



A-570-504
Scope Inquiry
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August 27, 2013

MEMORANDUM FOR: Gary Taverman
Senior Advisor
for Antidumping and Countervailing Duty Operations

FROM: James C. Doyle
Director, Office 9
Antidumping and Countervailing Duty Operations

SUBJECT: Goat and Cherub Candles Sold by Jay Import Company Inc., Final
Scope Ruling: Antidumping Duty Order on Petroleum Wax
Candles from the People's Republic of China ("PRC")

Summary

On July 18, 2013, Jay Import Company Inc., ("Jay Import") filed a request for a scope ruling to determine whether five candles that it imports are outside the scope of the antidumping duty order on petroleum wax candles from the PRC.¹ Based on an analysis of the information on the record, and in accordance with 19 CFR 351.225(k)(1), the Department of Commerce ("Department") has determined that the goat candle is not within the scope of the Order and the four cherub candles are within the scope of the Order.²

Background

The scope of the Order states:

The scope of the order covers 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. The products were classified under the Tariff Schedules of the United States (TSUS) item 755.25, Candles and Tapers. The products are currently classified under the Harmonized Tariff Schedule ("HTS") item number 3406.00.00.³

¹ See Jay Import's letter to the Department titled "Scope Inquiry Request regarding Certain Cherub and Goat Candles on Petroleum Wax Candles From the People's Republic of China" (July 18, 2013) ("Jay Import's Scope Request").

² See Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986) ("Order"). The Department has an internet website that allows interested parties to access prior scope determinations regarding the Order. This website lists all scope determinations from 1991 to the present. It can be accessed at <http://ia.ita.doc.gov/download/candles-prc-scope/index.html> and is updated periodically to include newly issued scope determinations.

³ Id.



On August 2, 2011, the Department published the final results of the PRC candles scope clarification project ("Scope Clarification") and stated that it intended to apply the clarified interpretation to "all pending and future scope determinations involving the Order."⁴ In the Scope Clarification, the Department determined that only three types of candles are excluded from the Order: birthday and birthday numeral candles, utility candles, and figurine candles. The Department defined figurine candles as candles in the shape of a "human, animal or deity." On July 18, 2013, Jay Import filed its request for a scope ruling in proper form.⁵ On July 29, 2013, the National Candle Association ("NCA"), an association of domestic producers and petitioner in the investigation, filed comments.⁶ On August 9, 2013, Jay Import filed rebuttal comments.⁷

Product Description

Jay Import submitted pictures and physical samples of the candles for which it requested a scope ruling.⁸ Jay Import states that the candles are made from petroleum wax and contain a fiber-cored wick on the top.⁹ The five candles that are subject to Jay Import's scope request are:

1. Bust Cherub Candle (Item #10-1268)

This candle consists of a candle molded in the shape of a winged cherubic angel from above the chest. The candle depicts a smiling cherub in a resting position with its hand resting under its chin and a pair of feathered wings spread out from its back. The candle is painted a shimmery gold color with a sand-textured finish and measures approximately four inches tall by four inches wide. Jay Import states that this candle is primarily purchased for display, decoration, and burning.¹⁰

2. Sleeping Cherub (Item #1121722)

This candle consists of a candle molded in the shape of a winged cherubic angel in a seating position. The candle depicts a smiling cherub sitting with one leg up and sleeping with its head on its arms, a petticoat draped over its body, and a pair of feathered wings spread out from its back. The candle is painted in a metallic silver color with a polished finish, and measures

⁴ Due to the large volume of scope requests received regarding petroleum wax candles, the Department determined that it would clarify the scope of the Order and apply this clarification to pending/future scope requests. As such, the Department decided to make the scope more administrable by establishing a more concise clarification of the scope language. During this process, the Department provided interested parties the opportunity to present comments and rebuttals on the language of the scope. After a detailed review of the comments submitted by interested parties, the Department decided that only three types of candles are excluded from the scope: birthday and birthday numeral candles, utility candles, and figurine candles. See Petroleum Wax Candles from the People's Republic of China: Final Results of Request for Comments on the Scope of the Antidumping Duty Order, 76 FR 46277 (August 2, 2011) ("Scope Clarification"), and accompanying Issues and Decision Memorandum.

⁵ See Jay Import's Scope Request.

⁶ See "Comments on Scope Ruling Request of Jay Import Company, Inc., Petroleum Wax Candles from the People's Republic of China," (dated, July 29, 2013) ("NCA's Comments").

⁷ See "Response to Petitioner's Comments on Jay Import's Scope Ruling Request Petroleum Wax Candles From the People's Republic of China (Cherub and Goat Candles)" (dated August 9, 2013) ("Jay Import's Rebuttal Comments").

⁸ See Jay Import's Scope Request at Exhibits 1 and 2.

⁹ Id. at 2.

¹⁰ See Jay Import's Scope Request at 2 and Exhibit 1A.

approximately four and a half inches tall by three inches wide. Jay Import states that this candle is primarily purchased for display, decoration, and burning.¹¹

3. Standing Cherub in Red (Item #112479)

This candle consists of a mold in the shape of a winged cherubic angel in a standing position. The candle depicts a smiling cherub resting with one hand holding its head, its other hand laid on its belly, and wearing a bell-shaped skirt with decorations on the helm. The candle is painted a metallic red color with a glittered finish, and measures approximately five inches tall by three inches wide. Jay Import states that this candle is primarily purchased for display, decoration, and burning.¹²

4. Standing Cherub in Gold (Item #10-1453)

This candle is identical in all physical characteristics and finish as the “cherub in red,” except it is painted a metallic gold color, and similar to the cherub in red it is primarily purchased for display, decoration, and burning.¹³

5. Lying Goat (Item #10-4833)

This candle consists of a candle molded in the shape of an adult goat lying down. The candle is painted in a glittered gold color, has a fur skin like finish, and measures approximately four inches tall by five and a half inches wide.¹⁴

Jay Import’s Comments

Jay Import states that the four cherubic candles should be excluded from the scope of the Order because each candle represents a recognizable deity, and figurine candles in the shape of an animal, human or deity are excluded from the scope of the Order. Jay Import argues that, although the Department did not provide guidance or a definition as to what constitutes a “human, animal, or deity,” the four candles qualify as figurines of a deity.¹⁵ Jay Imports notes that these candles, when viewed from a 360 degree perspective, are in the shape of a cherub. Jay Import further notes that the cherubic candles do not include an add-on or a separable part when viewed from any angle. Jay Import then quotes from the Merriam-Webster online dictionary (“Webster”) and argues that since a “deity” is in part, “one exalted or revered as supremely good or powerful,” the Department should also find a cherub to be a “deity” because it is a “celestial immortal being recognized in the form of a child and honored and respected in many religions as God’s messenger.”¹⁶

Jay Import also argues that a strict interpretation of “deity” would place the Department in an awkward position of defining what shape a god should be for purposes of the “figurine” exception.¹⁷ Jay Import references recent decisions in Fashion Craft¹⁸ and TAG¹⁹ scope rulings

¹¹ Id. at 2 and Exhibit 1B.

¹² Id. at 3 and Exhibit 1C.

¹³ Id. at 3 and Exhibit 1D.

¹⁴ Id. at 3 and Exhibit 1E.

¹⁵ Id. at 6-7, citing Scope Clarification.

¹⁶ Id. at 7.

¹⁷ Id.

¹⁸ See Memorandum Regarding: Final Scope Ruling on Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China, dated August 14, 2012 (“Fashion Craft”).

and argues that the Department should allow “deity” to include deviations in shape as long as the subject candle is recognizable as a spiritual being that embodies supreme good and power.²⁰ In conclusion, Jay Import argues that the Department should find these four cherub candles outside the scope because they are deities without additional candle shapes.

With regard to the goat candle, Jay Import argues that taken in its entirety, this candle falls outside the scope of the Order because it is in the shape of a goat and does not contain any non-candle shapes.

The NCA’s Comments

The NCA argues that Jay Import’s four cherubic candles fall within the scope of the Order because: 1) Jay Import’s definition of a “deity” does not include references to a cherub or an angel; 2) Jay Import fails to establish that these four candles are in the form of a “human” or “deity;” and 3) the candles could easily be cupids, holiday, or special occasion candles.²¹ The NCA contends that, by requesting angels to be excluded from the scope of the Order, Jay Import is attempting to reintroduce the exclusion for novelty candles.²² The NCA notes that in the Scope Clarification, the Department determined that religious and special occasion theme candles, used for decoration purposes, were included within the scope of the Order.²³ The NCA therefore argues that excluding these four candles as angels would broaden the definition of a “figurine” and lead to further exclusions based on expanded interpretations.²⁴

Contrary to Jay Import’s argument that the Department should define what constitutes a “deity” candle, the NCA argues that the Department “should not be in the business of making awkward distinctions between what is, or is not, a deity.”²⁵ Citing Webster, the NCA states that an angel is “superior to a human but lesser ranked than a deity, a symbol that is omnipresent in secular culture, and therefore, not a human or a deity.”²⁶ Finally, the NCA notes that similar to the recent HSE USA, Inc., scope request, two of the four candles are merely the top or bust of an angel sitting on the base of a round decorative in-scope column shaped candle.²⁷

With regard to the goat candle, the NCA agrees with Jay Import noting that the candle is in the shape of an animal and, thus, is excluded from the scope of the Order.²⁸

Jay Import’s Rebuttal Comments

In its rebuttal comments, Jay Import states that the NCA improperly interpreted “deity” as something that must be expressly mentioned in the Dictionary’s definition.²⁹ Jay Import further

¹⁹ See Memorandum Regarding: Final Scope Ruling on Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China, dated August 5, 2011 (“TAG”).

²⁰ Id. at 8.

²¹ See NCA’s Comments at 3-6.

²² Id. at 6.

²³ Id. at 5.

²⁴ Id. at 6.

²⁵ Id. at 7.

²⁶ Id.

²⁷ Id. at 8.

²⁸ Id. at 1.

²⁹ See Jay Import’s Rebuttal Comments at 2.

states that the third definition of a “deity” it provided simply encompasses various forms, “including God, Goddess, and other heavenly beings.”³⁰ Such a general definition, Jay Import contends, would prevent the Department from determining the “shape of a God or Goddess.”³¹ Otherwise, to avoid confusion in the administration of the Order, Jay Import states that the Department should provide a definition of a “deity” in connection with the figurine exception.³²

Jay Import argues that the NCA has overemphasized the potential consequence of broadening the scope of the Order because: 1) a clear definition would eliminate the ambiguity of what constitutes a “deity” and, 2) the new figurine definition in the Scope Clarification eliminated various types of inanimately shaped candles.³³ Finally, Jay Import contends that if a cherub is not considered a “deity,” then it should be considered a human figure and thus, outside the scope.³⁴ Jay Import argues that if the cherub candle is neither deity nor human, the Department will create uncertainty regarding the scope of the Order.

Legal Framework

The regulations governing the Department’s scope determinations are found at 19 CFR 351.225. When a request for a scope ruling is filed, the Department examines the scope language of the Order at issue and the description of the product contained in the scope ruling request.³⁵ Pursuant to the Department’s regulations, the Department may also examine other information, including the description of the merchandise contained in the petition, the initial investigation, and the determinations (including prior scope determinations) of the Department and the International Trade Commission.³⁶ If the Department determines that these sources are sufficient to decide the matter, it will issue a final scope ruling as to whether the merchandise is covered by an Order. This determination may take place with or without a formal inquiry.³⁷

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 factors are: (1) the physical characteristics of the merchandise; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of trade in which the product is sold; and (5) 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.

For purposes of this scope ruling, the Department considered Jay Import’s request in accordance with 19 CFR 351.225(k)(1) and finds that the descriptions of the products contained in these sources are dispositive with respect Jay Import’s candles. As a result, the Department has not evaluated Jay Import’s request in accordance with 19 CFR 351.225(k)(2).

³⁰ Id. at 3.

³¹ Id. at 3.

³² Id. at 3.

³³ Id. at 5.

³⁴ Id. at 6.

³⁵ See Walgreen Co. v. United States, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

³⁶ See 19 CFR 351.225(k)(1).

³⁷ See 19 CFR 351.225(d).

Analysis

Pursuant to the Scope Clarification, the Department found that record evidence from the investigation does not support the exclusion of candles based on holiday/religious/special-occasion themes, and therefore, that holiday/religious/special-occasion characteristics would have no bearing on determining whether a candle is included in or excluded from the scope of the Order.³⁸ The Department also defined "figurine" based on the Webster definition: "1. {a} small carved or molded figure...2. A very small figure, whether human or of an animal; especially, one in terra cotta or the like; -- distinguished from statuette, which is applied to small figures in bronze, marble, etc."³⁹ Based on this definition, the Department found that the best description of a figurine candle is a candle that is in the shape of a human, animal, or deity.⁴⁰

Therefore, the Department determined that the scope of the Order should be interpreted to include all petroleum wax candles (regardless of holiday/religious/special occasion-theme), with the exception of three types of petroleum wax candles: birthday (and birthday numeral) candles, utility candles, and figurine candles.⁴¹ The Department defined figurine candles as candles in the shape of a human, animal, or deity.⁴²

With respect to Jay Import's Scope Request, we find that four of the five candles that Jay Import included in its request are within the scope of the Order in accordance with 19 CFR 351.225(k)(1) because the descriptions of the products contained in the petition, the initial investigation, final determinations of the Secretary (including prior scope rulings) and the Order are dispositive. Therefore, for these candles, the Department finds it unnecessary to consider the additional factors set forth in 19 CFR 351.225(k)(2).

Our analysis begins with the four cherubic candles listed below.

1. Bust Cherub Candle (Item #10-1268)
2. Sleeping Cherub (Item #1121722)
3. Standing Cherub in Red (Item #112479)
4. Standing Cherub in Gold (Item #10-1453)

The Department finds that these four candles are within the scope of the Order and do not fall within the figurine exclusion. The four cherubic candles, taken in their entirety, meet the physical description of merchandise subject to the Order: they are made from petroleum wax and have a fiber or paper-cored wick.⁴³ Additionally, we determine that these four candles do not fall within the exclusion for figurine candles.

In the Scope Clarification, in which the Department analyzed all the (k)(1) sources to determine that one of the three scope exclusions is for figurine candles, the Department described a figurine

³⁸ See Scope Clarification, and accompanying Issues and Decision Memorandum at Comment 3D.

³⁹ Id. at 3C; see also Memorandum for Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations From James C. Doyle, Director, Office 9, AD/CVD Operations: "Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China ("PRC") (June 20, 2012).

⁴⁰ Id.

⁴¹ See Scope Clarification, and accompanying Issues and Decision Memorandum at Comment 1.

⁴² Id. at Comment 3C.

⁴³ See Order.

candle as “a candle that is in the shape of a human, animal, or deity.”⁴⁴ In Jay Import’s Scope Request, it states that these four candles fall under the third definition of a “deity” (i.e., “one exalted or revered as supremely good or powerful”). However, Jay Import describes its four candles as “cherubs” and states, “a cherub is a celestial immortal being which is commonly recognized in the form of a winged child and is honored and respected by many religions as God’s messenger carrying out God’s power.”⁴⁵ We find that Jay Import’s description of its four candles does not match the third meaning of the “deity” definition it provided. In other words, we find that Jay Import’s description of its product as a cherub, a celestial immortal, in the form of a winged child, does not meet Jay Import’s own definition of a “deity” that it references (i.e., “supremely good or powerful”).⁴⁶ Furthermore, we note that Jay Import’s proposed definition of a “deity” does not include any reference to a cherub or an angel.⁴⁷ Based on these considerations, we find the four candles are neither human nor deity because: 1) humans do not have wings and; 2) an angel or cherub does not rise to the level of a “deity” per the dictionary definition provided by Jay Import.⁴⁸

With regard to Jay Import’s argument that the Fashion Craft and TAG scope rulings support a finding that the cherub candles should be excluded as figurines,⁴⁹ we find those cases distinguishable from this scope inquiry. Specifically, in Fashion Craft the Department explained that all six candles were in the shapes of animals. Although the candles may have included additional objects (i.e., a lion with a crown), taken as a whole, the candles were in the shape of an animal.⁵⁰ Additionally, the Department allowed minor deviations in animal shaped candles to be within the figurine candle exception, as long as the animal shape of the candle was recognizable.⁵¹ In the TAG scope ruling, the Department also explained that the candles which qualified for the figurine exception were either specifically in the shape of an animal (e.g., a ladybug, frog, or bunny) or a human (e.g., a hula girl).⁵²

We find those scope rulings distinguishable from this scope ruling because Jay Import argues for a deviation from the definition of a “deity” that it provided. In this scope inquiry, Jay Import’s provided definition of deity does not include any indication that it also includes a cherub or angel and, therefore, does not encompass the cherub candles that Jay Import imports. Jay Import’s own description of the cherub candles does not meet its proposed definition of deity.⁵³ Using both the dictionary definition of a “deity” provided by Jay Import and Jay Import’s description of its products as cherubs, we find these four candles are neither human nor deity.⁵⁴

⁴⁴ See Scope Clarification, and accompanying Issues and Decision Memorandum at Comment 3C.

⁴⁵ See Jay Import’s Scope Request at 7.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id. at 8; see also Fashion Craft and TAG Scope Rulings.

⁵⁰ See Fashion Craft Scope Ruling, at 4-5.

⁵¹ See Fashion Craft and TAG Scope Rulings.

⁵² See TAG Scope Ruling, at 12-35 (explaining that certain candles qualified for the figurine exclusion).

⁵³ See Jay Import’s Scope Request at 7.

⁵⁴ Id.

5. Goat Candle (Item #10-4833)

We note that this candle is in the shape of a goat, which is an animal. Figurine candles are excluded from the Order, and the definition of a figurine candles includes candles shaped like animals.⁵⁵ Because this goat candle is in an animal shape, we find that it meets the exclusion for figurine candles and therefore is excluded from the scope of the Order. All parties agree with this conclusion.

Conclusion

We find that Jay Import's four cherubic candles are included in the scope of the Order in accordance with 19 CFR 351.225(k)(1). We further find Jay Import's goat candle is excluded from the scope under the figurine exclusion. As recently explained in the Scope Clarification, the only exclusions to the Order are for birthday, figurine and utility candles.⁵⁶ While the goat candle meets the exclusion for figurine candles because it is an animal, the four cherubic candles do not meet any of these exclusions.

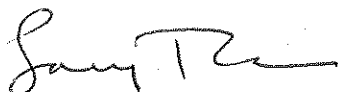
Recommendation

Based on the preceding analysis, we recommend that the Department find that the "Bust Cherub Candle" (Item #10-1268), "Sleeping Cherub" (Item #1121722), "Standing Cherub in Red" (Item #112479) and "Standing Cherub in Gold" (Item #10-1453), are within the scope pursuant to 19 CFR 351.225(k)(1) based on the language of the scope of the Order and the Scope Clarification. We further recommend finding the Goat Candle (Item #10-4833), to be excluded from the scope of the Order.

If the recommendation in this memorandum is accepted, we will notify the United States Customs and Border Protection of our determination and serve a copy of this memorandum to all interested parties on the scope service list via first class mail consistent with 19 CFR 351.225(d).

Agree

Disagree



Gary Taverman
Senior Advisor
for Antidumping and Countervailing Duty Operations

8/27/13

Date

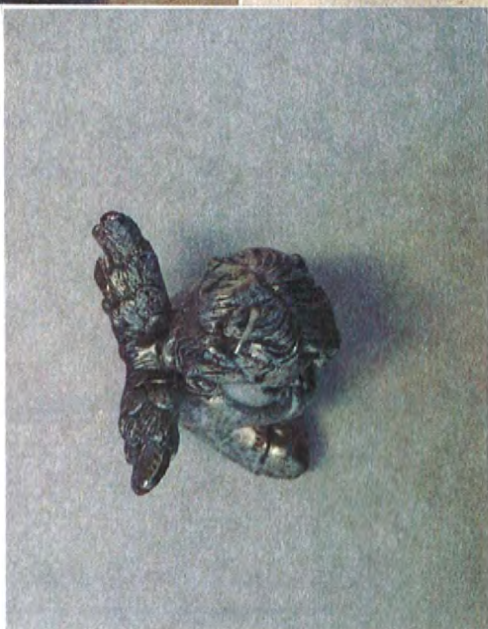
⁵⁵ See Scope Clarification, and accompanying Issues and Decision at Comment 3C.

⁵⁶ Id., 76 FR at 46277.

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