

JUL 2 1998

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

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On May 18, 1998, Et Al Imports, Inc. (Et Al) requested that the Department of Commerce (the Department) issue a scope determination on whether paraffin wax bamboo candles it imports, designated as style numbers CC451, CC452, and CC453, are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

In accordance with 19 CFR 351.225(d) of the Department's regulations, the Department has determined that no formal inquiry is warranted. Further, under 19 CFR 351.225(k)(1), the Department has determined that Et Al's bamboo candles are not included in 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 Stephanie Arthur at (202) 482-6312.

Sincerely,

Richard Weible
Office Director
AD/CVD Enforcement Group III/Office 8

Enclosure

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MEMORANDUM FOR: Joseph A. Spetrini

Deputy Assistant Secretary

Enforcement Group III

FROM: Richard Weible, Director

Office Eight

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

SUMMARY

On May 18, 1998, Et Al Imports, Inc. (Et Al) requested that the Department of Commerce (the Department) determine that 100 percent paraffin wax bamboo candles which it imports are outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

Based on an analysis of the information on the record, as defined below, and in accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that Et Al's candle is excluded from the scope of the order.

BACKGROUND

In its May 18, 1998 request for a scope determination, Et Al seeks clarification as to whether certain paraffin wax candles which it claims are shaped in the form of bamboo are covered by the antidumping duty order on petroleum wax candles from the PRC (51 FR 30686, August 28, 1986).

ANALYSIS

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 351.225. 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 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 351.225(d).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: i) the physical characteristics of the merchandise; ii) the expectations of the ultimate purchaser; iii) the ultimate use of the product; iv) the channels of trade in which the product is sold; and v) the manner in which the product is advertised and displayed. The Department applies these criteria when the product descriptions contained in the petition, the determinations of the Secretary and the ITC, the investigation and the order are ambiguous or 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 Et Al's candle is covered by the scope of the order. We have evaluated this request in accordance with 19 CFR 351.225(k)(l) 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 Candies 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; See also Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987.

In its request Et Al states that the candles at issue, which are made from 100 percent paraffin wax, are shaped to resemble bamboo, with its characteristic "circular knuckles" and knots along several points of the stalk. These candles measure 6" x 2", 9" x 2", and 3" x 3" and are designated as style numbers CC451, CC452, and CC453, respectively.

Et Al offers two arguments as to why its merchandise warrants exclusion from the scope of the antidumping duty order on candles from the PRC. First, Et Al asserts that the candles are easily recognizable as bamboo, and cites the July 1987 scope determination (quoted above) excluding identifiable objects from the scope of the order as support. Second, Et Al suggests that its bamboo candles, available typically through "high-end" retailers only, are purchased primarily to "promote more constructive, gratifying and productive time while in use." See Et Al Request at 2.

On June 23, 1998, we received comments from the NCA regarding Et Al's scope request. The NCA contends that because Et Al's bamboo candles are in the form of pillars, they are specifically included within the scope of the order. The NCA further asserts that "the Et Al candles' minimal decorative elements are too generic to distinguish them as designed exclusively for use as a novelty candles." See NCA Letter at 5. Even if the novelty exclusion were valid, argues the NCA, Et Al's candles would fall within the scope of the order because their use is not limited strictly to Christmas or any other holiday season.

With regard to petitioner's assertions regarding the novelty exclusion and its argument that Et Al's candles do not qualify for exclusion on this basis, we note that candles warrant exclusion from the scope of the order 1) if the candles are limited solely for use in connection with the Christmas or other holiday season; or 2) if they are shaped in the form of identifiable objects. The fact that Et Al's merchandise is not sold exclusively for Christmas or any other holiday season does not automatically disqualify these candles for exclusion as a novelty candle. Rather, a candle may also qualify for exclusion if it is shaped in the form of an identifiable object.

We note that "candles in the form of identifiable objects" have been previously excluded from the scope of the order. See CE N-212/85 Supp. No. 6, *op. cit.* In addition, the Department has in the past issued several scope determinations addressing products similar to the Et Al merchandise (i.e., candles formed as identifiable objects). See, e.g., Final Scope Ruling, Sun-It Corporation, May 16, 1995 ("gigantic fruit"

and pumpkin candles outside scope) and Final Scope Ruling, Midwest of Cannon Falls, October 30, 1996 (asparagus stalk outside scope). We agree with Et Al that the candles at issue should be excluded from the scope of the order on petroleum wax candles from the PRC. These candles are clearly identifiable as bamboo stalks (and not merely pillars) and bear the characteristic markings (i.e., ribbed joints and knots) of bamboo. The candies' markings are not too generic to distinguish them as a novelty candle, as the NCA suggests. Thus, Et Al's bamboo candles qualify as novelty candles which are excluded from the scope of the antidumping order.

Et Al's argument regarding the ultimate use of its candles was not considered, as these candles are excluded from the order because they are shaped in the form of an identifiable object (i.e., bamboo).

Based on the evidence in the record of this scope inquiry, as well as an analysis of the record in this case, we conclude that Et Al's bamboo candles fall outside of the scope of the antidumping duty order on petroleum wax candles from the PRC.

RECOMMENDATION

We recommend that the Department find Et Al's paraffin wax bamboo candles outside 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

8-2-98

Date