

DEC 24 1998

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

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On November 9, 1998, Endar Corp. ("Endar") requested that the Department of Commerce ("the Department") issue a scope ruling on whether floating round 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 Endar's floating 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
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 Peoples Republic of
 China(A-570-504); Endar Corp.

SUMMARY

On November 9, 1998, Endar Corp. ("Endar") requested that the Department of Commerce ("The Department") issue a scope ruling on whether floating round 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), we recommend that the Department determine that Endar's floating round candles are covered by the scope of the antidumping duty order.

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 Endar'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, the initial investigation, 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").

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 Endar's floating candles are petroleum wax candles, each with a wick, and in the shape of a round. Endar described the candles subject to this inquiry as floating candles that are molded from whipped wax to make them as light as possible and then dipped in colored wax. Endar asserted that these candles should be excluded from the order because they are novelty items.

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 rounds. NCA asserts that the candles 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 molded candles, as well as poured candles, are included within the scope of the order. Finally, NCA argues that there are no exclusions for "floating" candles from the order.

The Endar floating candles are made from petroleum wax and contain wicks. They are not designed to be used for a specific holiday and therefore do not qualify for the holiday novelty exclusion. Additionally, attached to Endar's scope request are photocopies of pages from the 1998 Colony Gift Corporation catalog, which Endar states "advertise[s] the same identical merchandise as our floating candles," and which refers to the subject candles as "floating rounds." Thus, the subject candles are not identifiable objects, but rather are properly identified as "rounds," which are included in the scope of the order.

Endar's candles are petroleum wax candles, contain wicks, and are in the shape of rounds. Therefore, the Department has determined that Endar's candles are within 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 Endar's floating round candles are 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
Enforcement Group III

DEC 24, 1998

Date

Attachment