

March 21, 2006

By Electronic Mail Notification

To All Interested Parties:

On December 29, 2005, the Department of Commerce (the Department) received a request from Design Ideas, Ltd. (Design Ideas) for a scope ruling on whether its “Lumenae” and “Lounge Light” candles are 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 Design Ideas’ “Lounge Light” candles are within the scope of the antidumping duty order on petroleum wax candles from the PRC. Because Design Ideas’ “Lumenae” candles are manufactured in Malaysia, these candles are not covered by the scope of the order. See, e.g., Design Ideas’ February 3, 2006 supplemental questionnaire response at 6.

Enclosed is a memorandum containing the Department’s analysis. We will notify U.S. Customs and Border Protection of this decision. If you have any questions, please contact Maryanne Burke at (202) 482-5604.

Sincerely,

Robert James
Program Manager
AD/CVD Operations, Office 7
Import Administration

Enclosure

MEMORANDUM FOR: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

FROM: Richard O. Weible
Office Director
AD/CVD Operations, Office 7

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

Summary

On December 29, 2005, the Department of Commerce (the Department) received a request from Design Ideas Ltd. (Design Ideas) for a scope ruling to determine whether its “Lumenae” and “Lounge Light” candles are included within the scope of the antidumping duty order on petroleum wax candles from the People’s Republic of China (PRC). See 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), the Department finds that Design Ideas’ “Lounge Light” candles are within the scope of the order.¹ Because Design Ideas’ “Lumenae” candles are manufactured in Malaysia, these candles are not covered by the scope of the order. See, e.g., Design Ideas’ February 3, 2006 supplemental questionnaire response at 6.

Background

On December 29, 2005, the Department received a letter from Design Ideas requesting a scope ruling on its “Lumenae” and “Lounge Light” candles. On January 9, 2006, the Department requested additional information from Design Ideas and issued a questionnaire addressing certain deficiencies in its original scope ruling request. On January 23, 2006, Design Ideas responded to our questionnaire. On January 27, 2006, the Department issued a supplemental questionnaire to Design Ideas for further clarification of its scope request. The National Candle Association (the

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/index>, and will be updated periodically to include newly issued scope determinations.

NCA), petitioner and interested party in this proceeding, filed initial comments on February 1, 2006 with respect to Design Ideas' scope request and submitted supplemental comments on February 2, 2006. On February 3, 2006, the Department received Design Ideas' response to its supplemental questionnaire. Then, on February 9, 2006, the NCA submitted corrections to the information cited in its February 2, 2006 submission. Finally, on February 13, 2006, Design Ideas filed rebuttal comments to the NCA's February 1, and 2, 2006 submissions.

Design Ideas' Scope Request

a. Product Descriptions

The "Lumenae" and "Lounge Light" are pillar candles made of unscented petroleum wax with fiber wicks. Design Ideas indicates that both of these candles possess a hollowed-out base to hold a flame-proof molded plastic dome. This dome houses a battery operated light emitting diode (LED). The LED mechanism consists of an LED, battery and rubber gasket. Design Ideas explains the rubber gasket is placed around the battery allowing it to fit inside the plastic dome at the base of the candle (the gasket fits approximately one third of the way up from the bottom of the candles). According to Design Ideas, when the LED is turned on, different colored light is emitted through the wax. The LED diffuses seven colors (red, orange, yellow, green, blue, purple and pink). The fiber wick is positioned about 15 millimeters from the top of the flame-proof plastic dome and is intended to extinguish safely before reaching the plastic dome.

Design Ideas maintains the "Lumenae" and "Lounge Light" are similar candles with only minor differences between them, the foremost being the type of battery used in the LED mechanism. The "Lumenae" candle uses a 9 volt battery, while the "Lounge Light" candle uses a 4.5 volt battery. However, other differences also include the size of the product and the shape of the gasket and circuitry. Design Ideas argues that both products operate identically and share the same general production process. Given these minor differences, Design Ideas, in its scope request, refers to both products as "Lumenae." However, Design Ideas' January 23, 2006 questionnaire response states the "Lumenae" candles are produced in Malaysia, while the "Lounge Light" candle is produced and exported from China. For purposes of the Department's ruling, therefore, we focus our discussion on the "Lounge Light" because candles from Malaysia are not included in the scope of the order.

There are two models of the "Lounge Light" candle, both of which comprise ivory-colored wax. The LL-3001S model measures 2.75" in diameter and 5" in height. The second model is the LL-3011T, which measures 2.75" in diameter and 6.75" in height.

b. Scope Request

Design Ideas argues that its “Lounge Light” candle qualifies for exclusion from the scope of the order pursuant to Diversified Products Corp. v. United States, 572 F. Supp. 883 (1983), later codified at 19 CFR 351.225(k)(2). Design Ideas maintains the written description of the scope of the order is not dispositive, and the Department cannot determine whether the “Lounge Light” candle is within the scope of the order based solely upon the description of the merchandise contained in the petition, the initial investigation, and prior determinations and scope rulings of the Department and the U.S. International Trade Commission (ITC). Design Ideas argues that despite the fact that its candle is pillar shaped, the distinctive characteristics of the “Lounge Light,” its domed shaped recess and the LED feature, distinguish the candle from candles subject to the scope of the order, as these features are not listed in the order. Design Ideas also maintains its candle should not be considered part of the same “like product” examined by the ITC during its original injury determination. While the “Lounge Light” has the appearance of traditional wax candles, Design Ideas insists its essential characteristic is the wax material which serves as a medium for the diffusion of the LED light.²

Design Ideas makes additional comments concerning the non-inclusion of its candles pursuant to 19 CFR 351.225(k)(2).

National Candle Association Comments

The NCA objects to the exclusion of the “Lounge Light” candle from the order. The NCA retraces the history of this antidumping order and 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. The NCA cites the ITC decision explaining the notion of “like product”:

the requirement that a product be “like” the imported article should not be interpreted in such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not “like” each other. . . the Commission has consistently defined “like product” as one having the same intrinsic qualities and essential characteristics and uses as the subject imports. Candles from the PRC (Final) (ITC Report) USITC Pub. 1888 (August 1986) at 4.

The NCA argues that all of Design Ideas’ candles are petroleum wax candles which have fiber-cored wicks and all are pillars which is a shape listed by name in the language of the order’s scope. The NCA concludes that these candles are subject to the order. The NCA adds that these candles are not in the shape of identifiable objects, and they are not designed for use only in connection with a particular holiday season and, as a result, they fall within the scope of the

² See Design Ideas’ Scope Request at 10.

order.

The NCA states that in analyzing a scope request, the Department first determines whether the candle is made of petroleum wax and has a fiber- or paper-cored wick. The NCA maintains that the Department then determines whether the candle falls within those shapes listed in the scope of the order. Since Design Ideas admits its candle is “pillar” in its scope request,³ and in its response to the Department’s supplemental questionnaire, the NCA insists these candles are therefore within the scope of the order.

The NCA argues that Design Ideas’ request is merely an attempt to evade or circumvent the order which, NCA insists, is vital to the survival of the U.S. candle industry. The NCA maintains that Design Ideas is asking the Department to narrow the scope of the order so it excludes everyday candles, and notes the Department does not have the legal authority to narrow the scope of the order. The NCA also makes arguments addressing why Design Ideas’ “Lounge Light” candles should not be excluded from the scope of the order pursuant to 19 CFR 351.225(k)(2).

Design Ideas’ Rebuttal Comments

In its February 13, 2006 rebuttal comments, Design Ideas insists that analysis subject to 19 CFR 351.225(k)(2) is appropriate. Design Ideas maintains that although the “Lounge Light” candle is a pillar shaped petroleum wax candle with a fiber wick, the fundamental and distinguishing feature of its product, its transmission and diffusion of the LED light, is what sets the “Lounge Light” apart from candles subject to the order.

Design Ideas argues that based on its unique LED feature, the “Lounge Light” candle also should not be considered as part of the same “like product” as the petroleum wax candles subject to the order. Design Ideas disagrees with the NCA’s statements that there have been previous determinations on similar products, namely “San Francisco Candle Co.” and “Abrim.”⁴ Design Ideas contends that the San Francisco Candle Company’s “Moonlite” and “Candylite” candles were found to be included within the scope of the order because they were candles which did not have physical characteristics which differed significantly from other petroleum wax candles. In fact, Design Ideas states that San Francisco Candle Company’s “Moonlite” and “Candylite” candles were double-layered candles made of petroleum wax mixed with different pigments, which produced colored wax sheets. Design Ideas argues when the wick from these candles was lit, the candle glowed from top to bottom, thus demonstrating the fact that it was the burning wick which served as the actual light source.

³ See Design Ideas Scope Request at 9.

⁴ See “Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the PRC (A-570-504); Request by San Francisco Candle Company” (November 5, 1991) (“San Francisco Candle Co.”) and “Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the PRC (A-570-504); Request by Abrim Enterprises, Inc.” (January 19, 2005) (“Abrim”).

Design Ideas also disputes the NCA's assertion that the "Lounge Light" candle is similar to "Rainbow Color-Changing Candles" in "Abrim" whereby ten of twelve candles were found subject to the order (two were not included within the scope of the order on the basis that they qualified under the novelty candle exclusion ⁵ because they were shaped as identifiable objects). Design Ideas contends that all of the "Rainbow Color-Changing Candles" cited in "Abrim" included an internal sensor powered by a lithium battery which caused the candles to change color when the wick was lit. Design Ideas also notes that the NCA did not explain in its rebuttal comments that the scope request submitted in "Abrim" only argued that those candles not be included within the scope of the order on the basis of the novelty candle exception (*i.e.*, in the shape of an identifiable object or a holiday-specific design), and never addressed the battery-operated characteristic as set forth by Design Ideas. The company argues that its "Lounge Light" candle differs from the candles in both "San Francisco Co." and "Abrim" because of the LED which allows its candle to function and provide a decorative effect without the wick being lit.

Legal Framework

The regulations governing the Department's antidumping scope determinations are found at 19 CFR 351.225 (2005). 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 ITC. 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: (1) the physical characteristics of the merchandise; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of trade in which the product is sold; and (5) the manner in which the product is advertised and displayed. The determination as to which

⁵ In July 1987, in connection with a scope determination, the Department issued the following novelty candle exception to the U.S. Customs Service (now renamed U.S. Customs and Border Protection (CBP)), which stated:

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 CBP Notice.

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 Design Ideas request in accordance with 19 CFR 351.225(k)(1) and finds the descriptions of the products contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the ITC are dispositive with respect to Design Ideas' "Lounge Light" candles⁶. Therefore, for these candles, 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 that the Department deemed relevant to this scope ruling were made part of the record of this determination and are referenced herein. Documents that neither the Department nor the parties placed on the record do not constitute part of the administrative record for this scope determination.

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 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

⁶ Design Ideas' "Lumenae" candles are manufactured in Malaysia, and therefore are not covered by the scope of the order.

Determination); and Order.

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 Candles from the People’s Republic of China: Determination of the Commission in Investigation No. 731-TA-282 (Final), Publication 1888 (August 1986) at 4, note 5, and A-2 (ITC Determination).

Analysis of Design Ideas’ Candle

With respect to the instant scope request, the Department finds, for the reasons outlined below, that the “Lounge Light” candle in Design Ideas’ request is included within the scope of the order. We have analyzed Design Ideas’ request pursuant to 19 CFR 351.225(k)(1) because the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the ITC are dispositive of this matter. Therefore, we find it unnecessary to consider additional factors (*i.e.*, the physical characteristics of the merchandise, the customer’s ultimate use, expectations of the ultimate purchasers, channels of trade and manner in which they are advertised and displayed) set forth at 19 CFR 351.225(k)(2) for purposes of this analysis.

“Lounge Light” (Model Nos. LL-3001S and LL-3011T)

The “Lounge Light” is a pillar candle made of unscented petroleum wax and holds a fiber wick. The pillar shape is one specifically within the scope of the order. Thus, the “Lounge Light” is a type of candle included in the order. The language of the order includes tapers, spirals, straight-sided dinner candles, rounds, columns, pillars, and votives and various wax-filled containers. Since a pillar is one of the shapes listed by name in the inclusive language of the order’s scope, Design Ideas’ “Lounge Light” candle is included within the explicit language of the scope.

We disagree with Design Ideas’ argument that the unique features of the “Lounge Light” candle, namely the LED and battery mechanism, are sufficient to set these candles apart from traditional petroleum wax candles subject to the order. While the LED may add a commercially attractive feature to the pillar candle, we find that this product is, essentially, a petroleum wax candle, in the shape of a pillar, with a fiber wick; thus, Design Ideas’ “Lounge Light” candle is on its face subject to the order. In no way does the added light-emitting utility alter the irreducible fact that these “Lounge Light” candles are “scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.” See Order.

With respect to previous scope rulings of this order, the Department notes that in “San Francisco Candle Co.” the candles at issue, the “Moonlite” and “Candylite,” were included within the scope of the order on the basis that these candles contained petroleum wax with paper-cored wicks and were within shapes covered by the scope of the order. The Department did not find other distinguishing physical characteristics which changed the fact they were petroleum wax candles

of a certain shape and size from the PRC. See “San Francisco Candle Co.” at 5. Similarly, with respect to “Abrim” we note Abrim Enterprises, Inc. never raised the issue of its varying light-emitting characteristic as a basis for its scope exclusion request, relying instead on its claim that each of its candles were “in the shape of identifiable objects” or “depict[ed] scenes or symbols from Christmas, Easter and Halloween” See “Abrim” at 2. Thus, in “Abrim” the Department did not address this additional feature of Abrim Enterprises’ candles, finding ten of the twelve candles subject to the order. See “Abrim”.

As discussed above, we find the product descriptions contained in the petition, the initial investigation and the determinations of the Department and the ITC are dispositive. Design Ideas’ “Lounge Light” candles manufactured in the PRC are pillar-shaped petroleum wax candles which are within the scope of the antidumping duty order on petroleum wax candles from the PRC.

Recommendation

We recommend finding the “Lounge Light” candle be included within the scope of the order because the candle is a pillar candle which is one of the shapes specifically listed in the express language of the order’s scope. If you agree, we will send the attached letter to the interested parties, and will notify CBP of our determination.

_____ Agree

_____ Disagree

Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

Date