

NOV 1 1991  
A-570-504  
Scope Review  
Public Document  
OADC:PT

By Certified Mail, Return Receipt Requested

Dear Sir or Madam:

On September 3, 1991, the Department of Commerce (the Department) received a request for clarification of the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). Specifically, the San Francisco Candle Company requested that the Department classify a special type of candle that they manufacture in and import from the PRC outside the scope of the antidumping duty order on petroleum wax candles from the PRC.

Because the descriptions of the product contained in the petition, the initial investigations, and the determinations of the Department and the ITC were dispositive in this case, we did not consider additional criteria. The Department rules that Moonlite and Candylite candles are within the scope of the antidumping duty order on petroleum wax candles from the PRC.

We will notify Customs of this decision.

If you have any questions please contact Melissa Skinner or Paul Thanos at (202) 377-4851.

Sincerely,

Edward Yang  
Director, Division I  
Office of Antidumping Compliance

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MEMORANDUM FOR: Joseph A. Spetrini  
Deputy Assistant Secretary  
for Compliance

FROM: Roland L. MacDonald  
Director  
Office of Antidumping Compliance

SUBJECT: Recommendation Memo -- Scope Clarification  
on Petroleum Wax Candles From the People's  
Republic of China (A-570-504)

#### ISSUE

On September 3, 1991, the U.S. Department of Commerce (the Department) received a request for clarification of the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). Specifically, the San Francisco Candle Company (SFCC) requested the Department to classify a special type of candle that they manufacture in and import from the PRC outside the scope of the antidumping duty order on petroleum wax candles from the PRC.

#### CRITERIA

The regulations governing antidumping scope determinations are found at §353.29 of the Department's regulations (19 CFR 353.29(1991)). Because the product descriptions contained in the petition and prior determinations of the Department and the International Trade Commission (ITC) are dispositive as to whether the candles imported by SFCC are within the scope of the antidumping duty order on petroleum wax candles from the PRC, we do not have to consider any additional criteria in making our final recommendation.

#### BACKGROUND

The original investigation of petroleum wax candles from the PRC arose from a petition filed in 1985 by the National Candle Association (NCA).

The petition described the imports intended to be included in the scope of the investigation as "candles.. .made from petroleum wax, containing paper or fiber-cored wicks," sold in the following shapes: "tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars; votives; and various wax filled containers." NCA added that "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 on Behalf of the National Candle Association, September 3, 1985, at 6-7.

In October 1985, the ITC completed a preliminary determination in which a candle was defined as "a molded or dipped mass.. .wholly or chiefly of petroleum wax.. .containing a wick that may be burned so as to give light, heat, or scent or used for celebration or votive purposes." Candles from the People's Republic of China: Determination of the Commission, Investigation No. 73I-TA-282 (Prelim) USITC Pub. No. 1768, October 1985, at A1-A2.

The Department's preliminary determination defined the scope of the products under investigation as "certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks..." sold in the shapes cited previously in the petition. Preliminary Determination of Sales at Less than Fair Value, 51 FR 6016 (February 19, 1986).

The Department's final determination on July 10, 1986, was identical to its preliminary determination with respect to the scope of the products under investigation. See 51 FR 25085. Similarly, the final ITC determination in August 1986 retained the same product description as in its preliminary determination. See USITC Pub. No. 1888, August 1986.

The need for scope clarification has arisen on several occasions prior to this scope determination request. Upon receiving notice of the initial antidumping investigation, the U.S. Customs Service questioned the Department as to whether the scope of the investigation included certain party candles. In a telex to Customs, dated March 20, 1986, the Department clarified that "birthday, birthday numeral, and figurine-type candles" were outside the scope of the investigation. The Department based this conclusion on differences in use and in physical characteristics between that type of candle and those described in the original petition. See "Petroleum Wax Candles from the PRC: Clarification of the Scope of the investigation," Telex, March 20, 1986.

In 1987, Global Marketing Services requested exclusion from the scope of the order of its hand-painted Santa Claus figurine candles. The Department determined that the Christmas candles were outside the scope of the order because:

the specialized decor of the candles in question distinguishes them physically from other decorative candles. The ultimate use of these candles and the expectations of the ultimate purchaser are necessarily limited to decorative use during the Christmas holiday season. The candles may be sold in the same channel of trade as the candles covered by the antidumping duty order because retail establishments that sell candles on a regular basis may also sell Christmas novelty candles. Nevertheless, such candles may also be sold during a specific limited time period and some merchants who do not normally sell candles may sell these candles in conjunction with holiday gift materials and decorations.

See Department letter from T. Bergan, Director, Office of Compliance, to L. Baker, Burdit, Bowles & Radzius, Ltd. July 13, 1987, at 2.

In a notice to the U.S. Customs Service, the Department further clarified that "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)." See CIE N-212/85, September 21, 1987.

On September 3, 1991, the Department received the request at issue. SFCC requested exclusion of its Moonlite and Candylite candles, which are manufactured at Kaite Candle in Shanghai, China.

## ARGUMENTS

In its request, SFCC argues that its product differs substantially from candles that are subject to the order. They state that Moonlite and Candylite candles are specialty candles and not the regular taper or pillar candles which are produced and consumed in large quantities in the United States. San Francisco Candle Company Comments, September 3, 1991, at 1.

SFCC states that the differences between Moonlite and Candylite candles and candles subject to the order are:

- 1) Moonlite and Candylite candles glow from top to bottom when lit;
- 2) Moonlite and Candylite are double-layered candles made of "special candle wax;"

3) Moonlite and Candylite are priced at a much higher level than regular candles. Id at 1.

SFCC states that their production process is located in China because it is extremely labor intensive, and manufacturing these candles in the United States would lead to high production costs. Subsequently, prices would be so high that their product would be uncompetitive in the United States. Id. at 1. SFCC also explains that the production process entails hand wrapping pieces of veneer discs onto wax candles. They state that they are the only candle producer in the world which uses this technique, and production is slow, labor-oriented, and time-consuming. SFCC argues that their product is a double-layered candle and, for these reasons, not subject to the scope of the order. Furthermore, SFCC contends that their production process is an art by itself and not related to the usual mechanized process employed in the production of regular candles. Id. at 2.

Finally, SFCC argues that because their candles are so much more expensive than other candles subject to the order, their prices should be distinguished from prices of other candles imported from China. SFCC claims:

- 1) Labor is hired in the open market;
- 2) All raw materials used in the production process are imported from the United States;
- 3) Operations are under US management;
- 4) No subsidies are received from the Chinese government. Id. at 1.

#### ANALYSIS

In accordance with §353.29(i)(1) of the Department's regulations, and in analyzing the scope request on the record in this proceeding, the Department took into account the descriptions of the merchandise contained in the petition, the initial investigations, and the determinations of the Department and the ITC. It is clear from the definition of the scope contained in the petition, the Department's and the ITC's determinations, the Department's definition of the scope in its final determination, and after considering SFCC's comments, that Moonlite and Candylite candles are within the scope of the antidumping duty order on petroleum wax candles from the PRC.

The Department compared the descriptions of the Moonlite and Candylite candles to the product descriptions contained in the petition and previous determinations. SFCC admits that their candles contain petroleum wax with paper—cored wicks. Thus, on their face, these candles would appear to fall within the scope of this order. Id. at 1. Accordingly, the Department must determine whether there are any other distinguishing characteristics that provide a basis for exclusion.

SFCC argues that several factors distinguish its candles from those subject to the order. First, SFCC claims its candles glow from top to bottom. While this may be an attractive quality, it is irrelevant to the issue of scope.

Secondly, SFCC emphasizes that the MoonLite and Candylite candles are double layered and that "special candle wax" is mixed with different pigments to produce colored wax sheets. SFCC never defines "special candle wax"; we are aware only that these candles are composed of petroleum wax. The fact that the candles are double-layered is another characteristic that simply has no bearing on scope. This feature does not alter the candles' shape or purpose. Id. at 2.

Thirdly, SFCC stresses that its candles are priced at a much higher level than regular candles. But scope decisions are not based on information related to pricing. While these factors may be interesting and result in attractive candles, they do not make dramatic changes that could make their uses unique or focused. Therefore, the Department does not find that these characteristics are sufficiently distinct to distinguish Moonlite and Candylite candles from other candles subject to the order.

SFCC's major contention is that "veneer discs" (which are not defined) are wrapped around the candles and change both their physical appearance and their purpose. SFCC claims that great physical differences exist between their imports and other petroleum wax candles because of the hand-made veneers. Different colors are mixed, which result in swirling, intricate designs. However, as SFCC's comments state, the veneer discs are still composed of wax. Their own description states:

"in making veneers, we hire skilled labor who use special candle wax..." (Letter from San Francisco Candle to Department, September 3, 1991, at 2).

The "special qualities" of these candles do not change the expectations of the ultimate purchaser. These are decorative candles which can be used on many occasions. Their uses are not confined for specific instances (i.e. Christmas, Halloween) and their size is comparable to other Chinese candles subject to the order. These are not any of the previously excluded shapes (birthday, birthday numeral, figure-type, hand-painted Santa Claus figurine, novelty candles having scenes or symbols of other occasions, or citronella candles). The shapes of all types of Moonlite and Candylite candles do not vary in any form from other candles subject to the order.

The veneer discs are made of wax, and they do not alter the candles physical characteristics to the extent that exclusion from the order would be appropriate. These items remain petroleum wax candles with or without veneer discs, and therefore are a covered shape within the scope of the order.

SFCC cites to no special functions or attributes that might justify exclusion from the order. Instead, it focuses on the nature of the production process and the extraordinary effort required to produce these candles. These considerations are irrelevant to the issue of scope. The Department finds no physical characteristics which change the fact that they are petroleum wax candles of a certain shape and size from the PRC. The ultimate use of these candles does not vary significantly from other petroleum wax candles subject to the antidumping duty order.

#### CONCLUSION

The product descriptions contained in the petition, the initial investigation, and the determinations of the Department and the ITC are dispositive. The Moonlite and Candylite candles manufactured in the PRC and imported by the San Francisco Candle Company are petroleum wax candles that are within the scope of the antidumping duty order on petroleum wax candles from the PRC.

#### RECOMMENDATION

Because the issue is easily resolvable by reference to the face of the order, we recommend determining that no scope inquiry is warranted.

\_\_\_\_\_√\_\_\_\_\_ Agree \_\_\_\_\_ Disagree

We recommend determining that Moonlite and Candylite candles manufactured in Shanghai, China, and imported by the San Francisco Candle Company, are within the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China.

\_\_\_\_\_√\_\_\_\_\_ Agree \_\_\_\_\_ Disagree

Joseph A. Spetrini  
Deputy Assistant Secretary  
for Compliance  
November 4, 1991

Date