

JAN 11, 2000

A-570-504
Scope Review
Public Document
Group III/7: SMC

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On November 24, 1999, the Department of Commerce ("the Department") received a request from Endar Corporation ("Endar") for a scope ruling on whether five of its candles 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 four of Endar's five 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 Sean Carey at (202) 482-3964.

Sincerely,

Barbara Tillman
Director
Office of AD/CVD Enforcement

Enclosure

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MEMORANDUM Joseph A. Spetrini
FOR: Deputy Assistant Secretary
 Enforcement Group III

FROM: Barbara Tillman
 Director
 Office of AD/CVD Enforcement

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

SUMMARY

On November 24, 1999, the Department of Commerce ("the Department") received a request from Endar Corp. ("Endar") for a scope ruling on whether five of its candles are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China ("PRC"). The National Candle Association ("NCA") filed comments on Endar's request on January 5, 2000. In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that Endar's "Round Floating," "Stress Relief Aromatherapy," "Gel" and "Bamboo" candles are covered by the scope of the antidumping duty order on petroleum wax candles from the PRC, and that the "Dragonfly" candles are outside the scope of the order.

BACKGROUND

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 ("ITC"), 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 ITC, 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 Endar's request in accordance with 19 CFR §351.225(k)(1), because the descriptions of the products contained in the petition, the final determinations of the Secretary and the ITC, 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:

[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); 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 ITC 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." See Determinations of the Commission (Final), USITC Publication 1888, August 1986, at 4, note 5, and A-2 ("ITC 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 & Radius, Ltd., July 13, 1987.

Physical Characteristics of the Products in Question

Endar described its five candles as follows:

Round Floating Candle (Item 1): This round candle, identified as NSC-196A, is approximately 3.5" high and 6" in diameter at the widest part of the candle, and comes in different sizes. It is made of paraffin-based wax, whipped to make it as light as possible, and contains a cotton thread wick.

Stress Relief, Aromatherapy Candle (Item 2): This candle, identified as CD-001, is 3" x 3" x 3", and is made of a paraffin-based wax with a cotton thread wick.

Dragonfly Candle (Item 3): This candle, identified as CS-1032, is 1.5" high, 4" long and 2" wide, and is made of a paraffin-based wax with a cotton thread wick.

Gel Candle (Item 4): This candle, identified as DR.RN-001, is manufactured from a "specially" selected and processed mineral oil, that is gelled with copolymers to give them a clear and rubbery texture. It contains no crystalline components, and contains a cotton thread wick.

Bamboo Candle (Item 5): This candle, identified as CS-1034, is 6" high and 2" in diameter, and is made of a paraffin-based wax with a cotton thread wick.

Endar submitted sample candles for the administrative record.

Comments of the Parties

Endar did not submit any additional comments beyond the above mentioned descriptions on those items that it requested a scope ruling.

The NCA argued that Endar's "round floating candle" is within the scope of the order based upon the December 24, 1998 scope determination where the Department found another variant of Endar's floating round candles covered by the scope of the order. Furthermore, the NCA states that "rounds" are one of the shapes that are included within the scope of the order, and that this candle does not qualify for the novelty candle exception.

With regard to Endar's "stress relief, aroma therapy candle," the NCA asserts that the Department has consistently found cube or square-shaped pillar candles within the scope of the order (both scented and unscented). The NCA also states that this candle cannot be considered a novelty candle because it is not restricted to a specific holiday event.

The NCA argues that Endar's "dragonfly candle" is a pillar candle with a dragonfly engraving on the top, and that the overall shape of the candle itself is not one of an identifiable object. In addition, the NCA believes that the decorative engraving does not tie this candle to any specific holiday, and therefore, it should not be considered a novelty candle.

The NCA agrees that Endar's gel candle is not within the scope of the order if it is made of gel or a mineral-oil based product. However, the NCA believes that the candle should be tested prior to rendering a scope ruling in order to ascertain the true content of the "gel" and the possible presence of any petroleum wax.

Lastly, the NCA asserts that Endar's bamboo candle is a decorative pillar candle with minimal design and decoration to be identifiable as bamboo. The NCA states that the Department has previously found other pillar candles with markings and textures on them to be within the scope of the order.

ANALYSIS

Round Floating Candle (Item 1)

The Endar floating candle is made of petroleum wax, contains a wick, and is identified as a "round." The Department has previously determined that similar Endar round floating candles were within the scope. See Final Scope Ruling: Endar Corp., December 24, 1999 (finding that the subject candles are not identifiable objects, but rather are properly identified as "rounds."). Therefore, the Department finds Endar's round floating candle within the scope of the order because "round" is a shape enumerated within the scope of the order.

Stress Relief. Aroma therapy Candle (Item 2)

As we stated above, the scope of the order covers certain scented or unscented candles in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, and votives. This candle is in the form of a cube, or square-shaped, and falls within the Department's definition of a straight-sided pillar. See Final Scope Ruling: Mervyn's, December 9, 1996 (finding that a 3" x 3" x 3" cube or square candle was within the scope of the order). Furthermore, the scent or "aroma," by itself, does not render the candle a "novelty" candle or otherwise brings it outside the scope of the order. Thus, based upon the shape of Endar's Aroma therapy Candle, we agree with the NCA and conclude that it falls within the scope of the order.

Dragonfly Candle (Item 3)

The Department has clarified that the scope of the order does not include figurine candles and candles shaped in the form of identifiable objects (e.g., animals or numerals), because such candles do not fall within the enumerated shapes in the order. This item resembles a stone with a flat backside, an engraved impression of a dragonfly on the front, and roughly hewn edges. We disagree with the NCA's characterization of this candle as a decorative pillar candle due to the candle's irregularly shaped edges. The impression of the dragonfly is only visible from the top, and is not a clearly identifiable object from other perspectives. However, this item is not one of the shapes covered by the scope of the order, and we therefore determine it to be outside the scope of the order.

Gel Candle (Item 4)

Endar stated that the clear blue rubbery material in the glass-filled container of its Gel Candle is the result of its use of a "specially selected and processed" mineral oil. We find that, based upon the evidence submitted for the record, this candle is within the scope of the order. First, both the petition and the order specifically cover wax-filled containers, and Endar has not argued that its product is not a "wax-filled container" within the meaning of the order. Second, we do not find it necessary or possible to test this candle as suggested by the NCA in order to render a scope ruling. Webster's II New Riverside University Dictionary (Houghton Mifflin Company, 1984) defines mineral oil as "a distillate of petroleum," and wax as "any of various natural unctuous viscous, or solid heat-sensitive substances." Based on this information, and because there is no contrary evidence in the record suggesting that this candle is not made from petroleum wax, we find that the mineral oil substance is the same or similar to that included within the scope of the order (i.e., petroleum wax), and that the texture of the substance is consistent with the aforementioned definition of wax. We therefore, conclude that Endar's gel candle is included in the scope of the order on petroleum wax candles from the PRC.

Bamboo Candle (Item 5)

The Department has previously found bamboo candles to be excluded from the scope of the order, but considers Endar's bamboo candle to be an exception. In the previous scope ruling, the candle was easily recognizable as bamboo because it had "characteristic circular knuckles and knots along several points of the stalk." See Final Scope Ruling: Et Al Imports, Inc. at 3, July 2, 1998. In contrast, Endar's bamboo candle has only a single ribbed joint that wraps along the center of the candle, and a single knot above the center joint. Furthermore, the center joint is only slightly raised and not easily discernable, and the single knot is not visible from all sides. Therefore, we agree with the NCA that the minimal decorative design does not make this candle easily identifiable as bamboo. Endar's Bamboo Candle is more characteristic of a "pillar," a shape that is specifically enumerated in the scope of the order, and thus, we consider this candle to be within the scope of the order.

RECOMMENDATION

We recommend the Department find that Endar's "Round Floating," "Stress Relief, Aromatherapy," "Gel" and "Bamboo" candles are within the scope of the antidumping duty order on petroleum wax candles from the PRC, and that Endar's "Dragonfly" candle is outside the scope of the antidumping duty order on petroleum wax candles from the PRC.

_____ a _____ Agree _____ Disagree

If you agree, we will send the attached letter to the interested parties, and will notify the U.S. Customs Service of our determination.

Joseph A. Spetrini
Deputy Assistant Secretary
Enforcement Group III

1-10-00

Date

Attachment