

SEP 2 1997

A-570-504
Scope Inquiry
Public Document
IA/Group III/SCA

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On July 17, 1997, Serko and Simon, on behalf of Russ Berrie and Company, Inc. (Russ Berrie), requested that the Department of Commerce (the Department) issue a scope ruling on whether "star-shaped confetti candles" it imports 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 Russ Berrie's candles are included in 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 Charles Ranado at (202) 482-3518 or Stephanie Arthur at (202) 482-6312.

Sincerely,

Richard Weible
Office Director
AD/CVD Enforcement Group III

Enclosure

SEP 2 1997

A-570-504 Scope Inquiry
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MEMORANDUM Joseph A. Spetrini
 Deputy Assistant Secretary
FOR: Enforcement Group III
FROM: Richard Weible, Director
 Office Eight
SUBJECT: Final Affirmative Scope Ruling - Antidumping Duty Order on Petroleum Wax
 Candles From the People's Republic of China (A-570-504); Russ Berrie, Inc.

SUMMARY

On July 17, 1997, Russ Berrie requested that the Department of Commerce (the Department) determine that star-shaped confetti candles 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, as defined below, and in accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that Russ Berrie's product, which is a star-shaped confetti candle, is included in the scope of the order.

BACKGROUND

On July 17, 1997, Russ Berrie wrote to the Department seeking clarification as to whether candles it identifies as star-shaped 6 ¼" high candles that are embedded with jasmine, lavender, and lily-scented color chunks, are covered by the antidumping duty order on petroleum wax candles from the PRC (51 FR 30686, August 28, 1986).

ANALYSIS

The regulations governing the Department's antidumping scope determinations can be 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 (ITC), the initial investigation and the 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 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 purchaser; 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 the product descriptions contained in the petition, the determinations of the Secretary and the ITC, the investigation and the order are ambiguous or unclear. 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 determined that no formal inquiry is warranted to determine whether or not Russ Berrie's candle is covered by the scope of the order. We have evaluated this request in accordance with 19 CFR 351.225(k)(1) because the descriptions of the products contained in the petition, the final determinations of the Secretary and the ITC, and the antidumping duty order are, in fact, dispositive.

Documents and parts thereof from the underlying investigation deemed relevant by the Department to the scope of the outstanding order 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:

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 determinations of sales at less than fair value and the eventual antidumping duty order:

[C]ertain 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 FR 30686 (August 28, 1986). The ITC 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." See Determinations of the Commission (Final), USITC Publication 1888, August 1986, at 4, note 5, and A-2.

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.

Russ Berrie maintains that its product is a novelty candle shaped in the form of an identifiable object, and notes that the Department has defined the scope of the order to exclude certain novelty candles that are shaped in the form of identifiable objects. Russ Berrie further notes that the Department has previously determined that certain candles were novelty candles and therefore outside the scope of the order. See Russ Berrie request at 2-4.

We agree with Russ Berrie that novelty candles are excluded from the order. However, we cannot agree that its confetti candle meets the exclusion criterion as an "identifiable object". Rather, its candle is a twelve-sided pillar (identified in Russ Berrie's catalog as a "pillar"), made of petroleum wax, with a fiber wick. The object is not clearly identifiable as a "star" when viewed, for example, from the side; from that view it is simply a multi-sided pillar.

The scope of the order includes candles "sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers" [emphasis added]. See Antidumping Petition, September 4, 1985, at 7. We note that pillar candles come in various shapes and sizes, including straight-sided, fluted, triangular, hexagonal, and cylindrical shapes.

Based on the evidence in the record of this scope inquiry, we conclude that Russ Berrie's product is a petroleum pillar candle and, by definition, is within the scope of the antidumping duty order on petroleum wax candles from the PRC.

Our analysis of the record of this scope request, as well as an analysis of the record in this case, supports the inclusion of the candle specified above, as it is a pillar made of petroleum wax, specifically included in the scope of the order.

RECOMMENDATION

We recommend that the Department find the Russ Berrie candle 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 interested parties and notify the U.S. Customs Service of our determination.

Agree Disagree

Joseph A. Spetrini
Deputy Assistant Secretary
AD/CVD Enforcement Group III

9/2/97

Date