

SEP 25 1997

A-570-504

Scope Review
Public Document
OADC:CRR

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On August 15, 1997, Russ Berrie Company, Inc., (RBC) requested that the Department of Commerce (the Department) issue a scope ruling on whether wax-filled heart shaped 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 RBC's wax-filled heart shaped candles are within 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 R. Ranado or Stephanie Arthur, at (202) 432-3518 or (202) 482-6312, respectively.

Sincerely,

Richard Weible
Director, Office 8
Enforcement Group Three

Enclosure

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MEMORANDUM Joseph A. Spetrini
FOR: Deputy Assistant Secretary
 AD/CVD 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 August 25, 1997, Russ Berrie 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 351.225(k)(l), we recommend the Department determine RBC's candles, described as "trinket box" heart shaped wax poured candles are covered by 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

In its August 15, 1997 letter, RBC requested the Department to issue a scope ruling finding its "trinket box" heart shaped wax poured candles to be outside the scope of the antidumping duty order on candles from the PRC. RBC accompanied its request with a sample of the candle and a photocopied page from a catalog it described as Russ Berrie's 1997 Valentine's Day catalog.

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 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 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 RBC's candles are covered by the scope of the order. We have evaluated this request in accordance with 19 CFR 351.225(k)(l) 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:

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]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:

[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) (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 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 Peoples 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.

RBC's request describes the candle as a "heart shaped petroleum wax holder filled with petroleum wax to form a heart shaped candle within the holder." Because the candle clearly fits within the "various wax-filled containers" language of the order, the remaining 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.

RBC's request describes the candle as:

a heart shaped petroleum wax holder filled with petroleum wax to form a heart shaped candle within the holder. The item has a separate heart shaped cover ... [and] the exterior of the wax outer shell of the candle and its cover are both decorated with raised floral designs.

In the accompanying catalog page, the candle is designated item number 14842. The provided sample petroleum wax holder is silver, approximately 4 inches at its widest point and 2.5 inches in thickness, and filled with red-colored wax.

RBC argues that there are three factors which enable the candle to qualify for this exception:

- its shape is that of a clearly identifiable object (i.e., a heart)
- it features a raised floral design on the exterior of the wax outer shell
- it is specifically produced, advertised, and sold as a Valentine's Day gift.

As support for its argument that its product should be outside the scope of the order, RBC argues its product is in fact one candle in the shape of an identifiable object. RBC argues that the inner candle is heated prior to being poured into the outer shell causing a type of bonding to occur creating one molded, heart shaped candle. However, RBC's catalog clearly states that for item number 14842

(double wax heart candle) the inner wax can be replaced with votive when depleted. Therefore, it is our opinion that the two are not one and the same and clearly represent a "wax-filled container".

RBC also argues that the exterior of the heart shaped candles is decorated with raised floral patterns and that these floral patterns are symbols depicted in the candles' design. The floral design molded into the container's side does not qualify RBC's candle as a novelty candle as defined by the Department. The floral design does not represent 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.

We agree with RBC that Christmas and other holiday novelty candles are excluded from the scope of the order, as we stated in our July 1987 letter. We note, however, that the order specifically covers "various wax-filled containers." The heart shaped candles are in a container filled with petroleum wax, and each has a wick. Therefore, the subject candles appear to be manifestly within the scope of the order, which lists "various wax-filled containers" as subject merchandise. Furthermore, we cannot agree that the subject RBC candles meet the criteria for exclusion specified in that letter. In pertinent part, we explained in the letter that the excluded novelty candles have scenes or symbols" of specific occasions depicted in their designs, or are "shaped in the form of identifiable objects (e.g., animals or numerals)" and are specifically designed for use only in connection with the holiday season. See CIE N-212/85, op cit.

The Department has, in the past, addressed several scope requests involving wax-filled containers. For example, in a ruling involving tins with floral designs imported by Lew-Mark Baking Company, the Department found that because the tins lack holiday scenes or symbols, they are properly considered wax-filled containers covered by the scope of the order. See Final Scope Ruling, Lew-Mark Baking Co., Inc., December 16, 1994. For this same reason, the Department found certain wax-filled containers with floral, fruit, or marine patterns, imported by Star Merchandise Co., Inc., to be covered by the order, while other containers imported by Star were excluded from the order because they incorporate scenes of Christmas or Halloween into their designs. See Star Merchandise Co., Inc., July 27, 1994.

Based on the evidence in the record of this scope inquiry, we conclude that RBC's heart shaped candles do not contain scenes or symbols specifically related to a holiday or other special event and their use is not attributed solely to the Valentine's Day season.

In each case involving wax-filled containers examined by the Department to date, the product has consisted of a metal, glass, ceramic, or terra-cotta container which, conceivably, would be available for re-use after the constituent candle had been burned. The issue before the Department, however, is not the disposition of the container after the candle is consumed but, rather, the wax-filled container en toto as it is imported into the United States. RBC has introduced no evidence which would indicate that its products should properly be classified as anything other than candles in wax - i.e., "wax-filled containers" - from the PRC. Therefore, the Department has no basis in the record evidence for focusing solely upon the containers while disregarding the petroleum wax candles therein.

Further, RBC 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.

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 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. In addition, the language of the order is also dispositive in regards to the candles subject to the scope of the inquiry. The candle is a "wax-filled container" as defined in the order and lacks the exclusionary characteristics necessary to consider it outside 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).

RECOMMENDATION

We recommend the Department find RBC's heart shaped candle, described as a heart shaped petroleum wax holder filled with petroleum wax to form a heart shaped 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 the interested parties, and will notify the U.S. Customs Service of our determination.

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

9/25/97

Date

Attachment