

By Certified Mail, Return Receipt Requested

On May 18, 1993, Hallmark Cards, Inc. (Hallmark), requested that the Department of Commerce (the Department) issue a scope ruling that the Hallmark's candles, models WCD3093, WCD3013, WCD4000 candles, and candles 149PCL9345 (Party) candles, be found outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China.

We evaluated Hallmark's application in accordance with 19 C.F.R. §353.29(i)(1). 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 Hallmark's Party candles have no exclusionary characteristics and, as such, are within the scope of the order. Based on these same documents, the Department determines that candle WCD3093, "Our Wedding" candle, is outside of the scope of the order.

Because the product descriptions contained in these same documents were not dispositive as to Hallmark's candles WCD3013 and WCD4000, the Department considered the four additional criteria listed in 19 C.F.R. §353.29(i)(2). Based on the combination of restrictive packaging, limited marketing, and the accessories/design of these two candles, the Department determined that the channels of trade, the expectations of the ultimate purchaser and the ultimate use of candles WCD3013 and WCD4000 is for weddings. As such, Hallmark's Unity candles are wedding novelty candles and follow the novelty candles precedent. Thus, Hallmark's WCD3013 and WCD4000 candles are found outside of 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) 482-0989.

Sincerely,

Laurie A. Lucksinger
Division Director
Office of Antidumping Compliance

Enclosure

SEP 30 1993

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

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) ; Hallmark Cards, Inc.

1. SUMMARY

On May 18, 1993, Hallmark Cards, Inc. (Hallmark), requested that the Department of Commerce (the Department) issue a ruling that Hallmark's candles, models WCD3013, WCD3093, WCD4000 (collectively "Unity Candles"), and 149PCL9345 (Party candles) 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) and (2) (1993), the Department determines that Hallmark's Party candles are within the scope of the order, and that Hallmark's Unity candles 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 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 April 8, 1993, Hallmark filed a letter with the Department asking for scope clarification on three of its Unity candles and one set of Party candles. Hallmark's submission stated that the "The Unity Candles and the Party Candles are very unique in that they are...novelty-type candles. These candles are marketed with the intent that they be used as a novelty or for a special event or occasion as opposed to the traditional use of a candle for illuminating a room." (See Letter from Hallmark to the Department, April 8, 1993.) The petitioner opposed Hallmark's request, stating that:

There are no significant differences in use or in physical characteristics between the Unity Candles and those described in the original Petition and the Antidumping Duty Order... The addition of an engraved cross, a four—line poem or a plastic medallion does not provide the distinguishing physical characteristics needed to be excluded from the Order.

(See Letter from Barnes & Thornburg (petitioner) on behalf of National Candle Association, August 4, 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 a part of the record to the 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 scope proceeding.

Hallmark's candles are made of 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. Accordingly, the Department must determine whether there are any other distinguishing characteristics that provide a basis for their exclusion.

In the Notice to Customs listed above, the Department determined that novelty candles were excluded from the order when they have scenes or symbols of other occasions (e.g., religious holidays or special events) depicted in their designs. Thus, the Department must determine if Hallmark's Unity and Party candles depict such scenes or symbols.

The descriptions of the merchandise contained in the above listed documents are dispositive as to whether Hallmark's Party candles are novelty candles and, as such, outside of the scope of the order. The Party candles are 8 inches tall and 1/16 of an inch in diameter. These candles are thin rounds made of colored petroleum wax, and sold in packages of 24. The candles do not symbolize any specific event and have no exclusionary characteristics. Therefore, Hallmark's Party candles are within the scope of the order.

The descriptions of the merchandise contained in the above listed documents are also dispositive as to whether Hallmark's candle WCD3093 is a novelty candle and, as such, outside of the scope of the order. Candle WCD3093 has a poem entitled "Our Wedding" imprinted onto the candle. The poem is surrounded with flowers and ribbon. The poem cannot be removed from the candle without destroying it and, as such, is an integral part of its design. Therefore the design of candle WCD3093 limits it to one special occasion (e.g. a wedding). As such, candle WCD3093 is a wedding novelty candle and therefore outside of the scope of the order. The Department disagrees, in this case, with petitioner's comments, and determines that a poem entitled "Our Wedding" engraved onto a candle does provide the distinguishing physical characteristics necessary for a candle to be excluded from the scope of the order.

The descriptions of the merchandise contained within the same documents were not dispositive as to whether Hallmark's other two Unity candles, WCD4000 and WCD3013, are novelty candles, and as such outside of the scope of the order. Therefore, in accordance with 19 CFR 353.29(i)(2), the Department considered four additional criteria: (1) the physical characteristics of the product: (2) the

expectations of the ultimate purchasers; (3) the ultimate use of the product; and (4) the channels of trade.

Physical Characteristics

Candle WCD4000 is made of ivory-colored petroleum wax and has an ivory colored medallion attached to the candle by a straight pin. The straight pin is hidden by a ribbon. The medallion is surrounded by raised carvings of flowers and leaves. The medallion states, "One light, One love, One life to share."

The medallion attached to candle WCD4000 limits candle WCD4000 to two special occasions, either a wedding or anniversary celebration. Additionally, as the medallion is attached by a straight pin, it is questionable as to whether the medallion is a part of the design of the candle, or an accessory to the candle. Therefore, the Department agrees with petitioner's comment that the physical characteristics of candle WCD4000 are not conclusive evidence as to whether candle WCD4000 is within the scope of the order.

Candle WCD3013 has a cross and flowers engraved on it. In the center of the cross are two gold rings or circles of metal. The circles are attached to a ribbon, which is, in turn, attached to the candle by a straight pin.

The rings attached to candle WCD3013 also limit the candle to a special occasion (e.g., a wedding). It is questionable, as in the case of WCD4000, if the rings are part of the design of the candle, or an accessory to it. Thus, the Department again agrees with petitioner's comment that the physical characteristics of candle WCD3013 are not conclusive evidence as to whether candle WCD3013 is within the scope of the order.

Channels of Trade

The two candles, WCD4000 and WCD3013, are packaged individually in gray boxes marked "Wedding Collection." There is additional packaging inside the boxes, where they are individually wrapped in cellophane. Each candle has a label affixed to its bottom, inside the cellophane, marked "Wedding collection." The label also lists the type of candle (e.g., "Cross with Rings") and the cost of the candle. These candles are sold exclusively in Hallmark gift shops.

The label and box, in combination with the sales of the candles from gift stores only, indicate a limited channel of trade for these two candles.

Expectations of the Ultimate Purchaser and Ultimate Use

Because of the marketing and the channels of trade listed above, in addition to the physical characteristics of these two candles, the Department determines that the expectations of the ultimate purchaser, as well as the ultimate use of the product, are that the subject candles would be used only for wedding purposes.

4. CONCLUSION

The product descriptions contained in the petition, the initial investigation, and the determinations of the Department and the ITC are dispositive as to whether Hallmark's Party candles and Hallmark's candle WCD3093 are novelty candles and, as such, outside of the scope of the order.

Hallmark's Party candles are thin "rounds" of different colors and have no exclusionary characteristics. As such, they are within the scope of the order.

With respect to candle WCD3093, the poem "Our Wedding" imprinted onto the candle is a part of its design and limits the candle to use only for wedding purposes. Thus, candle WCD3093 follows the novelty candles precedent, and is outside of the scope of the order.

The documents listed above are not dispositive concerning Hallmark's candles WCD3013 and WCD4000. Therefore, the Department considered the four additional criteria listed in 19 CFR 353.29 (i)(2).

Eased on the combination of restrictive packaging, limited marketing, and the accessories/design of the two candles, the Department determines that the channels of trade, the expectations of the ultimate purchaser and the ultimate use of the two candles are for that of weddings only. As such, Hallmark's candles WCD3013 and WCD4000 are wedding novelty candles and follow the novelty candles precedent. Thus, Hallmark's Unity candles are found outside of the scope of the order.

5. RECOMMENDATION

That the Department find the Party candles imported by Hallmark within the scope of the antidumping duty order.

Agree Disagree

That the Department find the Unity candles imported by Hallmark outside the scope of the antidumping duty 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
9/30/93

Date

Attachment