

DEC 10 1998

A-570-504
Scope Review
Public Document
Group III/7: BJH

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On October 26, 1998, Costco Wholesale ("Costco") requested that the Department of Commerce ("the Department") issue a scope ruling on whether its beeswax and petroleum wax-filled containers manufactured in the People's Republic of China ("PRC") and imported by Costco are covered by the antidumping duty order on petroleum wax candles from the PRC.

We have determined that Costco's candles are not petroleum wax candles as defined in the scope of the antidumping duty order on petroleum wax candles from the PRC. Thus, the candles subject to this inquiry are outside the scope of the antidumping duty 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 John Totaro or Becky Hagen, at (202) 482-1374 or (202) 482-1102, respectively.

Sincerely,

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

Enclosure

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

FROM: Roland L. MacDonald
 Executive Director
 Enforcement Group III, Office 7

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

SUMMARY

On October 26, 1998, Costco Wholesale ("Costco") requested that the Department of Commerce ("the Department") issue a scope ruling on whether its beeswax and petroleum wax-filled containers manufactured in the People's Republic of China ("PRC") and imported by Costco are covered by the antidumping duty order on petroleum wax candles from the PRC.

We have determined that Costco's candles are not petroleum wax candles as defined by the scope of the antidumping duty order on petroleum wax candles from the PRC. Thus, the candles subject to this inquiry are outside the scope of the antidumping duty order.

BACKGROUND

In its October 26, 1998 request for a scope ruling, Costco described the candles subject to this inquiry as a scented wax in a decorative, frosted glass container which consists of 81% beeswax and 19% petroleum wax. Costco asserted that these candles should be excluded from the order because the original petition filed on behalf of the National Candle Association fails to specify that blended petroleum wax-beeswax candles should be within the scope of the resulting final antidumping order.

In its comments, the National Candle Association ("NCA") argues that the candles subject to this inquiry are made from petroleum wax, contain fiber wicks, and are wax-filled containers. NCA asserts that the wax-filled containers subject to this inquiry would not qualify for the novelty exclusion, as they are not specifically designed for any special holiday, and they can be sold and used throughout the year. Furthermore, NCA states that the Costco wax-filled containers are not beeswax candles, because they are not composed of 100 percent beeswax.

ANALYSIS

The regulations governing the Department's antidumping scope determinations are 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 antidumping duty 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 evaluated Costco's 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); 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 ("ITC Determination").

The product descriptions contained in the above listed documents are dispositive. The Department has determined, based on the ITC's final determination, the determinations of the Secretary, the original language in the petition, and the circumstances of this particular case, that Costco's candles are not "petroleum wax" candles as defined in the scope of the order.

In its determination of injury to the domestic industry, the International Trade Commission ("ITC") considered the issue of whether candles containing a mixture of petroleum wax and other "natural" waxes were to be included in their like product determination. ITC Determination at 4. Specifically, the ITC determined that certain blended petroleum wax and beeswax candles are not "like or similar" products to the petroleum wax candles covered under the scope of the order. ITC Determination at 5.

NCA asserted in its comments that a beeswax candle is a candle composed of 100 percent beeswax, and that "a candle containing any petroleum wax from the People's Republic of China must be treated as being within the scope of the Order." NCA's Comments at 2. NCA's assertions on these issues are not persuasive. The ITC determined that certain blended candles which are composed of less than 100 percent petroleum wax are not a like product and therefore, are outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China. Costco's wax-filled containers, made of 81 percent beeswax and 19 percent petroleum wax, are similar to those candles excluded from the ITC's like product determination. Therefore, Costco's wax-filled containers composed of 81 percent beeswax and 19 percent petroleum wax are outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China.

RECOMMENDATION

We recommend the Department find that Costco's candles made from 81 percent beeswax and 19 percent petroleum wax are 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 the interested parties, and will notify the U.S. Customs Service of our determination.

Joseph A. Spetrini
Deputy Assistant Secretary
Enforcement Group III

12-11-98

Date

Attachment