

AUG 24 1998

A-570-504
Scope Review
Public Document
Grp.III:JBT

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On July 9, 1998, Kohl's Department Stores, Inc. (Kohl's) requested that the Department of Commerce (the Department) issue a scope ruling on whether eight types of 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 351.225(k)(1), the Department has determined that seven of Kohl's products (one star-shaped candle, one tree-shaped candle, one snowflake-shaped candle, two gold candles with rope designs, one ivory candle with gold flower and vine designs, and one ivory candle with gold cherubs and rope designs) are within the scope and one of Kohl's products (one white wax-filled container with carolers and a Christmas scene), is outside 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 John Totaro or Becky Hagen, at (202) 482-1374 or (202) 482-1102, respectively.

Sincerely,

Roland L. MacDonald
Executive Director, Office 7
Enforcement Group Three

Enclosure

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

FROM: Roland L. MacDonald
 Executive Director
 Office Seven

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

SUMMARY

On July 9, 1998, Kohl's Department Stores, Inc. (Kohl's) requested that the Department of Commerce (the Department) issue a scope ruling finding that its eight 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 351.225(k)(1), we recommend that the Department determine that Kohl's star-shaped candle, tree-shaped candle, snowflake-shaped candle, two gold candles with rope designs, ivory candle with gold flower and vine designs, and ivory candle with gold cherubs and rope designs are covered by the scope of the antidumping duty order and that the white wax-filled container with carolers and a Christmas scene are not included within the scope of the antidumping duty order.

BACKGROUND

In its July 9, 1998 scope request, Kohl's argues that each one of its eight candles (one star shaped, one tree-shaped and one snowflake-shaped candle in a container, two gold candles with rope designs, an ivory candle with gold flower and vine designs, an ivory candle with gold cherubs and rope designs, and a white wax-filled container with carolers and a Christmas scene) represents a "Christmas novelty candle." Kohl's argues that its candles should be excluded from the scope of the order based on their physical characteristics. Kohl's also states that it designed, had manufactured, advertised and sold these candles for use during the Christmas season.

Kohl's also contends that the shape of its gold candles with rope designs (items 5G527 and 5G528) brings these candles outside the scope of the order. These candles are cylinder-shaped. One is approximately three inches in diameter and four inches in height; the second is approximately three inches in diameter and six inches in height. Kohl's states that an earlier Department determination defined the term "rounds" in the order as round shaped columns or pillars. (San Francisco Candle Company, June 10, 1993.) Kohl's then cites a Webster's dictionary definition of "column," which defines this shape as a pillar with a capital and usually a base. Kohl's notes that these two candles have neither a capital or a base. Finally, Kohl's cites a Webster's dictionary definition of "pillar," which states that the defining characteristic of a pillar is that it is "relatively slender in proportion to its

height." Kohl's contends that these candles are broad in comparison to their heights, and, therefore, they should not be considered pillars.

In addition to its argument about their treatment under the novelty exception, Kohl's contends that the wax of the three candles in containers (items 07-8364, 07-6685 and 07-9481) are formed in the shape of identifiable articles as well, and therefore outside the scope of the order. Item 07-8364 is in the shape of a star, item 074685 is in the shape of a tree, and item 07-9481 is in the shape of a snowflake. Kohl's claims that the scope of the antidumping order does not include candles which are identifiable objects such as stars, trees, or snowflakes.

Kohl's contends that the ivory candle with embossed designs of gold flowers and vines (item X6233) should be considered a "holiday novelty candle." Again, Kohl argues that the ivory candle will only be sold during the Christmas season and that after the holiday season it will be discounted until sold.

Kohl's also argues that the ivory candle adorned with gold cherubs and rope design (item 8048) is excluded from the scope of the antidumping order because of its shape and design. It contends that this candle is not in one of the shapes specifically provided for in the antidumping order, in addition to the fact that it is a Christmas novelty item that cannot be used outside the holiday season.

Finally, Kohl's contends that the truncated, bulb-shaped candles in white containers decorated with carolers and a Christmas scene (item P4279) should be considered "novelty candles" as well. They argue that the Christmas designs on these containers cannot be removed without defacing the candle. Kohl's reiterates that the candle will only be sold during the Christmas season and that after the holiday season they will be unfit for use.

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 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 351.225(d).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the five 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 purchasers; 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 Kohl's candles are covered by the scope of the order. We have evaluated this request in accordance with 19 CFR 351.225(k)(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 requested that the investigation cover:

[C]andles [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, 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; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987.

The product descriptions contained in the above listed documents are dispositive. The Department has determined, based on the product descriptions, that Kohl's item 8048 (Ivory Candle Adorned with Gold Cherubs and Rope Design), items 56527 and 56528 (Gold Candles with Rope Design),

and item X6233 (Ivory Candle with Embossed Designs of Gold Flowers and Vines) they are properly identified as "pillar" candles, under the scope of the order. These four candles are decorated with exterior ornaments (cherubs, rope, flowers and vines), which do not symbolize any specific event or holiday. Thus, the decorations on these candles do not bring these candles within the "novelty candle" exemption described above. We conclude that Kohl's pillar candles meet all the physical criteria for merchandise within the scope of the order and do not have any characteristics which would otherwise exclude them from the scope of the order. See Two's Company, Inc., January 13, 1995.

We agree with Kohl's that Christmas and other holiday candles are excluded from the scope of the order, as we stated in our July 1987 letter. We note, however, that the order specifically covers "various wax-filled containers." The snowflake, star, and tree candles (Nos. 07-9481, 07-8364, and 07-6685, respectively) are containers filled with petroleum wax, and each has a wick. Therefore, the subject candles appear to be manifestly within the scope of the order, which lists various wax-filled containers" as subject merchandise. See CIE N-212/85, *op cit*. While the scope of the order is specifically limited to certain shapes for those candles not in containers, there is no such limitation for wax-filled containers. The scope of the order simply states that "various wax-filled containers" are included without respect to their configuration. Therefore, any wax-filled container is properly included within the scope of the order, unless it can be exempted based on the holiday novelty candle exemption. See Russ Berrie, Company, Inc., October 28, 1996.

The Department has, on numerous occasions, addressed wax-filled containers argued to be Christmas scenes and symbols. For example, in a ruling involving wax-filled terra-cotta containers in the shape of a bell, tree, reindeer and a star, imported by Meijer Inc., the Department found that because the candles do not contain scenes or symbols specifically related to a holiday or other special event and their use is not attributed solely to the Christmas season, the candles are within the scope of the order. See Meijer Inc., September 8, 1997. Other examples include cases involving figurines attached to tapers, pillar candles with engraved or molded scenes or symbols, and wax-filled containers incorporating holiday designs. Specifically, the Department has consistently found candles with Santa Claus designs to be Christmas novelty candles. See, e.g., Star Merchandise, Inc., July 27, 1994; West Coast Liquidators, July 27, 1994; A.J. Cohen, June 6, 1994; Kole Imports, June 7, 1994; and Primark International, June 7, 1993. The Santa Claus design effectively limits the candle to use during the Christmas season. Candles with other Christmas scenes or symbols have likewise been excluded. See, e.g., Success Sales, July 27, 1994 (candle set featuring depiction of the Nativity and of a Christmas ornament on pine boughs excluded).

Conversely, several parties have claimed that objects such as an angel, snowman, or pine cone constitute "Christmas symbols." In two separate scope rulings, the Department did not accept the parties' claims that these objects are Christmas scenes or symbols, deciding instead that the candles are excluded because, pursuant to our October 30, 1986 ruling involving Global Marketing Services, the figurines added to the tapers could not be removed without damaging the candle. See Two's Company, January 13, 1995 at 4; and West Coast Liquidators, July 27, 1994. The latter case is particularly instructive: West Coast Liquidators argued that a pine cone qualifies as a holiday "scene or symbol." See Letter, Gibson, Dunn & Crutcher to the Secretary, April 14, 1994 at 3. West Coast Liquidators also argued that the candles were excluded as "figurine" candles, citing the Global Marketing case. *Id.* The Department, in excluding this candle, found only the second argument persuasive. See West Coast Liquidators, *op cit*, at 3. We find parallels between West Coast Liquidator's claim that a pine cone is a Christmas scene or symbol and Kohl's claim that snowflakes, stars, and trees are likewise Christmas scenes or symbols.

The language of the order is dispositive in regards to the four aforementioned candles subject to the scope of the inquiry. Each of the four candles is a "wax-filled container," as defined in the order. They are of varying sizes and shapes, but, in each instance, lack the exclusionary characteristics necessary to consider them outside the scope of the order. Specifically, we find that neither a star, a snowflake, nor a tree is a symbol of Christmas. Therefore, we cannot agree that the subject Kohl's

candles meet the criteria for exclusion based on the holiday novelty candle exemption. See CIE N-212/85, op cit.

Finally, the Department has determined, based on the product descriptions on the record in this inquiry, that the white wax-filled container with carolers and a Christmas scene (item P4279) is a Christmas novelty candle. The Department found certain wax-filled containers with floral, fruit, or marine patterns, imported by Star Merchandise Co., Inc., to be covered by the order while other containers imported by Star were excluded from the order because they incorporate scenes of Christmas or Halloween into their designs. See Star Merchandise Co., Inc., July 27, 1994. Another example is the ruling in the Cherrydale Farms Confections inquiry. In that ruling, the Department found that the wax-filled metal container with a famous Currier and Ives print on the lid was outside the scope of the order. There are parallels between the Currier and Ives wax-filled container and the white wax-filled container in this inquiry; both have scenes that represent Christmas. The Currier and Ives candle shows a couple carrying a Christmas tree home on a sleigh. The white wax-filled container in this inquiry shows children, singing from books in a winter setting, which is clearly intended to represent Christmas carolers. The image of carolers on the container limits the candle to use for Christmas and thus qualifies it as a novelty candle outside of the scope of the order. See Cherrydale Farms Confections, September 30, 1993.

RECOMMENDATION

We recommend the Department find Kohl's star shaped, tree shaped, and snowflake shaped candles; gold candles with rope designs; ivory candle with gold flower and vine designs; and ivory candle with gold cherubs and rope designs within the scope of the antidumping duty order on petroleum wax candles from the PRC. In addition, we recommend that the Department find Kohl's white wax-filled container with carolers and a Christmas scene, not to be included 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 the interested parties, and will notify the U.S. Customs Service of our determination

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

8-24-98

Date

Attachment