

APR 9 1997
A-570-504
Scope Inquiry
Public Document
IA/Group III:SCA

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On July 22, 1996, Institutional Financing Services (IFS) requested that the Department of Commerce (the Department) issue a scope ruling on whether candles which it claims represent peppermint candy candles are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). On December 16, 1996, Hallmark Cards, Inc. (Hallmark) filed a request covering a similar candle, designated model number 399FMB5503.

In accordance with 19 CFR 353.29(i)(1), the Department has determined that IFS's and Hallmark's products are within the scope of the antidumping duty order on petroleum wax candles from the PRC.

As the issue presented in both the IFS and Hallmark requests is the same, the Department is addressing both scope inquiries in the attached memorandum. We will notify the U.S. Customs Service of this decision. If you have any questions, please contact Charles R. Ranado at (202) 482-3518 or Stephanie Arthur at (202) 482-6312.

Sincerely,

Richard Weible
Office Director
AD/CVD Enforcement Group III

Enclosure

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MEMORANDUM FOR: Joseph A. Spetrini Deputy Assistant Secretary Enforcement Group III

FROM: Richard Weible
Office Director
Enforcement Group III

SUBJECT: Final Affirmative Scope Ruling -- Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Institutional Financing Services and Hallmark Cards, Inc.

SUMMARY

On July 22, 1996, Institutional Financing Services (IFS) requested that the Department of Commerce (the Department) determine that candles resembling peppermint candy imported by IFS be found outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). On December 16, 1996, Hallmark Cards, Inc. filed a similar request concerning its model number 399FMB5503 formed wax peppermint candy candle.

As the issues are identical in IFS's and Hallmark's requests, the Department is addressing both scope inquiries in this memorandum. Based on an analysis of the information on the record, as defined below, and in accordance with 19 CFR 353.29(i)(1), we recommend that the Department determine that IFS's and Hallmark's products, which are small candles patterned with red stripes so as to resemble a peppermint candy, are within the scope of the order.

BACKGROUND

On July 22, 1996, IFS wrote to the Department seeking clarification as to whether candles 1¼ inches high and 2¾ inches in diameter, that are patterned with red and white stripes so as to resemble a piece of peppermint candy, are covered by the antidumping duty order on petroleum wax candles from the PRC (51 FR 30686 August 28, 1986). IFS argues that the peppermint candy candles, to be imported in retail packages containing drawings of the red and white candles on all sides and labeled "Season's Greetings", are imported specifically and only for the Christmas season. Further, IFS argues that the peppermint candy candles are sold only through a "Holiday Cheer" mail order catalog and that "[t]he seasonal marketing and Christmas holiday packaging of these candles further illustrates this product to be that of a Christmas novelty candle." See IFS Request at 1.

On December 16, 1996, we received a scope inquiry from Hallmark requesting that the Department issue a ruling finding Hallmark's candles, which are 2.75 inches in diameter and 1 inch in height and formed from white wax with red striped decorations and wrapped in polypropylene film to simulate a peppermint candy, outside the scope of the order on candles from the PRC. Hallmark argues that exclusion of its peppermint candy candle from the order is warranted based on the product's physical characteristics, specifically its appearance as "an identifiable object, ...a wrapped peppermint candy." See Hallmark Request at 2. Hallmark contends that product specifications indicating that the candle '...is intended to be more of a decorative candle than a normal candle' demonstrates that it does not fall within the scope of the order. *ibid.* In addition, Hallmark explains that the candle "is marketed at the retail level only during the Christmas selling season in various merchandising fixtures... [and] is sold in [its] 1996 Fall/Christmas catalog." See Hallmark Request at 2 and 3.

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 the product descriptions contained in the petition, the determinations of the Secretary and the ITC, the investigation and the order are ambiguous and unclear. 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.

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, note5, 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-212185, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987.

The IFS candle is a round candle 1¼ inches in height and 2¾ in diameter, is made of petroleum wax, and has a fiber wick. At first glance, the subject candle appears to be manifestly included within the scope of the order, which lists round candles as subject merchandise. IFS claims, however, that the peppermint candy candle is "patterned with red and white stripes...as to resemble peppermint candy", which limits their use to the Christmas holiday and would, thus, warrant exclusion pursuant to the July 13, 1987 ruling quoted above. See IFS Request at 1. Similarly, Hallmark's candle is a round candle measuring 2¾ inches in diameter and 1 inch in height. Hallmark contends that the candle represents an identifiable object, i.e. a peppermint candy. See Hallmark Letter at 2 and Attachment 1 at 11.

We agree with IFS and Hallmark that Christmas and other holiday novelty candles are excluded from the scope of the order, as the Department stated in our July 1987 letter. However, we cannot agree that the subject peppermint candy candles meet the criteria for exclusion specified in that letter. In pertinent part, we explained in the letter that "Christmas novelty candles are specially designed for use only in connection with the Christmas holiday season. This use is clearly indicated by Christmas scenes and symbols clearly depicted in the candle design." See CIE N-212/85, op cit. (emphasis added). This same criterion for specificity as to the holiday or occasion being depicted (for example, wedding) applies to any other holiday novelty candle.

Absent specific distinguishing characteristics of the candles themselves, such as scenes or symbols of holidays or any other occasions incorporated into the candle's design, the Department must consider the candles within the scope of the order, irrespective of labeling or packaging, unless there is some ambiguity after an examination of the physical characteristics of the subject merchandise.

Finally, we note that the order does not mention an exclusion on the basis of seasonal marketing; unless specifically excluded on the basis of shape or novelty of design, petroleum wax candles from the PRC are covered by the order irrespective of the manner in which an individual company chooses to market the product.

Based on the evidence in the record of these scope inquiries, we conclude that IFS's and Hallmark's peppermint candy candles do not contain scenes or symbols of holidays or other special events, nor are these candles "shaped in the form of identifiable objects," such as animals or numerals. These candles are red and white rounds made of petroleum wax and having fiber wicks. As such, these candles, by definition, fall within the scope of the antidumping duty order on petroleum wax candles from the PRC.

Our analysis of the record of these scope requests, as well as an analysis of the record in this case, support the inclusion of the candles specified above, as they are petroleum wax rounds, specifically included in the scope of the order.

RECOMMENDATION

We recommend that the Department find the Institutional Financial Services and Hallmark candles within the scope of the antidumping duty order on petroleum wax candles from the PRC.

_____√_____ Agree _____ Disagree

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

_____√_____ Agree _____ Disagree

Joseph A. Spetrini
Deputy Assistant Secretary AD/CVD
Enforcement Group III 4/9/97

Date