

OCT 5 2000

A-570-504  
Scope Review  
PUBLIC DOCUMENT  
Enforcement Group III: MER

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On August 21, 2000, the Department of Commerce (the Department) received a request from Cherrydale Farms (Cherrydale) for a scope ruling on whether its set of four "Floating Bug" candles is 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 these four candles are covered by 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 the U.S. Customs Service of this decision. If you have any questions, please contact Mathew Renkey at (202) 482-2312.

Sincerely,

Barbara E. Tillman  
Director  
Office of AD/CVD Enforcement VII

Enclosure

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MEMORANDUM      Joseph A. Spetrini  
FOR:                Deputy Assistant Secretary  
                        Enforcement Group III

FROM:              Barbara E. Tillman  
                        Director  
                        Office of AD/CVD Enforcement VII

SUBJECT:          Final Scope Ruling; Antidumping Duty Order on Petroleum  
                        Wax Candles from the People's Republic of China (A-570-504);  
                        Cherrydale Farms

#### Summary

On August 21, 2000, the Department of Commerce (the Department) received a request from Cherrydale Farms (Cherrydale) for a scope ruling on a set of four "Floating Bug" candles to determine if they are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). The National Candle Association (NCA), petitioner in this case, submitted comments on Cherrydale's request on September 22, 2000. In accordance with 19 CFR 351.225(k)(l), we recommend that the Department determine that Cherrydale's candles are covered by the scope of the antidumping duty order on petroleum wax candles from the PRC.

#### Background

Cherrydale filed its request for a scope ruling in proper form on August 21, 2000. The National Candle Association's timely comments followed on September 22, 2000.

The relations governing the Department's antidumping scope determinations are 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 determinations of the Secretary and the International Trade Commission (the Commission), the initial investigation, and the antidumping duty order. 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(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 Department applies these criteria when it is unclear whether the product which is the subject of the scope ruling fits within the product descriptions contained in the petition, the determinations of the Secretary and the Commission, the investigation, and the order. 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 all evidence before the Department.

In the instant case the Department has evaluated Cherrydale's request in accordance with 19 CFR 351.225(k)(l); the descriptions of the products contained in the petition, the final determinations of the Secretary and the Commission, the initial investigation, and the antidumping duty order are, in fact, dispositive.

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.

In its petition of September 4, 1985, the National Candle Association 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 (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:

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 (Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty Investigation, 50 FR 39743 (September 30, 1985); see also Preliminary Determination of Sales at Less Than Fair Value, 51 FR 6016 (February 19, 1986), Final Determination, 51 FR 25085 (July 10, 1986), and Antidumping Duty Order: Petroleum Wax Candles from the People 's Republic of China 51 PR 30686 (August 28, 1986)).

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" (Determinations of the Commission (Final), USITC Publication 1888, August 1986, at 4, note 5, and A-2 (Commission Determination)).

Also of relevance to the present scope inquiry is a notice issued to the United States Customs Service in connection with a July 1987 scope determination, 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), (CIE N-212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987).

### Cherrydale's Scope Request

Cherrydale argues that all of the models subject to this inquiry i) are novelty candles with physical characteristics that prevent them from being covered by the scope of the order; and ii) are sold in a different channel of trade than candles subject to the order. Any determination that the "Floating Bug" candles are covered by the order, Cherrydale maintains, would constitute an extra-legal broadening of the scope of an existing order. Accordingly, Cherrydale concludes the Department has no authority to find these products within the scope. Cherrydale insists that, unlike merchandise subject to the order, the "Floating Bug" candles are novelty candles marketed solely through school fundraising efforts, rather than to retail customers. Cherrydale included photographs of these candles from its product brochures, as well as two samples of the four candle set, with its scope request.

### The National Candle Association's Comments

In its comments the National Candle Association retraces the history of this antidumping duty order, including the import surges and resultant injury suffered by domestic manufacturers which prompted the original September 1985 antidumping petition. Turning specifically to Cherrydale's request, petitioner asserts that "Cherrydale's floating bug candle is nothing more than a floating 'round' candle which has been found to be within the scope of the Order." (National Candle Association Comments at 5). With respect to the specific novelty claims advanced by Cherrydale, petitioner suggests that none meet the degree of specificity required to merit exclusion from the scope of the order.

The National Candle Association concludes by noting what it characterizes as the long standing efforts of candle importers to "...evade or circumvent the order. The order is vital to the survival of the U.S. candle industry. Cherrydale is now asking Commerce to narrow the scope of the order so that it excludes everyday candles claiming that they are novelty candles. Commerce does not have the legal authority to narrow the scope of the Order." (Id. at 6).

### Analysis

Cherrydale argues that its "Floating Bug" candles should be found outside the scope of the order because the candles are one-piece complete molds and not short rounds, columns or pillars; because they represent novelty candles in the form of an identifiable object (a 3-dimensional mold of a bug); and, because the candles are marketed solely through schools' non-profit fundraising efforts (Cherrydale's Request, 1-2). According to Cherrydale, these conditions are sufficient to render its products outside the scope of the order.

For the reasons discussed below, the Department cannot subscribe to Cherrydale's interpretation of the scope of the order. When determining whether or not a particular product claimed as a novelty candle is within the scope of the antidumping duty order, the Department's first line of inquiry is whether the shape of the candle is one delineated in the language of the Order's scope, i.e., "tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers." As explained in the September 1987 Customs Information Exchange notice CE N-212/85 and in previous scope rulings by the Department, novelty candles which are in a shape

otherwise within the scope of the Order fall outside the scope of the Order due to the characteristic that renders them novelty candles.

With respect to the instant request, we find that the "Floating Bug" candles are, in fact, short rounds covered under the scope of the Order, rather than a 3-dimensional mold as claimed by Cherrydale. The Department has previously found that similar floating rounds fall within the Order's scope (Final Scope Ruling, Endar Corp., May 11, 2000 at 7; Final Scope Ruling, Endar Corp., January 11, 2000 at 5; Final Scope Ruling, Meijer Inc. September 30, 1999, 7-8; and Final Scope Ruling, Endar Corp., December 24, 1998 at 3). While the novelty exemption includes candles shaped in the form of identifiable objects, the bug designs found at the top of the candle do not alter the candle's fundamental shape, that of a short round. Furthermore, the bug design is only definable from above, and not from any other perspective. In a previous inquiry that discussed a candle with an engraving of a bug only discernable from the top, the impression of the insect was not deemed grounds for excluding the candle from the scope of the Order (Final Scope Ruling, Endar Corp., January 11, 2000 at 5). Cherrydale also does not cite any previous scope determinations in support of its arguments. The "Floating Bug" candles do not qualify for a novelty exemption because the majority of surfaces are not shaped in the form of an identifiable object; rather, the candles' shape is clearly definable as that of a short round.

These facts combine to nullify Cherrydale's claims that the shape of the candles in question is outside those outlined in the Order, or that the candles should be considered under the novelty exemption.

Regarding Cherrydale's argument that it should be exempt from antidumping duties on the candle because it markets the candle through school fundraising efforts, we note that Cherrydale's motives cannot serve as the basis for excluding a particular product from the scope of an antidumping duty order. In a scope inquiry, the Department must focus, above all, on the product at issue, irrespective of the reasons given for marketing the product. The Department only considers channel of trade when descriptions of the merchandise are not dispositive. In this case, the Department does not reach an analysis of the channel of trade, because the product description is dispositive of its inclusion in the scope.

Cherrydale argues that the "Floating Bug" candles are in a shape outside the scope of the Order, are novelty candies identifiable as bugs, and compete in a different channel of trade than candles subject to the Order. Despite the carved figures of bugs, the candles are still floating short rounds, covered by the Order, and are not classifiable as novelty candles. Thus, we find that the candles are within the scope of the Order. This conclusion is consistent with the scope of the investigation and order, as defined in the petition, and the Department's and the Commission's determinations.

#### Recommendation

Based on the preceding analysis, we recommend the Department find that Cherrydale's "Floating Bug" candles, as described above, are within the scope of the antidumping duty order on petroleum wax candles from the PRC.

\_\_\_\_\_ 4 \_\_\_\_\_ Agree \_\_\_\_\_ Disagree

If you agree, we will send the attached letter to the interested parties, and will notify the U.S. Customs Service of our determination.

Joseph Spetrini  
Deputy Assistant Secretary  
Enforcement Group III

10-05-00

Date

Attachment