

AUG 31 1998

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

By Certified Mail, Return Recipient Requested

To All Interested Parties:

On July 16, 1998, Leader Light Ltd. (Leader Light) requested that the Department of Commerce (the Department) issue a scope ruling on whether four 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 Leader Light's 3" x 3" square, 3" x 6" square, 3" x 3" round, and 3" x 6" round candles are within 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 People’s Republic of
 China (A-570-504); Leader Light Ltd.

SUMMARY

On July 16, 1998, Leader Light Ltd. (Leader Light) requested that the Department of Commerce (the Department) issue a scope ruling finding that its two round and two square 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 Leader Light’s two square and two round candles are covered by the scope of the antidumping duty order.

BACKGROUND

In its July 16, 1998 scope request, Leader Light argues that each one of its four candles (one 3" x 3" square (item X-1221H), one 3" x 6" square (item X-1222D), one 3" x 3" round (item X1238H), and one 3" x 6" round (item X-1237E)) is a crystallized, scented stearin candle. Leader Light argues that its candles are not of the class or kind described in the original petition and, therefore, are outside the scope of the order.

Leader Light contends that the material composition of their crystallized scented stearin candles is as follows: 1) Stearic Acid or Stearin - 45%; 2) Paraffin Wax (Petroleum Wax) - 43%; 3) Palm Oil – 10%; and 4) Scent (Essential Oil) - 2%. Leader Light argues that because the stearin used in the manufacture of the subject candles is the primary production material, and is not added merely in a secondary or subordinate material, these are distinctly unlike the candles described in the order.

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 Leader Light's crystallized scented stearin 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.

The product descriptions contained in the above listed documents are dispositive. The Department has determined, based on the product descriptions, that Leader Light's 3" x 3" round (item X-1238H), 3" x 6" round (item X-1237E), 3" x 3" square (item X-1221H), and 3" x 6" square (X-1222D) candles are containers filled with petroleum wax, and each has a wick. The outer shell, composed of

stearin and palm oil, is particularly designed to resist heat dissipation. Leader Light contends that the subject merchandise are "intended primarily for decorative use, particularly for the artistic effect created when the inner portion of the candle melts and the candle light shines through the crystallized outer shell." See Leader Light Scope Request, August 18, 1998, at 3. 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, September 21, 1987. As we stated in an earlier determination, 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.

Leader Light cites a scientific definition of stearic acid which states, in part, that "[s]tearic acid is used (1).... in the manufacture of 'stearin' candles, and is added in small amounts to paraffin wax

candles." See Request at 8, citing Van Nostrand's Scientific Encyclopedia (Douglas M. Considine, et al, eds., 6th ed. 1983). In addition, Leader Light quotes an industry source which asserts that "[m]ost modern candles are made from a blend of several ingredients. They are paraffin, stearic acid (stearin) and microcrystalline wax." See Leader Light Request at 7, citing Paul Collins, *Introducing Candlemaking* at 20 (1972). Based on Leader Light's scope request, we conclude the subject products are neither stearin candles nor candles in which stearic acid (or stearin) is blended with petroleum wax in the manufacturing process. Leader Light's candle has an outer shell of colored stearic acid, chosen for its hardness and slow melting rate relative to petroleum wax, with a center of petroleum wax and palm oil which contains the wick. See Request at 3. The shell and the inner candle material are visible at the base of the candle. According to Leader Light's Scope Request, this two-part construction allows the walls of colored stearin to stand while the petroleum wax burns down within those walls, and glows from within to create an "artistic effect." *Id.* The stearin shell, therefore, acts as a container for a petroleum wax candle.

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. We conclude that Leader Light's wax-filled containers 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.

RECOMMENDATION

We recommend the Department find Leader Light's 3" x 3" square, 3" x 6" square, 3" x 3" round, and 3" x 6" round 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 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

8-31-98

Date

Attachment