

MAY 11, 2000

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

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On March 27, 2000, Endar Corporation ("Endar") requested that the Department of Commerce ("the Department") issue 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)(l), the Department has determined that Endar's 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 Jonathan Lyons at (202) 482-0374.

Sincerely,

Richard O. Weible
Director
Enforcement Group III, Office 8

Enclosure

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

FROM: Richard O. Weible
 Director
 Enforcement Group III, Office 8

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

SUMMARY

On March 27, 2000, Endar Corporation ("Endar") requested that the Department of Commerce ("the Department") issue 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"). See Letter from Endar Corporation to the U.S. Department of Commerce, March 6, 2000 ("Endar Letter"). Rebuttal comments were filed by Barnes & Thornburg on behalf of the National Candle Association ("NCA") on Endar's request. See Letter from Barnes and Thornburg to the U.S. Department of Commerce, April 13, 2000 ("NCA Rebuttal"). In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that Endar's "Round Chinese Lanterns" (4" x 6 1/2", 2 3/4" x 3 1/2", and 2" x 3"), "Silver Studded White Votive" and "Candy Cane Floater" are within the scope of the antidumping duty order on petroleum wax candles from the PRC.

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: 1) 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 cast, 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 by 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 23, 1987.

Physical Characteristics of the Products in Question

Based upon Endar's descriptions and our review of the samples provided, the following are descriptions of the candles in question.

Round Chinese Lantern. 4" x 6 ½" (Item 1): This candle is described by Endar as having the shape of a Chinese lantern. It is a round-shaped candle with a large hollowed-out center area containing a single cotton wick. The outer surface is beehive-shaped, with a series of concentric circles creating a pattern Endar considers identifiable as a Chinese lantern.

Round Chinese Lantern, 2 ¾" x 3 ½" (Item 2): This candle is described by Endar as having the shape of a Chinese lantern. It is a round-shaped candle with a large hollowed-out center area containing a single cotton wick. The outer surface is beehive-shaped, with a series of concentric circles creating a pattern Endar considers identifiable as a lantern. The sample submitted by Endar is identical to Item 1 except for its smaller size and different color.

Round Chinese Lantern. 2" x 3" (Item 3): This candle is described by Endar as having the shape of a Chinese lantern. It is a round-shaped candle with a large hollowed-out center area containing a single cotton wick. The outer surface is beehive-shaped, with a series of concentric circles creating a pattern Endar considers identifiable as a lantern. The sample submitted by Endar is identical to Items 1 and 2 except for its size (smaller than both the aforementioned candles) and color.

Silver Studded White Votive (Item 4): This candle, identified as P/N 6532, is made of white paraffin-based wax, and is approximately 2" high x 1 ¾" diameter. It has twelve silver studs pressed into its surface and a cotton thread wick. Endar also notes that the candle is "marketed, sold and packaged as part of the Florasense Wedding Line."

Red and White Candy Cane floater (Item 5): This round candle is approximately 1" high and 2 ¾" in diameter. The candle has red and white stripes emanating outward from the center cotton thread wick. It is made of paraffin-based wax. Endar also notes that the shape is that of an identifiable object, a red and white mint candy.

Endar submitted sample candles for the administrative record.

Comments of the Parties

Based upon the descriptions outlined above, Endar argues that the candles are not of the kind or class of merchandise to which the antidumping duty order applies because the candles "are in the shape of a figurine or an identifiable object and/or novelty candles, specifically designed for use only in connection with a special event." See Endar letter at 2. Endar further argues that "because of the physical characteristics of these candles, the channels of trade, the expectations of the ultimate purchaser, and the ultimate use of the product," the candles fall outside the scope of the order.

The NCA argues that Endar's "Round Chinese Lantern" candle (Item 1) is within the scope of the order based upon the January 10, 2000 scope determination where the Department found the same Endar candle to be a "round" and therefore within the scope of the order. See Final Scope Ruling - Antidumping Order on Petroleum Wax Candles from the People's Republic of China: Endar Corp. January 10, 2000 at 5. The NCA asserts that the "round" candle submitted by Endar for the January 20, 2000 ruling was simply renamed and resubmitted to the Department. Therefore, the NCA argues, the Department must rule that the instant candle is also within the scope of the order.

For Items 2 and 3, the NCA argues that the same ruling must apply because the candles in question are merely smaller versions of Item 1. When properly characterized as rounds, the NCA notes, the candles also clearly remain within the scope of the order.

With regard to Endar's "white votive candle" (Item 4) the NCA asserts that votive candles are specifically included within the scope of the order. The NCA argues that the placement of silver studs into the candle limits the use of the candle neither to weddings nor any other specific holidays or events.

The NCA argues that Endar's "Red and White Candy Cane Floater" candle is a floating round, and thus within the scope of the order. The NCA notes that the Department has twice ruled that similar candles are within the scope of the order. First, the NCA asserts that a previous Endar floating round candle was ruled to be within the scope of the order by the Department on December 24, 1998, and that the instant candle is of a similar shape and is also characterized by Endar as floating. See Final Affirmative Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles from the Peoples Republic of China; Endar Corp., December 24, 1998 at 3. Changing the color to red and white, the NCA argues, can not change the Department's ruling. Second, the NCA notes that the Department previously ruled that a similar red and white round 1 ¼" by 2 ¼" candle, characterized as a "peppermint candy" candle, was also ruled to be within the scope of the order. See Final Affirmative Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China; Institutional Financing Services and Hallmark Cards, Inc., April 9, 1997 ("Hallmark Ruling") at 5. Because the shape of the candle is round, rather than that of an identifiable object, the NCA argues, the candle must be included within the scope of the order.

Finally, the NCA argues that the instant scope request is part of an attempt by importers to expand the "novelty candle" exemption in the order. See NCA Rebuttal at 6. The NCA argues that each of the candles in question compete in the same channels of trade and will be sold at all levels of the marketplace, as are those candles subject to the order. Additionally, the NCA asserts that the advertisement and display of Endar's candles in question would be in the same manner as candles subject to the order. The NCA concludes that a formal inquiry or investigation is unnecessary because the five candles submitted by Endar are unambiguously within the scope of the order.

ANALYSIS

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." If the candle is in one of these shapes, the Department next considers whether the candle is, in fact, a "holiday novelty candle," i.e., whether the candle is "specifically designed for use only in connection with a religious holiday or special event." See *Russ Berrie v. United States* (Russ Berrie'), Slip Op. 99-61 at 18 and 21 (CIT July 13, 1999). As explained in the September 1987 Customs Information Exchange notice CIE N-212/85 and in previous scope rulings by the Department, such candles are outside the scope of the order. Finally, if the candle does qualify as a holiday novelty candle, the Department may, if appropriate, determine if the holiday designs affixed to the candle (e.g., molded

shapes) can be removed without damaging the candle. This same reasoning would apply to any candle in one of the shapes listed in the scope of the order.

Round Chinese Lantern (Item 1)

This Endar candle is round in shape, made of petroleum wax, contains a wick, and appears to be physically identical to the round floating candle ruled to be within the scope of the order in the Department's January 10, 2000 ruling. See Final Scope Ruling: Endar Corp., January 10, 2000 at 5. Prior to that, the Department determined that similar Endar round floating candles were also within the scope of the order. Final Scope Ruling: Endar Corp., December 24, 1998 at 3 (finding that the "floating" candles are not identifiable objects, but rather are properly identified as "rounds"). Endar argues that this candle is outside of the scope because it is in the shape of an identifiable object. However, Endar's use of different descriptive language does not change the fact the instant candle appears to be identical in shape to the candle submitted by Endar in its previous scope request. The candle is, in fact a "round" as described in the scope of the order. Therefore, the Department finds Endar's "Round Chinese Lantern" candle to be round, rather than any identifiable shape, and thus within the scope of the order because "round" is a shape enumerated within the scope of the order.

Round Chinese Lantern (Item 2)

Endar's 2 $\frac{3}{4}$ " x 3 $\frac{1}{2}$ " "Chinese Lantern" candle appears identical to Item 1 except for its smaller size and different color. As explained above (in Item 1), this candle is also in the scope of the order because the shape of the candle is round, not that of an identifiable object. Because of the physical similarity of the shape and design between this candle and the aforementioned Endar candle, the Department also rules this candle to be within the scope of the order,

Round Chinese Lantern (Item 3)

Endar's description of its 2"x 3" "Chinese Lantern" candle was identical to the previous two candles, except for its smaller size and color. The shape of this candle is round, not that of an identifiable object. Thus, the Department must also determine that this candle is within the scope of the order, as it is a round candle not in the shape of an identifiable object

Silver Studded White Votive Candle (Item 4)

Endar's silver studded white votive candle is a standard white votive augmented with twelve small, silver studs that are pressed into the candle's surface (four studs on the top and eight studs around the circumference). The candle is a votive, a shape included within the scope of the order. Endar argues that the novelty exemption includes candles "having scenes or symbols of other occasions (e.g. religious holidays or special events) depicted in their designs," and that this is a novelty candle meant for weddings. We do not agree with Endar's argument that the candle is "to be used for weddings only," as the silver studs are suggestive of neither weddings nor any other specific event. In fact, the Department previously ruled that candles with stars, studs, or some other decoration pinned into the sides were within the scope of the order. In a January 13, 1995 ruling, the Department noted that pillar candles decorated with affixed round jewels, square jewels, pearls, roses, stars, dots, diamonds, hearts, and bells "do not symbolize any specific event or holiday and the ornaments can be removed from the candle without damage to the pillars" and are thus all within scope of the order. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China – Two's Company, Inc., January 13, 1995 at 4. We also do not agree with Endar that the product packaging has any bearing on whether the physical attributes of the candle itself are within the scope of the order.

Red and White Candy Cane Floater Candle (Item 5)

Endar's "red and white candy cane floater candle is made of petroleum wax, contains a wick, and is colored with red and white stripes forming a starburst from the center wick. It appears round from the top and column-shaped from the side. Endar argues that the candle's shape is that of an identifiable object -- a mint candy. The Department, however, has previously determined that similar candles were within the scope. We agree with the NCA that the Department's Hallmark Ruling previously ruled that a similar red and white, round, 1 ¼" by 2 ¼" candle, characterized as a "pepermint candy" candle by the importer, was within the scope of the order. We also agree with the NCA that the Department's December 24, 1998 ruling (finding that Endar's floating round candle is not an identifiable object, but rather is properly identified as "round") has bearing in the instant ruling. The July 1987 scope determination states that "other novelty items not within the scope of the order include candles having scenes or symbols of other occasions depicted in their designs, figurine candles, and candles shaped in the form of identifiable objects" (emphasis added). Endar's Item 5 candle may appear to be colored like an identifiable object, but its shape is clearly that of a typical "puck" round. Because the shape of the candle is a round, rather than that of an identifiable object the Department finds Endar's round floating candle to be within the scope of the order.

RECOMMENDATION

We recommend the Department find that Endar's "Round Chinese Lanterns" (4" x 6 ½", 2 ¾" x 3 ½", and 2" x 3"), "Silver Studded White Votive" and "Candy Cane Floater" candles are within the scope of the antidumping duty order on petroleum wax candles from the PRC.

_____√_____ 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

5/11/00

Date

Attachment