

A-570-504
Scope Review
PUBLIC DOCUMENT
DAS III (7): JAB

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On August 23, 2002 and August 26, 2002, the Department of Commerce (the Department) received requests from San Francisco Candle Company (SFCC) for scope rulings on whether three types of candles it imports, “concentric heart” candles (Style Nos. 71526 and 71426), “crackle heart” candles (Style Nos. 17734 and 17736), and “moonlight candy cane” floaters (Style Nos. 213619 and 213449), should be included within the scope of 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)(2002), the Department has determined that all three types of SFCC’s candles should be included 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. Bureau of Customs and Border Protection of this decision. If you have any questions, please contact Sally Gannon at (202) 482-0162 or Jessica A. Burdick at (202) 482-0666.

Sincerely,

Barbara E. Tillman
Director
Office of AD/CVD Enforcement VII
Import Administration

Enclosure

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

FROM: Barbara E. Tillman
Director
Office of AD/CVD Enforcement VII

SUBJECT: Final Scope Ruling: Antidumping Duty Order on Petroleum Wax
Candles From the People's Republic of China (A-570-504);
San Francisco Candle Company

Summary

On August 23, 2002 and August 26, 2002, the Department of Commerce (the Department) received requests from San Francisco Candle Company (SFCC) for scope rulings on three types of candles, "concentric heart" candles (Style Nos. 71526 and 71426), "crackle heart" candles (Style Nos. 17734 and 17736), and "moonlight candy cane" floaters (Style Nos. 213619 and 213449), to determine whether their candles should be included within the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986) (Order). In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that all three types of SFCC's candles should be included within the scope of the antidumping duty order on petroleum wax candles from the PRC.¹

¹ The Department has developed an internet website that allows interested parties to access prior scope determinations regarding the antidumping duty Order on Petroleum Wax Candles from the People's Republic of China. This website lists all scope determinations from 1991 to the present. It

Background

SFCC filed its requests for scope rulings in proper form on August 23, 2002 and August 26, 2002.² On October 25, 2003, SFCC supplemented its August 26, 2002 scope request. On November 22, 2002, counsel for the National Candle Association (NCA), association of domestic candles producers, and petitioner in this proceeding, filed comments on SFCC's requests.

SFCC's Requests

SFCC argues, in its August 23, 2002 submission, that its "crackle heart" candle and "concentric heart" candles are in the shape of a traditional rendition of a heart. SFCC also argues that the Department should determine that the two "heart" candles are excluded from the candles Order based upon the 1987 Customs Notice.³ SFCC alleges that, in the Customs Notice, the Department clarified the

can be accessed at <http://ia.ita.doc.gov/download/candles-prc-scope/>, and will be updated periodically, to include newly-issued scope determinations.

² SFCC filed a scope ruling request on its "crackle heart" candles and "concentric hearts" candles on August 23, 2002. On August 26, 2002, SFCC filed a scope ruling request on its "Christmas candy cane floaters."

³ The Customs Notice was a notice issued by the Department of Commerce to the U.S. Customs Service (as of March 1, 2003, renamed the U.S. Bureau of Customs and Border Protection (Customs)) in connection with a July 1987 scope determination concerning an exception to the Order for novelty candles, 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).

Petroleum-Wax Candles from the People's Republic of China - Antidumping - A-570-504; C.I.E. -212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles &

exclusion of “certain novelty 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 numbers).” SFCC further argues that its two heart candles should be excluded based upon the Department’s clarification in the Customs Notice. More specifically, SFCC maintains that the candles at issue are clearly identifiable as “hearts” and are therefore excluded from the Order. SFCC further argues that the two candles are unmistakably heart-shaped from any perspective, with traditional outlining and curves. The SFCC points out that the Department has previously ruled that heart-shaped candles are identifiable from most angles and are excluded from the Order. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Jo-Ann Stores at 7 (January 29, 2002) (Jo-Ann Stores). In addition, SFCC argues that the candles at issue should be excluded under the novelty exclusion because the candles are “specially designed” for Valentine’s Day, a “holiday or special event” that the SFCC maintains qualifies the candles for exclusion from the Order. See Custom’s Notice. Finally, the SFCC argues that, whether based on the “novelty” or “identifiable object” exception, the crackle heart and concentric heart candles are excluded from the Order. In the alternative, if the Department cannot make a scope determination based upon the face of its request, SFCC urges that the Department should initiate a formal scope inquiry.

SFCC argues in its August 26, 2002 submission, that its “moonlight candy cane” floaters are specifically designed for use only in connection with the Christmas Holiday, thereby qualifying the candles for exclusion from the Order. SFCC’s “moonlight candy cane” floater, style no. 213619, features red, white, green and transparent colors in a candy cane pattern, while “moonlight candy cane” floater, style no. 213449, features red, white and transparent colors in a candy cane pattern. SFCC argues that both the Department and the Courts have recognized that color combination may “clearly indicate” use only in connection with Christmas. More specifically, with respect to style no. 213619, SFCC asserts that the Department has recently determined that candles demonstrating a candy cane pattern in red, green and white are specifically designed for Christmas and should be excluded from the Order. See Petroleum Wax Candles from the People’s Republic of China: Final Results of Redetermination Pursuant to Court Remand; San Francisco Candle Company, Inc. v. United States, Court No. 01-00088, Slip Op. 02-47, at 19-20 (CIT May 30, 2002) (Candles Remand). With respect to style no. 213449, SFCC argues that the Department has previously ruled that such “candy cane” pattern designs are not specifically designed for use only in connection with Christmas. However, SFCC contends that this previous ruling contradicts plain evidence of design intent and actual use and that there is no meaningful design or use distinction between style no. 213449 and style no. 213619. Finally, the SFCC argues that because the “moonlight candy cane” floaters were specifically designed for use only in connection with the Christmas holiday, the candles should be excluded from the Order. In the alternative, if the Department cannot make a scope determination based upon the face of its request, SFCC urges that the Department should initiate a formal scope inquiry.

Radzius, Ltd., July 13, 1987 (Customs Notice).

The National Candle Association's Comments

In its comments, the NCA retraces the history of this antidumping duty order, including the import surges and resultant injury suffered by domestic manufacturers which prompted the original September 1985 antidumping petition. The NCA contends that the antidumping statute and antidumping duty orders are remedial in nature and exceptions to them should be construed as narrowly as possible to preserve the efficacy of the Order on petroleum wax candles from the PRC. In support of its assertion, the NCA cites a Court of International Trade (CIT) conclusion, with regards to the novelty exception, in which the Court noted that “. . . 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.” See Russ Berrie & Co., Inc. v. United States, 57 F. Supp. 2d 1184, 1194 (CIT July 1999) (Russ Berrie). Thus, the NCA argue that the Department narrowly limited the novelty candle exception to figurine candles, candles shaped in the form of identifiable objects, and candles specifically designed for use only in connection with the holiday season. The NCA commented on SFCC's subject candles.

With regard to SFCC's "heart" candles, the NCA argues that the alleged "heart" candles are pillars, which is a shape listed by the inclusive language of the Order's scope. Furthermore, the NCA argues that the subject candles are scented or unscented petroleum wax candles made in China, having a fiber- or paper-cored wick. As such, the NCA maintains that the candles fall specifically within the scope of the Order.

The NCA also argues that the SFCC's crackle heart and concentric heart candles are in the shape of a pillar and are not identifiable objects. The NCA points out that the alleged heart shape cannot be identified from most angles, as the flat surfaces of the top, bottom and sides of the candles are inconsistent with the shape of a heart, which has no flat sides. Furthermore, the NCA argues that the heart shape candle in Jo-Ann Stores did not have any flat surfaces. See Jo-Ann Stores. In addition, the NCA alleges that SFCC's "heart" candles are similar to the five-point star and star floater candles in Jo-Ann Stores, which were determined to be within the scope of the Order and not in the shape of an identifiable object.

Moreover, the NCA maintains that the Department has been consistent in requiring that the novelty design or shape of a candle must be capable of being seen from multiple angles. The NCA notes that in the Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Meijer, Inc. (September 30, 1999) (Meijer Inc.), Meijer sought to exclude a 9" high and 3.5" in diameter candle that it claimed to be an identifiable object in the shape of a star because, viewed from above, it could be conceived to be in the shape of a star. However, the NCA points out that the Department found the candle to be a fluted pillar-shaped candle within the scope of the Order. The NCA adds that the Department found that the candles did not qualify as "identifiable objects" because the candle was not clearly identifiable as a star when viewed from all

sides. See Meijer Inc. The NCA also points out that, in the Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Endar Corp. (April 7, 1999) (Endar), a 5" high “star” candle was found to be a pillar candle within the scope of the Order. The NCA further argues that the Department has consistently held that such candles are columns and pillars and are not identifiable objects because, from the side, one could not discern that it was in the shape of a star. Finally, the NCA points out that the Department and the CIT have also consistently held that heart symbols or designs are not holiday designs. See Russ Berrie, 57 F. Supp. 2d at 1194 and Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Russ Berrie Co. (Sept. 25, 1997) (Russ Berrie Scope Ruling). The NCA maintains that heart designs do not contain scenes or symbols specifically related to any holiday, nor are their uses attributed solely to any holiday. Therefore, because the candles are not identifiable objects and do not qualify for the novelty exception, the NCA argues that SFCC’s “heart” candles fall within the scope of the Order.

With regard to SFCC’s “moonlight candy cane” floaters, the NCA points out that the Department has previously ruled that candy cane candles that are the same as SFCC’s candles do not qualify for exclusion as Christmas holiday candles. See Candles Remand at 17-18; See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Endar at 5, 7 (January 11, 2000) (Endar 2). In addition, the NCA argues that the candy cane design suggests that the candles were meant to be used throughout the year and were not specifically designed for Christmas. As such, the NCA maintains that the year-round ubiquity of SFCC’s candy cane floater candles renders them meaningless as a holiday scene or symbol. Moreover, the NCA notes that color combinations alone cannot cause a candle to be a holiday candle. See Springwater Cookie & Confections, Inc. v. United States, 20 CIT 1192, 1196 (Ct. Int’l Trade 1996). The NCA asserts that SFCC’s candy cane floaters are round candles that do not contain scenes or symbols specifically designed for use only in connection with the Christmas holiday. Finally, the NCA argues that SFCC’s candles are not novelty candles and must be included within the scope of the Order.

The NCA notes that SFCC’s candles compete in the same channels of trade as the candles subject to the Order, and that their sale without the antidumping duty will severely injure the U.S. candle producers. The NCA further notes what it characterizes as the long-standing efforts of candle importers to “expand the ‘novelty candle’ loophole in the Order through a continuing stream of scope requests, causing the Order on PRC candles to be subjected to over seventy Final Scope Rulings and many more requests.” The NCA maintains that “[t]he success of the scope requests in eroding the Order has resulted in geometric increases in the volume of PRC candles coming into the United States” (NCA’s January 25, 2002 comments at 10). The NCA concludes by stating that SFCC is now asking the Department to narrow the scope of the Order on petroleum wax candles from the PRC so that it excludes everyday candles, claiming that they are novelty candles, and that the Department does not have such legal authority.

Analysis

The regulations governing the Department's antidumping scope determinations are found at 19 CFR 351.225(2002). On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission. 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(k)(1).

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 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 SFCC's request in accordance with 19 CFR 351.225(k)(1) and the Department finds that the descriptions of the products contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission are, in fact, dispositive. Therefore, the Department finds it unnecessary to consider the additional factors set forth at 19 CFR 351.225(k)(2).

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.

See Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty Investigation, 50 FR 39743 (September 30, 1985); Petroleum Wax Candles from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 51 FR 6016 (February 19, 1986); Petroleum Wax Candles from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 51 FR 25085 (July 10, 1986) (Final Determination); See also Order.

The Commission 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" (Commission Determination, at 4, note 5, and A-2).

Also of relevance to the present scope inquiry is the Customs Notice. As noted above, this notice was issued to Customs in connection with a July 1987 scope determination concerning an exception to the Order for novelty candles. When determining whether or not a particular product claimed as a novelty candle is within the scope of the antidumping duty order, the Department's first line of inquiry is whether the shape of the candle falls within those shapes listed by the inclusive language of the Order's scope, i.e., "tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers." If a candle falls within one of the above delineated shapes, it will be determined to be within the Order's scope. Candles of a shape not listed by the inclusive language of the Order's scope will then be evaluated to determine whether they are "scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks."

In November 2001, the Department changed its practice on the issue of candle shapes. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); JCPenney (November 9, 2001) (JCPenney Ruling). In this ruling, the Department reviewed the text of the scope of the Order, beginning with the text of the first sentence of the scope which covers "[c]ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks." See Order. The text following this broad inclusive sentence provides a list of shapes, which list is not modified by any express words of exclusivity. The result of our prior practice of excluding candles of a shape other than those listed was inconsistent with the fact that such candles were "scented or unscented petroleum wax candles made from petroleum wax and

having fiber or paper-cored wicks.”⁴ In JCPenney Ruling, the Department determined to revise this practice because it had the effect of narrowing the broad coverage of the first sentence of the Order’s scope. The list of shapes in the second sentence of the Order’s scope does not provide a textual basis for such a narrowing of the coverage of the first sentence of the Order’s scope. Accordingly, in order to give full effect to the first sentence of the inclusive language of the scope, the Department now will normally evaluate whether candles of a shape not listed by the inclusive language of the Order’s scope are scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.

This approach of evaluating such candles in light of the entire text of the scope is in keeping with the opinion of the CIT, noting that a better approach in scope rulings is to avoid subjective issues of intent and, instead, look to the petition’s language to determine whether the class or kind of merchandise at issue was expressly included. Duferco Steel, Inc. v. United States, 146 F. Supp. 2d 913 (May 29, 2001) (Duferco Steel). Such an approach is a departure from past CIT precedent that required Commerce to give ample deference to the NCA’s intent when examining a petition’s description of the subject merchandise. See, e.g., Torrington Co. v. United States, 995 F. Supp. 117, 121 (CIT 1998).

Although the specific scope decision in Duferco Steel has been overturned by the United States Court of Appeals of the Federal Circuit (CAFC) in Duferco Steel, Inc. v. United States, 296 F.3d 1087 (Fed. Cir. July 12, 2002) (Duferco Steel II), we do not believe that the Court’s decision undermines the Department’s decision in JCPenney Ruling. The plain language of the scope of the Order clearly states “[c]ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks . . . sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers” fall within the scope of the Order. Thus, the Order offers a descriptive list of the shapes of candles falling within the Order, but, as the courts have recognized, there is no requirement that every single product covered must be identified in the scope. More specifically, the CAFC has stated that “. . . the petitions that led to the issuance of the order did not need to specifically identify the [product] in order to cover [it]; our precedent, to say nothing of the regulations, makes clear that neither a petition nor an antidumping or countervailing duty order requires that level of specificity.”⁵ The CAFC further stated “[a]s a matter of law, a petition need not list the entire universe of products . . . in order [for the petition] to cover those products.”⁶ Thus, as applied to this Order, there is no requirement, nor is it possible, for all the shapes of candles to be

⁴ See, e.g., Endar 2 (“dragonfly” candle, in the shape of a rough-hewn stone with a dragon fly carved on top, not within scope because it is of a shape not listed by the scope), and See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); American Drug Stores, Inc. (March 16, 1998) (sphere or ball shaped candle not within scope because it is a shape not listed by the scope).

⁵ Novosteel SA v. United States, 284 F.3d 1261 (March 26, 2002).

⁶ Id.

listed.⁷ In fact, if the list were exhaustive, there would have been no need for the Department to render a decision on novelty candles or any other candle that was not explicitly listed as a shape in the scope of the Order. However, the Department did render the novelty candle exception that offered a narrowly-construed exclusion, leaving all other petroleum wax candles from the PRC covered by the Order.

If the Department determines that the candle is made from petroleum wax and has a fiber or paper-cored wick, but the candle possesses characteristics set out in the July 1987 novelty candle exception, it will fall outside the scope of the Order. In order for a candle to qualify for this exception, the characteristic which is claimed to render it a novelty candle (*i.e.*, the shape of an identifiable object or a holiday-specific design) should be easily recognizable in order for the candle to merit exclusion from the Order. Specifically, among other determining factors, the Department will examine whether the characteristic is identifiable from most angles and whether or not it is minimally decorative, *e.g.*, small and/or singularly placed on the candle. If the identifiable object or holiday-specific design is not identifiable from most angles, or if the design or characteristic is minimally decorative, the Department may determine that the candle does not qualify for exclusion from the Order under the novelty candle exception. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); JCPenney Purchasing Corp. (May 21, 2001) (JCPenney Corp.); San Francisco Candle Co. (Feb. 12, 2001) (SFCC); Endar 2. If a candle does not possess characteristics set out in the July 1987 novelty candle exception, and it is a scented or unscented petroleum wax candle made from petroleum wax and having fiber or paper-cored wick, the Department will determine that the candle is within the scope of the Order.

With respect to the instant request, the Department finds that for the reasons outlined below, SFCC’s “crackle heart” candle, “concentric heart” candle, and “moonlight candy cane” floaters, are included within the scope of the Order.

“Crackle Heart” Candle (Style Nos. 71526 and 71426)

The subject candles are approximately 5.5 inches in height and 2 inches wide. SFCC states that the candles are available in pink or red and are in the shape of a traditional rendition of a heart. The Department disagrees with SFCC that the subject candles’ shape, when viewed from most angles, can be clearly identified as a heart. In fact, only when viewed from the top is the heart-shape apparent; when viewed from multiple side angles, the candles’ shape appears to be that of a pillar. See Final

⁷ See Petroleum Wax Candles from China, USITC Pub. No. 3226 Investigation No. 731-TA-282 (Review) (August 1999) (USITC Pub. No. 3226), at 18 (“Candles come in a wide variety of shapes and sizes. Major U.S. candle manufacturers reportedly will offer 1,000 to 2,000 varieties of candles in their product lines.”).

Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Atico International, Inc. April 8, 2002 (Atico).

By the language of the Order, a “pillar” is specifically included within the scope. In addition, the Department has ruled in the past that heart-shaped candles not containing “scenes or symbols specifically related to a holiday or other special event” are within the scope of the Order, because their use is not attributed solely to the Valentine’s Day season. See Russ Berrie Scope Ruling. These candles contain no such scenes or symbols related to a holiday or other special event. Because the Department has previously ruled that heart-shaped candles that do not contain scenes or symbols which are specifically related to a holiday or other special event are within the scope, and because the “heart” shape of SFCC’s candles are only apparent when viewed from the top, the Department finds that these candles should be included within the scope of the Order.

“Concentric Heart” Candle (Style Nos. 17734 and 17736)

The subject candles are approximately 4-6 inches in height and 3.75 inches wide. SFCC states that the candles are in the traditional shape of a heart, with the heart reinforced by a red center core in the shape of a heart, surrounded first by a white heart-shaped layer, and then by a red heart-shaped layer. The Department disagrees with SFCC that the subject candles’ shape, when viewed from most angles, can be clearly identified as a heart. In fact, only when viewed from the top is the heart-shape apparent; when viewed from multiple side angles, the candles’ shape appears to be that of a pillar. See Atico.

By the language of the Order, a “pillar” is specifically included within the scope. In addition, the Department has ruled in the past that heart-shaped candles not containing “scenes or symbols specifically related to a holiday or other special event” are within the scope of the Order, because their use is not attributed solely to the Valentine’s Day season. See Russ Berrie Scope Ruling. These candles contain no such scenes or symbols related to a holiday or other special event. Because the Department has previously ruled that heart-shaped candles that do not contain scenes or symbols which are specifically related to a holiday or other special event are included within the scope, and because the “heart” shape of SFCC’s candles are only apparent when viewed from the top, the Department finds that these candles should be included within the scope of the Order.

“Moonlight Candy Cane” Floaters (Style Nos. 213619 and 213449)

“Moonlight Candy Cane” floater, style no. 213449, is a red and white candy cane floater candle made of petroleum wax, containing a wick, and is colored with red and white stripes. SFCC argues that the candle was specifically designed for use only in connection with the Christmas holiday. The Department, however, has previously determined that similar candles were within the scope. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Endar Corp. (May 11, 2000) (Endar 3); See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Hallmark

Cards (April 9, 1997) (Hallmark). As noted by the NCA, in Hallmark, the Department ruled that a similar red and white, round, 1 ¼” by 2 ¼” candle, characterized as a “peppermint candy” candle by the importer, was within the scope of the Order. Likewise, the Department found in Endar 3 that the subject red and white striped floating candle was not an identifiable object, but rather was properly identified as a “round,” and, thus, was within the scope of the Order. We disagree with SFCC that the red and white striped pattern, variously characterized as a “candy cane” or “peppermint candy” pattern, is solely associated with the Christmas holiday; rather, such a design could be used throughout the year. Therefore, because SFCC’s “moonlight candy cane” floater, style no. 213449, was not specially designed for use only in connection with the Christmas holiday season, and is more appropriately classified as a “round,” the Department finds SFCC’s candle should be included within the scope of the Order.

“Moonlight Candy Cane” floater, style no. 213619, is a red, white and green candy cane floater candle made of petroleum wax, containing a wick, and is colored with red, white and green stripes. SFCC argues that the candle was specifically designed for use only in connection with the Christmas holiday. The Department disagrees with SFCC that the red, white and green candy cane floater was designed solely for the Christmas holiday. As noted above, in Hallmark, the Department ruled that a similar red and white, round, 1 ¼” by 2 ¼” candle, characterized as a “peppermint candy” candle by the importer, was included within the scope of the Order. See Hallmark, at 4-5. Likewise, the Department found in Endar 3 that the subject red and white striped floating candle was not an identifiable object, but rather was properly identified as a “round,” and, thus, was included within the scope of the Order. The Department finds that the red, white and green stripes, without any other holiday pattern or design, is not enough to qualify SFCC’s candles for the holiday novelty exception. We find that the sole addition of a green stripe to the red and white stripes is insufficient to qualify the candle as a Christmas candle. Unlike SFCC’s “moonlight candy cane” floater, the candle at issue in the Candles Remand had a Santa image on it, in conjunction with the red, white and green stripes. Therefore, because SFCC’s “moonlight candy cane” floater, style no. 213619, was not specially designed for use only in connection with the Christmas holiday season, and is more appropriately classified as a “round,” the Department finds SFCC’s candle should be included within the scope of the Order.

Recommendation

Based on the preceding analysis, we recommend the Department find that SFCC’s “crackle heart” candle, “concentric heart” candle, and “moonlight candy cane” floaters, as described above, are within the scope of the antidumping duty order on petroleum wax candles from the PRC.

If you agree, we will send the attached letter to the interested parties, and will notify Customs of our determination.

_____Agree

_____Disagree

Joseph A. Spetrini
Deputy Assistant Secretary
for Import Administration, Group III

Date