

FEB 12 1993
A-570-504
Scope Review
Public Document
OADC: MJG

By Certified Mail, Return Receipt Requested

Dear Sir/Madam:

On July 24, 1992, 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 Simcha Candle Company (Simcha) requested that the Department clarify whether the five candles (samples sent in by Simcha labeled 1, 2, 3, 4A and 4B) that they import from the PRC are 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, we did not consider additional criteria contained in section 353.29(i)(2) of the Department's regulations governing scope rulings. Therefore, the Department determines that candles number 2 and 3 are outside the scope of the order, while candles number 1, 4A and 4B are within the scope of the 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 Matt Gaisford or Melissa Skinner at (202) 482-4851.

Sincerely,

Laurie A. Lucksinger
Division Director
Office of Antidumping Compliance

MEMORANDUM FOR: Joseph A. Spetrini
THROUGH: Deputy Assistant Secretary for Compliance
Roland L. MacDonald
FROM: Office of Agreements Compliance
Holly A. Kuga, Director
SUBJECT: Office of Antidumping Compliance
Final Scope Ruling -- Antidumping Duty Order on Petroleum Wax Candles
From the People's Republic of China: Simcha Candle Co.
SUMMARY:

On July 24, 1992, Simcha Candle Co. (Simcha) requested that the Department of Commerce (the Department) issue a scope ruling clarifying whether their candles, numbered 1, 2, 3, 4A and 4B, are within the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

The Department initiated a formal scope inquiry on August 21, 1992. Because the comments and rebuttal comments provided by the interested parties on September 24, 1992 and September 29, 1992, respectively, did not sufficiently address the issue, the Department requested additional comments from interested parties on October 29, 1992. Based on an analysis of the information on the record, and in accordance with section 353.29(i)(1) of the Department's regulations (19 CFR 353.29(i)(1) (1992)), the Department determines that candles number 2 and 3 are not within the scope of the order, while candles number 1, 4A and 4B are within the scope of the order.

BACKGROUND:

On July 24, 1992, Simcha filed a letter with the Department asking that the Department clarify whether five specific candles imported by Simcha fall within the scope of the order on candles from the PRC (See 51 FR 30686, August 28, 1986). In Simcha's submission, Simcha inquired as to the status of candle number 1, and stated that the other four candles should be found outside the scope of the order because two of the candles (candles 2 and 3) are household/utility candles and the other two (candles 4A and 4B) are Christmas Tealight Candles (See letter from Simcha to the Department, July 22, 1992, at 1).

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 investigation, and the determinations of the Department and the ITC.

Simcha argues that candles marked 2 and 3 are household candles and therefore should be found outside the scope of the order (See letter from Simcha to the Department, July 22, 1992, at 1).

During the course of the less-than-fair-value (LTFV) investigation, household/utility candles were specifically excluded from the scope. The basis for this exclusion was identified by the petitioner, the National Candle Association (NCA), in its statement that:

he types of candles imported into the United States from Jamaica are short, white candles, which are not even within the scope of this investigation...

tility candles would have substantially lower unit values than tapers, spirals, and other products subject to this investigation. Therefore, to compare the average unit value of candle imports from the PRC to imports which are composed of a wholly different set of candles types and, indeed, are not even "like" products which are the subject of this investigation would be totally without foundation.

(See letter from Taft, Stettinius & Hollister to the Department, February 7, 1986, at 4). Further, in its final determination, the Department agreed with the NCA and stated that:

[a]t the preliminary determination we excluded imports from Jamaica from consideration because we received information from petitioner that the Jamaican candles were "household candles" not subject to this investigation.

(See 51 FR 23088, (July 10, 1986)).

Because household/utility candles are not within the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China, the Department initiated a formal inquiry to determine whether the candles subject to Simcha's request are properly considered household/utility candles.

In conjunction with its letter on July 22, 1992, Simcha sent in samples of the candles in question. All candles are white, with cotton wicks, and made out of petroleum wax. The candles' measurements are as follows:

- Candle #1: 9 ³/₄ inches in height 12/16 inches in diameter at base
- Candle #2: 5 inches height 11/16 inches in diameter at base
- Candle #3: 3 ⁶/₁₂ inches in height 10/16 inches in diameter at base

The NCA submitted comments to the Department (in this scope inquiry), responding to Simcha's September 9, 1992 letter, arguing that:

Simcha claims that the subject candles are household candles, but submits no evidence to support its claim that these are household candles. The bald assertion by Simcha that these are household candles is not enough. Simcha has submitted no evidence that the candles which it imports from the PRC are, in fact, household/utility candles and that they are like the Jamaican candles that were excluded from the investigation. Absence such evidence on the record, Simcha's request for exclusion of candles #2 and #3 should be denied.

(See letter from Barnes and Thornburg to the Department, September 29, 1992, at 2).

In its supplemental request for comments on October 29, 1992, the Department asked interested parties to comment on the question of "what constitutes a household/utility candle" and "whether small color candles could be considered household/utility candles, as well" (See letter from the Department to all interested parties, October 29, 1992, at 1-2).

In response to the Department's October 29, 1992, request for comments and in rebuttal to the comments submitted by the NCA (dated September 29, 1992), Simcha submitted brochures from U.S. candle companies demonstrating that the U.S. candle industry regards taper candles that are under 6 inches in height and approximately 3/4 inches diameter as household/utility candles (See letter from Simcha to the Department, November 10, 1992, at 7-20). Simcha also submitted

comments stating that "[i]n question whether small, color candles could be considered household candles, we feel that all candles under 6" are household candles" (Id. at 4) . Simcha supported its argument on color candles by, again, referring to the brochures of other U.S. candle companies indicating that color candles can be referred to as household/utility candles (Id. at 10).

The Department did not receive any rebuttal comments from the NCA on the issue of whether size or color affects the classification of candles as household/utility candles. Therefore, given Simcha's comments and brochure submissions, and absent any evidence to the contrary, the Department has reason to believe that Simcha's candles number 2 and 3 constitute household/utility candles and small color candles less than 6 inches in height and approximately 3/4 inches in diameter likewise constitute household/utility candles, outside the scope of the order.

With respect to Simcha's inquiry regarding the status of candle number 1, we note that this particular candle is a petroleum wax candle that contains a cotton wick and stands over 6 inches tall and clearly falls within the scope of the order.

Finally, Simcha argues that candles number 4A and 4B are Christmas tealight novelty candles. Previously, the Department determined that Christmas novelty candles are not within the scope of the order if:

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 specified 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.)

We noted that Simcha's candles number 4A and 4B are merely tealight candles that do not have any special decor, scenery, or limitations related to the Christmas holiday season. These tealight candles are ordinary petroleum wax candles containing a cotton wick that are surrounded by a thin metal casing on all but one side and can be sold throughout the year. Based on all the preceding criteria, the Department concludes that these tealight candles are within the antidumping duty order on petroleum wax candles from the People's Republic of China.

CONCLUSION:

Candles number 2 and 3 are appropriately considered as household/utility candles. Because household/utility candles were specifically excluded from the investigation, these candles are not within the scope of the antidumping duty order on petroleum wax candles from the PRC. Candles number 1, 4A, and 4B, manufactured in the PRC and imported by Simcha Candle Company, are petroleum wax candles within the scope of the antidumping duty order on petroleum wax candles from the PRC.

RECOMMENDATION:

That the Department finds candles number 2 and 3 are household/utility candles not within the scope of the antidumping duty order and candles number 1, 4A, and 4B are petroleum wax candles within the scope of the antidumping duty order on petroleum wax candles from the PRC.

_____√_____ Agree _____ Disagree

Joseph A. Spetrini
Deputy Assistant Secretary for Compliance
FEB 12, 1993

Date