

MAY 16 1995

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

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On March 29, 1995, Sun It, Corp. (Sun) requested that the Department of Commerce (the Department) issue a scope ruling on whether certain candles imported by Sun are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). The subject candles include Sun's "Flag Lites" torch candle, model numbers 271N and 271ND; the "Porch Torch" candles, model numbers 259NA and 259NDA; the "Gigantic Fruit" candles, model number 281N; and the "Pumpkin" candles, model numbers 284N and 285N.

In accordance with 19 CFR 353.29(b) of the Department's regulations, the Department has determined that no formal inquiry is warranted. Further, under 19 CFR 353.29(i)(1), the Department has determined that the Sun models 271N, 271ND, 259NA, 259NDA, 281N, 284N, and 285N candles are outside the scope of the order on petroleum wax candles from the PRC.

Enclosed is a memorandum containing the Department's analysis. We will notify the U.S. Customs Service of this decision. If you have any questions, please contact Robert M. James or Zev Primor, at (202) 482-5222 or (202) 482-5253, respectively.

Sincerely,

Wendy J. Frankel
Acting 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 (A-570-
504); Sun-It, Corporation

SUMMARY

On March 29, 1995, Sun It Corporation (Sun) requested that the Department of Commerce (the Department) issue a scope ruling finding that the Sun model 271N and 271ND Flag Lites, the model 259NA and 259NDA Porch Torch candles, the model 281N Gigantic Fruit candles, and the model 284N and 285N Pumpkin candles, imported from the People's Republic of China (PRC), are outside the scope of the antidumping duty order on candles from the PRC (51 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, pursuant to 19 CFR 353.29(i)(1), we recommend that the Department determine that the subject Sun candles are outside the scope of the antidumping duty order.

BACKGROUND

In its March 29, 1995, request for a scope ruling (Request), Sun maintains that each of the subject candles are shaped in the form of an identifiable object and, therefore, meet the established criteria for exclusion from the scope of the order covering candles from the PRC. At the Department's request, Sun submitted a letter on April 13, 1995 (Clarification), specifying which individual model numbers are subject to its request.

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. This determination may take place with or without a formal inquiry. See 19 CFR 353.29(b) and (i)(1).

Pursuant to 19 CFR 353.29(b), the Department has determined that no formal inquiry is warranted to determine whether the subject Sun candles are covered by the scope of the order. We have evaluated this request in accordance with 19 CFR 353.29(i)(1) because the descriptions of the products contained in the petition, the final determinations of the Secretary and the ITC, the antidumping duty order, and subsequent scope determinations are dispositive of the issue. Therefore, we have not referred to the additional factors found at section 353.29(i)(2).

Documents, and parts thereof, from the underlying investigation deemed relevant by the Department to the scope of the outstanding order were made part of the record of this determination 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 administrative record for this scope determination.

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).

Also relevant to the present scope ruling is a notice we issued to the United States Customs Service 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)... 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, Supp. No.6, September 21, 1987; see also Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987 (emphasis added).

Sun describes the Flag Life candles as being "molded in the shape of partially furled flags of the United States atop bamboo stakes," and measuring "approximately 6 by 4 inches." Including the stake, the candles stand 46 inches tall, and are intended for use "during the summer months when pool and patio use at night are possible." See Request at 2 and 8. Sun has assigned two model numbers to these candles, 271N or 271ND, the sole distinction being that 271ND is sold with a cardboard "dump" display for retailers' use. See Clarification at 2. The Porch Torch candles are likewise described as six-inch by four-inch candles mounted on bamboo stakes, with an overall length of 46 inches. The Porch Torch candles are molded in the shape of either a rose bloom or a lily. Sun also describes these candles as intended for outdoor use "around the patio, pool or picnic table" and "along borders and walks..." See Request at 2, 11 and 12. Two model designations, 259NA and 259NDA, distinguish between candles with and without the cardboard display. See Clarification at 2.

According to Sun, the Gigantic Fruit candles are seven inches tall, with a circumference of approximately twenty-one inches. Each is shaped in the form of a specific fruit (i.e., an apple, orange, pineapple or strawberry) With the wick "designed to look like the stem[] of the fruit." Sun claims these candles are intended for outdoor use. See Request at 3. Finally, the Pumpkin candles measure seven inches tall and approximately twenty inches in circumference. These come in four varieties; two are designed to resemble jack-o'-lanterns (model number 284N) and two resemble pumpkins with "full facial features modeled in relief" (model number 285N). *Id.*, and Clarification at 2. As with the Gigantic Fruit candles, the Pumpkin candles have a "stem" with a protruding wick, and are intended for outdoor use as "an alternative to carving or decorating an actual pumpkin." See Request at 12.

We agree with Sun that "candles shaped in the form of identifiable objects" have previously been excluded from the scope of the order covering petroleum wax candles from the PRC. See CIE N-212/85, Supp. No. 6, *op. cit.* In addition, prior scope decisions have addressed products similar to the Sun merchandise, i.e., candles formed as identifiable objects. See, e.g. Final Scope Ruling, San Francisco Candle Company, June 10, 1993; and Final Scope Ruling, West Coast

Liquidators, July 27, 1994 (on file in room B-099 of the Main Commerce Building). On the basis of this record, we find that each of the subject Sun candles clearly meets the exclusionary characteristics set forth by the Department in its past scope clarifications.

RECOMMENDATION

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

_____√_____ Agree _____ Disagree

We recommend the Department find the Sun models 271N and 271N1) Flag Lites, 259NA and 259NDA Porch Torch, 281N Gigantic Fruit, and 284N and 285N Pumpkin candles outside the scope of the antidumping duty order on petroleum wax candles, as these candles are formed in the shape of identifiable objects and are, therefore, excluded from the order.

_____√_____ Agree _____ Disagree

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

Joseph A. Spetrini
Deputy Assistant Secretary
for Compliance
5/16/95

Date

Attachment