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International Trade Administration
Washington, D.C. 20230

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Scope Inquiry
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July 23, 2014

MEMORANDUM FOR: Edward C. Yang
Director, Office VII
Antidumping and Countervailing Duty Operations

FROM: James C. Doyle
Director, Office V
Antidumping and Countervailing Duty Operations

SUBJECT: Tinker Bell Candle Imported by Hallmark Cards, Inc. Final Scope
Ruling: Antidumping Duty Order on Petroleum Wax Candles
from the People's Republic of China ("PRC")

Summary

On February 6, 2014, Hallmark Cards, Inc. ("Hallmark") filed a request for a scope ruling to determine whether a candle it imports is 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 Hallmark's candle 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 and stated that it intended to apply the clarified interpretation to "all pending and future scope determinations involving the

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) ("Final Results Scope Clarification"); see also Memorandum to the File from Emeka Chukwudebe, International Trade Analyst, Office V, Antidumping and Countervailing Duty Operations, through Catherine Bertrand, Program Manager, Office V, Antidumping and Countervailing Duty Operations RE: "Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Placing Documents on the Record," dated concurrently with this memorandum.



Order.”³ On February 7, 2014, Hallmark filed its request for a scope ruling in proper form.⁴ Between February 18, 2014, and February 24, 2014, Hallmark⁵ and the National Candle Association (“NCA”),⁶ an association of domestic producers, and the petitioner in the investigation, filed comments and rebuttal comments. Finally, Hallmark filed additional rebuttal comments on April 21, 2014, after the Department released a draft remand redetermination in another candles scope inquiry involving Trade Associates’ candles.⁷

Product Description

Hallmark submitted pictures of the candle for which it requested a scope ruling.⁸ Hallmark states that the candle is made of paraffin, a petroleum wax, has a cloth wick, is painted, measures approximately 2.5 inches tall by 2 inches wide by 1.5 inches deep and is classified under the Harmonized Tariff Schedule for the United States (“HTSUS”) category 3406.00.0000.⁹ Hallmark states that the candle consists of a candle molded in the shape of a three-dimensional representation of the Disney license character, “Tinker Bell” sitting cross-legged on a purple rock base adorned with pink and yellow lilies with normally-proportioned features consisting of a face, head, neck, torso, arms, fingers, legs, and feet.¹⁰ The Tinker Bell candle wears a green strapless dress and matching shoes.¹¹ To one side of the Tinker Bell candle are wings that sprout from its back, discernable from the pink background.¹² Hallmark further states that the candle may be lit as a birthday candle or used as a table decoration along with other Tinker Bell accessories for a themed celebratory occasion.¹³

Hallmark’s Scope Request

Hallmark notes that the Tinker Bell candle depicts a lithe young woman sitting cross-legged on a purple rock base adorned with pink and yellow lilies. Hallmark states that the Tinker Bell candle is not included within the scope of the Order because taken in its entirety, the candle is in the shape of a human which is excluded from the scope of the Order.¹⁴ Hallmark cites to the Final Results Scope Clarification arguing that the Department’s term, “in the shape of” used to define figurine candles means that figurine candles subject to the exclusion can vary by deviations in

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 “Scope Ruling Exclusion Request Regarding Tinker Bell Candle; Petroleum Wax Candles from the People’s Republic of China” (dated February 6, 2014) (“Hallmark’s Scope Request”).

⁵ See “Hallmark’s Rebuttal Comments Regarding Its Tinker Bell Candle Scope Ruling Exclusion Request; Petroleum Wax Candles from the People’s Republic of China” (dated February 24, 2014) (“Hallmark’s Rebuttal Comments”).

⁶ See “Comments on Scope Ruling Request of Hallmark Cards, Inc.- “Tinker Bell” Petroleum Wax Candles from the People’s Republic of China” (dated February 14, 2014) (“NCA Comments”).

⁷ See “Hallmark’s Additional Grounds for Scope Exclusion Per Draft Remand Determination” (dated April 21, 2014) (“Hallmark’s Additional Rebuttal Comments”).

⁸ See Hallmark’s Scope Request, Exhibit 1.

⁹ Id. at 1.

¹⁰ Id. at 1-2.

¹¹ Id. at 2.

¹² Id.

¹³ Id.

¹⁴ Id. at 5-6, citing Final Results Scope Clarification.

shape. Hallmark also argues that a strict interpretation of what is “human” would place the Department in an awkward position of defining what shape a human should be for purposes of the “figurine” exception. Finally, Hallmark argues that similar to the *Fashion Craft*¹⁵ and *TAG*¹⁶ scope rulings, the Department should allow the definition of a figurine candle to include deviations in shape as long as the subject candle is recognizable as a human.

With regard to the wings protruding from the back of Tinker Bell, Hallmark argues that the inclusion of wings on the Tinker Bell candle is discreet and does not prevent the candle from being in the shape of a human. In conclusion, Hallmark argues that the Department should find the Tinker Bell candle outside the scope because it is in the shape of a woman.

The NCA’s Comments

The NCA relies on the less-than-fair-value investigation, the final determination of the International Trade Commission (“ITC”) and the Final Results Scope Clarification, to argue that Hallmark’s Tinker Bell candle falls within the scope of the Order because the candle is a representation of a winged fairy and not a human.¹⁷ The NCA notes that in the Final Results Scope Clarification, the Department intended for the definition of “figurine” candle to be very narrow to eliminate any ambiguity in the scope.¹⁸ By contending that its Tinker Bell candle falls within the definition of a figurine candle, Hallmark ignores the unambiguous definition of a “figurine” candle set forth in the Final Results Scope Clarification. The NCA argues that Hallmark is attempting to reintroduce the exclusion for novelty candles.¹⁹

The NCA notes the Department concluded in the *Jay Import*²⁰ scope ruling, “*humans do not have wings.*”²¹ The NCA emphasizes the essential nature of the wings to the Tinker Bell candle. NCA also claims that “Hallmark attempts to downplay the wing’s role on the ‘Tinker Bell’ candle, by describing ‘a pair of wings’ that ‘recedes into the background as part of the setting.’”²² Contrary to the *Fashion Craft* scope ruling, the Tinker Bell candle, taken in its entirety, is a fairy.²³ Moreover, the NCA contends that Hallmark misinterprets the language “in the shape of” in the Department’s definition of a figurine candle as it “*need not be human, but only in the*

¹⁵ See Memorandum for Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations from James C. Doyle, Director, Office 9 for Antidumping and Countervailing Duty Operations: Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China (“PRC”) (dated August 14, 2012) (“*Fashion Craft*”).

¹⁶ See Memorandum for Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations from James C. Doyle, Director, Office 9 for Antidumping and Countervailing Duty Operations: Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China (“PRC”) (dated August 4, 2011) (“*TAG*”).

¹⁷ See “Comments on Scope Ruling Request of Hallmark Cards, Inc., “Tinker Bell” Petroleum Wax Candles from the People’s Republic of China,” (dated February 14, 2014) (“NCA’s Comments”).

¹⁸ *Id.* at 3-6.

¹⁹ *Id.* at 4.

²⁰ See Memorandum for Gary Taverman, Senior Advisor, Antidumping and Countervailing Duty Operations from James C. Doyle, Director, Office 9, Antidumping and Countervailing Duty Operations: Goat and Cherub Candles Sold by Jay Import Company Inc., Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China (“PRC”) (dated August 27, 2013) (“*Jay Import*”).

²¹ *Id.* at 4-5.

²² *Id.* at 5.

²³ *Id.*

*shape of a human.*²⁴ The NCA states that in the *HSE USA*²⁵ scope ruling, the Department ruled the language “in the shape of” means the candle itself must be in the shape of a human, deity or animal, not in the shape of a cross, column, or other article into which a deity is incorporated or simply attached.²⁶

Hallmark’s Rebuttal Comments

In its rebuttal comments Hallmark argues that based upon a correct reading of the plain language of the figurine definition, the Tinker Bell Candle is in the shape of a human.²⁷ Hallmark cites to the *Jay Import* and *Fashion Craft* scope rulings to argue: 1) the definition of a figurine candle should mean “in the shape of a human” and should not be synonymous with “is a human”; 2) viewed in its entirety, the overall impression of the Tinker Bell candle is a completely articulated human shape, and; 3) the wings in the background of the candle do not prevent the candle from being in the shape of a human.²⁸ Hallmark contends that the Tinker Bell candle and Cinderella Candle,²⁹ another princess candle made by Hallmark, are not materially different in “shape” from another and share nearly identical features. Hallmark claims Tinker Bell’s eye makeup, pert nose, outfit and shapely figure are similar to that of Barbie. Both continue to reflect the original 1950’s ideals of the human female form.³⁰

Moreover, Hallmark is “mystified” by NCA’s remark that “wisely, Hallmark does not attempt to argue that ‘Tinker Bell’ is a deity” because Hallmark did not mention the deity exclusion. Hallmark is also “mystified” by NCA’s comparison to the candles in the HSE USA ruling.³¹ Hallmark mentions how again, the NCA has put the Department in the awkward position of making unnecessary distinction between what is or is not a figurine candle.

Hallmark’s Additional Rebuttal Comments

In its Additional Rebuttal Comments, Hallmark claims that in the Trade Associates Group (“Trade Associates”) draft remand, the Department found that candles in the shapes of identifiable objects are excluded from the scope unless they are in common candle shapes.³² Hallmark states that the Tinker Bell candle is in the shape of an identifiable object and is not a common candle shape or a shape listed in the scope language. Thus, Hallmark claims that the Tinker Bell candle should be excluded because it is neither a shape listed by the scope of the

²⁴ Id. at 6.

²⁵ See Memorandum for Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations from James C. Doyle, Director, Office 9 for Antidumping and Countervailing Duty Operations Final Scope Ruling: Antidumping Order on Petroleum Wax Candles from the People’s Republic of China (“PRC”) (dated June 20, 2012) (“HSE USA”).

²⁶ Id. at 6.

²⁷ See “Hallmark’s Rebuttal Comments Regarding Its Tinker Bell Candle Scope Exclusion Request; Petroleum Wax Candles from the People’s Republic of China (A-570-504),” (dated February 24, 2014) (“Hallmark’s Rebuttal Comments”).

²⁸ Id. at 3-5.

²⁹ See Hallmark’s Scope Request, Exhibit 2.

³⁰ See Hallmark’s Rebuttal Comments at 6.

³¹ Id.

³² See Hallmark’s Additional Rebuttal Comments.

Order (tapers; spiral; straight-sided dinner candles; rounds; columns; pillars; votives; and various wax-filled containers) nor is it a common candle shape.³³

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.³⁴ 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.³⁵ 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 evaluated Hallmark'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 Hallmark's candle. Therefore, for these candles, the Department finds it unnecessary to consider the additional factors set forth at 19 CFR 351.225(k)(2).

Analysis

In the Final Results Scope Clarification, the Department found that record evidence best supported 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."³⁶ Based on this definition, the Department found that the best description of a figurine candle is a candle that is in the shape of a human, animal, or deity.³⁷

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

³³ Id., at 2-3.

³⁴ See Walgreen Co. v. United States, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

³⁵ See 19 CFR 351.225(k)(1).

³⁶ See Final Results Scope Clarification at Comment 3C.

³⁷ Id.

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.³⁸

* * *

Figurine candles are those that are in the shape of a human, animal, or deity.³⁹

With respect to Hallmark's Scope Request, we find that the Tinker Bell candle is included in the scope of the Order in accordance with 19 CFR 351.225(k)(1), 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.⁴⁰ Therefore, for these candles, the Department finds it unnecessary to consider the additional factors set forth in 19 CFR 351.225(k)(2).

The Department determines that the Tinker Bell candle is within the scope of the order and that it meets the physical description of merchandise subject to the Order because it is made from petroleum wax and has a fiber or paper-cored wick.⁴¹ In this regard, the Department determines that the candle does not fall within the figurine exclusion because the candle, taken in its entirety and inclusive of the wax form of Tinker Bell, is not in the shape of a human, animal or deity.

Similar to the Department's ruling in *Jay Import*, this scope inquiry can be distinguished from the rulings in *Fashion Craft* and *TAG*⁴² because both *Jay Import* and this case involve the inclusion of wings on a candle. Specifically, in *Fashion Craft*, the Department explained that all six candles were in the shapes of animals. Although the candles may have included additional objects (i.e., a lion with a crown), taken as a whole, the candles were in the shape of an animal.⁴³ In the *TAG* scope ruling, the Department also explained that the candles which qualified for the figurine exception were either specifically in the shape of an animal (e.g., a ladybug, frog, or bunny) or a human (e.g., a hula girl).⁴⁴ In *Jay Import*, the Department relied on these rulings to determine that a cherub candle, unlike those candles in *Fashion Craft* and *TAG*, is covered by the scope because it is in the form of a winged child and, therefore, is not in the shape of a deity or human subject to the figurine exception.

With regard to Hallmark's argument that the *Fashion Craft* and *TAG* scope rulings support a finding that the Tinker Bell candle should be excluded as a figurine, we find those cases distinguishable from this scope inquiry because the Tinker Bell candle's inclusion of wings demonstrate that it is not in the shape of a human.⁴⁵ In this scope inquiry, Hallmark argues that "{t}he emphasis on Tinker Bell's representation in a human form is the candle's dominant

³⁸ Id. at Comment 1.

³⁹ See Final Results Scope Clarification at Comment 3C.

⁴⁰ See, generally, Final Results Scope Clarification.

⁴¹ See Order.

⁴² See *Jay Import* at 7.

⁴³ See *Fashion Craft* and *TAG*.

⁴⁴ See *TAG* at 12-35 (explaining that certain candles qualified for the figurine exclusion).

⁴⁵ Further, no party claimed, and we do not find, that the candle is in the shape of an animal or deity.

feature; her magic powers suggested by the rather two-dimensional wings are downplayed.”⁴⁶ We disagree with Hallmark’s characterization and cannot ignore the prominent role of the wings which do not constitute additional objects, but are part of the character of Tinker Bell. We find that the wings are essential to the character of Tinker Bell depicted on the candle.

Additionally, we agree with the NCA’s comment regarding the *HSE USA* scope ruling.⁴⁷ In that ruling, the Department found that the candles, taken in their entirety, included the pillar or cross base in addition to the figure, such that they did not fit the figurine language as a candle “in the shape of animal, human, or deity.”⁴⁸ Similarly, we find the Tinker Bell candle, taken in its entirety, includes the wings and purple rock base adorned with pink and yellow lilies and, therefore, does not fit the figurine exclusion language..

Finally, with regard to Hallmark’s argument that under the analysis in the Trade Associates draft remand the Tinker Bell candle is an identifiable object and should be excluded from the scope of the Order,⁴⁹ we note that the Trade Associates litigation is ongoing before the Court of International Trade and there has been no final and conclusive court decision in that case. For that reason, we continue to follow the analysis provided in the Final Results Scope Clarification.

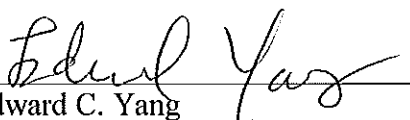
Recommendation

Based on the preceding analysis, we recommend that the Department find that the Tinker Bell candle is included within the scope of the Order under 19 CFR 351.225(k)(1).

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



Edward C. Yang
Director, Office VII

Antidumping and Countervailing Duty Operations

7/23/2014
Date

⁴⁶ See Hallmark’s Scope Request at 9.

⁴⁷ See NCA’s Comments at 6.

⁴⁸ See *HSE USA* at 6-7.

⁴⁹ See Hallmark’s Additional Rebuttal Comments at 1.