

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

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On October 22, 2001 the Department of Commerce (the Department) received a request from Premier Candle Corp. (Premier) 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 the candle falls within 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
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);
Premier Candle Corp.

Summary

On October 22, 2001 the Department of Commerce (the Department) received a request from Premier Candle Corp. (Premier) 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) (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 this candle falls within the scope of the Order.

Background

Premier filed its request for a scope ruling in proper form on October 22, 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 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 Premier'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 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).

Premier’s Scope Request

Premier contends that the candle subject to this inquiry is in the shape of a pink-colored tulip. Premier further argues that this candle is not a pure candle on the whole, “as the outer flower-shaped wax container will remain after the inner wax is consumed,” and could have other possible uses, such as a lantern, votive/pencil holder, or as a decorative item. Thus Premier believes that this candle is not covered by the scope of the Order. Premier included a sample of the candle with its scope request. See Premier’s October 22, 2001 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. 2nd 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.

With regards to the “tulip lantern” candle, the NCA first notes that the candle at issue is a wax-filled container that is filled with petroleum wax, with a single wick. The NCA emphasizes Premier’s description in its request of the candle as a wax-filled container, which will remain once the inner wax is consumed. The NCA argues that “[t]he Department has consistently determined that waxed-filled containers of all shapes fall within the scope of the Order, with the only exception being a design that is such that the candle can be used only during the Christmas holiday or other specific holidays” (NCA comments a 4). Moreover, the NCA claims that this scope request is similar to the Final Scope Ruling: Leader Light, Ltd. (August 31, 1998) (Leader Light), where the Department ruled that the stearin columns and rounds are waxed-filled containers and are within the scope of the Order. Further, the NCA believes that the subject candle is a decorated round not in the shape of a tulip. The NCA also contends that this candle’s design has no distinguishing features that could be attributed to Christmas or any other holiday. Thus, the NCA argues that this candle must not be excluded from the scope of the Order.

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); Endar Corp. (Jan. 11, 2000) (“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); 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

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 candle is within the scope of the Order.

Tulip Lantern Candle (Article #S130)

This candle, which Premier alleges to be in the shape of a tulip, is approximately 4 inches wide and 4 inches high. Despite Premier’s assertion, this candle is not recognizable as a tulip from all of its angles. The candle cannot be recognized as a tulip from its top, bottom, and sides. Thus, it cannot be considered a novelty candle. Therefore, the Department finds that this candle does not fall within the July 1987 exception because the characteristic which is claimed to render it a

“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 Steel, Inc. v. United States, 146 F. Supp. 2d 913 (Ct. Int’l Trade 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 (Ct. Int’l Trade 1998).

novelty candle is not visible from any of its angles. Furthermore, as described by Premier, and noted by the NCA, the candle has an outer wax container designed to remain once the inner wax is consumed; the inner wax contains a wick. While it may be true that the remaining outer wax container may have other possible uses after the inner wax is consumed, that fact does not mean this item is not a candle at the time of entry into the U.S. market. Because the scope of the Order includes "...various wax-filled containers," we find that this candle falls within 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); Cherrydale Farms (October 6, 2000).

Summary

The Tulip Lantern Candle is described by Premier as being "tulip-shaped" and a wax (wax-filled) container. As discussed above, we disagree with Premier's assertion that its Tulip Lantern Candle is an identifiable object, but concur with Premier's description, that the subject candle is a wax-filled container. Thus, we find that this candle falls 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 that this candle falls 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