

September 27, 2007

By Certified Mail Notification

To All Interested Parties:

On January 29, 2007, the Department of Commerce (“Department”) received a request on behalf of Enchanté Accessories, Inc. for a determination on whether candle Style No. MNGB0603 is covered by the antidumping duty order on petroleum wax candles from the People’s Republic of China. See <http://ia.ita.doc.gov/download/candles-prc-scope/index.html> under “Enchanté Accessories, Inc. - Sample Images.”

In accordance with 19 CFR 351.225(k)(2), the Department has determined that the Style No. MNGB0603 is within the scope of the antidumping duty order on petroleum wax candles from the PRC. If you have any questions, please contact Michael Holton at (202) 482-1324.

Sincerely,

Alex Villanueva
Program Manager, Office 9
AD/CVD Operations
Import Administration

Enclosure

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

THROUGH: Jim Doyle
Director, Office 9
for Import Administration

FROM: Alex Villanueva
Program Manager
AD/CVD Operations, Office 9

RE: Petroleum Wax Candles from the People's Republic China
("PRC")

SUBJECT: Final Scope Ruling Memorandum for Enchanté Accessories, Inc.

Summary

On January 29, 2007, the Department of Commerce ("Department") received a request on behalf of Enchanté Accessories, Inc. ("Enchanté") for a determination on whether a specific candle (Style No. MNGB0603) ("Enchanté candle") is covered by the antidumping duty order on petroleum wax candles from the People's Republic of China. In accordance with 19 CFR 351.225(k)(2), the Department finds that Enchanté's candle is included within the scope of the Order. See Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986) ("Order").

Background

As noted above, on January 29, 2007, the Department received a request from Enchanté requesting a determination on whether its candle is covered by the antidumping duty order on petroleum wax candles from the PRC. Enchanté argued that its candle contains four inputs: (1) palm oil wax (not mixed with petroleum wax); (2) fragrance; (3) color; and (4) wick. Enchanté states that there is no petroleum wax mixed with the palm oil wax and, therefore, its candle is not a mixed-wax candle subject to the Order. Enchanté acknowledges, however, that the color, fragrance and wick contain small amounts of petroleum components or paraffin.

On April 9, 2007, the National Candle Association ("NCA") submitted comments regarding the

scope ruling request. In the instant case, the Department determined it was necessary to consider the additional criteria set forth in 19 CFR 351.225(k)(2). On April 30, 2007, in a letter to interested parties and pursuant to 19 CFR 351.225(e), the Department initiated a formal scope inquiry with respect to the Enchanté candle because the scope descriptions of the merchandise contained within the petition, the initial investigation and Order, and the determinations by the Department and the ITC, as provided by 19 CFR 351.225(k)(1), were not dispositive with regard to the candle. In the letter to interested parties, the Department stated that although the Department recently found in a circumvention inquiry that mixed-wax candles containing any amount of petroleum wax were within the scope of the antidumping duty order, the Department recognized that there may be types of mixed-wax candles containing a given amount of vegetable-based wax that may place certain mixed-wax candles outside the scope of the antidumping duty order. Thus, pursuant to 19 CFR 351.225(e), the Department found it necessary to further examine Enchanté's candle style No. MNGB0603, using the criteria set forth in 19 CFR 351.225(k)(2), in order to determine whether its product was outside the scope of the antidumping duty order.

The letter also requested that parties submit comments addressing the five additional criteria set forth in 19 CFR 351.225(k)(2). On May 11, 2007, the Department requested that Enchanté submit photographs from all angles of the Enchanté candle.

On May 17, 2007, Enchanté submitted photographs from all angles of the Enchanté candle. On May 25, 2007, the Department received comments from Enchanté addressing the five additional criteria set forth in 19 CFR 351.225(k)(2). On May 29, 2007, the NCA submitted its response addressing the five additional criteria set forth in 19 CFR 351.225(k)(2). On June 12, 2007, the NCA submitted rebuttal comments to the comments filed by Enchanté. On June 21, 2007, Enchanté submitted comments regarding NCA's June 12, 2007, submission.

Legal Framework

The regulations governing the Department's antidumping scope determinations are set forth in 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 U.S. International Trade Commission. See 19 CFR 351.225(k)(1). 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 pursuant to 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the five additional criteria set forth in 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 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.

Scope of the Order

The products covered by this order are certain 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. The products were classified under the Tariff Schedules of the United States (“TSUS”) 755.25, Candles and Tapers. The products covered are currently classified under the Harmonized Tariff Schedule of the United States (“HTSUS”) item 3406.00.00. Although the HTSUS subheading is provided for convenience purposes, our written description remains dispositive. See Order and Notice of Final Results of the Antidumping Duty New Shipper Review: Petroleum Wax Candles from the People’s Republic of China, 69 FR 77990-91 (December 29, 2004).

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.

Petition

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.

Initiation Notice

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”); and the “Order.”

ITC Determinations

The ITC adopted a similar definition of the “like product” subject to its determinations, noting 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) (“ITC Determination”), at 4, note 5, and A-2.

Department Determinations

On October 6, 2006, the Department issued an affirmative final circumvention determination with respect to the order pursuant to section 781(d) of the Tariff Act 1930, as amended (i.e., later-developed merchandise). See Later-developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 71 FR 59075 (October 6, 2006) (“LDM Circumvention Final”). In the LDM Circumvention Final, the Department stated that mixed-wax candles containing any amount of petroleum wax are within the scope of the Order because there is record evidence demonstrating that mixed-wax candles are produced in proportions higher than 87.80 percent of non-petroleum (vegetable-based) wax. Id. at 59078. The Department recognized, however, that there may be types of mixed-wax candles containing a certain amount of vegetable-based wax that may place such mixed-wax candles outside the scope of the Order. Id. Accordingly, the Department indicated that parties could submit scope requests, pursuant to section 351.225 of the Department’s regulations, regarding whether a certain type of mixed-wax candle may be outside the scope of the Order. Id.

Comments On the Five Criteria Set Forth in 19 CFR 351.225(k)(2) from Interested Parties

Enchanté argues that the physical characteristic or specification is the only appropriate criterion set forth in 19 CFR 351.225(k)(2) from which to determine whether the Enchanté candle is within the scope of the Order. Specifically, it argues that the Enchanté candle is made with palm oil wax that is not mixed with petroleum. Enchanté contends that the only sources of petroleum are de minimis amounts of petroleum wax added by the fragrance, color, and wick. Therefore, Enchanté contends that the candle is not a mixed-wax candle and does not meet the scope specifications of the Order. Finally, Enchanté contends that if there is any mixed-wax candle that

the Department envisioned to be outside the scope, as referred to in LDM Circumvention Final, then it is the Enchanté candle.

Enchanté did not submit comments or evidence addressing the other four criteria set forth in 19 CFR 351.225(k)(2) in its comments.

The NCA argues that the Enchanté candle's physical characteristics are indistinguishable from the Department's determination in the LDM Circumvention Final, in terms of appearance, shape, feel, and scent. Specifically, the NCA contends that the shape of the candle is a column or pillar, which is a shape described in the Order. The NCA adds that the only benefit of using color, fragrance, and a wick that contain petroleum is to enhance the candle's performance. Therefore, because the candle contains petroleum wax and is a shape as described in the Order, the NCA argues that the Enchanté candle is within the scope of the Order.

With respect to the other four criteria set forth in 19 CFR 351.225(k)(2), the NCA relies on the Department's determinations in the LDM Circumvention Final. Specifically, NCA argues that the Department determined that mixed-wax candles do not have different expectations than the ultimate purchasers of in-scope petroleum wax candles; that mixed-wax candles are used for the similar purposes (*i.e.*, they provide light, heat, scent or are for decorative purposes); that mixed-wax candles are sold in the same channels of trade as petroleum wax candles; and that the mixed-wax candles and petroleum wax candles are advertised, displayed and sold in virtually the same manner. In this case, the NCA argues that there is no evidence that the wax composition of Enchanté's candle factors into any of the criteria set forth in 19 CFR 351.225(k)(2).

Department's Position:

Enchanté's request for a scope ruling was submitted after the Department's recent determination that candles subject to the Order include mixed-wax candles that contain any amount of petroleum wax. See LDM Circumvention Final at 59078. In that determination, the Department considered very similar factors to those required by the Diversified Products analysis and under section 351.225(k)(2) of the Department's regulations. See Diversified Products Corporation v. United States, 572 F. Supp. 883, 889-90 (September 27, 1983) ("Diversified Products"). In the LDM Circumvention Final, the Department found that the "mixed-wax candles are virtually indistinguishable from in-scope petroleum wax candles in terms of appearance, feel, and scent." See LDM Circumvention Final at Comment 5(B).

Enchanté requests that the Department find its candle outside the scope of the order because it contains only a small amount of petroleum wax. Moreover, Enchanté presented its arguments and information only with respect to the physical characteristics of its candle. In response to the request for information regarding the factors of section 351.225(k)(2) of the Department's

regulations,¹ Enchanté chose to only provide information and substantive argument with respect to the physical characteristics criterion. When analyzing criteria set forth in 19 CFR 351.225(k)(2), the determination as to which analytical criteria are most appropriate in any given scope inquiry is made on a case-by-case basis determined on the evidence before the Department. See, e.g., Crawfish Processors Alliance v. United States, 483 F.3d 1358, 1360 (CIT 2007).

In this case, the Department finds that argument and information addressing the remaining four factors of section 351.225(k)(2) that Enchanté chose not to address would be critical to our analysis given that the Department has already addressed the physical characteristics of a mixed-wax candle in the LDM Circumvention Final with participation and information from many producers, exporters and importers of subject candles. Absent such relevant information from Enchanté addressing such key factors of the analysis,² the Department cannot definitively conclude that Enchanté's candle is outside the scope of the Order. Therefore, the Department finds that Enchanté's candle is within the scope of the Order.

Recommendation:

After considering previous determinations, comments and data submitted by Enchanté and the NCA regarding the criteria set forth in 19 CFR 351.225(k)(2), the Department finds that Enchanté candle is within the scope of the Order. If accepted, we will send the attached letter to interested parties, and will notify CBP of our determination.

Agree

Disagree

Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

Date

¹ 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.

² In each case, the Department considers the totality of the evidence in reaching a determination. See Diversified Products at 889-890.