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

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

FROM: Richard Weible
Office Director
AD/CVD Enforcement Group III, Office 8

SUBJECT: Final Affirmative Scope Ruling - Antidumping Duty Order on
Petroleum Wax Candles From the People's Republic of
China (A-570-504); Indio Products, Inc.

SUMMARY

On March 13, 1997, Indio Products, Inc. (Indio) requested that the Department of Commerce (the Department) issue a scope ruling on whether certain candles it imports are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

We notified Indio that we would require additional information to consider its scope request, and received the requested information on April 17, 1997.

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 the following candles are within the scope of the order:

Item# Candle Category

Model 0080 Votives – Devotional Lites

Model 0040 Households

Model 0083 Jumbos

Model 0086 Triple Action Jumbos

Model 532 Pullouts

Model 0058 Tapers

BACKGROUND

On March 13, 1997, Indio wrote to the Department seeking clarification as to whether its votive, household, jumbo, pullout, and tapered candles are covered by the antidumping duty order on petroleum wax candles from the PRC (51 FR 30686, August 28, 1986). Indio's product catalog, submitted as an attachment to its scope request, describes the candles as follows:

- 1.) "jumbo candles", 9" by 1 ½", sold in various colors
- 2.) "household candles", 6" by ¾", sold in various colors
- 3.) "triple action jumbo candles", 9" by 1 ½", tri-colored (red/white/blue or red/white/green)

- 4.) "taper candles", 12 inches high, sold in various colors
- 5.) "15 hour votive candles", sold in various colors
- 6.) "pullout candles", 7 ¼" by 2 ¼", sold in various colors, with reversible wicks

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*, 532 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.

In the instant case, the Department has determined that no formal inquiry is warranted to determine whether or not Indio'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.

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 (NCA) 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); 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 Peoples 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.

We do not believe that Indio's tapers, votive, household, jumbo, and pullout candles qualify for the novelty exclusion. Again, the applicable analysis for this scope determination is 19 CFR 353.29(i)(1). Under this section, if the description of the products contained in the petition, the final determinations of the Secretary, and the ITC, and the antidumping duty order are dispositive, no further analysis is necessary. The factors found under 19 CFR 353.29(i)(2) become relevant only if a dispositive determination cannot be made using the criteria set forth in 19 CFR 353.29(i)(1).

In the instant case, the criteria set forth in 19 CFR 353.29(i)(1) are dispositive with regard to Indio's taper and votive candles. According to the language of the order, tapers and votives are within the scope of the order. These criteria are also dispositive with regard to the company's household, pullout, jumbo, and triple action jumbo candles. These candles, as evident from Indio's product catalog, are sold in the shape of straight-sided dinner candles and pillars or columns, all of which are explicitly included in the scope of the order.

In its request, Indio argues that because its products are marketed primarily to the Black and Hispanic communities for use as "altar invocational", "personal or astral", and "offertory" candles in rituals, they should fall within the exclusion for "image" (i.e. identifiable object) candles because their purpose in candle burning rituals is the same. (See March 13, 1997 letter from Indio, page 3, in which Indio contends that "the criteria for these [candles] should be identical as for the image candles' and that "the expectations of the ultimate purchaser is identical to that of the image candle.")

On May 16, 1997, the NCA, petitioner in the original less-than-fair-value investigation, submitted comments in response to Indio's submission. The NCA argues that because the subject candles imported by Indio are made from petroleum wax with fiber wicks and are sold in shapes which are specifically listed in the scope description (votives, tapers, straight-sided dinner candles, and columns, or pillars), they are, by definition, subject to the antidumping duty order on petroleum wax candles from the PRC.

Indio's assertions of the possible "ritual uses" of its products are not sufficient to overcome the explicit scope language of the order. These candles are votives, tapers, pillars, and straight-sided dinner candles, made of petroleum wax, which are all specifically included in the scope of the order. The candles do not fit within the novelty exception. They do not have scenes or symbols of specific religious holidays or special events depicted in their designs, they are not figurine candles, nor are

they in the shape of identifiable objects. Additionally, Indio's argument regarding "[t]he expectations of the ultimate purchaser" is irrelevant because the applicable analysis set forth in 19 CFR 353.29(i)(1) is dispositive, thereby making further analysis under 353.29(i)(2) unnecessary.

Our analysis of the record of these scope requests, as well as an analysis of the record in this case, supports the inclusion of the candles specified above, as they are votives, tapers, pillars, and straight-sided dinner candles, made of petroleum wax, specifically included in the scope of the order.

RECOMMENDATION

We recommend that the Department find the Indio 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

9/15/97

Date