

SEP 28 1995

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

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On November 21, 1994, Concept Marketing (Concept), a division of the Seeds Corps, requested that the Department of Commerce (the Department) issue a scope ruling on whether the straight sided candle imported by Concept, and Marketed as the Safe-2-Lite, is covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

In accordance with 19 CFR 353.29(i)(1), the Department has determined that Concept's Safe-2-Lite candle is outside the scope of the antidumping duty 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,

Holly A. Kuga
Director,
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 -- Antidumping Duty Order on Petroleum Wax
 Candles From the Peoples Republic of China (A-570-504); Concept
 Marketing, for the Seeds Corps.

SUMMARY

On November 2, 1994, Concept Marketing (Concept), a division of the Seeds Corps, requested that the Department of Commerce (the Department) issue a scope ruling finding that its straight-sided candle, imported from the People's Republic of China (PRC) and marketed as the Safe-2-Lite, is 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(i)(1), we recommend that the Department determine that Concept's Safe-2-Lite candle is outside the scope of the antidumping duty order.

BACKGROUND

In its November 2, 1994, request for a scope ruling (Concept Request), Concept argues that its Safe-2-Lite candle meets the established criteria for exclusion from the scope of the order covering candles from the PRC as the Concept candle is a holiday novelty candle. On December 28, 1994, the National Candle Association (NCA), petitioner in the original less-than-fair-value (LTFV) investigation, submitted comments arguing that the subject candle falls within the scope of the order. Concept submitted rebuttal comments, dated January 25, 1995, which the Department received on January 30, 1995.

On August 3, 1995, the Department requested additional information and comments from interested parties. Specifically, the Department requested that parties address a February 1993 scope ruling on a product similar to the subject Safe-2-Lite candle. Concept submitted timely comments on August 11, 1995; we received no rebuttal comments from any interested party.

ANALYSIS

The regulations governing the Departments 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 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).

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.

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.

Concept describes the subject product as a straight-sided petroleum wax candle with "a tapered point." measuring four-and-one-half inches in length and three-quarters of an inch in diameter at the base. See Concept Request at 1. After importation, the candle is packaged with a "wire safety holder" which allows the user to fix the candle inside a jack-o-lantern. Along with the candle and holder, Concept includes a stainless-steel tool for carving the jack-o-lantern. *Id.*, at 1 and Attachment 1. In its request, Concept included a photograph of the subject candle, as packaged for sale. *Id.*

Concept offers two arguments in support of its belief that the Safe-2-Lite candle is outside the scope of the order. First, Concept asserts that the subject candle is a holiday novelty candle which is intended to safely illuminate a jack-o'-lantern. Concept maintains that the Safe-2-Lite is "only used for a one week period and on the Halloween holiday celebration of October 31." See Concept Request at 2. Second, Concept states that it only markets its Safe-2-Lite product for purposes of "education of children in safety during the Halloween celebration." *Id.* Concept argues that its non-profit fund-raising efforts have been excessively burdened by the "escalating price" of domestically-produced candles despite decreases in worldwide petroleum prices. Concept insists that "it is not the intention of the Department...to penalize children's education" through the application of antidumping duties. *Id.*

NCA counters that the issue before the Department is the subject candle itself, and that packaging is "irrelevant" See Letter, NCA to the Secretary, December 28, 1994, at 2. Further, NCA argues, "[t]he fundraising/nonprofit/educational sector of the U.S. market is not excluded from the scope of the Antidumping Order." *Id.*

In its rebuttal comments, Concept insists that "the Safe-2-Lite candle is not a taper and is not used as a decoration or for lighting purposes in the home;" Concept also renews its argument regarding its "eleemosynary educational pursuits." See Concept Letter, January 25, 1995, at 1 and 2.

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-tilled containers.

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

Based on the descriptions and arguments originally provided by Concept, it appears that the subject candle clearly falls within the scope of the order. While we agree with Concept that holiday novelty candles are excluded from the scope of the order, we cannot agree that the subject Safe-2-Lite candle meets any of the criteria for exclusion on this basis. The Department has previously determined that candles incorporating "scenes and symbols" of a particular holiday which effectively limit the candle's use to that holiday season are outside the scope of the order. See Letter, Director, Office of Compliance to Burditt, Bowles & Radzius, Ltd., July 13, 1987. Concept describes the subject Safe-2-Lite as a plain, straight-sided four-and-one-half inch candle with a tapered point. From Concept's own submission, the subject candle is simply a straight-sided petroleum wax candle which is specifically within the scope of the order.

However, in the February 1993 scope determination referenced above, the Department concluded that certain plain white or colored candles, known as "household" or "utility" candles, are outside the scope of the order because these candles had been specifically excluded from the scope during the LTFV investigation. See Memo to the Deputy Assistant Secretary for Compliance; Final

Scope Ruling; Simcha Candle Co., February 12, 1993. In that inquiry, the Department concluded that plain candles "under 6 inches in height and approximately 3/4 inches in diameter" are "household/utility candles, outside the scope of the order." Id at 4.

During the LTFV investigation, petitioners had insisted that these candles, which are plain, inexpensive candles used primarily for emergency lighting, e.g., during power failures, were "not within the scope of this investigation." See Letter. Taft, Stettinius & Hollister to the Secretary February 7, 1986. The Department agreed; a memo from the Office of Policy to the file concluded that "utility candles" are "not covered by this investigation." See Memo, Office of Policy to the File, February 11, 1986. In the LTFV final determination we reiterated this conclusion: "we excluded imports from Jamaica [for consideration as a basis for FMV] because we received information from petitioner that the Jamaican candles were 'household candles' not subject to this investigation." See Petroleum Wax Candles from the People's Republic of China:

Final Determination of Sales at Less than Fair Value, 51 FR 25085, 25088 (July 10, 1986).

In response to our request for comments on the February 1993 scope decision, Concept states that "The common name for our 3/4 by 4-1/2 inch candle is 'Plumber's Candle'." See Concept Letter, August 11, 1995, at 1. We note that "plumber's candle" is synonymous with "utility candle." By its physical characteristics and dimensions, the Safe-2-Lite candle falls squarely within the Department's definition of "utility" candles which were specifically excluded from the scope of the order during the LTFV investigation. This exclusion was reaffirmed in the February 1993 scope ruling cited above.

As to Concept's argument that it should be exempt from antidumping duties on the Safe-2-Lite because it markets the candle as part of its non-profit fundraising efforts, we note that Concept's motives cannot serve as the basis for excluding a particular product from the scope of an antidumping duty order. In a scope inquiry, the Department must focus, above all, on the product at issue, irrespective of the reasons given for marketing the product.

On the basis of the record of the present scope inquiry, the LTFV investigation and the Department's February 1993 scope determination, we must conclude that the Concept candle is a "Utility" candle. Because these candles are specifically excluded from the scope of the LTFV investigation and the resulting order, we conclude that Concept's Safe-2-Lite candle is outside the scope of the antidumping duty order on petroleum wax candles from the PRC.

RECOMMENDATION

In accordance with § 353.2(i)(1), we recommend the Department find the Concept Safe-2-Lite candle outside of the scope of the antidumping duty order on petroleum wax candles, as the product is a "household" or "utility" candle, which is specifically excluded from the Scope of the order.

_____√_____ Agree _____ Disagree

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

Joseph A. Spetrini
Deputy Assistant Secretary
for Compliance
9/28/95

Date

Attachment