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A-570-504
Scope Review
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By Certified Mail, Return Receipt Requested

To All Interested Parties:

On April 30, 1998, DJP Design, Inc. ("DJP") requested that the Department of Commerce ("the Department") issue a scope ruling on whether its gold metal canister with accompanying candles is 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 the DJP's gold metal canister with accompanying candles is not 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 at (202) 482-1374.

Sincerely,

Barbara Tillman
Executive Director
Enforcement Group III, Office 7

EnclosureA-570-504

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

FROM: Barbara Tillman
 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); DJP Design, Inc.
 ("DJP")

SUMMARY

On April 30, 1999, DJP Design, Inc. ("DJP") requested that the Department of Commerce ("the Department") issue a scope ruling on whether its metal canister containing a scented candle ("gold metal canister with accompanying candles") is covered by the antidumping duty order on petroleum wax candles from the People's Republic of China ("PRC"). The National Candle Association filed comments on DJP's request on May 25, 1999. In accordance with 19 CFR 351.225(k)(l), we recommend that the Department determine that DJP's gold metal canister with accompanying candles is not covered by the scope of the antidumping duty order.

BACKGROUND

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 it is unclear whether the product which is the subject of the scope ruling fits within the product descriptions contained in the petition, the determinations of the Secretary and the ITC, the investigation, and the order. 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 DJP's request in accordance with 19 CFR § 351.225(k)(l), 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 this scope ruling 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 candies 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 candies having scenes or symbols of other occasions (e.g., religious holidays or special events) depicted in their designs, figurine candies, 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.

Physical Characteristics of the Product in Question

DJP described its gold metal canister with accompanying candle as "a metal canister, measuring 2x2x1" with a vanilla scented candle, packaged as a gratuitous item to complement retail sales." The lid is embossed with the design of a ribbon so that the canister with its lid on resembles a gift-wrapped box. The product is described in a package insert as a "candle holder" that "is beautifully hand-crafted in 18k gold plate and is packaged with a vanilla scented candle." This insert also states that the container can be "easily converted to a beautiful keepsake by carefully removing the wax remains with soap and hot water." A brochure contained in the package indicates that the subject product is part of a collection of "18k gold-dipped cosmetic accessories" which include compacts, pill cases, and atomizers.

Comments of the Parties

DJP asserts that the gold metal canister with accompanying candles should be excluded from the order because: 1) it is a "novelty" item that is "not intended for primary use as a candle;" and 2) it is an "identifiable object." DJP argues that "novelty candles" are excluded from the scope of the order, as a result of a decision issued by Court of International Trade on September 25, 1996. Thus, DJP implies that its candle is excluded from the order as a "novelty" item. DJP further argues that "identifiable objects" were excluded from the scope of the order on October 30, 1996.

The National Candle Association responded to DJP's request, asserting that the product falls within the scope of the order because: (1) exemptions from the scope of the order "should be narrowly construed;" (2) the candle does not qualify as a "novelty candle" because it is not designed for "use only in connection with a specific holiday;" (3) it is a "wax-filled" container as defined by the scope of the order, or alternatively the wax-portion included within the container is a four-sided pillar candle as defined by the scope of the order. Additionally, the National Candle Association stresses that there is no need for a formal inquiry or to review the factors set forth at 19 CFR § 351.225(k)(2), since the current record is dispositive that the product falls within the scope.

ANALYSIS

The scope of the order specifically covers "various wax-filled containers." See Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China 51 FR 30686 (August 28, 1986); CIE N-212/85. As stated above, the enclosed candle can be easily separated from the metal canister. The petroleum wax is not melted into the container, and in fact, a replacement candle is packaged outside of the container. In each case involving wax-filled containers examined by the Department to date, the product has consisted of a container made of metal, glass, ceramic, terracotta, or other material into which molten wax has been poured, such that the wax conforms to the interior contours of the container. In many of these cases, the containers are designed so that they may be re-used after the constituent candle has burned. See e.g., *Morris Friedman & Co.* ("Morris Friedman") (June 24, 1996). In that case, the importer argued that its wax-filled container should be outside the scope as a novelty item because "the glass container is functional when the candle has lost its use or is removed." *Id.* at 1. The Department disagreed, and determined that the product was a wax-filled container, in part because the importer had "introduced no evidence which would indicate that its products should properly be classified as anything other than candles in metal or glass containers – i.e., 'wax-filled containers' - from the PRC." *Id.* at 5.

Unlike the facts in *Morris Friedman*, evidence on the record of this inquiry indicates that this product as packaged should not be classified as either a candle or a wax-filled container as defined by the scope of the order. The metal canister subject to this inquiry is easily separated from its accompanying candle; the candles are wholly separate from the metal canister, and do not conform to the interior of the canister. By lifting the candle out of the canister, the canister becomes fully functional as a keepsake box, and the packaging includes instructions for cleaning and re-use after

use as a candle holder. A brochure contained in the package indicates that the subject product is part of a collection of "18k gold-dipped cosmetic accessories" which include compacts, pill cases, and atomizers. The product also contains a separate warranty included within the packaging in which DJP agrees to replace or repair a defective canister. As explained by DSP, the vanilla-scented candle is "packaged as a gratuitous item to complement retail sales." Finally, the gold box and accompanying candles are packaged in a durable and decorative gift box.

The container was not filled with molten wax, and while it may be used as a candle holder, based on the accompanying literature, this is clearly not the only intended use for this container--either before or after the candle is burned. Additionally, as explained above, the facts on the record distinguish DJP's product from previous products that were determined to be "wax-filled containers" as delineated in the scope of the order. Finally, our review of the descriptions of this product indicates that the product should properly be classified as something other than a wax-filled container as defined by the scope of the order.

Notwithstanding the fact that DJP's product does not constitute a wax-filled container, it should also not be viewed as two separate items (i.e., a metal canister and a wax candle), because its components are packaged together and sold as one unit. The Department considered a similar issue in a previous scope review. In the Department's scope ruling for Polardreams, the Department considered whether a kit consisting of powdered wax, an empty glass container, wicks and other smaller items, was within the scope of this order. We found that:

[i]n determining whether the product in question is a candle, the Customs doctrine of "entireties" is instructive. The Court of International Trade (CIT) stated in *Sears, Roebuck & Co. v. United States*, 13 C.I.T. 772 (1989) that "under the doctrine of entireties, when an importer imports a set of components designed to form a saleable unit, the merchandise is classifiable as that unit." *Id.* at 777 citing *Nissio-Iwai American Corp. v. United States*, 10 C.I.T. 154, 158 (1986).

The Court of Appeals for the Federal Circuit, in applying the doctrine of entireties noted that this doctrine is a corollary to another theory of customs jurisprudence that "an imported article should be classified according to its true commercial character." The Court noted that "[t]he doctrine states that, if an entry consists of parts which, although unjoined, when assembled form an article different from any of the parts, the proper classification is the one for the whole article and not for the parts separately." *Computime, Inc. v. United States*, 772 F.2d 874, 877 (Fed. C.I.T. 1985) citing *Donalds, Ltd. v. United States*, 32 Cust. Ct. 310, 314-15 (1954).

Polardreams at 4.

The commercial reality of DJP's "bow candle" is that its three components, a gold metal box and two wax candles, are imported together in one package and marketed as a decorative box/candle holder with candles. Thus, we find that, even if we found that the candle, on its own, would be within the scope of the order, because the commercial reality is that the candle is incorporated into DJP's product as one saleable unit, it is not appropriate to assess duties on the candle component of this product. Therefore, we find that DJP's product is not covered by the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China.

DJP's gold metal canister with accompanying candles are marketed together as a single product. DJP does not claim that it ever sells the various components that make up this product independently of each other. However, if in the future the Department is able to establish that DJP sells the metal containers separately and/or the containers are valued separately from the petroleum

wax candles, we may at that time consider whether alternative assessment procedures should be established with the U.S. Customs Service.

RECOMMENDATION

We recommend the Department finding that DJP's "gold metal canister with accompanying candles" is not a candle 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

7/1/99

Date

Attachment