

JUN 9 1993

A-570-504
Scope Review
Public Document
OADC: SLY

By Certified Mail, Return Receipt Requested

On March 31, 1993, Primark International (Primark) requested that the Department of Commerce (the Department) issue a scope ruling that the Company's candles, numbered 10031, 10032, 10033, and 10034, be found outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China.

We evaluated the Company's application in accordance with 19 C.F.R. § 353.29(i)(l). Based on the product descriptions contained in the petition, the initial investigation, and the determinations of the Department and the International Trade Commission, the Department determines that candles 10032 and 10034, which have Santa Claus depicted on the container, are outside the scope of the order. The Department finds candles numbered 10031 and 10033 within the scope of the order.

Enclosed is a memorandum explaining our decision. We will notify Customs of this decision. If you have any questions, please contact Sandra Yacura at (202) 482-4851.

Sincerely,

Laurie A. Lucksinger
Division Director
Office of Antidumping Compliance

Enclosure

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MEMORANDUM Joseph A. Spetrini
FOR: Deputy Assistant Secretary for Compliance
THROUGH: Roland L. MacDonald, Director
 Office of Agreements Compliance
FROM: Holly A. Kuga, Director
 Office of Antidumping Compliance
SUBJECT: Final Scope Ruling -- Antidumping Duty Order on Petroleum Wax Candles
 From the People's Republic of China (A-570-504); Primark International

1. SUMMARY

On March 31, 1993, Primark International (Primark) requested that the Department of Commerce (the Department) issue a ruling that Primark's candles, numbered 10031, 10032, 10033, and 10034, be found outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

Based on an analysis of the information on the record, and in accordance with 19 CFR 353.29(i) (1), the Department determines that candles numbered 10031 and 10033 are within the scope of the order, and that candles 10032 and 10034 are outside the scope of the order.

2. BACKGROUND

a. Scope of the Order

The products covered by this order are "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." (See Antidumping Duty Order: Petroleum Wax Candles from the PRC, 51 FR 30686, August 28, 1986.)

The need for scope clarification of the antidumping order on petroleum wax candles has arisen on several occasions prior to this scope determination request. Relevant to this inquiry is a clarification issued by the Department to the U.S. Customs Service excluding "Santa Claus" candles from the scope of the order:

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).

(See CIE N-212/85, September 21, 1987.)

b. Request

On March 31, 1993, Primark filed a letter with the Department asking that the Department clarify whether four of its candles, depicting various holiday scenes on their containers, fall within the scope of the order on candles from the PRC. Primark's submission stated that the candles should be found outside the order as they "fall under the 'other novelty types' [provision]" (See Letter from Janet K. Lutton-Marvin, on behalf of Primark, to the Department, March 31, 1993).

3. ANALYSIS

In accordance with 19 CFR 353.29(i)(1), 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 International Trade Commission (ITC). Documents from the underlying investigation deemed relevant by the Department to the scope of the outstanding order were made part of the record of this determination. Documents that were not presented to the Department, or placed by it on the record, do not constitute part of the record for this determination.

The candles at issue are containers filled with petroleum wax having fiber wicks. Thus, on their face, the candles would appear to fall within the scope of the order on petroleum wax candles from the PRC.

In its letter, Primark requested that all four of the candles listed be found outside the scope of the order based on the "other holiday types" provision. (See *Id.*)

In the previous scope clarification referred to by Primark, the Department determined that "certain Christmas novelty candles...are not within the scope of the order...[because they] are specifically designed for use only in connection with the Christmas holiday season."

The four candles submitted by Primark are in tin containers with lids. Candle number 10032 is in a blue container with stars covering the sides and lid. In addition to the stars, the lid has a picture of Santa Claus flying with reindeer. Candle number 10034 has Santa Claus, a chimney, an elf, and a tree on the lid of the container. The side of the container continues the brick design of the chimney. The containers for candles 10031 and 10033 have designs of flowers, berries, and leaves.

As the order specifically includes both candles and "wax-filled containers," exclusionary design characteristics may either be on the candle or the container in which the candle is held. Thus, a wax-filled container with "scenes or symbols of other occasions (e.g., religious holidays or special events)" on the container may be found outside the scope of the order.

Candles 10032 and 10034 both have Santa Claus designs on their container. As candles with Santa Claus designs were specifically excluded from the order in the Customs Notice mentioned above, candles 10032 and 10034 are found outside the scope of the order.

The containers for candles 10031 and 10033, and their lids, have designs of flowers, leaves, and berries on them. These designs do not depict a "scene or symbol" of any specific occasion or special event. Therefore, candles 10031 and 10033 are within the scope of the order.

4. CONCLUSION

The product descriptions contained in the petition, the initial investigation, and the determinations of the Department and the ITO are dispositive concerning whether the merchandise in question is within the scope of the order.

Candles 10032 and 10034 are in containers that have Santa Claus pictures on them. As such, these candles follow the Christmas novelty candles precedent and are found outside the scope of the order.

Candles 10031 and 10033 are in containers that have designs of flowers, leaves, and berries. These designs do not depict "scenes or symbols of...religious holidays or special events." Therefore, candles 10031 and 10033 are within the scope of the order.

5. RECOMMENDATION

That the Department find the candles imported by Primark and numbered 10032 and 10034 outside of the scope of the antidumping duty order.

_____√_____Agree _____Disagree

That the Department find the candles imported by Primark and numbered 10031 and 10033 within the scope of the antidumping order.

_____√_____Agree _____Disagree

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

_____√_____Agree _____Disagree

Joseph A. Spetrini
Deputy Assistant Secretary
for Compliance
6/7/93

Date

Attachment