

February 12, 2001 - Scope Ruling on Petroleum Wax Candles from the PRC

February 12, 2001

A-570-504
Scope Review
PUBLIC DOCUMENT
Enforcement Group III: MER

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On December 27, 2000 the Department of Commerce (the Department) received a request from San Francisco Candle Company Inc. (SFCC) for a scope ruling on whether 12 types of candles it imports 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 all but one of these twelve candles are covered by 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 B. Tillman
Director
Office of AD/CVD Enforcement VII
Import Administration

Enclosure

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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); SFCC

Summary

On December 27, 2000, the Department of Commerce (the Department) received a request from San Francisco Candle Company Inc. (SFCC) for a scope ruling on 12 candles to determine if they are 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)). The National Candle Association (NCA), petitioner in this case, submitted comments on SFCC's request on January 31, 2001. In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that all but one of SFCC's candles are covered by the scope of the antidumping duty order on petroleum wax candles from the PRC.

Background

SFCC filed its request for a scope ruling in proper form on December 27, 2000. The NCA's timely comments followed on January 31, 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 SFCC's request in accordance with 19 CFR 351.225(k)(1); 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.

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:

candles [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 Ant/dumping 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, 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).

SFCC's Scope Request

SFCC argues that all of the models subject to this inquiry i) are Christmas novelty candles that fall under the holiday novelty exemption; ii) bear Christmas motifs that cannot be removed without damaging the candle; and iii) are sold only during the Christmas season. SFCC included a sample of each candle with its scope request (SFCC's Request at 4).

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. Turning specifically to SFCC's request, petitioner asserts that, "Commerce has denied exclusion to candles that depict scenes, symbols or items related to late fall and winter months, or mere generic decorations, such as flowers, leaves, berries, jingle bells or winter scenes. More recently, Commerce found that wax-filled containers in the shape of a snowflake, star and tree 'lack

the exclusionary characters necessary to consider them outside the scope of the Order'" (NCA's comments at 5).

The NCA concludes by noting what it characterizes as the long standing efforts of candle importers to "...evade or circumvent the Order. The Order is vital to the survival of the U.S. candle industry. SFC[C] is now asking Commerce to narrow the scope of the Order so that it excludes everyday candles claiming that they are novelty candles. Commerce does not have the legal authority to narrow the scope of the Order. Furthermore, if Commerce grants SFC[C]'s requests, it will severely damage the efficacy of the Order." (NCA's comments at 9).

Analysis

The three factors noted above are those which SFCC contends render its candles outside the scope of the Order as holiday novelty candles. For the reasons discussed below, the Department cannot subscribe to SFCC's interpretation of the scope of the order. 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 candies; rounds, columns, pillars, votives; and various wax-filled containers." As explained in the September 1987 Customs Information Exchange notice cm N-212/85 and in previous scope rulings by the Department, novelty candles which are in a shape otherwise within the scope of the Order fall outside the scope of the Order due to the characteristic that renders them novelty candles. Characteristics that can exclude a candle from the Order's scope under the novelty exemption are limited to i) if a candle depicts scenes or symbols of a specific holiday ii) if a candle is in the form of a figurine; and iii) if a candle is in the shape of an identifiable object.

With respect to the instant request, we find that for the reasons outlined below, all but one of the 12 candles fall under the scope of the Order.

1. Christmas Holly Leaf with Berries Candy Cane Pillar (Item No. 03433)

SFCC maintains that this candle, with red and white diagonal stripes along the body of the candle and a holly leaf with berries design on the top surface of the candle, is a Christmas novelty candle. However, the holly leaf and berries are generic to the winter season in general, not to Christmas in particular. Designs on the top surface of the candle would also quickly melt. The Department has also previously determined that candles with red and white stripes, designated as "candy cane" candles, are not eligible for the holiday novelty exclusion (Final Scope Ruling, Institutional Financing Services and Hallmark Cards, April 9, 1997 at 4). Therefore, this candle is covered by the Order.

2. Santa Claus Motif Candy Cane Pillar (Item No. 13403)

This candle is identical to the preceding candle, except that a Santa Claus face is found in place of the holly leaf with berries on the top surface of the candle. While the Santa Claus image is specific to the Christmas holiday, it is only discernable when viewed from above and would soon melt away once the candle is lit. In a previous scope ruling, the Department found that a minimally decorative design that does not make the product easily identifiable as a novelty candle is not grounds for excluding an item from the Order (Final Scope Ruling, Endar Corp., January 10, 2000 at 6). This candle is accordingly found to be within the scope of the Order.

3. Christmas Tree with Star Candy Cane Pillar (Item No. 73633)

Similar to the first two candles, this item has green stripes in addition to red and white ones, and a Christmas tree with star design on the top surface. While the Christmas tree image is specific to the Christmas holiday, it is only discernable when viewed from above and would soon melt away once the candle is lit. In a previous scope ruling, the Department found that a minimally decorative design that does not make the product easily identifiable as a novelty candle is not grounds for excluding an item from the Order (Ibid). This candle is thus found to be within the scope of the Order.

4. Christmas Holly Leaf Pillar (Item No.83136)

This candle is dark green in color with an image of a holly leaf and berries embossed in white on one side of the candle. As discussed previously, the holly leaf and berries design does not meet the specificity requirements to render a particular candle exempt under the holiday novelty exemption, since holly is genetic to the winter season. This item is therefore covered by the scope of the Order.

5. Christmas Sock Pillar (Item No. 33036)

This candle is white in color with an image of a stocking drawn in red on one side of the candle. While the stocking image is specific to the Christmas holiday, it is not visible from most angles. Since the stocking image is the only feature which distinguishes this candle as a holiday novelty candle, and as it is not clearly visible when viewed from different angles, the Department cannot exclude this candle from the scope of the order. The Department has previously ruled that such minimally decorative designs are not grounds for determining a candle to be outside the scope of the Order (Ibid).

6. Santa Claus Pillar (Item No. 82936)

This candle is red in color with a "Santa Claus" motif drawn in white on one face of the candle. However, the image, a stylized outline of what appears to be a head and shoulders, is not easily recognizable as Santa Claus. Furthermore, the motif is a minimally decorative design that is not viewable from most perspectives and thus not grounds for excluding this item (Ibid). These two factors render the candle within the scope of the Order, since the "Santa Claus" image would have been the only factor that could possibly exclude it from the scope of the Order.

7. Carved Christmas Tree with Star Pillar (Item No. 64904)

The sample candle provided is white in color with a stylized image of a Christmas tree carved in gold on four faces of the candle. The image is clearly identifiable as a Christmas tree and is viewable from most perspectives. Since the Christmas tree design is specific to the Christmas holiday, and since removing the carved image would cause significant damage to the candle, this candle should be excluded from the scope of the Order.

8. Santa Claus Candy Cane Column (Item No. 00016)

This candle has red and white diagonal stripes along the body of the candle, with a small visage of Santa Claus visible on one face. While the image of Santa Claus is specific to the Christmas holiday, this particular ornamentation is only minimally decorative and not viewable from most angles, and therefore is not grounds for excluding this item from the scope of the Order (Ibid).

9. Christmas Holly Leaf with Berries Candy Cane Column (Item No. 00016)

This candle has red, white and green diagonal stripes along the body of the candle, with a small image of a holly leaf with berries visible on one face. As discussed previously, the holly leaf and berries design does not meet the specificity requirements to render a particular candle exempt under the holiday novelty exemption, since holly is generic to the winter season. This item is therefore covered by the scope of the Order.

10. Christmas Tree with Star Candy Cane Column (Item No. 00016)

Similar to the previous candle in design, this candle possesses a small image of a Christmas tree with a star in place of the holly leaf and berries. While the image of a Christmas tree is specific to the Christmas holiday, this particular ornamentation is only minimally decorative and not viewable from most angles, and therefore is not grounds for excluding this item from the scope of the Order (Ibid).

11. Christmas Holly Leaf with Berries Pillar (Item No. 166406)

The sample candle is red in color, with numerous carved holly leaves and berries decorating the body of the candle. As discussed previously, the holly leaf and berries design does not meet the specificity requirements to render a particular candle exempt under the holiday novelty exemption, since holly is generic to the winter season. This item is therefore covered by the scope of the Order.

12. Christmas Patchwork Pillar (Item No. 15736)

This candle has a variety of images drawn over the surface of the candle, including a candy cane, evergreen trees, snowflakes, a snow-covered house, a cardinal, what appears to be a reindeer, stars, holly leaves with berries, and patchwork designs of various colors. None of these images, however, is solely specific to the Christmas holiday, and some are quite ubiquitous. As such, this candle cannot be excluded from the scope of the Order.

Summary

These facts combine to nullify SFCC's claims, in all but one case, that its candles should be considered under the holiday novelty exemption. Moreover, our analysis of the ease or difficulty of removing decorative figurines or images is predicated on a finding that the candles with the figurine or image would be excluded as a holiday novelty candle (Final Scope Ruling, American Greetings Corporation, May 4, 2000 at 8). Many of the designs found on SFCC's candles are not specific to the Christmas holiday. Those that are merely represent minimally decorative designs that are not viewable from most angles, rendering moot the fact that removing them may cause damage to the candle

Regarding SFCC's argument that it should be exempt from antidumping duties on the candles because they are sold only during the Christmas season, we note that SFCC's motives cannot serve as the basis for excluding a particular product from the scope of an antidumping duty order. In a scope inquiry, the Department must focus, above all, on the product at issue, irrespective of the season during which the product is sold.

SFCC argues that its candles are holiday novelty candles sold only during the Christmas season. All fall within a shape outlined in the Order, and due to the seasonal and minimally decorative designs found on the candles, all but one fails the requirements to be considered under the holiday novelty exemption. Thus, we find that candles #1-6 and 8-12, as described above, are within the scope of the Order. This conclusion is consistent with the scope

of the investigation and 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 the Department find that all but one of SFCC's 12 candles, as described above, are within the scope of the antidumping duty order on petroleum wax candles from the PRC. We also recommend that the Carved Christmas Tree with Star Pillar (Item No. 64904) should be excluded from 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.

_____a _____Agree _____Disagree

Joseph A. Spetrini
Deputy Assistant Secretary
Enforcement Group III

Date

2-12-01

Attachment

San Francisco Candle Company Product Sample

Item 64904: Christmas Tree Candle

