, we find that the subject candle is a taper, a shape listed by the inclusive language of the Order's scope, unscented, made from petroleum wax and having a fiber cord wick. Thus, this candle falls within the scope of the Order.

5.5 Inch Beige "Spiraled-Utility" Candle (AV16)

T S Group contends that this candle is an unscented beige spiral, measuring 5.5 inches in height and 0.25 inches in diameter with a fiber-wick. Further, T S Group argues that subject candle is a household utility candle, as it is colored, under 6 inches in height and 0.75 inches in diameter.

T S Group cites to See Simcha Candle. The Department disagrees with T S Group's argument as our practice has changed subsequent to that ruling. See JC Penney Ruling. In addition, under the new practice, the Department no longer considers the intent of the petitioner, *i.e.*, the alleged use of the candle for household utility. Pursuant to the new language, we find that the subject candle is a spiral, a shape listed by the inclusive language of the Order's scope, unscented, made from petroleum wax and having a fiber cord wick. Thus, this candle falls within the scope of the Order.

5 Inch White and Blue "Utility" Candle (AV14)

T S Group contends that this candle is an unscented white taper, decorated with a blue "stem with leaves," measuring 5 inches in height and 0.25 inches in diameter with a fiber-wick. Also, T S Group argues that the subject candle is a household utility candle, as it is decorated, under 6 inches in height and 0.75 inches in diameter. T S Group cites to See Simcha Candle. The Department disagrees with T S Group's argument as our practice has changed subsequent to that ruling. See JC Penney Ruling. In addition, under the new practice, the Department no longer considers the intent of the petitioner, *i.e.*, the alleged use of the candle for household utility. Pursuant to the new language, we find that the subject candle is a taper, a shape listed by the inclusive language of the Order's scope, unscented, made from petroleum wax and having a fiber cord wick. Thus, this candle falls within the scope of the Order.

5 Inch Orange “Utility” Candle

T S Group contends that this candle is an unscented orange, measuring 5 inches in height and 0.25 inches in diameter with a fiber-wick. Further, T S Group argues that subject candle is a household utility candle, as it is colored, under 6 inches in height and 0.75 inches in diameter. T S Group cites to See Simcha Candle. The Department disagrees with T S Group’s argument as our practice has changed subsequent to that ruling. See JC Penney Ruling. In addition, under the new practice, the Department no longer considers the intent of the petitioner, *i.e.*, the alleged use of the candle for household utility. Pursuant to the new language, we find that the subject candle is a taper, a shape listed by the inclusive language of the Order’s scope, unscented, made from petroleum wax and having a fiber cord wick. Thus, this candle falls within the scope of the Order.

3.75 Inch Pink “Utility” Candle

T S Group contends that this candle is an unscented pink taper, measuring 3.75 inches in height and 0.25 inches in diameter with a fiber-wick. Also, T S Group argues that the subject candle is a household utility candle, as it is colored, under 6 inches in height and 0.75 inches in diameter. T S Group cites to See Simcha Candle. The Department disagrees with T S Group’s argument as our practice has changed subsequent to that ruling. See JC Penney Ruling. In addition, under the new practice, the Department no longer considers the intent of the petitioner, *i.e.*, the alleged use of the candle for household utility. Pursuant to the new language, we find that the subject candle is a taper, a shape listed by the inclusive language of the Order’s scope, unscented, made from petroleum wax and having a fiber cord wick. Thus, this candle falls within the scope of the Order.

Summary

T S Group’s 3.5 inch white “utility” candle; 3.75 inch white “utility” candle; 5 inch white “utility” candle; 5 inch white and blue “utility” candle; 5 inch orange “utility” candle; 5 inch blue “utility” candle; and 3.75 inch pink “utility” candle are tapers, and its 5.5 inch beige “spiraled utility” candle is a spiral, pursuant to the new language. Thus, these candles fall within the scope of the Order. This conclusion is consistent with the scope of the investigation and the Order, as defined in the petition, as well as the Department’s and the Commission’s prior determinations.

Recommendation

Based on the preceding analysis, we recommend that the Department find the “3.5 inch white “utility” candle; the 3.75 inch white “utility” candle; the 5 inch white “utility” candle; the 5.5 inch beige “spiraled utility” candle; the 5 inch white and blue “utility” candle; the 5 inch orange “utility” candle; the 5 inch blue “utility” candle; and the 3.75 inch pink “utility” candle within the scope of the Order.

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