

MAY 6 1998

A-570-504
Scope Inquiry
Public Document
Enforcement Group III:CRR

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On March 25, 1998, Polardreams International, Inc. (Polardreams) requested that the Department of Commerce (the Department) issue a scope ruling on whether the granular petroleum wax candle kit it imports is 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 Polardreams granular petroleum wax candle kit is 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) 482-5222.

Sincerely,

Richard Weible
Office Director
AD/CVD Enforcement Group III

Enclosure

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MEMORANDUM Joseph A. Spetrini
FOR: Deputy Assistant Secretary
 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); Polardreams International, Inc.

SUMMARY

On March 30, 1998, Polardreams International, Ltd. (Polardreams) requested that the Department of Commerce (the Department) issue a scope ruling finding its beaded wax candle kit outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). Based upon 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 Polardreams' beaded wax candle is within the scope of the order because this candle is a "wax filled container" containing a fiber or paper wick, explicitly covered by the scope of the order.

BACKGROUND

In its March 25, 1998 request for a scope ruling (Request), Polardreams maintains that its granular wax candle should be excluded from the scope of the order "[b]ecause the beaded wax is placed into an empty glass container and the powdered wax is paraffin." Request at 1. No other interested party filed comments on Polardreams' request.

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 initial investigation, the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (the Commission). See 19 CFR 351.225(k)(1). 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 Commission, 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 Polardreams' beaded wax candle is 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 Commission, 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(emphasis added).

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 1TC 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 (emphasis added).

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.

Polardreams' request describes the item in question as an unassembled product that consists of an empty decorative glass, powdered or granular paraffin wax in a cellophane bag, wicks, fragrance and stand" which are "boxed together and sold as one product" (U.S. Tariff Classification number 3406.00.0000). Polardreams also notes that the item will be "displayed and advertised to the consumer as a way to create a fragranced candle in an empty glass container which may be placed on a stand". Polardreams believes that because its product is made of paraffin wax and because the beaded wax is placed into an empty container it falls outside the scope of the order.

The first step in the analysis is to determine whether the product imported is in fact a candle. In determining whether the product in question is a candle, the Customs doctrine of "entireties" is instructive. The Court of International Trade (CIT) stated in *Sears, Roebuck & Co. v. United States*, 13 C.I.T. 772 (1989) that "under the doctrine of entireties, when an importer imports a set of components designed to form a saleable unit, the merchandise is classifiable as that unit." *Id.* at 777 citing *Nissho -Iwai American Corp. v. United States*, 10 C.L.T. 154, 158 (1986).

The Court of Appeals for the Federal Circuit, in applying the doctrine of entireties noted that this doctrine is a corollary to another theory of customs jurisprudence that "an imported article should be classified according to its true commercial character." The Court noted that "[t]he doctrine states that, if an entry consists of parts which, although unjoined, when assembled form an article different from any of the parts, the proper classification is the one for the whole article and not for the parts separately." *Computime, Inc. v. United States*, 772 F.2d 874, 877 (Fed. Cir. 1985) citing *Donalds Ltd. v. United States*, 32 Cust. Ct. 310, 3 14-15 (1954).

Notwithstanding Polardreams' argument that because a consumer must physically place the wax into the empty container provided, its product falls outside the scope, the commercial reality is that the components that Polardreams imports together in a gift box are to be used to make a candle. Polardreams explicitly states in its application that the package "will be displayed and advertised to the consumer as a way to create a fragranced candle in an empty glass container..." The various components that are imported - the decorative glass, the powdered or granular wax, wicks, fragrance, and stand - together form a "saleable unit" and when combined, become an inseparable part of a candle. Again, the commercial reality is that these components are sold not to be used individually, but, as explicitly articulated by the applicant itself, to be used together as a candle.

Polardreams' other claim is that because its candle is made of paraffin wax, it falls outside the scope of the order. This claim, by definition, is incorrect. In *The American Heritage Dictionary*, petroleum is described as "a thick, flammable, yellow-to-black mixture of gaseous, liquid, and solid hydrocarbons...that can be separated into fractions including natural gas, gasoline, naphtha, kerosene, fuel and lubricating oils, paraffin wax, and asphalt. In addition, *Encyclopedia Britannica* states that petroleum wax is any wax obtained from petroleum to include paraffin wax (see e.g.,

Britannica Online, search word: petroleum wax). Therefore, by definition, petroleum wax candles include candles made of paraffin wax.

Thus, Polardreams' candle is manifestly within the scope of the order, which lists "various [petroleum] wax-filled containers" as subject merchandise.

Based on the evidence in the record of this scope inquiry, we conclude that Polardreams' candle represents a wax-filled container, which, by definition, falls within the scope of the order.

RECOMMENDATION

We recommend the Department find Polardreams' candle, described as a product consisting of an empty decorative glass, powdered or granular paraffin wax in a cellophane bag, wicks, fragrance and stand, 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

5-6-98

Date