

JUL 27 1994

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

By Certified Mail, Return Receipt Requested

On May 11, 1994, Success Sales, Incorporated, (Success) requested the Department of Commerce (the Department) to issue a ruling that its set of "Holiday Pillar Candles" (Success item number SS-40425) be found outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

We evaluated Success'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 Success SS-40425 candles set is 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; Success Sales, Inc.

SUMMARY

On May 11, 1994, Success Sales, Inc. (Success) requested that the Department of Commerce (the Department) determine that Success's candle set, item number SS-40425 (the Success candle set), is outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). Success argued that its set comprises "Christmas novelty candles which are not of the class or kind of merchandise to which the antidumping order applies." See Letter, Success Sales to the Department, May 11, 1994 (Success Letter).

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 Success candle set, which consists of three pillars with holiday scenes incorporated into their design, is outside the scope of the order.

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), 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. Because the descriptions are not dispositive, we evaluated this request in accordance with 19 CFR 353.29(i)(2). The information obtained from Success's request, and from examination of the Success sample, is sufficient for the Department to make a ruling in this scope matter. Therefore, the Department has determined that no formal inquiry is warranted. See 19 CFR 353.29(b).

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-aided 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; and Letter from the Director, Office of Compliance to Burditt, Bowles & Radzius, Ltd., July 13, 1987.

Physical Characteristics

The Success product consists of three pillar candles packaged as a set. Each candle has a specific scene depicted through painted raised-relief and painted etched designs around the entire candle.

Success, in its scope request, has identified the pillars by the specific design incorporated into each candle. See Success Letter, May 6, 1994, pages 2 and 3. Our physical examination of the sample set revealed three candles, each measuring 5-¼ inches tall and 2-¼ inches in diameter. The candles are wrapped separately in cellophane and packaged in a cardboard box. Each is described below:

The "Nativity Scene" pillar is composed of red wax. It features painted, raised-relief images of Mary and Joseph standing beside the baby Jesus. The backdrop for the crèche is a large star shape cut deeply into the candle, and painted black. To one side, a raised-relief lamb is visible; to the other, three gold raised-relief Wisemen approach the manger. In addition, a white star is visible high above, and behind, the Joseph figure. See Success Letter, page 3.

The "Snow Scene" candle has a white wax base, and features raised relief figurines representing a horse-drawn sleigh with two occupants. The sleigh and horse are gold, while the occupants are painted in red. The sleigh is shown passing in front of a red house with white paint indicating snow on the roof and dormers. Also in the foreground is a raised relief fir tree, painted green with white "snow". The background is covered with etchings of deciduous and evergreen trees. Id.

The "Christmas Bells" candle is green. It features two identical scenes on opposite sides of the pillar. Two raised-relief bells, painted gold and red, are depicted beneath a raised-relief red bow. The bells and bow are presented on a backdrop of etched evergreen boughs, which are lightly traced with green paint.

Our examination of the subject candles clearly establishes that the designs are an integral part of all three candles. The "Nativity Scene", with its patently religious figures, is a type of "Christmas novelty candle." Further, the "Christmas Bells" candle, which features holiday bows and bells set against pine boughs, is consistent with products designed primarily for use in connection with the holiday season. Based on the physical characteristics criterion, these two candles are not of the type to be included in the scope of the order.

The "Snow Scene" candle merely represents a calendar season, i.e., winter, as there is nothing in this candle's design indicating any specific holiday or occasion whatsoever. Therefore, we cannot conclude on the basis of physical characteristics alone that the "Snow Scene" candle is the type of candle excluded from the order.

Expectations of the Ultimate Purchaser and Ultimate Use

The candles are packaged in a white box labeled "Holiday Pillar Candles" on all six sides. Further, the front and back panels feature a color photograph of the three pillars, with the additional legend "Set of 3" at the bottom. Success maintains that this packaging, coupled with "the permanency of the holiday scenes," limits the product's use to display during the Christmas holiday season. See Success Letter, p.7. 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 purposes only. Moreover, the Department also concludes, based on the packing and the decorations, that the candles are used for holiday purposes only. Therefore, because the customer's expectations and uses relate to holiday purposes, the expectations of the ultimate

purchaser and the ultimate use of these products are the same as those of products excluded from the scope of the order. See Petition, March 3, 1985, p.7; Success Letter, op. cit.

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. 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. Success claims it has only one outlet for this product: "United States Purchasing Exchange," a mail-order retailing firm. Success Letter, p.7-8. Attached to this letter is a catalog from the mail-order company. Id., Exhibit B. While this catalog advertises a broad array of goods, it also displays numerous Christmas items, including the subject candles. Id., Exhibit B-47. From our examination of the packaging and advertising of these candles, as well as the ITC findings cited above, we conclude the Success candles are customarily marketed during the Christmas holiday season by a mail-order retailer targeting the holiday-season market. This channel of trade is consistent with that of products previously excluded from 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, support the conclusion that the Success candle set falls outside the scope of the antidumping duty order on petroleum wax candles from the PRC. While the "Snow Scene" candle's physical characteristics are rather inconclusive, our analysis of the remaining three criteria, coupled with the fact that these candles are marketed as a set, leads us to base our determination on the set as a whole.

RECOMMENDATION

Because the product description provides sufficient basis for making a determination, and the issues 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, the petition, and subsequent scope rulings, we recommend determining that no formal inquiry is warranted.

Agree Disagree

We further recommend that the Department find the Success candle set, which consists of 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
7/27/94

Date

Attachment