

JUN 6 1994

A-570-504
Scope Clarification
Public Document
OADC:RMJ

By Certified Mail, Return Receipt Requested

On October 6, 1993, Kole Imports requested that the Department of Commerce (the Department) issue a ruling that two sets of its tapered candles (Kole SA09 candle sets) be found outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

We evaluated Kole's application in accordance with the criteria provided in 19 C.F.R. §353.29(i) (2) (1993). Based on an analysis of the physical characteristics, the expectations of the ultimate purchaser, the end use, and the channels of trade, the Department determines that the Kole SA-09 candles sets are outside 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 Robert M. James or Wendy J. Frankel at (202) 482-5222, or (202) 482-5253, respectively.

Sincerely,

Laurie A Lucksinger
Director, Division I
Office of Antidumping Compliance

Enclosure

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

FROM: Holly A. Kuga, Director
Office of Antidumping Compliance

SUBJECT: Final Scope Ruling -- Petroleum Wax Candles From the People's
Republic of China; Kole Imports

SUMMARY

On September 17, 1993 Kole Imports, Inc. (Kole), requested that the Department of Commerce (the Department) determine that two of Kole's products, the "Snowman" and "Santa Claus" candle sets, both designated as product number SA-09 (the Kole 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, as defined below, and in accordance with 19 CFR 353.29(i)(2), the Department determines that the Kole candle sets, which are tapers with holiday figurines, are outside the scope of the order.

BACKGROUND

On September 17, 1993, Kole wrote to the Department seeking clarification as to whether its Kole candle sets are covered by the antidumping duty order on candles from the PRC. The National Candle Association (NCA), petitioner in the original less than fair value (LTFV) investigation, objected to Kole's exclusion request in a February 9, 1994 letter. Kole offered rebuttal comments to NCA's submission on February 15, 1994.

ANALYSIS

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 353.29. On matters concerning the scope of an antidumping duty order, our normal bases for determining whether a product is included within the scope of the order are the descriptions of the product contained in the order, the determinations of the Secretary and the International Trade Commission (ITC), and the petition. See 19 CFR 353.29(b) and (i)(1). If these descriptions are not dispositive, the Department considers the four additional criteria found at 19 CFR 353.29(i)(2). These criteria are: (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. Because the descriptions are not dispositive, we evaluated this request in accordance with 19 CFR 353.29(i)(2).

Documents from the underlying investigation, or parts thereof, and subsequent decisions deemed relevant by the Department to the scope of the outstanding order were made a part of the record of the present scope inquiry. Documents not presented to the Department, or placed by it on the record, do not constitute part of the administrative record of this scope proceeding.

Physical Characteristics

The Department defined the scope of the original order as:

...[C]ertain 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.

Antidumping Duty Order: petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986).

Relevant to the present scope issue is a Notice issued to Customs in connection with a July 1987 scope determination, which 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; Letter, Director, Office of Compliance to Burditt, Bowles & Radzius, Ltd., July 13, 1987.

Also relevant to Kole's request is a previous scope ruling which states:

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 (emphasis added).

Kole's products consist of two ten-inch red tapers packaged as a set. Each taper has a ring of white petroleum wax with a decorative holiday figurine, either a snowman or Santa Claus, affixed at the midpoint of the taper. Kole suggests that the figurines attached to the red tapers distinguish these products from merchandise covered under the scope of the order. See Kole Letter, September 17, 1993. NCA counters that the decorative ring "could easily be (removed from) the candle, and what remained (would be) nothing more than a red taper candle." See NCA Letter, February 9, 1994, p.1. NCA goes on to assert that the "physical characteristics [of] these candles.. .cannot be changed.. .by virtue of adding the cheap wax ring that can be slipped on and off the candle." (Id.)

Our physical examination of samples of the Kole candle sets revealed that the holiday figurines can, in fact, be removed from the taper, but not without marked damage to the candle. As NCA maintains, the wax ring is, indeed, slipped over the narrow end of the taper. However, it is secured with sufficient force to cause an indelible impression about the circumference of the candle if removed. The holiday figurines, which measure three inches tall on the Santa model, and two inches tall for the snowman, adhere to the taper. The inside surface of these figurines is rather crudely finished, resulting in noticeable pitting of the smooth candle surface if the figurine is removed. This damage renders the taper unsuitable as a "decorative" candle, and therefore, as noted in the Global Marketing case cited above, "precludes the inclusion of these candles within the scope of the order" (Letter to Global Marketing Services, *op. cit.*). We conclude that the physical characteristics of these candles are consistent with the description of merchandise excluded from the scope of the order.

Expectations of the Ultimate Purchaser and Ultimate Use

The candles are packaged in green boxes which are enclosed in cellophane and labeled "Holiday Candles." The boxes have Santa Claus characters on both front and back, with the words "In the Christmas Spirit" on the back panel. Based on a review of the packing, the Department concludes that the ultimate purchaser of this product is the retail consumer, who expects to use this product for home holiday use. See Petition, March 3, 1985, p.7; Kole Letter, September 10, 1993; NCA Letter, p.1; and Kole Letter, February 15, 1994. NCA argues that the ultimate purchaser would buy these

products in order to remove the wax figurine and "use them as any other taper candle." See NCA Letter, p.1. However, these products are clearly marked as holiday candles. Moreover, they are sold in sealed packaging. NCA's contention assumes the purchaser would know in advance whether the figurine could be removed without damaging the taper, and would therefore purchase these candles for year-round use. In fact, the purchaser cannot determine if it is possible to use the candles as taper candles prior to purchasing the product, opening the package and forcing the wax ring off of the taper. Furthermore, as noted above, removing the figurine does damage the taper, rendering NCA's argument regarding ultimate use unpersuasive. The Department, therefore, believes that the expectations of the ultimate purchaser and the ultimate uses of these products are consistent with Kole's position, i.e., that these are holiday novelty candles purchased for seasonal decorative use.

Channels of Trade

The ITC found that the candles subject to the order are sold both directly to retailers and to wholesalers. See Candles from the People's Republic of China, USITC Pub. 1768, October 1985, p.4. Small producers market directly to specialty shops, department stores, and churches, while large producers tend to sell to "mass merchandisers" (e.g. drugstore chains and supermarkets). Id., p.A-6. The ITC found that many retailers "only purchase Chinese candles in red, white and green for the Christmas season, and. . .primarily rely on domestic candles for their everyday displays." Id. p.A-2. The Department has previously found that the types of candles subject to this scope inquiry are sold by retailers who customarily carry candles; however, "merchants who do not normally sell candles may sell [Christmas] candles in conjunction with holiday gift materials and decorations." See Letter, Director, Office of Compliance to Burditt, Bowles and Radzius, Ltd., July 13, 1987; and Kole Letter, September 10, 1993, p.2. NCA's sole comment regarding channels of trade is that Kole's products would compete directly with U.S.-produced candles. See NCA Letter, February 9, 1994, p.2. From our examination of the packaging of these candles, as well as the ITC findings cited above, we conclude the Kole candles are customarily marketed during the Christmas holiday season both by retailers who usually sell candles, as well as by those retailers who only stock candles for the holiday season. The former channel of trade is similar to that of products covered by the order. However, the latter channel is consistent with products previously excluded from the scope of the order.

CONCLUSION

Our analysis of the record of this scope request, as well as an analysis of the physical characteristics of these particular candles, the expectations of the ultimate purchaser, the ultimate use of the product, and the channels of trade, all support the conclusion that the Kole candle sets fall outside the scope of the antidumping duty order on petroleum wax candles from the PRC.

RECOMMENDATION

That the Department find the two Kole candle sets, which are Christmas novelty candles, outside the scope of the antidumping duty order on petroleum wax 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

JUN 6, 1994

Attachment