

JAN 13 1995

A-570-504  
Scope Inquiry  
Public Document  
OADC: RMT

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

To All Interested Parties:

On February 23, 1994, Two's Company, Inc. (Two's Company), requested that the Department of Commerce (the Department) issue a ruling finding that pillar candles, decorated with ornaments (stars, pearls, dots, hearts, roses, etc.) and a red taper candle with a gold angel attached to it be found outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

In accordance with 19 CFR 353.29(b) (1994), the Department has determined that no formal inquiry is warranted. Further, under 19 CFR 353.29(i)(1), the Department has determined that the following pillar candles, decorated-with ornaments, are within the scope of the antidumping duty order:

Item # Candle Name

#1230 "Round Jewels"

#1221 "Square Jewels"

#1232/1233 "Pearls"

#1234 "Celestial"

#1236/1237 "Roses"

#1248/1250/1256 "Stars"

#1251 "Squares"

#1252 "Dots"

#1254 "Diamond Design"

#1255 "Hearts"

#1258 "Jingle Bells"

We have determined that the red taper candle with the gold angel attached, #1279-08, is outside the scope of the antidumping duty order on petroleum wax candles from the PRC. The enclosed memorandum contains the Department's analysis.

We will notify the U.S. Customs Service of this decision. If you have any questions concerning this matter, please contact Ron Trentham or Wendy Frankel at (202) 482-5253.

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—Antidumping Duty Order On Petroleum  
Wax Candles From the People's Republic of China—Two's  
Company, Inc.

Summary:

On February 23, 1994, Two's Company, Inc. (Two's Company), requested that the Department of Commerce (the Department) issue a ruling finding pillar candles decorated with ornaments (stars, pearls, dots, hearts, roses, etc.) and a red taper candle with a gold angel attached to it outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) (50 FR 30686, August 28, 1986). In accordance with 19 CFR 353.29(b) (1994), we recommend that the Department determine that no formal scope inquiry is warranted. Further, in accordance with 19 CFR 353.29(i)(1), we recommend that the Department determine that the red taper candle with the gold angel attached, model #1279-08, is outside the scope of the order. We further recommend that the Department determine that the following pillar candle, decorated with ornaments, are within the scope of the order:

Item # Candle Name

#1230 "Round Jewels"

#1221 "Square Jewels"

#1232/1233 "Pearls"

#1234 "Celestial"

#1236/1237 "Roses"

#1248/1250/1256 "Stars"

#1251 "Squares"

#1252 "Dots"

#1254 "Diamond Design"

#1255 "Hearts"

#1258 "Jingle Bells"

Background:

Two's Company asserts in its February 23, 1994, submission that the red taper candle with the attached gold angel is outside the scope of the order because it is used for, festive or religious occasions such as Christmas, christenings, weddings, etc. Two's Company further asserts that the decorated pillar candles are outside the scope of the order because they are party candles, used for various types of parties, depending on the kind of decoration on the candles. Along with its submission, Two's Company submitted sample candles -- a red taper candle with an angel attached and a pillar-candle with pearl decorations.

On June 14, 1994, the National Candle Association (NCA) submitted comments in response to Two's Company's request:

Two's Company states that the decorated pillar candles are used for various types of parties. This does not distinguish the subject candles from the candles covered by the Antidumping Order which the Petition specifically identified as-being used for decoration and lighting purposes...

The attachment of a gold angel to the red taper candle does not form the basis for it to be treated-any differently than U.S. produced taper candles for festive or religious occasions. U.S. producers also produce red taper candles that will compete with the subject candle for use at festive or religious occasions. The addition of the gold angel does not change the physical characteristics or uses of the candle.

See Letter to the Department from NCA, June 14, 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, the normal bases for determining whether a product is included within the scope of the order are the descriptions of the product contained in the determinations of the Secretary and the International Trade Commission (ITC), the petition, and subsequent scope rulings; this determination may take place with or without a formal scope inquiry (see 19 CFR 353.29(b) and (i)(1)).

In accordance with 19 CFR 353.29(b) of the Department's regulations, the Department has determined that no formal inquiry is warranted. We have evaluated this request in accordance with 19 CFR 353.29(i) (1) because the product descriptions of the merchandise contained in the determinations of the Secretary and the ITC, the petition, and subsequent scope determinations are dispositive.

Documents, or parts thereof, from the underlying investigation and prior scope rulings deemed relevant by the Department to the scope of the outstanding order were made part of the record of this scope proceeding and are referenced herein. Documents that were not presented to the Department, or placed by it on the record, do not constitute part of the record for this scope determination.

The Department defined the scope of the order as follows:

...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.

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

The order was further clarified in a 1986 scope ruling which, states 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.

Also relevant to Two's Company's request is a notice-issued to the U.S. Customs Service (Customs) from the Department concerning the order, 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.

The product descriptions of the, merchandise contained in the above-listed documents are dispositive as to whether Two's Company's red tapered candle, model #1279-O8, to which the form of a gold wax angel has been attached, is a novelty candle and, as such, is outside of the scope of the order. We note that the notice to Customs on September 21, 1987, clearly includes figurine candles within the definition of novelty candles excluded from the scope of the order. 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 candle, we conclude that the angel figurine on the candle cannot be removed without damage to the taper. Therefore, we conclude that this candle clearly meets the description of a novelty candle, merchandise specifically excluded from the scope of the order on petroleum-wax candles from the PRC.

The preceding conclusion makes moot Two's Company's argument, and the NCA's assertions to the contrary, that the red taper candle with the attached gold angel be excluded based on its festive or religious uses; therefore, we have not addressed that issue here.

The product descriptions contained in the above, listed documents are also dispositive with regard to Two's Company's pillar candles decorated with ornaments. According to the language of the original order, pillar candles are within the scope of the order. Although Two's Company's, candles, #1230 ("Round Jewels"), #1231- ("Square Jewels"), #1232/1233 ("Pearls"), #1234 ("Celestial") , #1236/1237 ("Roses"), #1248/1250/1256 ("Stars"), #1251 ("Squares"), #1252 ("Dots"), #1254 ("Diamond Design"), #1255 ("Hearts"), and #1258 ("Jingle Bells" which are simply little gold bells attached to the candle), are decorated with exterior ornaments, these ornaments do not symbolize any specific event or holiday and the ornaments can be removed from the candles without damage to the pillars.

Thus, we conclude that Two's Company's pillar candles meet all the physical criteria for merchandise within the scope of the order and do not have any characteristics which would otherwise, exclude them from the scope of the order.

Recommendation:

Because the product description and 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 merchandise contained in the petition, the initial investigation, the determinations of Secretary and the ITC, and subsequent scope rulings, we recommend determining that no formal inquiry is warranted.

Agree  Disagree

Further, we recommend that the Department find the red tapered candle with a gold figurine, model #1279-08, imported by Two's Company, outside the scope of the order on petroleum wax candles from the PRC because this candle is a figurine novelty candle that clearly meets the description of merchandise specifically excluded from the scope of the order.

Agree  Disagree

In addition, we recommend that the Department find the decorated pillar candles, #1230 ("Round Jewels"), #1231 ("Square Jewels"), #1232/1233 ("Pearls"), #1234 ("Celestial"), #1236/1237 ("Roses"), #1248/1250/1256 ("Stars"), #1251 ("Squares"), #1252 ("Dots"), #1254 ("Diamond Design"), #1255 ("Hearts"), and #1258 ("Jingle Bells"), imported by Two's Company, within the scope of the order on petroleum wax candles from the PRC because these candles meet the description of merchandise covered by the order and do not have any characteristics which would otherwise exclude them from the scope of the order.

Agree  Disagree

If you agree, we will send the attached letter to interested parties and will notify the U.S. Customs Service of our determination.

Joseph A. Spetrini  
Deputy Assistant Secretary  
for Compliance

1/13/95

Date