

SEP 30 1993

A-570-504  
Scope

Review Public Document  
OADC:SLY

MEMORANDUM FOR: Joseph A. Spetrini  
Deputy Assistant Secretary for Compliance

THROUGH: Roland L. MacDonald, Director  
Office of Agreements Compliance

FROM: Holly A. Kuga, Director  
Office of Antidumping Compliance

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

## 1. SUMMARY

On May 18, 1993, Cherrydale Farms Confections (Cherrydale) requested that the Department of Commerce (the Department) issue a ruling that a set of Cherrydale's candles, which are red scented holiday candles in red containers with Currier and Ives designs on their lids (Currier and Ives candle set), be found outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

Based on an analysis of the information on the record, and in accordance with 19 CFR 353.29(i)(1), the Department determines that these candles, packaged and sold together as one unit, are outside of the scope of the order.

## 2. BACKGROUND

### a. 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." (Antidumping Duty Order: Petroleum Wax Candles from the PRC, 51 FR 30686, August 28, 1986.)

The need for scope clarification of the antidumping order on petroleum wax candles has arisen on several occasions prior to this scope determination request. Relevant to this inquiry is a clarification issued by the Department to the U.S. Customs Service excluding "Santa Claus" candles from the scope of the order:

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).

(See CIE N-212/85, September 21, 1987.)

b. Request

On May 18, 1993, Cherrydale filed a letter with the Department requesting that the Department clarify whether two of its wax filled containers, packaged together and sold as one unit, with Currier and Ives prints on their lids, fall within the scope of the order on candles from the PRC. Cherrydale's submission stated that the Currier and Ives candle set should be found outside the order as they are "Sold by Cherrydale from September-December...and [they each] have a famous Currier and Ives Christmas scene..." (See Letter from Cherrydale to the Department, May 7, 1993.) The petitioner opposed Cherrydale's request, stating that:

[The Currier and Ives candle set] will be used for the same decorative or lighting purposes as U.S. produced candles and will compete directly against them...There are no significant differences in use or in physical characteristics between these wax filled containers and those described in the original Petition and the Antidumping Order...The addition of a graphic does not provide the distinguishing physical characteristics needed to be excluded from the Order such as figurines or birthday numerals.

(See Letter from Barnes and Thornburg on behalf of National Candle Association, August 4, 1993.)

3. ANALYSIS

In accordance with 19 CFR 353.29(i)(1), in analyzing the scope request in this proceeding, the Department took into account the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Department and the International Trade Commission (ITC).

Documents from the underlying investigation and subsequent decisions deemed relevant by the Department to the scope of the outstanding order were made a part of the record to the scope inquiry. Documents that were not presented to the Department, or placed by it on the record, do not constitute part of the administrative record of this scope proceeding.

The set of candles at issue are wax-filled metal containers having fiber wicks. Thus, on their face, the candles would appear to fall within the scope of the order on petroleum wax candles (and wax filled containers) from the PRC. Accordingly, the Department must determine whether there are any other distinguishing characteristics that provide a basis for their exclusion.

As noted above, the Department determined that "certain Christmas novelty candles...are not within the scope of the order...[because they] are specifically designed for use only in connection with the Christmas holiday season." In its letter, Cherrydale requested that the Currier and Ives candle set be found outside the scope of the order based on this provision. (See *Id.*)

The descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Department and the ITC are dispositive as to whether one of the Currier and Ives candles is within the scope of the order. This Currier and Ives candle has the print named "Bringing Home the Christmas Tree" on its lid. This print limits the candle to use for Christmas and thus qualifies it as a novelty candle outside of the scope of the order.

The second candle is contained in a metal container that bears an untitled Currier and Ives print of a winter scene. This candle, by itself, is not a novelty candle because the winter scene does not limit its use to a special event or occasion such as Christmas. However, because the two candles are packaged and sold as one unit, the Department considered additional criteria to determine if the imported article as a whole is covered by the order on candles from the PRC.

The four additional criteria the Department considered in determining if the set is within the order are listed at 19 CFR Section 353.29(i)(2) as: (1) the physical characteristics of the product; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; and (4) the channels of trade.

## Physical Characteristics

The Currier and Ives candles in the set submitted by Cherrydale are made of scented red petroleum wax, and are in red tin containers with lids. The lid of the first candle bears the Currier and Ives print called "Bringing Home the Christmas Tree." It is a picture of a couple riding a sleigh and carrying a pine tree. The sleigh is being pulled past a house and a man carrying another pine tree. The lid of the container of the second candle depicts a Currier and Ives winter scene of a couple walking by a large pine tree towards a barn after a snowfall. The name of this print is not known.

The two candles are sold in one red box as a unit. The box has cellophane circles on the top to display the candles' lids. The box is labeled on the front as "Holiday Candles Set of 2." The back of the box reads "Scented Holiday Candles with Currier and Ives Scenes. Set of 2. 3 1/4 in. dia. by 1 1/8 in. deep." The candles' tin containers are marked with stickers that read "Bayberry Scented."

While one candle of the set can be said to depict only a winter scene, the second candle specifically references Christmas in the name of the Currier and Ives print. Although not conclusive, the scene on these candles, the scent, the red color and the label "Holiday Candle" all point to use during Christmas.

## Channels of Trade

The Currier and Ives candle set is sold by Cherrydale through door-to-door sales for fundraising purposes. The products available for sale are advertised by a brochure. The brochure only advertises gift items, and offers no other candles for sale. Most of the gifts for sale in the brochure have a Christmas theme, such as Christmas tree ornaments, Christmas cards, and Christmas dishes.

## Expectations of the Ultimate Purchaser and Ultimate Use

Due to the narrow channel of trade, the marketing and the physical packaging of the Currier and Ives candle set, the Department concludes that expectations of the ultimate purchaser would be to purchase this set as a novelty in connection with the Christmas holiday.

## 4. CONCLUSION

Because the product descriptions contained in the petition, the initial investigation, and the determinations of the Department and the ITC are not dispositive concerning whether the Currier and Ives candle set, as a package, constitutes a Christmas novelty item, the Department considered the four additional criteria listed in Section 353.29(i)(2) of the Department's regulations.

The record indicates that the combination of physical characteristics, seasonal packaging and trade channel substantially limit the expectations of the candle set purchaser to use of the candles during the Christmas holiday. As such, the candles are Christmas novelty candles and follow the Christmas novelty candles precedent. Therefore, they are found outside of the scope of the order.

## 5. RECOMMENDATION

That the Department find the packaged set of Currier and Ives candles imported by Cherrydale outside of the scope of the antidumping duty order.

\_\_\_\_\_√\_\_\_\_\_ Agree \_\_\_\_\_ Disagree

If you agree, we recommend sending the attached letter to interested parties.

\_\_\_\_\_√\_\_\_\_\_ Agree \_\_\_\_\_ Disagree

Joseph A. Spetrini  
Deputy Assistant Secretary for Compliance  
9/30/93

Date

Attachment