

OCT 28 1996

A-570-504
Scope Inquiry
Public Document
G204:JKD

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On April 4, 1996, Russ Berrie Company, Inc., (RBC) requested that the Department of Commerce (the Department) issue a scope ruling on whether wax-filled terracotta heart shape candles, imported by RBC, are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) - In accordance with 19 CFR 353.29(i)(1), the Department has determined that RBC's wax-filled terracotta heart shape candles are within the scope of order.

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 Jack K. Dulberger or Zev Primor at (202) 482-5253.

Sincerely,

Holly A. Kuga Senior Director
AD/CVD Enforcement, Group 2

Enclosure

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MEMORANDUM FOR: Jeffrey P. Bialos
Principal Deputy Assistant Secretary for
Import Administration

FROM: Holly A. Kuga, Senior Director
AD/CVD Enforcement, Group 2

SUBJECT: Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From
the People's Republic of China: request by Russ Berrie Company, Inc., for ruling
on wax-filled terracotta heart shape candles

SUMMARY

On April 4, 1996, Russ Berrie Company, Inc., (RBC) requested that the Department of Commerce (the Department) issue a scope ruling finding that its petroleum wax candles, imported from the People's Republic of China (PRC), are outside the scope of the antidumping duty order on candles from the PRC. In accordance with 19 CFR 353.29(i)(1), we recommend that the Department determine that RBC's candles, described as wax-filled terracotta heart shaped candles, are within the scope of the antidumping duty order on petroleum wax candles, as they meet the description of various wax-filled containers, which are specifically included in the scope of the order.

BACKGROUND

On April 4, 1995, RBC requested that the Department issue a scope ruling finding its candle to be outside the scope of the antidumping duty order on candles from the PRC (RBC's Request for Scope Ruling on Mauve Wax Filled Terracotta Hearts, April 4, 1996 (RBC Request) - RBC accompanied its request with a sample of the candle and a photocopied page from a catalog it described as Russ Berrie's 1996 Valentine's Day catalog. On July 24, 1996, the National Candle Association (NCA), a petitioner in the original less than fair value (LTFV) investigation, submitted comments opposing the RBC Request. See NCA's Letter with Exhibit to the

Department (July 24, 1996) (NCA Letter). RBC submitted to the Department comments in rebuttal to petitioner's comments. See RBC's Letter to the Department (October 2, 1996) (RHO Letter). We received no other comments on the RBC Request.

ANALYSIS

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 353.29. 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 (ITC), the initial investigation and the order to determine whether these descriptions are dispositive with regard to the product at issue. 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 merchandise subject to the scope inquiry is covered by the order. See 19 CFR 353.29(b) and (i)(1).

In accordance with 19 CFR 353.29(b) of the Department's regulations, the Department has determined that no formal inquiry is warranted to determine whether RBC's candle is outside the scope of the order. Further, we have evaluated this request in accordance with 19 CFR 353.29(i)(1) because the descriptions of the subject merchandise contained in the petition, the final determinations of the Secretary and the ITC, the antidumping duty order and subsequent scope rulings are, in fact, dispositive of the issue.

Documents, and parts thereof, from the underlying investigation deemed relevant by the Department to this scope determination 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 NCA requested that the investigation cover:

candles [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 LTFV determinations and the eventual antidumping duty order, States, in part:

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) (emphasis added); 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 FR 30686 (August 28, 1986). The ITC adopted a similar definition of the "like product" subject to its determinations, noting that it did not include "birthday, birthday numeral and figurine type candles." See Determinations of the Commission (Final), USITC Publication 1888, August 1986, at 4, note 5, and A-2.

Also relevant to the present scope inquiry is a notice we issued to the United States Customs Service which states, in part:

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.

RBC's request describes the candle as a "terracotta holder filled with wax to form a heart shaped candle within the holder." (See RBC Request at 3-5). Because the candle clearly fits within the "various wax-filled containers" language of the order, the resulting issue before the Department is whether RBC's heart shaped candle, which RBC expressly describes as a holiday (i.e., Valentine's Day) and an identifiable object candle, is properly characterized as a novelty candle under the above exception and, therefore, excluded from the scope of the antidumping duty order.

Holiday exception analysis

RBC's Request describes the candle as:

a heart shaped terracotta holder filled with wax to form a heart shaped candle within the holder... [and] the top of the candle decorated with dried flowers.

RBC Request at 2-3. In the accompanying catalog page, the candle is designated item number 7971. The provided sample terracotta holder is pale orange, approximately 4.5 inches wide and 1.5 inches in thickness, and filled with mauve-colored wax.

RBC argues that there are three factors which bring the candle under this exception:

- its shape is that of a clearly identifiable object (i.e., a heart);
- it features dried floral designs atop the candle;
- it is specifically produced, cataloged, advertised, and sold as a Valentine's Day gift.

See RBC Request at 2-5.

In its request, RBC discusses a previous scope ruling - Final Scope Ruling; Request by Springwater Cookie and Confections Co., February 14, 1995 (Springwater scope) - in which the Department determined that a white taper candle with several two-lobed heart decals was not a Valentine's Day holiday candle and therefore was within the scope of the order. (See RBC letter at 5). RBC attempts to distinguish its candle from the candle in the Springwater scope on the basis that its candle is specifically marketed and sold for Valentine's day and its candle is actually in the shape of a heart and, therefore, unlike the Springwater candle, its candle qualifies as a holiday candle excluded from the order. *Id.*

As to the candle's holiday nature, NCA argues that RBC has not "shown that [the] candle was specifically designed for use only in connection with a particular holiday," (see NCA Letter at 5), and further contends that:

[Neither] the dried flowers or the heart shape container limit the candle for use only in connection with Valentine's Day. Russ Berrie admits this on page 4 of its scope request where it states: "whereas the heart shaped candle is a novelty candle more likely to be used at parties or other occasions of a less serious nature." [Therefore] the use of the subject wax-filled container is not limited to Valentine's Day, but can be used throughout the year at various parties or other occasions.

Id. (emphasis added)

The heart shape of RBC's candle does not qualify it for holiday-candle status. As we determined in the Springwater scope:

Nothing inherent in the design of the subject candles would limit their use to a specific occasion... [T]he sole distinguishing characteristic of the Sweetheart candle is its pink heart. [However,] the year-round ubiquity of this particular shape renders it meaningless as a holiday scene or symbol.

Springwater scope at 3-4.

Moreover, in a redetermination on remand for the Springwater scope, we further explained that:

The familiar two-lobed heart design is ubiquitous as a symbol of affection or familial or romantic love...[I]t is used throughout the year in, for example, greeting

cards...[and] is also commonly associated with weddings and wedding anniversaries...fall[ing] at all times of the year.

This finding is consistent with the Department's rulings with regard to other candles incorporating the same heart shape in their designs. See Two's Company, January 13, 1995; see also, Trade Advisory Group, April 9, 1993.

See Petroleum Wax Candles from the People's Republic of China, Final Results of Redetermination Pursuant to Court Remand, Springwater Cookie and Confections, Inc. v. United States, Court No. 95-03-00283, at 12-13 (Springwater Scope Remand), aff'd, Springwater v. U.S., Slip Op 96-160 (CIT September 25, 1996).

Therefore, consistent with our previous determinations, we find that the heart shape of RBC's candle does not limit its use to a particular holiday, as required by the holiday candle exception to the scope. The fact that RBC's candle is heart shaped and the Spring-water candle had only heart-shaped decals does not change this analysis. Furthermore, the requestor in the Springwater scope inquiry, contrary to RBC's assertions, did argue that the Springwater candle was sold for use on Valentine's Day. (See Springwater Scope Remand at 12).

RBC also argues that the dried flowers embedded in the candle qualify it for novelty status. The flowers pressed into the Candle's surface do not qualify the RBC's candle as a novelty candle as defined by the Department. The flowers are not holiday symbols which would limit the candle's use to a particular holiday. Indeed, RBC's scope request labels the flowers as "symbols" but fails to identify what holiday they purportedly symbolize.

Since in this case we have evaluated this request in accordance with 19 CFR 353.29(i)(1), and not under the criteria of Diversified Products v. United States, 572 F. Supp. 883 (CIT 1983), (see above, page 2), RBC's arguments as to how its product is produced, advertised, sold, and as to the type of catalog in which it appears, are not relevant here.

Identifiable object analysis

RBC further argues that the identifiable object portion of the novelty candle exception applies to exclude the candle, stating that:

candles shaped in the form of hearts, as are at issue in this instance, are in the form of identifiable objects, within the meaning of the [exception]...We believe it is irrelevant that the candle in this instance was imported in a heart shaped container. The candle itself is heart shaped, and would be heart shaped if it were imported separately.

See RBC Request at 4.

However, while the scope of the order is specifically limited to certain shapes for those candles not in containers, there is no such limitation for wax-filled containers. The scope of the order simply states that "various wax-filled containers" are included without respect to their configuration. Therefore, any wax-filled container, including a heart-shaped container, is properly included within the scope of the order. This determination is consistent with a previous scope determination that a heart-shaped wax-filled container is included within the scope of the order. See Final -Scope Ruling: Request by Star Merchandise Company, at 5-6, July 27, 1994 (Star Merchandise).

In adhering to the criteria, as outlined above, including the Department's antidumping order and prior scope rulings, and the ITC determination, we find that the heart shape and flower design of the candle in question do not amount to exclusionary characteristics necessary to consider it outside the scope of the order.

RECOMMENDATION

We find that the product descriptions contained in the petition, the initial investigation, and the determinations of the Secretary and the ITC are dispositive of the issue and, therefore, we recommend that no formal inquiry is warranted. We further recommend that the Department find the heart shaped candle is properly considered within the scope of the antidumping duty order on petroleum wax candles from the PRC.

_____√_____ Agree _____ Disagree

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

_____√_____ Agree _____ Disagree

Jeffrey P. Bialos
Principal Deputy Assistant Secretary
for Import Administration
October 24, 1996

Date