

SEP 8 1997

A-570-504

Scope Review
Public Document
OADC:CRR

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On July 24, 1997, Meijer Inc. requested that the Department of Commerce (the Department) issue a scope ruling on whether five types of 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)(l), the Department has determined that four of Meijer's products (bell, tree, reindeer, and star) are within the scope and one product (jack-a-lantern) is outside 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) 482-3518 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); Meijer
 Inc.

SUMMARY

On July 24, 1997, Meijer Inc. (Meijer) requested that the Department of Commerce (the Department) issue a scope ruling finding that its four (bell, tree, reindeer, and star) wax-filled terra-cotta candles and one (jack-o-lantern) wax-filled porcelain candle, 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)(1), we recommend that the Department determine that Meijer's bell, tree, reindeer, and star candles are covered by the scope of the antidumping duty order and that the jack-o-lantern candle is not included within the scope of the antidumping duty order.

BACKGROUND

In its July 24, 1997 request for a scope ruling, Meijer (Meijer Request) argues that its bell, tree, reindeer, and star candles, measuring 1 ¼" high and approximately 3 ½" long and from 1-3 ½" at the widest point, "should be considered a novelty candle." Meijer also suggests that these candles will be sold at a retail level for the holiday season (Christmas and Halloween) and that once the holiday season is over they will be discontinued. Meijer believes the terra-cotta containers cannot be used once the candles have expired.

Meijer also contends that the jack-o-lantern pumpkin candle held in a porcelain container measuring 1 ¾" high and approximately 3" across, which is orange with black eyes and nose and white teeth, should be considered a "novelty candle". Meijer argues that the jack-o-lantern candle will only be sold during the Halloween season and that after the holiday season it too will be discontinued.

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 Meijer's candles are 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:

[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 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-212185, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd, July 13, 1987.

Meijer provided samples of two-dimensional, geometric, bell, reindeer, tree, and star candles which are in terra-cotta containers 1 ¼ inches in height holding either a red or green petroleum wax candle. Meijer argues that because the candles are of a novelty design and are only sold during a holiday season, they are Christmas novelty candles.

The jack-o-lantern candle, according to Meijer, is a candle in a porcelain container measuring 1 ¾ inches in height. Again, Meijer argues that the jack-o-lantern candle is a Halloween novelty candle (orange with black eyes and nose and white teeth) and is sold only during the holiday season.

We agree with Meijer that Christmas and other holiday novelty candles are excluded from the scope of the order, as the Department stated in our July 1987 letter. We note, however, that the order specifically covers "various wax-filled containers." The bell, tree, reindeer, and star 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 Meijer 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 Meijer's bell, tree, reindeer, and star 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 Christmas season. The Department has, on numerous occasions, addressed Christmas scenes and symbols. Examples include cases involving figurines attached to tapers, pillar candles with engraved or molded scenes or symbols, and wax-filled containers incorporating holiday designs. Specifically, the Department has consistently found candles with Santa Claus designs to be Christmas novelty candles. See, e.g., Star Merchandise, Inc., July 27, 1994; West Coast Liquidators, July 27, 1994; A.J. Cohen, June 6, 1994; Kole Imports, June 7, 1994; and Primark International, June 7, 1993. The Santa Claus design effectively limits the candle to use during the Christmas season. Candles with other Christmas scenes or symbols have likewise been excluded. See, e.g., Success Sales, July 27, 1994 (candle set featuring depiction of the Nativity and of a Christmas ornament on pine boughs excluded).

Conversely, several parties have claimed that objects such as an angel, snowman, or pine cone constitute "Christmas symbols." In two separate scope rulings, the Department did not accept the parties' claims that these objects are Christmas scenes or symbols, deciding instead that the candles are excluded because, pursuant to our October 30, 1986 ruling involving Global Marketing Services, the figurines added to the tapers could not be removed without damaging the candle. See Two's Company, January 13, 1995 at 4; and West Coast Liquidators, July 27, 1994. The latter case is particularly instructive: West Coast Liquidators argued that a pine cone qualifies as a holiday "scene or symbol." See Letter, Gibson, Dunn & Crutcher to the Secretary, April 14, 1994 at 3. West Coast Liquidators also argued that the candles were excluded as "figurine" candles citing the Global Marketing case. *Id.* The Department, in excluding this candle, found only the second argument persuasive. See West Coast Liquidators, *op cit.*, at 3. We find parallels between West Coast Liquidator's claim that a pine cone is a Christmas scene or symbol and Meijer's claim that a star, bell, tree, and reindeer are likewise a Christmas scene or symbol.

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. Meijer has introduced no evidence which would indicate that its products should properly be classified as anything other than candles in terra cotta - 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.

In addition, the language of the order is also dispositive in regards to the four aforementioned candles subject to the scope of the inquiry. Each of the four candles is a "wax-filled container," as defined in the order. They are of varying sizes and shapes, but, in each instance, lack the exclusionary characteristics necessary to consider them outside the scope of the order

Finally, with regard to Meijer's comments regarding its jack-o-lantern candle, the Department agrees with Meijer that this particular candle is a Halloween novelty candle that is specifically designed for use only in connection with the Halloween season, and therefore, is not covered by the scope of the order. The Department has determined from samples submitted by Meijer that the jack-o-lantern candle (bearing the design of a jack-o-lantern face), having the shape of a pumpkin with "black eyes and nose and white teeth," is a holiday novelty candle that is clearly associated with Halloween.

RECOMMENDATION

We recommend the Department find Meijer's bell, star, reindeer, and tree candles, described as petroleum wax candles in terra-cotta containers, within the scope of the antidumping duty order on petroleum wax candles from the PRC. In addition, we recommend that the Department find Meijer's jack-o-lantern candle, described as a petroleum wax candle in a porcelain container, not included 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

9/8/97

Date

Attachment