

APR 7 1999

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

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On February 12, 1999, Endar Corp. ("Endar") requested that the Department of Commerce ("the Department") issue a scope ruling on whether seven types of candles manufactured in the People's Republic of China ("PRC") and imported by Endar are covered by the antidumping duty order on petroleum wax candles from the PRC.

In accordance with 19 CFR 351.225(k)(1), the Department has determined that one of Endar's candles (gold 5" high holiday candle) is covered by the scope of the antidumping duty order, and that six of Endar's candles (red holiday floating candle, purple eight points floating puck candle, white frosty snow ball candle, gold 3" pine cone candle, white Christmas star candle, green Christmas free ball ornament candle) are not included within 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 FOR: Joseph A Spetrini  
Deputy Assistant Secretary  
Enforcement Group III, Office 7

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

SUBJECT: Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles  
from The People's Republic of China (A-570-504); Endar Corp.

#### SUMMARY

On February 12, 1999, Endar Corp. ("Endar") requested that the Department of Commerce ("the Department") issue a scope ruling on whether seven types of candles manufactured in the People's Republic of China ("PRC") and imported by Endar are covered by the antidumping duty order on petroleum wax candles from the PRC.

In accordance with 19 CFR § 351.225(k)(l), we recommend that the Department determine that one of Endar's candles (gold 5" high holiday candle) is covered by the scope of the antidumping duty order, and that six of Endar's candles (red holiday floating candle, purple eight points floating puck candle, white frosty snow ball candle, gold 3" pine cone candle, white Christmas star candle, green Christmas tree ball ornament candle) are not included within the scope of the antidumping duty order.

#### BACKGROUND

In its February 12, 1999 scope request, Endar argues that each of its seven candles (red holiday floating candle, purple eight points floating puck candle, white frosty snow ball candles, gold 3" pine cone candle, white Christmas star candle, green Christmas tree ball ornament candle, and gold 5" high holiday candle) are novelty candles, which are explicitly excluded from the scope of the order. Endar also states that these candles are only ordered for sale during the holiday season. Comments submitted by petitioners, the National Candle Association ("NCA"), are addressed in the "Analysis" section, below.

#### ANALYSIS

The regulations governing the Department's antidumping scope determinations are set forth at 19 CFR § 351.225. Pursuant to 19 CFR § 351.225(d) and (k)(1), 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. If the Department determines that these descriptions are dispositive of the matter, the Department

will issue a final scope ruling as to whether the merchandise at issue is covered by the order. See 19 CFR § 351.225(d).

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.

In its petition of September 4, 1985, the NCA 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 6-7.

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 of Sales at Less Than Fair Value, 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 Determinations").

Also of relevance to the present scope inquiry is a notice issued by the Department 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 1, 1987.

As explained below, the product descriptions contained in the above-listed documents are dispositive with respect to each of the candle types identified by Endar.

### 1. Gold 5" High Holiday Candle

Endar maintains that its gold 5" high holiday candle is a novelty item and is only ordered for sale during the holiday season.

NCA argues that Endar's gold 5" high holiday candle is a six-sided pillar candle that is not clearly identifiable as a "star" when viewed from the side and therefore does not qualify for the "identifiable objects" exclusion. NCA further argues that Endar's gold 5" high holiday candle does not depict any holiday scenes or symbols and therefore does not qualify for the holiday novelty candle exclusion.

Endar's gold 5" high holiday candle is a six-sided pillar candle which is made from petroleum wax and contains a wick. Neither the candle's color nor its shape appears to symbolize any specific event or holiday; therefore, this candle does not qualify for the holiday novelty candle exemption described above. Further, the Department, in a prior scope ruling regarding a twelve-sided pillar candle, determined that because "the object {was} not clearly identifiable as a "star" when viewed from all sides, it did not qualify for the identifiable object exclusion. See September 2, 1997 Scope Determination regarding Russ Berrie, Inc. Similarly, Endar's gold 5" high holiday candle is not clearly identifiable as a star, or any other known object, when viewed from all sides. Therefore, the identifiable object exclusion does not apply to this candle. We conclude that Endar's pillar candle meets all the physical criteria for merchandise within the scope of the order and does not have any characteristics which would otherwise warrant treating it as not within the scope of the order.

### 2. Holiday Floating Candle

Endar maintains that its red holiday floating candle is a novelty item and is only ordered for sale during the holiday season.

NCA argues that Endar's red holiday floating candle is made from petroleum wax, contains a fiber wick, and is in the shape of a round. NCA asserts that Endar's red holiday floating candle is the "same Endar candle that Commerce has previously found to be within the scope of the Order." NCA argues that this candle would not qualify for the novelty exclusion, as it is not specifically designed for any special holiday, and as it does not have any holiday scenes or symbols depicted in its design.

Endar's red holiday floating candle is made from petroleum wax, contains a wick, and is in the shape of a round. However, because the design and color combination of this candle (pine cones bunched in the center of green pine branches against a red background) is associated with Christmas, we find that Endar's red holiday floating candle qualifies for the holiday novelty candle exclusion. Therefore, we conclude that Endar's red holiday floating candle is not covered by the scope of the antidumping duty order on petroleum wax candles from the PRC.

### 3. Frosty Snow Ball Candle

Endar maintains that its white frosty snow ball candle is a novelty item and is only ordered for sale during the holiday season.

NCA did not submit any comments regarding this candle.

Endar's white frosty snow ball candle is made of petroleum wax and contains a fiber wick. However, as the order specifically lists the shapes that it covers, and because Endar's white frosty snow ball candle is ball-shaped (which the Department has previously determined to be outside the scope of the order (see June 10, 1993 Scope Determination regarding San Francisco Candle Company), we conclude that Endar's white frosty snow ball candle is not covered by the order.

#### 4. Eight Points Floating Puck Candle

Endar maintains that its purple eight points floating puck candle is a novelty item and is only ordered for sale during the holiday season.

NCA asserts that this candle is "a small eight-sided pillar candle." NCA argues that Endar's purple eight point floating puck candle does not qualify for either the holiday or identifiable objects exclusion, as it does not depict scenes or symbols for a specific holiday, nor does it identify any known object. Further, NCA cites a previous scope determination in which the Department found a candle of 1 ½" height and 2 ¾" diameter that was patterned with red and white stripes to resemble peppermint candy to be covered by the scope of the order.

Endar's purple eight points floating puck candle is made of petroleum wax and contains a fiber wick. However, we disagree with NCA's characterization of this candle as a pillar. According to Webster's New World Dictionary, a pillar is "a long, slender, vertical structure used to support a superstructure...or anything resembling a pillar in form or function." Since this candle is approximately twice as wide as it is tall, it is not properly described as a pillar, nor as any of the other shapes specifically listed in the scope of the order. Further, in response to NCA's citation of a previous determination in which the Department found a candle of 1 ½" height and 2 ¾" diameter that was patterned with red and white stripes to resemble peppermint candy to be covered by the scope of the order, we find no parallels between the peppermint candy candle and the candle at issue here. The peppermint candy candle was clearly in the shape of a round and therefore it was of a shape explicitly covered by the order. See April 9, 1997 Scope Determination regarding Hallmark. Finally, we find that any discussion as to whether this candle qualifies for either the holiday novelty or identifiable objects exclusion irrelevant, as the shape of Endar's purple eight points floating puck candle is not specifically mentioned in the order and therefore is not covered by the scope of the order.

#### 5. Christmas Tree Ball Ornament Candle

Endar maintains that its green Christmas tree ball ornament candle is a novelty item and is only ordered for sale during the holiday season.

NCA did not submit comments regarding this candle.

Endar's green Christmas tree ball ornament is made of petroleum wax and contains a fiber wick. However, the Department has found that this candle, when viewed from all sides, is clearly identifiable as a Christmas tree ball ornament, and, therefore, qualifies for the identifiable object exclusion. Accordingly, we conclude that Endar's Christmas tree ball ornament candle is not covered by the scope of the order.

6. Christmas Star Candle

Endar maintains that its white Christmas star candle is a novelty item and is only ordered for sale during the holiday season.

NCA did not submit comments regarding this candle.

Endar's white Christmas star candle is made of petroleum wax and contains a fiber wick. However, we have found that, when viewed from all sides, this candle is clearly identifiable as a star and, therefore, qualifies for the identifiable object exclusion. Accordingly, we conclude that Endar's white Christmas star candle is not covered by the scope of the order.

7. 3" Pine Cone Candle

Endar maintains that its gold 3" pine cone candle is a novelty item and is only ordered for sale during the holiday season.

NCA did not submit comments regarding this candle.

Endar's gold 3" pine cone candle is made of petroleum wax and contains a fiber wick. However, we have found that, when viewed from all sides, this candle is clearly identifiable as a pine cone and, therefore, qualifies for the identifiable object exclusion. Accordingly, we conclude that Endar's gold 3" pine cone candle is not covered by the scope of the order.

RECOMMENDATION

We recommend the Department find that one of Endar's candles (gold 5" high holiday candle) is covered by the scope of the antidumping duty order, and that six of Endar's candles (red holiday floating candle, purple eight points floating puck candle, white frosty snow ball candle, gold 3" pine cone candle, white Christmas star candle, green Christmas tree ball ornament candle) are not included within the scope of the antidumping duty order.

\_\_\_\_\_√\_\_\_\_\_ 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

4/7/99

Date

Attachment