

A-570-504
Scope Review
PUBLIC DOCUMENT
Enforcement Group III: JAF

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On March 30, 2001, the Department of Commerce (the Department) received a request from Avon Products, Inc. (Avon) for a scope ruling on whether two 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 both of these candles are 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 the U.S. Customs Service of this decision. If you have any questions, please contact Julio Fernandez at (202) 482-0190.

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); Avon

Summary

On March 30, 2001, the Department of Commerce (the Department) received a request from Avon Products, Inc. (Avon) for a scope ruling on two candles to determine if they are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) (Petroleum Wax Candles from the PRC, 51 FR 25085 (July 10, 1986)). The National Candle Association (NCA), petitioner in this case, submitted comments on Avon's request on April 25, 2001. In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that both of Avon's candles are outside the scope of the antidumping duty order on petroleum wax candles from the PRC.

Background

Avon filed its request for a scope ruling in proper form on March 30, 2001. The NCA's timely comments followed on April 24, 2001.

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(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). 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 Department applies these criteria when it is unclear whether the product which is the subject of the scope ruling fits within the product descriptions contained in the petition, the determinations of the Secretary and the Commission, the investigation, and the order. 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 Avon's request in accordance with 19 CFR 351.225(k)(1); 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.

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:

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 (*Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 50 FR 39743 (September 30, 1985); *see also Preliminary Determination of Sales at Less Than Fair Value*, 51 FR 6016 (February 19, 1986), *Final Determination*, 51 FR 25085

(July 10, 1986), 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, 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).

Avon's Scope Request

Avon argues that both models subject to this inquiry: i) are Christmas novelty candles that fall under the holiday novelty exemption; ii) bear Christmas motifs that cannot be removed without damaging the candle; and iii) will be bought and sold only during the Christmas season. Avon included a sample of one of the models with its scope request. (Avon's Request at 3). The subject candles are decorated with holly leaves and berries molded on the exterior of the candles, as further described below under “Analysis.”

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. Turning specifically to Avon's request, petitioner asserts that, “Commerce has denied exclusion to candles that depict scenes, symbols or items related to late fall and winter months, or mere generic decorations, such as flowers, leaves, berries, jingle bells or winter scenes.” (NCA's comments at 4).

The NCA concludes by noting what it characterizes as the long standing efforts of candle importers to “. . .evade or circumvent the Order. The Order is vital to the survival of the U.S. candle industry. Avon is now asking Commerce to narrow the scope of the Order so that it excludes everyday candles claiming that they are novelty candles. Commerce does not have the legal authority to narrow the scope of the Order. Furthermore, if Commerce grants Avon’s requests, it will severely damage the efficacy of the Order.” (NCA’s comments at 7).

Analysis

The three factors noted above, under “Avon’s Scope Request,” are those which Avon contends render its candles outside the scope of the Order as holiday novelty candles. For the reasons discussed below, the Department subscribes to Avon’s interpretation of the scope of the order.

When determining whether or not a particular product claimed as a holiday 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 is one delineated in the language of the Order’s scope, *i.e.*, “tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers.” As explained in the September 1987 Customs Information Exchange notice CIE N-212/85 and in previous scope rulings by the Department, novelty candles which are in a shape otherwise within the scope of the Order fall outside the scope of the Order due to the characteristic that renders them novelty candles. Characteristics that can exclude a candle from the Order’s scope under the novelty exemption are limited to i) if a candle depicts scenes or symbols of a specific holiday; ii) if a candle is in the form of a figurine; and iii) if a candle is in the shape of an identifiable object. With respect to the instant request, we find that for the reasons outlined below, both candles fall outside the scope of the Order.

1. Holly Berry Pillar Candle (Product Profile No. 221227)

Avon maintains that the sample candle provided, a green scented pillar candle, decorated with raised holly leaves and holly berries molded on the exterior of the candle, is a Christmas novelty candle. The Department agrees with this assertion. The holly images represent significant decorations, are clearly identifiable as holly, and are visible from multiple angles. Since the Court of International Trade has previously held that the holly sprig is a symbol associated with Christmas, and since removing the holly berries would cause significant damage to the candle, this candle should be excluded from the scope of the Order. This decision is consistent with Springwater Cookie & Confections v. The United States (Slip Op. 96-160, CIT, September 25, 1996).

2. Holly Berry Pillar Candle (Holly Berries Painted Red)

Avon has also requested the Department determine whether a candle, identical in all physical respects to the Holly Berry Pillar Candle discussed above, except containing holly berries painted red, would be outside the scope of the Order. The Department agrees with this assertion. The

raised holly images represent significant decorations, are clearly identifiable as holly, and are visible from multiple angles. For the reasons outlined in our analysis above, and because removal of the red holly berries would similarly cause significant damage to the candle, this candle is therefore ruled to be outside the scope of the Order. This decision is consistent with Springwater Cookie & Confections v. The United States (Slip Op. 96-160, CIT, September 25, 1996).

Summary

These facts demonstrate that in both cases, Avon’s candles should be considered under the novelty exemption as holiday candles. As a result, we find that both of Avon’s candles fall outside 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 determinations.

Recommendation

Based on the preceding analysis, we recommend the Department find that both of Avon’s candles, as described above, should be excluded from the antidumping duty order on petroleum wax candles from the PRC.

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
Enforcement Group III

Date

Attachment