

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

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On April 27, 2001, the Department of Commerce (the Department) received a request from Avon Products, Inc. (Avon) for a scope ruling on whether one type of candle it plans to import is 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 this candle is 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 Matthew Renkey at (202) 482-2312.

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
Products, Inc.

Summary

On April 27, 2001, the Department of Commerce (the Department) received a request from Avon Products, Inc. (Avon) for a scope ruling on one candle to determine if it is 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)). In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that this candle is covered by 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 April 27, 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); 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 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 (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 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).

Avon’s Scope Request

Avon argues that the model subject to this inquiry is in the form of an identifiable object, a tear. Avon included a sample of the candle with its scope request. According to Avon, the subject candle “...is a teardrop shaped candle measuring approximately 4 inches in height with an approximate base diameter of 1¾ inches...” (Avon’s Request at 1).

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 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.” If a candle falls within one of the above shapes, it would be within the Order’s scope, unless it otherwise possessed holiday-specific decorations. However, if a candle is in the form of an identifiable object, then it would not fall within one of the shapes designated above, and would be determined to be outside the scope of the Order.

With respect to the instant request, we find that for the reasons outlined below, this candle falls within the scope of the Order.

Avon claims that its candle is in the shape of a teardrop, an identifiable object. The candle actually has a round base and gradually tapers to a point at the top. We consider this shape to constitute a taper and, therefore, consider Avon's candle to be within the scope of the Order. See, e.g., Webster's Third New International Dictionary (1993) (including as a definition of taper, "regularly narrowed toward a point").

In its request, Avon relies on the following quotation found in Russ Berrie & Company v. United States, Slip Op. 99-61 (CIT, July 13, 1999) (Russ Berrie):

Commerce identified a limited set of candles, specifically certain 'novelty candles,' that fall outside the scope of the Order.... It stated that figurine candles and candles shaped in the form of identifiable objects were outside the scope of the Order.... By doing so, it was not *creating* an exception for figurines and candles in the form of identifiable objects generally. Rather, it *clarifies* that such candles were excluded from the scope of the Order because shapes covered by the Order are tapers, spirals, straight-sided dinner candles, rounds, columns, pillars and votives.

This language from Russ Berrie does not lend support to Avon's position; rather, the very language Avon relies on actually supports the Department's determination here that Avon's "teardrop" candle is within the scope of the Order because it is in the shape of a taper.

For these reasons, the Department determines that this item is a taper-shaped candle within the scope of the Order.

Summary

Avon's "Tear Shaped Candle" is taper-shaped, and taper-shaped candles are 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 determinations.

Recommendation

Based on the preceding analysis, we recommend that the Department find that the “Tear Shaped Candle” (Product Profile No. 202246) is 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
Enforcement Group III

Date

Attachment