

MAR 18, 1992
A-570-504
Scope Review
Public Document

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On December 23, 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, Wolf D. Barth Co., Inc. requested that the Department determine whether the candles imported by its client, Candles by Finesse, fall within 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 are dispositive in this case and the scope of the order expressly includes "candles made from petroleum and having fiber or paper-cored wicks...sold in the following shapes: tapers, spirals, and straight-sided dinner candles" (see 51 FR 30686, August 28, 1986), the Department determines that no inquiry is warranted. Further, based upon an analysis of the information on the record, the Department rules that the "Van Gogh" and "Monet" candles are within the scope of the antidumping duty order on petroleum wax candles from the PRC. Enclosed is a memorandum explaining our decision.

We will notify Customs of this decision.

If you have any questions please contact Melissa Skinner at (202) 377-4851 or Tyler Hawkins at (202) 377-1843.

Sincerely,

Edward Yang
Director, Division I
Office of Antidumping Compliance

Enclosure

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

FROM: Roland L. MacDonald
 Director Office of Antidumping Compliance

SUBJECT: Scope Recommendation Memo—Request by Wolf D. Barth Co., Inc. for a
 Scope Determination—Antidumping Duty Order on Petroleum Wax Candles
 from the People's Republic of China

1. SUMMARY:

On December 23, 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 (candles) from the People's Republic of China (PRC). Specifically, Wolf B. Barth Co., Inc. (WDBC) requested the Department to render a scope determination with regard to the "Van Gogh" and "Monet" candles imported from the PRC by their client, Candles by Finesse (Finesse).

Because the descriptions of the product contained in the petition, the initial investigations, and the determinations of the Department and the ITC are dispositive of the issue in this case, in accordance with section 353.29(b) of the Department's regulations, the Department determines that no inquiry is warranted (See 19 CFR 353.29(b)(1991)). Further, based upon an analysis of the information on the record, the Department rules that the "Van Gogh" and "Monet" candles are within the scope of the antidumping duty order on candles from the PRC.

2. BACKGROUND:

a. History of the Order:

The original investigation of 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" (See 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" (See Candles from the People's Republic of China Determination of the Commission, Investigation No. 731-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 (See 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 distinguished 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 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).

In 1990, Fabri-centers of America, Inc. requested exclusion from the scope of the order for its citronella candles. Because the product descriptions contained in the petition, the initial investigations, and the determinations of the Department were not dispositive of whether candles containing citronella oil which are used outdoors to repel insects were within the scope of the antidumping duty order on candles from the PRC, the Department considered the four additional criteria found at section 353.29(i) (2) of the Department's regulations. The record indicated that the presence of citronella, a known insect repellent, in the candles affected the physical characteristics, ultimate use, expectations of the ultimate purchasers, and the channels of trade in which the candles were sold. The presence of citronella oil results in the candles' use as an insect repellent. The candles were purchased by consumers for that purpose and were marketed by retailers as insect-repellent candles for outdoor use only (See Scope Recommendation Memo from the Department regarding Candles from the PRC, September 3, 1991, at 8).

The Department concluded that these citronella candles were not standard candles and, therefore, were outside the antidumping duty order on candles from the PRC (See *Id.*)

b. Request:

On December 23, 1991, WDBC filed a letter with the Department requesting a scope determination to ascertain whether the "Van Gogh" and "Monet" candles, imported by its client, Finesse, fall within the scope of the antidumping duty order on candles from the PRC (See 51 FR 30686, August 28, 1986).

In its letter, WDBC states the following:

- 1) the two candles, the "Van Gogh" and the "Monet", are made of petroleum wax and have 100% cotton fiber wicks;
- 2) the "Van Gogh" is a spiral curved candle which, as it burns, through its core, leaves a wax sculpture. The "Van Gogh" is shaped entirely by hand; and
- 3) the "Monet" is a straight sided candle with a spiral wax overlay.

(Letter from WDBC to the Department, December 23, 1991, at 1.)

3. Analysis:

In accordance with §353.29(i)(1) of the Department's regulations, in analyzing the scope request 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 ITC.

WDBC stated that the "Van Gogh" and "Monet" candles are made of petroleum wax and have 100% cotton fiber wicks (See letter from WDBC to the Department, December 23, 1991, at 1). The scope of the order expressly includes "candles made from petroleum wax and having fiber or paper-cored wicks." Therefore, based on these physical characteristics, the "Van Gogh" and "Monet" appear to fall within the scope of the antidumping duty order on candles from the PRC (See 51 FR 30686, August 28, 1986).

In its letter to the Department, WDBC further stated that the "Van Gogh" is a spiral curved candle which leaves a wax sculpture as it burns. The scope of the order expressly includes "tapers, spirals, and straight-sided dinner candles" (See *Id.*). Unlike certain specialty candles, discussed above, which the Department has excluded from the scope of this order, the "Van Gogh", at the time of purchase, is not distinguishable in appearance from other spiral candles subject to the order. While leaving a wax sculpture may be an attractive quality for a candle to possess, this result does not limit the Van Gogh's use as a candle to certain uses, seasons, or occasions, as do the physical characteristics of these specialty candles excluded from the order.

WDBC stated that the "Van Gogh" is shaped entirely by hand. This fact, however, is not dispositive of the issue of scope.

WDBC stated that the "Monet" is a straight sided candle with a spiral wax overlay. As noted above, the scope of the order expressly includes "tapers, spirals, and straight-sided dinner candles," therefore, the "Monet" appears to be within the scope regardless of whether it is considered either a straight-sided or a spiral candle.

From the descriptive brochures provided by WDBC, however, the Department believes that the "Monet" candle is simply a spiral candle.

Because spiral and straight sided candles composed of petroleum wax and fiber wicks are within the scope of the antidumping duty order on candles from the PRC, and because WDBC has provided no reason for these candles to otherwise be outside the scope of the order, the Department determines that the "Van Gogh" and "Monet" candles are within the scope of the order (See 51 FR 30686, August 28, 1986).

In accordance with §353.29(b) of the Department's regulations the Secretary may determine on the basis of an appropriately filed application that no inquiry is necessary to make a scope determination. Documents from the underlying investigation deemed relevant by the Department to the scope of the outstanding order were made part of the record to the instant scope inquiry.

Documents that were not presented to the Department, or placed by it on the record, do not constitute part of the administrative record of this proceeding.

4. CONCLUSION

The product descriptions contained in the petition, the initial investigation, and the determinations of the Department and the ITC are dispositive concerning whether the merchandise in question is within the scope of the order. The "Van Gogh" and "Monet" candles are both spiral shaped candles made of petroleum wax with a cotton fiber wick. Candles of this type are specifically included in the investigation. The "Van Gogh" and "Monet" candles are, therefore, within the scope of the antidumping duty order on candles from the PRC.

5. RECOMMENDATION

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

Agree: Disagree:

We recommend determining that the "Van Gogh" and "Monet" candles are within the scope of the antidumping duty order on candles from the PRC.

Agree: Disagree:

If you agree, we recommend sending the attached letter to interested parties.

Agree: Disagree:

Joseph A. Spetrini
Deputy Assistant Secretary
for Compliance
March 18, 1992

Date

Attachment