

A-570-504
Scope Review
Public Document
G2-04/RWB

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On May 9, 1996, Dollar Tree Stores, Inc. (Dollar Tree) requested that the Department of Commerce (the Department) issue a scope ruling on whether its taper candle, imported by Dollar Tree, is covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). In accordance with 19 CER 353.29(i)(1), the Department has determined that one candle (item 416750) described as a Christmas novelty candle is outside the scope of antidumping order.

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 IV, 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);
 Dollar Tree Stores, Inc.

SUMMARY

On May 9, 1996, Dollar Tree Stores (Dollar Tree) requested that the Department of Commerce (the Department) issue a scope ruling finding that its petroleum wax candle, imported from the People's Republic of China (PRC), is 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 Dollar Tree's candle described as a Christmas novelty candle is outside the scope of the antidumping order.

BACKGROUND

In its May 9, 1996 request for a scope ruling, Dollar Tree contends that its taper candle, item number 416750, is a Christmas novelty candle and falls outside of the scope of the order. On August 8, 1996, the National Candle Association ("NCA"), petitioner in the original less than fair value (LTFV) investigation, submitted comments on the Dollar Tree candle. According to the NCA, the Dollar Store candle "does not have any exclusionary characteristics that would bring them within the Christmas Novelty Candle exclusion." Therefore, the Dollar Store candle is within the scope of the antidumping duty 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 antidumping order and subsequent scope rulings. 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 merchandise subject to the scope inquiry is covered by the order. See 19 CFR 353.29(b) and (i)(1).

In the instant case, we have evaluated this request in accordance with 19 CFR 353.29 (i)(1) because the descriptions of the subject merchandise contained in the petition, the final determinations of the Secretary and the ITC, the antidumping duty order and subsequent scope rulings 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 LTFV determinations and the eventual antidumping duty order, states, in part:

[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 29, 1986). The ITC adopted a similar definition of the "like product" subject to its determinations, noting that it included:

The imports from China in this investigation are scented and unscented petroleum wax candles having fiber or paper-cored wicks. They are made in various shapes and sizes, including tapers, spirals, straight-sided dinner candles, rounds, columns, pillars, votives, and various wax, filled containers as provided for in the Tariff Schedules in the United States ("TSUSA") Item No. 755.25, "Candles and Tapers."

Relevant to the present scope request 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 especially 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).

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

Most relevant to the present scope request is the recent opinion and decision in *Springwater Cookie & Confections, Inc. v. United States*, Slip Op. 96-260 (Court of International Trade Sept. 26, 1996). In that decision, the CIT overturned the Department's February 14, 1999 scope ruling with respect to Springwater's Holly Feather Twist candle ("Holly Candle"), a Christmas novelty candle with a design similar to the Dollar Tree Candle. After analyzing Springwater's design, the Court noted that the Holly Candle was "although mostly white, used red and green and features a holly sprig, a symbol associated with Christmas." In contrast to the Department's ruling, the Court held that "the holly sprigs are indeed a symbol associated with Christmas." Therefore, the Court ruled that the Holly Candle met the Department's definition of a Christmas novelty candle and was not within the scope of the antidumping duty order.

The Dollar Tree Candle is similar to the Springwater Holly Feather Twist Candle. Mostly white in color, the candle has a design using red and green holly leaves and berries on a vine. Since candles featuring holly have been determined by the CIT to be a Christmas novelty candle, we recommend that the Department, consistent with this CIT decision, determine that the Dollar Tree Candle is a Christmas Novelty Candle and therefore, excluded from the antidumping order on petroleum wax candles from the PRC.

RECOMMENDATION

Based on the above, we recommend that no formal inquiry is warranted. We also recommend finding that the Dollar Tree Candle falls within the Department's Christmas

Novelty Candle exclusion and is outside the scope of the antidumping duty order on petroleum wax candles from the PRC.

_____√_____ 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
April 9, 1997

Date