

JUN 6, 1994

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

By Certified Mail, Return Receipt Requested

On October 6, 1993, A.J. Cohen (Cohen) requested that the Department of Commerce (the Department) issue a ruling that two sets of holiday candles be found outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

We evaluated Cohen's application in accordance with 19 C.F.R. § 353.29(i)(1) (1993). 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 set # 155 meets the physical criteria of merchandise within the scope of the order, and does not have any exclusionary characteristics. Therefore, we determine that candle set #155 is within the scope of the order. Conversely, each candle in set #154 is a taper with a ring and a figurine molded to it. Consistent with prior rulings on the scope of this order, we determine that candle set #154 is outside of the scope of the order on 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 Sandra Yacura or Wendy J. Frankel at (202) 482-5253.

Sincerely,

Laurie A. Lucksinger
Division Director/Office of Antidumping Compliance

Enclosure

A-57 0-504
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MEMORANDUM Joseph A. Spetrini
FOR: Deputy Assistant Secretary for 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.J. Cohen

SUMMARY

On October 6, 1993, A.J. Cohen requested that the Department of Commerce (the Department) issue a ruling that two sets of holiday candles (A.J. Cohen candle sets) 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 the candles in set number 154, which are tapers with Santa Claus figurines affixed to the taper, are outside of the scope of the order. The Department determines that the candles in set number 155, which are red spirals helically trimmed in gold paper, are within the Scope of the order.

BACKGROUND

On October 6, 1993, A.J. Cohen filed a letter with the Department requesting that the Department clarify whether two sets of its petroleum wax candles fall within the scope of the antidumping duty order on candles from the PRC. The candles in each set are ten-inch red tapers made of petroleum wax. The tapers in set number 154 each have a ring of green petroleum wax molded onto the taper. Each ring has a figurine of a Santa Claus on its front. The candles in set number 155 are red spirals which are helically trimmed in gold paper.

A.J. Cohen's submission stated that both set number 154 and set number 155 should be found outside the order:

(Candle set] 154 is a 10" taper candle with decorative scene's [sic] on them such as Santa, Snowman, Reindeer, etc...[The candles are] to be used as a decoration for Christmas or to burn candles during the Christmas season. [Candle set] 155 is a 10" taper with gold decorative striping throughout, up and down the candle.

See Letter to the Department from A.J. Cohen, October 6, 1993.

On February 9, 1994, counsel for the National Candle Association submitted comments in response to A.J. Cohen's request:

...[T]aper candle (X154) was nothing more than a typical taper candle to which the manufacturer has loosely attached a wax Santa Claus figurine. . . [T]he Santa Claus figure had broken and left no mark on the taper. The attached figure was of such poor quality that it is probable that the consumer would buy these dumped candles at a very low price, remove the Santa Claus figure, and use them as any other taper candle. The physical characteristics

and purposes for which this candle will be used cannot be changed from being a taper subject to the order by virtue of attaching a cheap Santa Claus figure that can easily be removed from the candle.

The other candle submitted by A.J. Cohen (X155) is nothing more than a spiral candle which is specifically included within the scope of the Antidumping Order. The addition of a gold paper striping in the grooves of the spiral do not change its physical characteristics or uses. This spiral candle will be used for the same decorative or lighting purposes as U.S.-produced spiral candles and will compete directly against them in the same channels of trade.

See Letter to the Department from Barnes and Thornburg, February 9, 1994.

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), and determined that this documentation is dispositive as to whether the two candle sets are within the scope of the order.

Documents from the underlying investigation and subsequent decisions 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.

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 order was further clarified in a 1986 scope ruling which stated that:

Your tapers have a hand-painted figurine molded to the candle, which could not be removed without damage to the taper. This different physical characteristic precludes inclusion of these candles in the scope of the order.

See Letter from the Department to Global Marketing Services, October 30, 1986. The Notice to the U.S. Customs Service (Customs) from the Department concerning the ruling further states:

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.

Candle Set Number 154

The candles in set number 154 are figurine candles that can clearly be identified as Christmas novelty candles due to the Santa Claus figurine. We note that the Notice to Customs on September 21, 1987, clearly states that novelty candles are not within the scope of the order on petroleum wax

candles from the PRC when their "use is clearly indicated by Christmas scenes and symbols depicted in the candle design." Further, we note that the Global Marketing scope ruling clearly states that figurine candles are outside the scope of the order when the removal of the figurine would cause damage to the taper. After physical inspection of the candles in this set, the Department established that, contrary to the National Candle Association's claim, the Santa Claus figurine on the taper cannot be removed without damage to the taper. Therefore, we conclude that these candles clearly meet the description of merchandise excluded from the scope of the order on petroleum wax candles from the PRC.

Candle Set Number 155

The candles in set number 155 are red spirals, helically trimmed in gold paper. According to the language of the original order, spiral-shaped candles are within the scope of the merchandise covered by the order. Despite A.J. Cohen's claim that these are Christmas novelty candles and therefore are excluded, we note that the language of the Customs Notice discussed above describes Christmas candles as candles whose "use is clearly indicated by Christmas scenes and symbols depicted in the candle design." After carefully viewing the candles in this set, we do not believe that there is anything in their design which clearly depicts Christmas scenes or symbols. Moreover, the gold paper can be removed from the candle without damage to the spiral.

Therefore, because the candles in set number 155 meet the physical criteria of merchandise within the scope of the order and do not have any exclusionary characteristics, the Department concludes that the candles in set number 155 are within the scope of the order on petroleum wax candles from the PRC.

RECOMMENDATION

That the Department find the candle set number 154 imported by A.J. Cohen outside of the scope of the order on petroleum wax candles from the PRC, as these candles meet the physical characteristics of candles previously found outside of the scope of the order.

_____√_____ Agree _____ Disagree

That the Department find the candle set number 155 imported by A.J. Cohen within the scope of the order on petroleum wax candles from the PRC because the candles in that set do not meet any of the physical criteria attributed to candles outside the scope of the 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
6/6/94

Date

Attachment