

SEP 30 1999

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

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On July 16, 1999, American Fun & Toy Creators, Inc. ("American") requested that the Department of Commerce ("the Department") issue a scope ruling on whether its cube-shaped candle embossed with the words "YEAR 2000" 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 American's candle is 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 E. Tillman  
Director  
Enforcement Group III, Office 7

Enclosure

MEMORANDUM FOR: Joseph A. Spetrini  
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);  
American Fun & Toy Creators, Inc.

#### SUMMARY

On July 16, 1999, American Fun & Toy Creators, Inc. ("American") requested that the Department of Commerce ("the Department") issue a scope ruling on whether its cube-shaped candle embossed with the words "YEAR 2000" is covered by the antidumping duty order on petroleum wax candles from the People's Republic of China ("PRC"). The National Candle Association ("NCA") filed comments on American's request on August 12, 1999. On September 2, 1999, the Department determined that it was impracticable to issue a scope ruling within the 45-day schedule established in section 351.225(c)(2) of the Department's regulations, and extended the deadline from September 2 to September 30, 1999. In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that American's cube-shaped "Year 2000" candle is 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 American'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 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 by 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.

#### Physical Characteristics of the Product in Question

American described its candles as gold or silver candles with three wicks, "with the words 'Year 2000 appearing in three dimensions on all four sides of the candle." American also states that its candles are properly classified under HTSUS subheading 3406.00.0000. The sample candle provided for the record is cube-shaped, with equal length and width dimensions (approximately 6 inches) and a slightly smaller height. The phrase "Year 2000" is molded into the sides of the candle at a depth of approximately 1/8 inch. The sample provided for the record is silver-colored.

#### Comments of the Parties

American asserts that its candles should be excluded because 1) the candles are not shapes covered by the scope of the order, and specifically, "the candles are in the form of the phrase 'Year 2000;'" 2) the candles are novelty candles because they are designed for use during a special event, "the New Year and millennium;" and 3) the candles are "identifiable objects" because they "bear 3-dimensional numbers." In response, NCA argues that American's candles are within the scope of the order because they are shapes covered by the scope, specifically, straight-sided pillar or dinner candles. NCA further contends that the candles should not be excluded as novelty candles because their use is not limited to a specific holiday. Additionally, NCA 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

##### A. Shape

American's candle, like the merchandise subject to the LTFV investigation, is made of petroleum wax and contains a wick. The four sides of the candle are decorated with the phrase "Year 2000." The candle is in the form of a cube, or square-shaped pillar, and the scope of the order specifically covers "pillars," which includes straight-sided as well as cylinder-like articles.

Consistent with this definition, the Department previously found that a similar square-shaped candle was a pillar. See Final Scope Ruling: Mervyn's, December 9, 1996 (hereinafter Mervyn's). Thus, because American's candle is a square-shaped, straight-sided pillar candle, it is a shape covered by the scope of the order.

##### B. Identifiable Object Clarification

As stated above, the Department has clarified that figurine candles and candles shaped in the form of identifiable objects (e.g., animals or numerals) do not fall within the scope of the order, because they do not fall within the list of identified shapes. See CIE N-212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987. Because American's candle is a specific shape delineated in the scope of the order (i.e., a pillar), it is not excludable as an identifiable object. American's candle is a typical pillar candle (in the form of a cube). Additionally, the fact that the cube shape is decorated with raised letters and numbers does not alter the shape of the candle. See Mervyn's at 7 (cube-shaped candle was within the scope even though the candle was decorated with raised relief designs). American's candle is not "in the form of

the phrase "Year 2000." Thus, it is not a numerical or figurine candle as was anticipated by the Department's clarification of the scope.

### C. Holiday Exemption

American argues that its candle should be exempt from the order because it is a holiday novelty item. As we stated above, the Department has found certain candles to be excluded from the scope of the order as novelty candles where the candles have scenes or symbols of occasions such as religious holidays or special events depicted in their designs, and where such candles are limited for use only in connection with these holidays or events. See *Russ Berrie & Co. v. United States*, USCIT Slip Op. 99-61 ("[A] candle must be specifically designed for use only in connection with a religious holiday or special event to fall within the novelty candle exception.") The phrase "Year 2000," which decorates the four sides of American's candle, does not relate to a specific religious holiday or special event. Although the candle contains the phrase "Year 2000" in its design, this characteristic does not limit its use to any particular day of the year, holiday, or event. This candle, as NSC argues, "could be used at any time before, after, and during the year 2000." Therefore, because this candle is not designed for use only in connection with a holiday or special event, it is not exempt from the scope of the order as a holiday novelty candle.

### RECOMMENDATION

We recommend that the Department find that American's "Year 2000" candle, is 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

9-30-97

Date

Attachment