

JUL 7 2000

A-570-504
Scope Review
PUBLIC DOCUMENT
Enforcement Group III/7: SMC

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On May 12, 2000, the Department of Commerce (the Department) received a properly filed request from Endar Corporation (Endar) for a scope ruling on whether four 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 three of Endar's four candles are within the scope of the antidumping duty order on petroleum wax candles from the PRC. We have determined that the fourth product is outside the scope of the order, as it is shaped in the form of an identifiable object, a category of merchandise previously excluded from the scope.

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,

Richard Weible
Director
Office of AD/CVD Enforcement VIII

Enclosure

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

FROM: Richard Weible
 Director
 Office of AD/CVD Enforcement VIII

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 May 12, 2000, the Department of Commerce (the Department) received a request from Endar Corp. (Endar) for a scope ruling on whether four of its candles are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). See the Department's Memorandum to the file dated May 12, 2000. The National Candle Association, petitioner in this case, filed comments on Endar's request on May 31, 2000 (Petitioner's Comments). In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that Endar's "6"x 3" Pillar," "Green Christmas Taper," and "White Christmas Taper" candles are covered by the scope of the antidumping duty order on petroleum wax candles from the PRC, and that the "Bond Cake" candle is 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 (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 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 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 6 and 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 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." See Determinations of the Commission (Final), USITC Publication 1888, August 1986, at 4, note 5, and A-2.

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; see also Letter from the Director, Office of Compliance, to Burditt, Bowles & RADIUS, Ltd., July 13, 1987.

Endar's Scope Request

Endar argues that each of the candles subject to this inquiry i) are tapers or pillars with special designs which are integral to the candle and render them novelty items; ii) incorporate designs or shapes that make them suitable for use only in connection with specific holiday seasons; iii) are destined for use at special occasions and for special purposes, as opposed to everyday use; and iv) incorporate hand-painted designs making them relatively expensive and, therefore, not intended for routine use. See Endar's Scope Request *passim*. Endar submitted samples of each of the candles subject to this inquiry for the administrative record.

Endar described its four candles as follows:

6"x 3" Pillar (Item 1): Endar describes this product as a six-inch by three-inch pillar candle which has hand painted molded gold designs. Endar asserts that because the molded designs cannot be removed without damaging the candle, this product should be considered a novelty candle. See Endar Scope Request at 1.

Green Christmas Taper (Item 2): Endar maintains that this ten-inch taper candle is in the shape of a Christmas tree. Noting that the Department has previously excluded from the scope of this order candles shaped as identifiable objects, Endar argues that this candle is in the form of an identifiable object and, thus, exempt from duties. In addition, Endar continues, because the candle is "sold and used only during the Christmas [s]eason," it is also a holiday novelty candle, which is also excluded. *Id.* at 2.

White Christmas Taper (Item 3): Endar describes this product as a ten-inch "White Christmas taper, in the shape of a Christmas tree." As with Item 2, above, Endar argues that this candle is excluded both as a candle shaped in the form of an identifiable object and as a Christmas holiday novelty candle. *Id.*

Bond Cake (Item 4): Endar describes this as a "bond [sic] cake candle" which is 2 inches high and 3 ½ inches in diameter. Endar makes a multi-pronged argument for this candle's exclusion, asserting that it is a candle shaped in the form of an identifiable object (presumably, a bundt cake), that it is a novelty candle limited to use on special occasions, such as birthdays, and that it is more expensive than everyday candles. *Id.*

The National Candle Association's Comments

The National Candle Association, after tracing the history of this antidumping proceeding, argues that all of the candles subject to this inquiry are, in fact, within the scope of the antidumping duty order. With respect to Endar's "6"x3" Pillar" candle, petitioner states that it agrees with Endar that "this candle is a pillar, and pillars are specifically included within the scope of the [o]rder." Petitioner's Comments at 5. The National Candle Association further asserts, however, that the candle's molded gold design does not constitute a specific holiday scene or symbol because of "the year-round ubiquity of the design." *Id.*

With regard to Endar's "Green Christmas Taper" candle, the National Candle Association asserts that it is a tapered candle and not an identifiable object. Petitioner believes that the actual shape of the candle retains much more of the thin shape of a taper than that of an evergreen tree. Furthermore, the decorative detail of the candle does not alter the fundamental shape of the candle as a taper. Furthermore, petitioner continues, "nothing in the design of this taper limits this candle's

use solely to the Christmas holiday;" rather, this candle is a taper which can be used throughout the winter season.

The National Candle Association argues that Endar's "White Christmas Taper" is also a tapered candle based upon the identical reasoning cited above for the "Green Christmas Taper." Petitioner states that the design of the candle neither alters the fundamental shape of the candle as a taper to consider it an identifiable object, nor does it limit its use to a specific holiday or event.

Finally, petitioner asserts that Endar's "Bond Cake" candle is not an identifiable object but a "pillar, slightly tapered, flipped upside down" with wax poured over the top. Therefore, petitioner argues, the Department should conclude that this product is 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. If the holiday designs in question can be easily removed, the Department may find that the candle is still within the scope of the order, notwithstanding the removable decoration. This same reasoning would apply to any candle in one of the shapes listed in the scope of the order.

With respect to the instant request, there is no question that three of the four candles (the exception being the "Bond Cake," which is discussed separately below) is in a shape covered by the scope of the order; Endar acknowledges that they are tapers. Thus, as three of the four candles are presumptively within the scope of the order, our inquiry next turns to Endar's claims that these are holiday novelty candles. We find that none of these tapers represents a "holiday novelty candle" as defined by the Department in previous scope inquiries. We have always defined the "holiday novelty" exclusion rather narrowly. See *Russ Berrie*, op. cit. Candles bearing designs or symbols of a general seasonal nature, for example, have not warranted exclusion as holiday novelty candles. The Department has noted on numerous occasions that the scope of the order does not mention any exclusion on the basis of seasonal marketing. *Id.*; see also, Final Scope Ruling; *Meijer, Inc.*, September 30, 1999 at 6 ("Leaf Candle" evokes the fall season and, thus, does not qualify as a holiday novelty candle); Final Scope Ruling; *Springwater Cookie & Confection*, February 14, 1995 at 4, *aff'd* *Springwater Cookie and Confections, Inc. v. United States*, Court No. 95-03-00283, May 13, 1996 (spiral candle described as suitable for "springtime decor" does not qualify as a holiday novelty candle); Final Scope Ruling; *Success Sales, Inc.*, July 27, 1994 at 3 ("Snow Scene" candle merely represents a calendar season, i.e., winter" and, therefore, is not a holiday novelty candle (candle excluded on other grounds)). Rather, as indicated in the *Russ Berrie* decision, "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." *Russ Berrie*, op. cit. For each of the models submitted by Endar, we find the decorative elements at best evoke general seasonal themes and, as such, are not uniquely suited to a single holiday or special event. With respect to Item 4, however, we find that the candle is not in a shape within the scope of the order (indeed, it is shaped as an identifiable object) and, thus, it is outside the scope of this order. We treat each candle separately below:

6"x 3" Pillar (Item 1): This candle is clearly in the shape of a pillar, a shape specifically named in the order, regardless of whether the affixed molded designs can be removed without damaging the candle. The Department recently determined that a candle in one of the shapes named in the order with attached figurines or other decorations is only outside of the scope of the order if: 1) the candle is a holiday novelty candle, and ii) the holiday figurine (decoration) cannot be easily removed. See Final Scope Ruling; American Greetings Corporation, May 4, 2000 at 9 (American Greetings). Nothing in the design or decoration of Endar's "6"x3" Pillar" can be associated with any specific religious holiday or special event. Because the "6"x3" Pillar" fails to meet the first criterion outlined above as a novelty candle, the permanence of the molded design is irrelevant; we conclude this candle is a pillar candle within the scope of the order irrespective of whether the molded design can or cannot be removed.

Green Christmas Taper and White Christmas Taper (Items 2 & 3): As Endar readily acknowledges, both of these items are taper candles, which are covered by name within the scope of the order. We agree with petitioner that the decorative detail of these candles neither alters the fundamental shape of the candles as tapers, nor shapes them in the form of identifiable objects. For example, the Green Christmas Taper is a ten-inch high, narrow, tapered candle which includes leaf-like decorations with randomly-placed red berries. As such, this candle is simply a decorated taper which resembles neither a Christmas tree nor a holly bush. Previous scope inquiries support a determination that a decorated taper candle is still within the scope in instances where the candle, when viewed as a whole, retains the form of a taper. See American Greetings; see also, Final Scope Ruling; Meijer, Inc., June 11, 1998 at 7. Furthermore, nothing in their design limits these candles' use solely to the Christmas holiday; they could be used at any time during the winter season. Therefore, we find that these tapers are within the scope of the order.

Bond Cake (Item 4): Contrary to our position with respect to Items 2 and 3, we agree with Endar's assertion that this candle is in the form of an identifiable object. The candle is 2 inches high and 3 ½ inches wide at its base, tapering to approximately 2 ½ inches wide at its top, and is fashioned out of brown wax. The sides of the candle bear regularly-spaced ridges to resemble a traditional ringed bundt cake. A drizzling of white wax, apparently representing icing, spills down the sides. We note that, although the candle can be said to "taper" to a certain degree, this candle is not a traditional "taper candle" as delineated in the scope of the order. Rather it is clearly shaped in the form of an identifiable object, i.e., a bundt cake, and is, therefore, excluded from the scope of this order.

Recommendation

We recommend the Department find that Endar's "6"x3" Pillar," "Green Christmas Taper," and "White Christmas Taper" candles are within the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China because they are pillars or tapers, products specifically covered by the scope of the order. We further recommend that the Department find Endar's "Bond Cake" candle outside the scope of the antidumping duty order because it is not one of the shapes specified in the scope of the order (and, indeed, it is shaped in the form of an identifiable object, a category of products previously excluded from the order).

_____√_____ 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

7-7-00

Date

Attachment