

A-570-504
Scope Review
Public Document
G-2-04/RWB

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On December 5 1995, Midwest of Cannon Falls, Inc. (Midwest) requested that the Department of Commerce (the Department) issue a scope ruling on whether certain 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 four of the seven candles are within the scope of order. The Department has also determined that one candle is excluded from the order. The Department is issuing its ruling on two products described as rectangle and square-shaped candles soon.

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 W. Blankenbaker or Zev Primor, at (202) 482-0989 or (202) 482-5253, respectively.

Sincerely,

Holly A. Kuga
Director
Office of AD/CVD Enforcement
Group II

Enclosure

MEMORANDUM Jeffrey P. Bialos
FOR: Principal Deputy Assistant Secretary
 For Import Administration

FROM: Holly A. Kuga, Director
 Office of AD/CVD Enforcement, Group II

SUBJECT: Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles
 From the People’s Republic of China (A-570-504); Midwest of Cannon
 Falls, Inc.

SUMMARY

On December 5, 1995, Midwest of Cannon Falls, Inc., (Midwest) requested that the Department of Commerce (the Department) issue a scope ruling finding that seven of its petroleum wax candles, 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 four candles listed below are within the scope of the antidumping order.

Article #	Description
16057-2	Taper candle
#H061141	Pillar candle
16105-0	Pillar candle
17257-5	Pillar candle

We also recommend that the Department find that the taper candle numbered 16073-2 is excluded from the order. Regarding Midwest’s exclusion request for the rectangular and square-shaped candles, we will issue a separate ruling on these candles, shortly.

BACKGROUND

In its December 5, 1995 submission, Midwest asserts that articles FC-9902A and 17256-8 are rectangular and square-shaped candles and therefore, are outside the scope of the antidumping order. Midwest further asserts that the third candle, article 16057-2, is outside the order because it is a novelty candle with an Easter motif. Regarding articles H061141, 16105-0 and 17257-5, Midwest contends that these three pillar-shaped candles have decorative materials under the surface of the wax and, thus are excluded from the order. Finally, Midwest argues that its candle with an asparagus design, article 16073-2, is shaped in the form of an object and thus, should be excluded from the order. Along with its submission, Midwest submitted product samples for each candle.

On July 19, 1996, the National Candle Association (NCA) submitted comments in response to Midwest’s request:

All of the subject candles submitted by Midwest fall within the scope of the Order; they are made of petroleum wax and contain fiber wicks. They are sold in the shape of tapers, straight-sided dinner candles, pillars or columns. All of these candles are specifically listed in the scope definition. A simple examination of the candles themselves and the information supplied by Midwest can only lead to the conclusion that the subject candles are included within the scope of the order.

See Letter to the Department from NCA, July 19, 1996.

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 five of Midwest's seven 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 rulings are dispositive of the issue. We will issue a ruling with respect to the two remaining candles shortly. 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. The 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.

Relevant to the present scope issue regarding the Easter taper, candle Number 16057-2, 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). 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.

Based on the record of this scope proceeding, we have determined that the Midwest "Easter" taper candle, article 16057-2, does not meet our definition of a holiday or novelty candle. The candle's design does not incorporate scenes depicting religious holidays or special events. Further, the candle does not possess any exclusionary characteristics similar to figurine candles or candles shaped as identifiable objects. Although blue in color with yellow, pink and dark blue spots, nothing in this design limits the candle to use exclusively at Easter. In fact, the candle's multiple spots are not readily identifiable as either Easter eggs or generic eggs, as claimed by Midwest. Therefore, we conclude that this candle does not meet the definition of Holiday Novelty Candles excluded from the scope of the order

The product descriptions contained in the above listed documents are also dispositive with regard to the Midwest's three pillar candles, articles H061141, 16105-0 and 17257-5. According to the language of the order, pillar candles are within the scope of the order. Although Midwest argues that the candles have decorative materials under the wax, these "designs" as such, do not possess any exclusionary characteristics and do not symbolize any holiday or special event. The first candle's design consists of seashells under the surface of the wax. The design of the second candle has dried flowers on the surface with an additional covering of a thin film of wax. Finally, the third pillar has pine cones and pine branches under the surface which are visible from the surface. None of these designs symbolize a religious holiday or special event. Thus we conclude that these Midwest pillar candles do not have any characteristics which would exclude them from the scope of the order.

According to Midwest, article 16073-2, a taper candle, measuring 10 1/2" tall, is in the shape of an asparagus and is excluded from the order since it is in the form of an object. We note that "candles in the form of identifiable objects" have been previously excluded from the scope of the antidumping duty order. See CIE n-212/85 Supp. No 6, op.cit. In addition, prior scope decisions have addressed products similar to the Midwest merchandise, i.e. candles formed as identifiable objects See e.g. Final Scope Ruling, the Sun It Corporation, May 16, 1995. In this Ruling, the subject candle was shaped in the form of a specific fruit and had a wick designed to look like a stem. Upon physical examination, we agree that the Midwest candle is also shaped in the form of a specific vegetable and possesses a top similar to that found on a spear of an asparagus. Thus, the candle is in the form of an identifiable object and therefore, qualifies as a novelty candle which is excluded from the scope of the antidumping order.

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 rulings, we recommend that no formal inquiry is warranted. Based on the analysis as discussed above, we further recommend that the Department find that the one candle described as an Easter motif candle and the three taper candles are within the scope of the antidumping duty order on petroleum wax candles from the PRC. Additionally, we recommend that the one candle described as an Asparagus candle be excluded from the scope of the antidumping duty order on petroleum wax candles from the PRC because it is the form of an identifiable object.

_____√_____ Agree _____ Disagree

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

Jeffrey P. Bialos
Principal Deputy Assistant Secretary
for Import Administration

October 30, 1996

Date