



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-504
Scope Inquiry
Public Document
IA/NME/9: EC

June 20, 2012

MEMORANDUM FOR: Gary Taverman
Senior Advisor
for Antidumping and Countervailing Duty Operations

FROM: James C. Doyle
Director, Office 9
AD/CVD Operations

SUBJECT: Final Scope Ruling: Antidumping Duty Order on Petroleum Wax
Candles From the People's Republic of China ("PRC")

Summary

On March 27, 2012, HSE USA, Inc. ("HSE") filed a request for a scope ruling to determine whether four candles that it imports are outside the scope of the antidumping duty order on petroleum wax candles from the PRC.¹ In accordance with 19 CFR 351.225(k)(1), we recommend that the Department of Commerce ("Department") find that HSE's four candles are within the scope of the Order.

Background

On August 2, 2011, the Department published the final results of its request for comments regarding the appropriate interpretation of the scope of the Order² ("Final Results Scope Clarification") and stated that it intended to apply the clarified interpretation to "all pending and future scope determinations involving the Order."³ On March 27, 2012, HSE filed its request for a scope ruling in proper form.⁴ Between April 6, 2012, and April 19, 2012, HSE and the National Candle Association ("NCA"), an association of domestic producers and petitioner in the investigation, filed comments and rebuttal comments. On May 1, 2012, the Department extended the scope determination date by 45 days, from May 11, 2012, to June 25, 2012.

¹ See Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986) ("Order").

² See Petroleum Wax Candles From the People's Republic of China: Final Results of Request for Comments on the Scope of the Antidumping Duty Order, 76 FR 46277 (August 2, 2011) and accompanying Issues and Decision Memorandum ("Final Results Scope Clarification").

³ The scope reinterpretation project was designed to clarify, based on information from the original investigation, the scope language in light of hundreds of scope rulings made under a variety of different criteria that evolved over the years. The project also had the result of making it clear exactly what kinds of products were to be included in, and excluded from, the scope.

⁴ See "Request for Scope Inquiry; Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504)" (dated February 27, 2012) ("Scope Request"). Although the Request is dated March 15, it was not filed in proper form until March 15, 2012. It was properly served on all parties on the scope service list on March 27, 2012. See "Confirmation of Second Service of Scope Inquiry Filed by HSE USA, Inc.; Antidumping Duty Order on Petroleum Wax Candles from China; A-570-504" (dated March 27, 2012).



Product Description

HSE submitted pictures and physical samples⁵ of the candles for which it requested a scope ruling.⁶ HSE states that the candles are made of paraffin, a petroleum wax. HSE also states that all candles are classified under the Harmonized Tariff Schedule for the United States (“HTSUS”) category 3406.00.0000. The four candles that are subject to this scope ruling are listed as follows:

1. Religious Cross with Jesus Candle (Item #RI004-W)

This candle consists of a wax figure of Jesus, painted a gold color, which is affixed to a wax candle that is in the shape of a cross. Brown paint has been applied to a portion of the front of the cross to simulate a cross made of wood. The figure of Jesus is painted a metallic color. The figure of Jesus measures approximately two inches from top to bottom. As the entire candle measures approximately four inches from top to bottom, the Jesus figure is approximately 45 percent of the height of the candle. Aside from the metallic color of the Jesus figure and the brown paint on the cross, the rest of the candle is colorless. HSE states that this candle is primarily purchased for display and is not typically burned.⁷

2. Religious Cross with Jesus on Monument Candle (Item #RI013)

This candle consists of a Jesus figure on a brown-painted wax cross, which is affixed to a wax candle that is in the shape of an obelisk. The figure of Jesus measures approximately two inches from top to bottom. As the entire candle measures approximately four inches from top to bottom, the Jesus figure is approximately 50 percent of the height of the candle. HSE states that this candle is primarily purchased for display and is not typically burned.⁸

3. Religious Cross with Jesus on Carved Candle (Item #RI027)

This candle consists of a Jesus figure on a brown-painted wax cross, which is affixed to a candle that has a “carved appearance.”⁹ The Jesus figure measures approximately two inches from top to bottom. The entire candle measures approximately 3.5 inches from top to bottom, and thus the Jesus figure is approximately 60 percent of the height of the candle. HSE states that this candle is primarily purchased for display and is not typically burned.¹⁰

4. Column Candle with Angel (Item #RI031-W)

The column candle with angel is approximately 3.5 inches from top to bottom. The candle depicts an angel sitting on a round column. Similar to the three candles described above, HSE states that the column candle with angel is primarily purchased for display and not for burning.¹¹

HSE’s Scope Request

HSE states that the first three candles depicting a crucifix (an image of Jesus Christ on the cross), are not included within the scope of the Order because each candle represents a recognizable human or deity, and figurine candles in the shape of an animal, human or deity are excluded

⁵ See HSE’s Scope Request at Exhibit 1A through 1C.

⁶ See HSE’s Scope Request.

⁷ Id. at 2-3 and Exhibit 1A.

⁸ Id. at 3 and Exhibit 1B.

⁹ Id. at 3.

¹⁰ Id. at 3 and Exhibit 1C.

¹¹ Id. at 4 and Exhibit 1D.

from the scope of the Order.¹² HSE argues that, although the Department did not provide guidance or a definition as to what constitutes a “human, animal, or deity,” the three candles which include a Jesus figure qualify as figurines of a human or deity. HSE quotes from Wikipedia, which provides a description of Jesus, and argues “since most critical historians agree that Jesus was a man who was a Galilean Jewish Rabbi,” the Department should find that the figurines are representations of a human.¹³ HSE argues in the alternative that, based on the description of Jesus found in Wikipedia, the figurines are of a deity, because “most Christian denominations worship Jesus as the incarnation of God the Son and the second person in the Holy Trinity.”¹⁴ In conclusion, HSE argues that the candles fall within the figurine exception because: 1) the size of the figurine on the candles is “substantial and distinctive;” 2) the figurine is clearly identifiable from multiple angles as Jesus; and 3) the figurine is the primary reason why customers purchase the candles.¹⁵

With regard to the column candle with angel, citing the Online Oxford Dictionary, the Free Dictionary by Farlex, and Wikipedia, HSE argues that the definition of deity should include angels, because a deity may be defined as a “supernatural immortal being” that is considered holy or sacred.¹⁶ HSE contends that the Department should define “deity” based not only on Western religions and traditions but also on Eastern faiths. HSE argues that in non-Western religions, the term deity is given a wider interpretation than in Western faiths.¹⁷ Under the inclusive definition of deity proposed by HSE, an angel falls under the definition of deity, because the term “deity” includes the meaning “deva” which is defined, according to Wikipedia, as an angel-like being.¹⁸ HSE argues that Buddhism, Hinduism and other Eastern religions are practiced by millions of Americans, and so adopting an interpretation of deity to include the meaning of the term “deva,” “would honor their faiths and their interpretations of angels, deities and devas.”¹⁹ HSE states that the Department should determine that an angel is a deity and therefore, a candle in the shape of an angel is outside the scope of the Order.²⁰

HSE argues that the four candles should be excluded because, unlike candles that are subject to the Order: 1) the primary reason people buy these candles is for decoration purposes; and 2) they are often used as a gift for baptism, first communion, and other Christian ceremonies.

The NCA’s Comments²¹

The NCA argues that HSE’s three candles depicting a crucifix and figure of Jesus fall within the scope of the Order, relying on the less-than-fair-value investigation, the final determination of the International Trade Commission (“ITC”) and the Final Results Scope Clarification, because the Department intended that the definition of “figurine” be very narrow, to eliminate any

¹² Id. at 5-6, citing Final Results Scope Clarification.

¹³ Id. at 7.

¹⁴ Id. at 8.

¹⁵ Id.

¹⁶ Id. at 9.

¹⁷ Id. at 10.

¹⁸ Id. at 11.

¹⁹ Id. at 11.

²⁰ Id. at 8-13.

²¹ See “Comments on Scope Ruling Request of HSE USA, Inc. Petroleum Wax Candles from the People’s Republic of China,” (dated April 6, 2012) (“NCA’s Comments”).

ambiguity in the scope.²² The NCA contends that in the Final Results Scope Clarification, the Department determined that religious and special occasion theme candles, used for decoration purposes, were included within the scope of the Order.²³ The NCA argues that HSE is attempting to reintroduce the exclusion for novelty candles.²⁴ Regarding the first three candles listed above, HSE argues that because the wax form of Jesus is not the candle itself, but merely a wax form that is attached to an in-scope candle, the candle does not meet the definition of a figurine. Finally, the NCA states that although HSE contends the figure of Jesus is visible from multiple angles, the wax figure is only visible from a front angle view of the candles.

With regard to the column candle with angel, the NCA argues that the Department “should not be in the business of making awkward distinctions between what is, or is not, a deity.”²⁵ Citing Webster’s Online Dictionary, the NCA states that an angel can be a secular figure, a symbol that is omnipresent in secular culture, and can connote many different meanings.²⁶ The NCA further states that HSE’s candle is in the shape of a Western-style image of an angel, not that of a deity from an Eastern religion. The NCA also argues that, as defined in the dictionary, an angel is, among other definitions, a spiritual being superior to humans, but of a lesser rank than a deity.²⁷ Finally, the NCA states that the Department should construe the Order narrowly and refuse to broaden the exclusion for figurines as HSE suggests.²⁸

HSE’s Rebuttal Comments²⁹

In its rebuttal comments, HSE provides a declaration from its president stating that the three candles depicting a crucifix are made from one mold and not composed of two separately molded pieces.³⁰ HSE reiterates its argument that “deity” should be defined inclusively to consider Eastern religious faiths and that the NCA does not support its argument that the definition of deity was intended to be construed narrowly.³¹ HSE further argues that the Department’s ruling that the candles are outside the scope would not further expand the definition of a figurine.³²

The NCA’s Rebuttal Comments³³

In its rebuttal comments, the NCA argues that it is irrelevant whether the wax forms of Jesus appears on or is affixed to the candles, or that the candles are made from one mold, because the wax forms are merely a decorative element on the side of in-scope candles.³⁴ The NCA further

²² NCA’s Comments at 3-6.

²³ Id. at 5, quoting Final Results Scope Clarification and accompanying Issues and Decision Memorandum at Comment 1.

²⁴ Id. at 6.

²⁵ Id. at 10.

²⁶ Id. at 9-10.

²⁷ Id., citing Webster’s Online Dictionary.

²⁸ Id. at 11-12.

²⁹ See “Rebuttal to Comments filed by NCA on HSE USA’s Scope Request; Petroleum Wax Candles from the People’s Republic of China (A-570-504),” (dated April 13, 2012) (“HSE’s Rebuttal Comments”).

³⁰ Id.

³¹ Id. at 5-6.

³² Id. at 8.

³³ See “Comments in Response to Rebuttal Comments Submitted by HSE USA, Inc.,” (dated April 19, 2012) (“The NCA’s Rebuttal Comments”).

³⁴ Id. at 7-8.

argues that whether the crucifix figure is visible from multiple angles is irrelevant because, although that was a requirement for the prior novelty candle exclusion, it is not a requirement for the figurine exclusion. Finally, the NCA argues that many candles are used for decoration, and that is not sufficient to exclude them from the Order.³⁵

Legal Framework

The regulations governing the Department's scope determinations are found at 19 CFR 351.225. When a request for a scope ruling is filed, the Department examines the scope language of the order at issue and the description of the product contained in the scope-ruling request.³⁶ Pursuant to the Department's regulations, the Department may also examine other information, including the description of the merchandise contained in the petition, the records from the investigations, and prior scope determinations made for the same product.³⁷ If the Department determines that these sources are sufficient to decide the matter, it will issue a final scope ruling as to whether the merchandise is covered by an order. This determination may take place with or without a formal inquiry.

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 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 this case, the Department has evaluated HSE's request in accordance with 19 CFR 351.225(k)(1) and finds that the descriptions of the products contained in these sources are dispositive with respect to HSE's candles. Therefore, for these candles, the Department finds it unnecessary to consider the additional factors set forth at 19 CFR 351.225(k)(2).

Analysis

Pursuant to the Final Results Scope Clarification, the Department found that record evidence from the investigation does not support the exclusion of candles based on holiday/religious/special-occasion themes, and therefore, that holiday/religious/special-occasion characteristics would have no bearing in determining whether a candle is included in or excluded from the scope of the Order.³⁸ The Department also found that record evidence best supports a scope interpretation where "figurine" is based on the definition of this term from the Webster's Online Dictionary: "1. {a} small carved or molded figure...2. A very small figure, whether human or of an animal; especially, one in terra cotta or the like; -- distinguished from statuette, which is applied to small figures in bronze, marble, etc."³⁹ Based on this definition, the

³⁵ Id. at 8-9.

³⁶ See Walgreen Co. v. United States, 620 F.3d 1350, 1357 (Fed. Cir. 2010)

³⁷ See 19 CFR 351.225(k)(1)

³⁸ See Final Results Scope Clarification and accompanying Issues and Decision Memorandum at comment 3D.

³⁹ Id. at 3C.

Department found that the best description of a figurine candle is a candle that is in the shape of a human, animal, or deity.⁴⁰

Therefore, the Department determined that the scope of the order should be interpreted as follows:

All petroleum wax candles (regardless of holiday/religious/special occasion-theme) are included within the scope of the order, with the exception of three petroleum wax candle types: birthday (and birthday numeral) candles, utility candles, and figurine candles.⁴¹

* * *

Figurine candles are those that are in the shape of a human, animal, or deity.⁴²

With respect to HSE's Scope Request, we find that HSE's four candles are included in the scope of the Order in accordance with section 351.225(k)(1) of the Department's regulations, because the descriptions of the products contained in the petition, the initial investigation, final determinations of the Secretary (including prior scope rulings) and the Order are dispositive. Therefore, for these candles, the Department finds it unnecessary to consider the additional factors set forth in 19 CFR 351.225(k)(2).

Our analysis begins with the three candles that include the Jesus figure, listed below.

1. **Religious Cross with Jesus Candle (Item #RI004-W)**
2. **Religious Cross with Jesus on Monument Candle (Item #RI013)**
3. **Religious Cross with Jesus on Carved Candle (Item #RI027)**

The Department determines that these candles are within the scope of the order because they meet the physical description of merchandise subject to the Order: they are made from petroleum wax and have fiber or paper-cored wicks.⁴³ In this regard and as described in further detail below, the Department determines that the candles do not fall within the figurine exclusion because the three candles, taken in their entirety and inclusive of the wax form of Jesus, are not in the shape of a human, animal or deity.

In the Final Results Scope Clarification, the Department described a figurine candle as "a candle that is in the shape of a human, animal, or deity."⁴⁴ In HSE's Scope Request, it states that the Jesus figure is "affixed to the part of the candle" that is in the shape of a cross or pillar.⁴⁵ In HSE's Rebuttal Comments, it states that the Jesus figure is not made from separately molded parts, and enclosed a declaration in which the president of HSE states that each of the three candles listed above is made using a single mold, and that the Jesus figure is not assembled from

⁴⁰ Id.

⁴¹ See Final Results Scope Clarification at Comment I.

⁴² See Final Results Scope Clarification at Comment 3C.

⁴³ See Order.

⁴⁴ See Final Results Scope Clarification at Comment 3C.

⁴⁵ See HSE's Scope Request at 2-3.

a separate mold.⁴⁶ HSE states that the use of the words “affixed to” describes the “appearance” of the Jesus figure.⁴⁷ We find that, for each of the candles the fact that the Jesus figure and the cross/pillar are made using a single mold is not dispositive as to the question of whether the candle is a figurine, because, rather than being a candle in the shape of a human, animal, or deity, the wax form of Jesus is merely part of an otherwise in-scope petroleum wax candle. In other words, the three candles listed above are not figurine candles “in the shape of a human, animal, or deity” because taken in their entirety and inclusive of the wax form of Jesus, they are not in the shape of an animal, human or deity.⁴⁸ Indeed, the shapes are of a cross or a pillar with a figure of Jesus incorporated into part of the cross or pillar.

We do not agree with HSE that the size of the Jesus form in relation to the cross or pillar demonstrates that the candles are figurine candles. In this case, the inclusive shapes of the candles are a cross or a pillar because, as HSE’s statements suggest⁴⁹ and the photos of the candles make clear,⁵⁰ the form of Jesus is incorporated into the overall candle rather than the shape of the cross or pillar being incorporated into the form of Jesus.⁵¹ In addition, the fact that the candles are intended for decoration and that they are given at gifts at certain events does not render them excluded from the scope of the Order because the Order does not exclude candles based on their intended end-use.

As noted above, the Department has clarified that there is not an exclusion for religious, holiday or special occasion themed candles.⁵² In the Final Results Scope Clarification, the Department determined that, based on the final determination in the investigation, the NCA did not intend to exclude religious, holiday or special occasion themed candles, and so the Department confirmed that candles which would have met this exclusion “are within the scope of the Order where they otherwise satisfy the descriptions of the merchandise.”⁵³ We agree with the NCA that the three candles listed above, which include a wax candle in the shape of a cross or pillar with the form of Jesus incorporated into the candles, are religious-themed candles, which are included within the scope of the Order as the Department has clarified.

⁴⁶ See HSE’s Rebuttal Comments at 3 and Declaration.

⁴⁷ Id. at 2.

⁴⁸ Using this clear standard – taken in its entirety the shape must be an animal, human, or deity – for the figurine exception ensures that this exception to the Order is narrowly drawn and assists greatly in the administrability of the Order. See, e.g., Petroleum Wax Candles from the People’s Republic of China: Request for Comments on the Scope of the Antidumping Duty Order and the Impact on Scope Determinations, 74 FR 42230, 42231 (August 21, 2009) (explaining that the scope clarification was necessary because prior scope rulings lead to a great deal of uncertainty which, in turn, led to an extremely large number of scope requests hindering the Department’s ability to administer the Order).

⁴⁹ See HSE’s Scope Request at 2-3 (“a wax figure of Jesus, painted a gold color, which is affixed to a wax candle”).

⁵⁰ See HSE’s Scope Request at Exhibit 1A through 1C.

⁵¹ In contrast, if the candle were in the shape of a man holding a book, the Department would likely find the candle meets the figurine exception because the shape is of a man and the mere fact that the man is holding a book would not indicate that the candle was not a figurine.

⁵² See Final Results Scope Clarification at Comment 3D.

⁵³ Id.

4. **Column Candle with Angel (Item #RI031-W)**

Similar to the three candles above, the Department determines that the column candle with angel is included within the scope of the Order because it meets the physical description of merchandise subject to the Order: it is made from petroleum wax and has a fiber or paper-cored wick.⁵⁴ In this regard, we determine that the column candle with angel does not fall within the exclusion for figurine candles. As noted above, in its Final Results Scope Clarification, the Department clarified the scope based on evidence from the initial investigation, and determined that the scope covers all candle shapes, with limited exceptions for, *inter alia*, figurines.⁵⁵ The depiction of the angel forms only the top portion of the candle, with the entire bottom portion being a column, an in-scope candle shape. Thus, even assuming for arguments sake that the angel was a human, deity or animal, the shape of the candle taken in its entirety is not in the shape of an angel and, thus, the Department does not consider it a figurine candle.⁵⁶ Furthermore, the Department has clarified that there is no exception under the Order for novelty candles (*i.e.*, a religious, holiday, special-occasion themed candle).⁵⁷

Recommendation

Based on the preceding analysis, we recommend that the Department find that the “Religious Cross with Jesus Candle” (Item #RI004-W), “Religious Cross with Jesus on Monument Candle” (Item #RI013), “Religious Cross with Jesus on Carved Candle” (Item #RI027), and Column Candle With Angel” (Item #RI031-W), are included within the scope of the Order.

If you agree, we will mail the attached letter to the interested parties, and will notify the United States Customs and Border Protection of our determination.

Agree Disagree



Gary Tavernin
Senior Advisor
for Antidumping and Countervailing Duty Operations

6/20/12
Date

⁵⁴ See 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) and Order.

⁵⁵ Id. at Comment 3C.

⁵⁶ See n. 47 supra explaining the need for a clear standard for the figurine exception.

⁵⁷ Id. 76 FR at 46278.