

OCT 6 2000

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

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On August 22, 2000, the Department of Commerce (the Department) received a request from Cherrydale Farms (Cherrydale) for a scope ruling on whether its "Fruit Gel" and "Strawberry Preserves" 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 these two 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 Matthew Renkey at (202) 482-2312.

Sincerely,

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

Enclosure

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

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

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 22, 2000, the Department of Commerce (the Department) received a request from Cherrydale Farms (Cherrydale) for a scope ruling on its "Fruit Gel" and "Strawberry Preserves" 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)(1), 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 22, 2000. The National Candle Association's timely comments followed on September 22, 2000.

The regulations 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 those 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 19CFR § 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 of all evidence before the Department.

In the instant case the Department has evaluated Cherrydale's request in accordance with 19 CFR 351.225(k)(1); 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 atn 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 FR 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), (CE 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 "Fruit Gel" and "Strawberry Preserves" 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 "Fruit Gel" and "Strawberry Preserves" 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 a sample of each candle, 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 "The two candles submitted by Cherrydale are wax-filled containers which are specifically provided for 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 "Fruit Gel" and "Strawberry Preserves" candles should be found outside the scope of the Order due to their physical composition; because they qualify for a novelty exemption (they represent identifiable objects, wax fruit inside of jars); or, 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 this 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 CIE 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 "Fruit Gel" and "Strawberry Preserves" candles are wax-filled containers and therefore covered under the scope of the Order. Cherrydale itself

maintains that the individual pieces of wax fruit placed inside the container account for over 80 percent of the candle mass. The Commission has found that petroleum wax candles are those composed of over 50 percent petroleum wax (Candles from the People's Republic of China, (USITC Pub. 1888, Aug. 1986, 4-5). The Order specifically covers "various wax-filled containers," irrespective of the form the wax found in such containers may take. Cherrydale also claims the candles are identifiable objects in the form of wax fruit inside of jars, and thus exempt from the Order as "novelty candles." When the Department ruled that figurine candles and candles in the form of identifiable objects were outside the scope of the Order, it was not creating an exception for figurines and candles in the form of identifiable objects generally. Rather, the Department was clarifying that such candles were excluded from the scope of the Order because shapes covered by the Order are tapers, spirals, straight-sided dinner candles, rounds, columns, pillars, and votives. Because the scope of the Order did not distinguish among wax-filled containers based on shape, as it did with other candles, the Department could not make that distinction in its novelty candle exception (Customs Bulletin and Decisions, v33n31, August 4, 1999 at 70; and Final Scope Ruling Russ Berrie Co., Inc., October 28, 1996, 7-8). Cherrydale also does not cite any previous scope determinations in support of its arguments. These facts combine to nullify Cherrydale's claim that the candles' physical composition or status as identifiable objects renders them outside the scope of the Order.

Regarding Cherrydale's argument that it should be exempt from antidumping duties on the "Fruit Gel" and "Strawberry Preserves" candles because it markets the candles 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.

Cherrydale argues that the "Fruit Gel" and "Strawberry Preserves" candles are novelty candles as a result of their physical composition and the fact that they can be identified as wax fruit inside of jars. Despite these characteristics, the candles are still wax-filled containers, 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 "Fruit Gel" and "Strawberry Preserves" candles, as described above, are within the scope of the antidumping duty order on petroleum wax candles from the PRC.

\_\_\_\_\_√\_\_\_\_\_ 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 A. Spetrini  
Deputy Assistant Secretary  
Enforcement Group III

10-06-00

Date

Attachment