

JUN 24 1996

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

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On February 13, 1996, Morris Friedman & Co. (Friedman) requested that the Department of Commerce (the Department) issue a scope ruling on whether two types of candles are 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 Friedman's products are within 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  
   Deputy Assistant Secretary  
   For Compliance  
FOR:                                Holly A. Kuga, Director  
FROM:                              Office of Antidumping Compliance  
SUBJECT:                         Final Affirmative Scope Ruling - Antidumping Duty Order on  
   Petroleum Wax Candles From the People's Republic of China  
   (A-570-504); Morris Friedman & Co.

#### SUMMARY

On February 13, 1996, Morris Friedman & Co. (Friedman) requested that the Department of Commerce (the Department) issue a scope ruling finding that its wax-filled galvanized steel buckets and wax-filled glass jars, imported from the People's Republic of China (PRC), are outside the scope of the antidumping duty order on candles from the PRC. In accordance with 19 CFR 353.29(i)(1), we recommend that the Department determine that Friedman's steel bucket candles and glass container candles are covered by the scope of the antidumping duty order.

#### BACKGROUND

In its February 13, 1996 request for a scope ruling (Friedman Request), Friedman argues that its steel bucket candle (Candle A) "should be considered a novelty candle." Friedman also suggests that Candle A, "while not citronella," should be excluded because the U.S. Customs Service has classified similarly-packaged candles containing oil of citronella "as an insecticide." Friedman Request at 1. Friedman contends that its candle in a glass container (Candle B) is also a "novelty item" because "The glass container is functional when the candle has lost it[s] use, or has been removed." *Id.* at 2.

On April 8, 1996, the case analyst telephoned Friedman to seek additional information regarding the two products subject to this inquiry. See Memorandum for the file, April 8, 1996, on public file in Room B-099 of the Main Commerce Building. Friedman described Candle A as a candle in a galvanized steel bucket measuring two inches in height and two inches in diameter at the bottom, flaring to three inches in diameter at the top. Friedman confirmed that Candle A does not contain oil of citronella. As to Candle B, Friedman explained that the glass wax-filled container is similar to a "Ball" mason jar, and that the candle is sold either with or without a gasket-sealed glass-and-wire lid. Friedman suggested that the containers for both Candle A and Candle B are re-usable, making these novelty candles 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, the Department first examines the descriptions of the merchandise contained in

the petition, the determinations of the Secretary and the International Trade Commission (ITC), the initial investigation and the order. This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. See 19 CFR 353.29(b) and (i)(1).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the additional factors set forth at 19 CFR 353.29(i)(2). These criteria, commonly referred to as the "Diversified Products" criteria, are: i) the physical characteristics of the merchandise; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; and iv) the channels of trade. See 19 CFR 353.29(i)(2); see also *Diversified Products v. United States*, 572 F. Supp. 883 (CIT 1983); *Kyowa Gas Chemical v. United States*, 582 F. Supp. 887 (CIT 1984); and *Smith-Corona v. United States*, 678 F. Supp. 285 (CIT 1987). The Department applies the Diversified Products criteria when comparison of the merchandise which is subject to a scope inquiry to the product descriptions contained in the petition, the determinations of the Secretary and the ITC, the investigation and the order reveals ambiguity or uncertainty as to its proper class or kind. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

In the instant case, the Department has determined that no formal inquiry is warranted to determine whether or not Friedman's 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, and the antidumping duty order are, in fact, 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.

In its petition of September 4, 1985, the National Candle Association requested that the investigation cover:

candles [which] are made from petroleum wax and contain 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. These candles may be scented or unscented ... and are generally used by retail consumers in the home or yard for decorative or lighting purposes.

Antidumping Petition, September 4, 1985 at 7.

The Department defined the scope of the investigation in its notice of initiation. This scope language carried forward without change through the preliminary and final determinations of sales-at-less-than-fair-value and the eventual antidumping duty order:

[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.

Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty Investigation, 50 FR 39743 (September 30, 1985) (emphasis added); see also

Preliminary Determination of Sales at Less Than Fair Value, 51 FR 6016, (February 19, 1986); Final Determination, 51 FR 25085 (July 10, 1986) and Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China 51 FR 30686 (August 28, 1986). The ITC adopted a similar definition of the "like product" subject to its determinations, noting that the investigations did not include "birthday, birthday numeral and figurine type candles." See Determinations of the Commission (Final), USITC Publication 1888, August 1986, at 4, note 5, and A-2.

Also of relevance to the present scope inquiry is a notice 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). 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).

CIE N-212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987.

Friedman's Candle A is a galvanized steel bucket two inches in height holding a petroleum wax candle. This candle is produced by pouring molten petroleum wax into the bucket. See Friedman Request at 1. Friedman notes that the U.S. Customs Service has considered similar candles (i.e., candles in galvanized steel buckets) outside the scope of the order because the candles contained oil of citronella. This addition, according to Friedman, qualifies the candle as an insecticide, as opposed to the petroleum wax candles subject to the order. Friedman suggests that although its Candle A does not contain oil of citronella, it should nonetheless be covered under this exclusion. Id. Friedman further argues that Candle A is a novelty candle because the steel bucket is re-usable. See Memorandum for the File, April 8, 1996.

Candle B, according to Friedman, is a candle in a glass mason jar which is sold either with or without a gasket-sealed lid. Again, Friedman argues that because the glass jar can be put to other uses once the candle is consumed, this product should be considered a novelty candle. Friedman Request at 2 and Memorandum to the File, op cit.

We agree with Friedman that Christmas and other holiday novelty candles are excluded from the scope of the order, as the Department stated in our July 1987 letter. We note, however, that the order specifically covers "various wax-filled containers." Each of the subject Friedman candles is a container filled with petroleum wax, and each has a wick. At first glance, therefore, the subject candles appear to be manifestly within the scope of the order, which lists "various wax-filled containers" as subject merchandise. Furthermore, we cannot agree that the subject Friedman candles meet the criteria for exclusion specified in that letter. In pertinent part, we explained in the letter that the excluded novelty candles have "scenes or symbols" of specific occasions depicted in their designs, or are "shaped in the form of identifiable objects (e.g., animals or numerals)." See CIE N-212/85, op cit.

The Department has, in the past; addressed several scope requests involving wax-filled containers. For example, in a ruling involving tins with floral designs imported by Lew-Mark Baking Company, the Department found that because the tins lack holiday scenes or symbols, they are properly considered wax-filled containers covered by the scope of the order. See Final Scope Ruling, Lew-Mark Baking Co., Inc., December 16,

1994. For this same reason, the Department found certain wax-filled containers with floral, fruit, or marine patterns, imported by Star Merchandise Co., Inc., to be covered by the order while other containers imported by Star were excluded from the order because they incorporate scenes of Christmas or Halloween into their designs. See Star Merchandise Co., Inc., July 27, 1994.

Based on the evidence in the record of this scope inquiry, we conclude that Friedman's Candle A and Candle B do not contain scenes or symbols of a holiday or other special event, nor are these candles "shaped in the form of identifiable objects," such as animals or numerals. As to Friedman's contention that the subject candles are novelty candles because their containers are re-usable, we note that the order covers wax-filled containers without regard to the subsequent use of the container. In each case involving wax-filled containers examined by the Department to date, the product has consisted of a metal, glass, ceramic or terra cotta container which, conceivably, would be available for re-use after the constituent candle had been burned. The issue before the Department, however, is not the disposition of the container after the candle is consumed but, rather, the wax-filled container en toto as it is imported into the United States. Friedman has introduced no evidence which would indicate that its products should properly be classified as anything other than candles in metal or glass containers - i.e., "wax-filled containers" - from the PRC. Therefore, the Department has no basis in the record evidence for focusing solely upon the containers while disregarding the petroleum wax candles therein.

Finally, with regard to Friedman's comments regarding citronella candles, the Department has previously excluded citronella candles from the scope of the order. See Fabri-centers of America, Inc., September 3, 1991. However, as Friedman's products are not citronella candles, this prior ruling is not applicable in the instant scope inquiry.

#### RECOMMENDATION

We recommend the Department find Friedman's Candle A, described as a petroleum wax candle in a galvanized steel container, and Candle B, a petroleum wax candle in a glass jar, within the scope of the antidumping duty order on petroleum wax candles from the PRC. These products meet the description of wax-filled containers, which are specifically included in the scope of 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  
6/24/96

Date

Attachment