

MAR 16 1998

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

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On April 29, 1997, American Drug Stores, Inc. (ADS) requested that the Department of Commerce (the Department) issue a scope ruling on whether its spherical wax veneer 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 353.29(i)(1), the Department has determined that ADS's candles are not 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 Ranado at (202) 482-3518 or Stephanie Arthur at (202) 482-6312.

Sincerely,

Richard Weible
Office Director
AD/CVD Enforcement Group III, Office 8

Enclosure

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

FROM: Richard Weible
 Office Director
 AD/CVD Enforcement Group III, Office 8

SUBJECT: Final Negative Scope Ruling - Antidumping Duty Order on Petroleum
 Wax Candles From the People's Republic of China (A-570-504);
 American Drug Stores, Inc.

SUMMARY

On April 29, 1997, American Drug Stores, Inc. (ADS) requested that the Department of Commerce (the Department) issue a scope ruling on whether its spherical wax veneer candles are covered by 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 353.29(i)(1), we recommend that the Department determine that ADS's candle, designated No. 34731, is outside the scope of the order.

BACKGROUND

On April 29, 1997, ADS wrote to the Department seeking clarification as to whether its wax veneer candles are covered by the antidumping duty order on petroleum wax candles from the PRC (51 FR 30686, August 28, 1986). ADS describes its candles as spherical wax veneers with "multi-colored floral designs which produce a colorful effect when illuminated" (see ADS letter at 1). ADS argues that exclusion from the order is warranted because ball-shaped or spherical candles are not explicitly included in the language of the order.

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. 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 353.29(b) and (i)(1). Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the additional factors set forth in 19 CFR 353.29(i)(2).

In the instant case, the Department has determined that no formal inquiry is warranted to determine whether or not ADS's candles are covered by the scope of the order. We have evaluated this request in accordance with 19 CFR 353.29(i)(1) because the descriptions of the products contained in the petition, the final determinations of the Secretary and the ITC, and the anti dumping 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 (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 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.

The Department has previously ruled that ball-shaped and spherical candles are outside the scope of the antidumping duty order on petroleum wax candles from the PRC (see Final Scope Ruling, Petroleum Wax Candles from the People's Republic of China: San Francisco Candle Company, June 10, 1993). In that ruling, the Department determined that, because ball-shaped candles are not one of those shapes specifically listed in the scope definition (tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers), they are outside the scope of the order. The Department, citing to a letter from petitioner, noted that despite the inclusion of the term "round" in the language of the order, the industry definition of round refers to round-shaped columns or pillars and not to candles which are ball-shaped or spherical (ibid).

ADS's candle is a spherical wax-veneer candle patterned with multi-colored flowers. As the order lists specifically the shapes that it does include, and because spheres or balls are not one of those shapes, the Department has determined that ADS's candle is not included in the scope of the order.

RECOMMENDATION

We recommend that the Department find ADS's candle, designated as No. 34731, outside 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

3-16-98

Date