

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

To All Interested Parties:

On February 19, 2003, the Department of Commerce (the Department) received a request from Crazy Mountain Imports, Inc. (CMI) for a scope ruling on whether two styles of wax-filled ceramic containers with a single “snowman” or a “snow-woman” figurine attached to the top of each container’s lid with the words “Merry Christmas” that it imports 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), the Department has determined that CMI’s candles are 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 U.S. Customs and Border Protection (CBP) of this decision. If you have any questions, please contact Jacqueline Arrowsmith at (202) 482-5255.

Sincerely,

Dana Mermelstein
Acting Director
AD/CVD Operations, Office 6
Import Administration

Enclosure

MEMORANDUM FOR: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

FROM: Dana Mermelstein
Acting Director
AD/CVD Operations, Office 6

SUBJECT: Final Scope Ruling: Antidumping Duty Order on Petroleum Wax
Candles From the People's Republic of China (A-570-504);
Crazy Mountain Imports, Inc.

Summary

On February 19, 2003, the Department of Commerce (the Department) received a request from Crazy Mountain Imports, Inc. (CMI) for a scope ruling on two types of wax-filled ceramic containers with a single "snowman" or a "snow-woman" figurine attached to the top of each container's lid, each with the words "Merry Christmas" on one side of the container, to determine whether these two 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 CMI's two types of "Merry Christmas" figurine wax-filled containers should be included within the scope of the Order.¹

¹ The Department has developed an Internet website that allows interested parties to access prior scope determinations regarding the Order. This website lists all scope determinations from 1991 to the present. It can be accessed at <http://ia.ita.doc.gov/download/candles-prc-scope/>. The Department will update the website periodically to include newly issued scope rulings.

Background

CMI filed its request for a scope ruling in proper form on February 19, 2003. The National Candle Association (NCA), petitioner and an interested party in this proceeding, filed rebuttal comments to CMI's request on October 28, 2004.

Product Description

CMI's request concerned two petroleum wax-filled ceramic container candles with lids that have figurines resembling either a "snowman" or a "snow-woman." The ceramic wax-filled container with either a "snowman" or a "snow-woman" figurine lid are reported to be "goods that are sold with the Christmas decorations and considered a Christmas decoration by the facilities that sell them." See CMI February 19, 2003, submission at 1. CMI provided a sample of its "snowman" and "snow-woman" wax-filled containers.

The "snow-woman" candle is a ceramic wax-filled container in the shape of a cylinder with a navy blue color, with painted white snowflakes and the words "Merry Christmas" printed in white letters on one side. The lid to the ceramic wax-filled container has a figurine attached to the top of the lid that resembles a "snow-woman" holding a gingerbread man. The "snow-woman" is painted with details including a brown plaid coat, a red and green plaid scarf, a navy blue winter hat and gloves, rosy cheeks, and a carrot nose. The Department measured the ceramic wax-filled container candle base and found it to be 2-5/8 inches in height and 2-1/8 inches in diameter. The Department further found that the overall height of the candle with the "snow-woman" figurine lid is 5-3/8 inches. The "snow-woman" figurine lid is not permanently attached to the candle base and must be removed to expose the wick and burn the candle.

The "snowman" candle is a ceramic wax-filled container in the shape of a cylinder with a white color and embossed snowflakes, with the words "Merry Christmas" printed in navy blue letters. The lid to the ceramic wax-filled container has a figurine attached to the top of the lid that resembles a "snowman" holding a small white pine tree and a white bird. The "snowman" is painted with details including a navy blue suit, a white and blue striped scarf, a navy blue top hat, black boots, rosy cheeks, and a carrot nose. The Department measured the ceramic wax-filled container candle base and found it to be 2-5/8 inches in height and 2-1/8 inches in diameter. The Department further found the overall height of the candle with the "snowman" figurine lid to be 5-3/4 inches. The "snowman" figurine lid is not permanently attached to the candle base and must be removed to expose the wick and burn the candle.

Crazy Mountain Imports, Inc.'s Comments

In its February 19, 2003, submission, CMI argues that its figurine candles, containing the words "Merry Christmas," should not be included within the scope of the Order, based on information

contained in the 1987 Customs Notice,² because its figurine candles are clearly marked with the words “Merry Christmas.” Additionally, CMI argues that its figurine candles “are sold with the Christmas decorations and considered a Christmas decoration by the facilities that sell them.” See CMI February 19, 2003, submission at 1.

Further, as part of its February 19, 2003, submission, CMI included a copy of Public Bulletin Number 02–005 issued by the Port of Los Angeles Customs Service, which provided information regarding CBP’s interpretation of the scope of the Order, as well as additional information regarding examples of candles that are not covered by the scope of the Order. Specifically, CMI argues that, Public Bulletin Number 02-005, provides that candles containing certain holiday scenes or words, including the words “Merry Christmas,” do not fall within the Order’s scope, as long as such scenes or words are clearly recognizable; as such, its candles should not be included within the scope of the Order. See CMI February 19, 2003, submission at 4.

NCA’s Comments

Petitioner argues that both of CMI’s candles are petroleum wax candles made in the PRC having fiber or paper-cored wicks and that both are wax-filled containers that are listed within the inclusive language of the Order’s scope. Petitioner maintains that CMI’s candles are not in the shape of identifiable objects and are not designed for use only in connection with the Christmas season and, therefore, fall within the scope of the Order.

According to the NCA, neither of these candles are figurine candles, but rather, they are wax-filled containers. Petitioner states that the figurines on top of the lid can be removed when the lid is removed, and the wax-filled container can be used by itself, and must be considered by itself. Petitioner argues that the snowman figurines do not change the wax-filled container into the shape of an identifiable object. Petitioner maintains that in the American Greetings scope request, the Department determined that the candle was in the shape of a taper and the snowman-shaped figurine, which formed the base of the candle, was not sufficient to render the candle an identifiable object. See Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); American Greeting Corporation.

² The Customs Notice was a notice issued by the Department of Commerce to U.S. Customs and Border Protection (CBP) 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).

(May 4, 2000). Petitioner further states that the Department determined that “nothing in the design of the snowman figure suggests any specific holiday or special event; as such, the figurine does not limit the candle to use solely in connection with the Christmas holiday.” See id. Thus, petitioner contends, the Department determined that the American Greetings candle did not qualify for exclusion, either as an identifiable object, or as a holiday novelty candle. With respect to the small hand-written phrase “Merry Christmas” on one side of the candle, petitioner argues that this phrase does not appear on any other side or the top or bottom of the wax-filled container. Because this phrase cannot be viewed from multiple angles, petitioner maintains that this does not qualify the candles as Christmas novelty candles.

Legal Framework

The Department examines scope requests in accordance with the Department’s scope regulations, which may be 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 initial investigation, and the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (the Commission). See 19 CFR 351.225(k)(1). 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 product 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 determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis, with or without formal inquiry, after consideration of all evidence before the Department.

Pursuant to 19 CFR 351.225(k)(1), the Department will examine the description of the subject merchandise from the petition, the initial investigation, and the Commission’s determinations. 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.

See 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 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); Final Determination; and 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.” See Determination of the Commission (Final), USITC Publication 1888, August 1986, at 4, note 5, and A-2 (Commission Determination). The Commission stated that “we determine that the domestic like product shall consist only of petroleum wax candles.” See id. at 9. In its discussion of like product, the Commission also stated:

Petroleum wax candles are those composed of over 50 percent petroleum wax, and may contain other waxes in varying amounts, depending on the size and shape of the candle, to enhance the melt-point, viscosity, and burning power.

See id. at 4-5.

The Department clarified the scope of the Order in relation to certain novelty candles. See Russ Berrie Ruling, 57 F. Supp. 2d, at 1194. In 1987, the Department issued a notice to the United States Customs Service (since renamed CBP) in connection with a scope ruling which provides:

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).

See 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 & Radzius, Ltd., July 13, 1987.

In November 2001, the Department changed its interpretation of the scope of the Order. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); J.C. Penney (November 9, 2001) (J.C. Penney Scope 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; this list is not modified by any express words of exclusivity. The result of our prior practice of not including within the scope of the Order candles of a shape other than those specifically listed in the Order was inconsistent with the fact that the candles were “scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.”³ In the J.C. Penney Scope Ruling, the Department revised this practice because the former practice 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.

This approach of evaluating candles in light of the entire text of the Order’s scope is in keeping with Duferco Steel, 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. See Duferco Steel, Inc. v. United States, 146 F. Supp. 2d 913 (CIT 2001) (Duferco Steel).

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. 2002) (Duferco Steel II), the Court’s ruling does not undermine the Department’s scope determination in the J.C. Penney Scope 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” are included within the scope of the Order. Thus, the Order offers a descriptive list of the shapes of candles included 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

³ See, e.g., Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Endar Corp. (January 11, 2000) (Endar) (the Department determines that a “dragonfly” candle, in the shape of a rough-hewn stone with a dragonfly carved on top, should not be included within the scope because it is of a shape not specifically listed by the language of the scope); See also 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) (the Department determined that a sphere or ball-shaped candle should not be included within scope because it is a shape not specifically listed by the language of the scope).

countervailing duty order requires that level of specificity.”⁴ 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.”⁵ Thus, as applied to this Order, there is no requirement, nor is it possible, for all the shapes of candles to be listed.⁶ 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 issue the novelty candle exception, which offered a narrowly construed exception and left all other petroleum wax candles from the PRC covered by the Order.

When determining whether a particular novelty candle is within the scope of the Order, the Department will first determine whether the candle is made of petroleum wax. If the candle is made of petroleum wax, the Department will look to see whether the shape of the candle falls within those shapes listed in the second sentence of the scope as defined in the Order, i.e., “tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers.” If the Department determines that a candle is one of these shapes, it is within the scope of the Order.

If the Department finds that a candle’s shape is not among the shapes listed in the second sentence of the scope as defined in the Order, i.e., taper, spiral, straight-sided dinner candle, round, column, pillar, votive, and various wax-filled containers, then the candle will be evaluated to determine whether it is a novelty candle. 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 not being included within the scope of 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 should be included within the scope of the Order. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); J.C. Penney Purchasing Corp. (May 21, 2001); Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); San Francisco Candle Co. (Feb. 12, 2001) (SFCC Ruling); San Francisco Candle Company, Inc. v. United States, 265 F. Supp. 2d 1374, 1379 (CIT 2003) (SFCC); and Endar. If the 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 a fiber or paper-cored wick, the Department will determine that the candle is within the scope of the Order.

⁴ Novosteel SA v. United States, 284 F.3d 1261, 1264 (Fed. Cir. 2002).

⁵ Id.

⁶ 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.”)

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.

Analysis of Crazy Mountain Inc.'s Candles

With respect to the instant request, we recommend that, for the reasons outlined below, CMI's two styles of ceramic wax-filled containers each with the words "Merry Christmas" on one side and with a "snowman" or "snow-woman" figurine attached to the top of each candle's lid are within the scope of the Order.

"Snowman and Snow-Woman" Figurine Candles

CMI argues that the two involved ceramic wax-filled containers with the words "Merry Christmas" and a "snowman" or "snow-woman" figurine on each of the candles' lids, should not be included within the scope of the Order because they are Christmas candles. CMI also argues that, because these two candles contain the words "Merry Christmas," they meet the Department's novelty and holiday candle exception and, therefore, should not be included within the scope of the Order. Based on CMI's comments, we examined whether the "snowman" and "snow-woman" candles were in fact holiday or novelty candles.

Although each candle and its lid is sold as a set, the figurine lid is not permanently attached to the wax-filled ceramic container base. The candle containers are molded with an exterior texture or have painted designs that represent snowflakes. The candle containers have the words "Merry Christmas" printed on one side. The words "Merry Christmas" are only visible from one angle on both candles.

With respect to CMI's argument that these candles qualify for the holiday or novelty candle exception, we find that the involved wax-filled containers do not qualify for this exception. In order to qualify for the holiday or novelty exception, the scenes, symbols, or motifs on the candles must be specific and exclusive to the Christmas holiday, not merely an evocation of the winter season. See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From People's Republic of China (A-570-504); Abram Enterprises, Inc. (January 19, 2005) (where the Department determined that a "snowman" candle is included within the scope of the Order). Further, as we have established in prior scope rulings, candles containing snowmen or snow-women designs by themselves are not Christmas holiday items because "snowmen" and "snow-women" are merely associated with winter and are not specific or exclusive to Christmas or any other generally recognized holiday. See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); American Greetings Corporation. (May 4, 2000) (where the Department determined that snowman designs are not specific to any holiday or special event). In this instance, the "snowman" and "snow-woman" figurines are only on the lids of the candle containers. The essential feature of the candle is its base, which contains the wick. We find that the base is a wax-filled container, which is specifically mentioned in the language of the scope of the Order. Thus, we find that the candle is within the scope of the Order.

We find that the words “Merry Christmas” on one side of the base of each of the wax-filled containers does not render this candle a holiday candle. Words alone on a candle do not make an otherwise in scope candle outside the scope of the Order. See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Hallmark Corporation, (September 30, 1993) (where the Department determined that words engraved on candle WCD3093 do not provide the distinguishing physical characteristics necessary for a candle to be excluded from the scope). As we have found in prior scope rulings, the “Merry Christmas” lettering does not make either candle specific or exclusive to Christmas or any other generally recognized holiday. Moreover the words are not easily and readily visible on the ceramic wax filled container candle base, nor are they visible from multiple angles. See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Specialty Merchandise Corporation (January 14, 2005) (where the Department determined that although the words “Merry X’mas” and “JOY” appear on the candles, they are not visible from all angles of the candles and thus the candles do not qualify for the novelty exception). Given that there is no decoration visible from multiple angles on either of these candles that indicates that these candles are exclusively used as Christmas candles, these candles do not qualify for the holiday or novelty exception. Instead, we find that the items are wax-filled containers, and as such, the candles are expressly within the language of the scope of the Order. Thus, we find that the involved candles are included within the scope of the Order.

Recommendation

We recommend finding that the candles are included within the scope of the Order because the wax-filled container, with either a “snowman” or “snow-woman” figurine, is one of the shapes listed in the explicit language of the Order’s scope, and because such candles are not considered “Christmas Holiday” items.

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

_____ Agree

_____ Disagree

Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

Date

Attachment