

JUL 27, 1994

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

By Certified Mail, Return Receipt Requested

On June 3, 1994, Star Merchandise Company, Inc. (Star), requested that the Department of Commerce (the Department) issue a ruling that twenty-four models of candles imported by Star be found outside the scope of the order on petroleum wax candles from the People's Republic of China (PRC).

We evaluated Star's request in accordance with the criteria provided in 19 C.F.R. 353.29(i)(l) (1993). Based on an analysis of the descriptions of the merchandise contained in the order, the determinations of the Secretary and the International Trade Commission, and the petition, the Department determines that the following Star products, which are citronella candles in terra-cotta containers, are outside the scope of the order:

HFT709 Round, diameter 2-3/8", height 2-5/8", yellow wax

HFT801 Heart-shaped; width 3", yellow wax

HFT819 Bear-shaped; length 2-1/2", width 2-1/4" height 2-1/2", green wax

HFT821 Snowman-shaped; diameter 2-1/2", height 2-1/2", green wax

HFT822 Santa Claus-shaped; diameter 2-1/2", height 2-1/2", green wax

HFT823 Evergreen tree-shaped; length 3-3/4", width 3", height 1-1/4", green wax

HFT824 Bell-shaped; length 3-1/2", width 3", red wax

HFT825 Star-shaped; 2-7/8" across, red wax

The Department further determines that the following products are "holiday novelty candles," and, as such, are excluded from the order:

HPT704 Hexagonal; width 2-1/2", height 2"; Santa's sleigh; red wax

HFT705 Square; 2-1/4" x 2-1/4"; height 3-1/8"; green with Santas and bells; red wax

HFT707 Round; diameter 3-3/8", height 1-3/4"; Santa and child; red wax

HTF828 Oval; length 3", width 2", height 2-1/8"; snowman; red wax

HTF829 Round; diameter 3", height 1-3/4"; Santa's sleigh; red wax

HFX915 Molded, hand-painted wax Santa; height 4-3/4"

HFT846 Hexagonal; width 2-1/2", height 2"; Witch; orange wax

HPT847 Square; 2-1/4" x 2-1/4", height 3-1/8"; Witch; orange wax

HPT848 Round; diameter 3" height 1-3/4"; Witch; orange war

Finally, the Department determines that the following candles are wax-filled containers, which are specifically included within the scope of the order:

HFT842 Round; diameter 2-1/2", height 3-3/6"; Lobsters; blue wax

HFT843 Oval; length 3", width 2", height 2-1/8"; Seahorses; blue wax

HFT844 Round; diameter 3", height 1-3/4"; Lobsters; blue wax

HFT845 Heart-shaped; length 2-3/4" width 2-3/4", height 1-7/8"; Seahorses; blue wax

HFT702 Square; 2-1/4" x 2-1/4", height 3-1/8"; strawberries and flowers; blue wax

HFT703 Round; diameter 3-3/8", height 1-3/4"; cherries and flowers; pink wax

HFT814 Heart-shaped; length 2-3/4", width 2-3/4", height 1-7/6'; Bear family; blue wax

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 292-492-5222.

Sincerely,

Laurie A. Lucksinger
Director, Division I
Office of Antidumping Compliance

Enclosure

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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 -- Petroleum Wax Candles From the People's Republic of
 China; Star Merchandise Company, Inc.

SUMMARY

On June 3, 1994, Star Merchandise Company, Inc. (Star), requested that the Department of Commerce (the Department) determine that 24 candles imported by Star 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)(1), the Department determines that the following Star products, which are citronella candles in terra-cotta containers, are outside the scope of the order:

- HFT709 Round, diameter 2-3/8", height 2-5/8", yellow wax
- HFT801 Heart-shaped; width 3", yellow wax
- HFT819 Bear-shaped; length 2-1/2", width 2-1/4" height 2-1/2", green wax
- HFT821 Snowman-shaped; diameter 2-1/2", height 2-1/2", green wax
- HFT822 Santa Claus-shaped; diameter 2-1/2", height 2-1/2", green wax
- HFT823 Evergreen tree-shaped; length 3-3/4", width 3", height 1-1/4", green wax
- HFT824 Bell-shaped; length 3-1/2", width 3", red wax
- HFT825 Star-shaped; 2-7/8" across, red wax

The Department further determines that the following products are "holiday novelty candles," and, as such, are excluded from the order:

- HPT704 Hexagonal; width 2-1/2", height 2"; Santa's sleigh; red wax
- HFT705 Square; 2-1/4" x 2-1/4"; height 3-1/8"; green with Santas and bells; red wax
- HFT707 Round; diameter 3-3/8", height 1-3/4"; Santa and child; red wax
- HTF828 Oval; length 3", width 2", height 2-1/8"; snowman; red wax
- HTF829 Round; diameter 3", height 1-3/4"; Santa's sleigh; red wax

HFX915 Molded, hand-painted wax Santa; height 4-3/4"

HFT846 Hexagonal; width 2-1/2", height 2"; Witch; orange wax

HPT847 Square; 2-1/4" x 2-1/4", height 3-1/8"; Witch; orange wax

HPT848 Round; diameter 3" height 1-3/4"; Witch; orange war

Finally, the Department determines that the following candles are wax-filled containers, which are specifically included within the scope of the order:

HFT842 Round; diameter 2-1/2", height 3-3/6"; Lobsters; blue wax

HFT843 Oval; length 3", width 2", height 2-1/8"; Seahorses; blue wax

HFT844 Round; diameter 3", height 1-3/4"; Lobsters; blue wax

HFT845 Heart-shaped; length 2-3/4" width 2-3/4", height 1-7/8"; Seahorses; blue wax

HFT702 Square; 2-1/4" x 2-1/4", height 3-1/8"; strawberries and flowers; blue wax

HFT703 Round; diameter 3-3/8", height 1-3/4"; cherries and flowers; pink wax

HFT814 Heart-shaped; length 2-3/4", width 2-3/4", height 1-7/6'; Bear family; blue wax

BACKGROUND

On June 3, 1994, Star wrote to the Department seeking clarification as to whether 24 products imported by Star are covered by the antidumping duty order on candles from the PRC, published on August 28, 1986 (51 FR 30686). Star also submitted samples of each of the 24 candles in question. Star suggests that "the Christmas candles and Halloween candles speak for themselves," and further notes that the entire line of citronella candles "should be described as insect repellent." See Letter, Star Merchandise to the Department, June 3, 1994, page 1. As a general basis for seeking exclusion of its entire line, Star asserts that it has "no intent of hurting or affecting sales of domestic manufacturers." *Id.* The National Candle Association (NCA), petitioners in the original less-than-fair-value investigation, submitted comments on July 18, 1994. NCA maintains that all 24 Star products are simply "wax-filled containers," which are specifically included within the scope of the order. See Letter, NCA to the Department, July 18, 1994, pages 1 and 2.

ANALYSIS

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 353.29. On matters concerning the scope of 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), the initial investigation, 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. With respect to the 24 submitted products, the descriptions are dispositive, so we evaluated these candles in accordance with 19 CFR 353.29(i)(1).

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.

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) (Emphasis added)

Also relevant to the present scope inquiry are two prior rulings issued in this case. As a result of a July 1987 scope determination, the Department issued a Notice to Customs, 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; see also Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987.

Also of relevance, with respect to the citronella candles, is an additional scope clarification of September 3, 1991. In this determination, the Department found that 'the presence of citronella oil in the candles results in the candles' use as an insect repellent... [C]itronella candles are not standard wax candles and, therefore, are outside the scope of the antidumping duty order." See Letter-from the Division Director /OADC to Interested Parties, Fabri-center scope request, September 3, 1991.

From the samples submitted by Star, we note that, with one exception, all are wax-filled containers, be they terra cotta or tin. Star claims that the order covered "tapers, spirals, straight-sided dinners [sic], rounds, columns, pillars and votives," and states that it does not market any of these products. See Star Letter, page 1. The order, though, explicitly covers "wax-filled containers."

However, in light of the 1991 scope determination, we note that the eight products identified in the "Summary" above as "citronella candles in terra-cotta containers" would, by definition, fall outside the scope of the order. In addition, models HFT819, HFT821 and HFT822 are "shaped in the form of identifiable objects" (respectively, a bear, a snowman and a Santa Claus), and would, therefore, pursuant to the 1987 scope determination, be excluded, even if they contained "standard wax."

The products described as "holiday novelty candles" are, with one exception, wax-filled containers bearing scenes or symbols of holidays or special occasions in the container design.

Models HFT704 and HFT829 have illustrated lids depicting Santa's sleigh passing through the night sky. HFT705 features a pattern of Santas and bells upon a green background. The HFT707 tin has a red brick pattern on the side, and has a scene of Santa presenting a child with a toy dog on the lid. HFT828 is a red tin dotted with white spots. Upon the lid, a snowman with red Santa hat is shown cradling a gift in one arm and a small Christmas tree in the other, with a poinsettia blossom at its feet. The three "Halloween" candles, models HFT846, HFT847 and HFT848, while of different shapes, all share the identical images of the witch seen on model HFT846. Each of the wax-filled tins described above incorporates scenes and symbols of a specific -holiday occasion in its design, i.e., Christmas or Halloween. Therefore, as "holiday novelty candles," each is excluded from the scope of the order, pursuant to the Department's 1987 scope determination.

The model HFX915 is a petroleum wax candle formed in the shape of a sack-bearing Santa, and, as such, is unique to this scope proceeding. It measures 4-¾ inches high, approximately 3 -inches across and approximately 2-½ inches measured front-to-back. Again, this candle not only incorporates the holiday symbol of Santa Claus, but is actually molded in the shape of a Santa,

complete with a sack of gifts. Thus, the HFX915 is clearly outside the scope of the order. See CIE N-212/85, op. cit.

The language of the order is also dispositive as to the remaining seven products subject to this scope inquiry. Each of the seven candles is a "wax-filled container," as defined in the order. They are of varying sizes and shapes, and are decorated with different patterns, but, in each instance, lack the exclusionary characteristics necessary to consider them outside the scope of the order.

Four of these candles bear "ocean decor" patterns. See Star Letter, page 1. Model HFT842 and HFT844 are decorated with the same pattern: a light-blue background with white dots depicting bubbles in seawater with an assortment of lobsters and, rising-from a brown seabed, marine plants. Both have lids featuring a single lobster against the "seawater" background. The oval HFT842 and heart-shaped HFT845 also share a single decorative design. Seahorses, seaweed and other aquatic life are depicted against a plain, light-blue background.

The remaining three candles have miscellaneous patterns. Model HFT702 is a square tin with blue wax. The tin is decorated with a pattern of cherries, strawberries, grapes and assorted flowers against a black background. Model HFT703 is somewhat more ornate, featuring more detailed pen-and-ink renditions of plums, cherries and assorted flowers, all against a peach-colored background. Finally, the HFT814 is a heart-shaped tin with a cartoon-like rendering of a "bear family". One bear, identified as the mother by both its size and pink apron; stands beside a "father" bear, which is seated and reading from a book. Two bear "children" flank the larger bears. An assortment of toys is strewn about the hardwood floor, including a train, horn, ball, et cetera. Tables, lamps and other furnishings are visible in the background.

What is clear in examining all seven of these products is that nothing inherent in their design relates to a specific holiday or other special occasion. All seven represent decorated wax-filled tins, i.e., "wax-filled containers," as described in the original order. Similarly, as they are filled with petroleum wax, they lack the specific insect-repellent utility of a citronella candle.

CONCLUSION

Our analysis of the record of this scope request, as well as an analysis of the prior determinations of the Secretary in this case, supports the exclusion of the eight terra-cotta candles specified above, as these are citronella candles previously excluded from the scope of the order. Additionally, the nine candles identified in the summary above as "holiday novelty candles" incorporate scenes and symbols of specific holidays, i.e., Christmas and Halloween, and, thus, are excluded from the order. Finally, the four "ocean decor" and the three "miscellaneous" candles are wax-filled containers, as defined in the original order, and, thus, covered by the antidumping duty order on petroleum wax candles from the PRC.

RECOMMENDATION

Because our physical examination of sample candles provides sufficient basis for making a determination, and the issue can be resolved by making reference to the descriptions of the product contained in the order, the final determinations of the Secretary and the ITC, and the petition, we recommend determining that no formal inquiry is warranted.

Agree Disagree

In addition, we recommend that the Department find, the eight terra-cotta filled containers, which are citronella candles, and the nine "holiday novelty candles" outside the scope of the antidumping duty order on petroleum wax candles from the PRC.

Agree Disagree

We further recommend that the Department find the four "ocean decor" candles and three "miscellaneous" candles are wax-filled containers, specifically included within 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
7/27/94

Date

Attachment