

SEP 25 1997

A-570-504

Scope Review  
Public Document  
OADC:CRR

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On February 4, 1997, M.G. Maher and Company, Inc. (M.G. Maher) requested that the Department of Commerce (the Department) issue a scope ruling on whether its "flame 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 M.G. Maher's flame 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) 482-3518 or (202) 482-6312, respectively.

Sincerely,

Richard Weible  
Director, Office 8  
Enforcement Group Three

Enclosure

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

FROM: Richard Weible, Director  
Office Eight

SUBJECT: Affirmative Scope Ruling - Antidumping Duty Order on Petroleum  
Wax Candles From the People's Republic of China (A-570-504);  
M.G. Maher and Company, Inc.

#### SUMMARY

On February 4, 1997, M.G. Maher and Company, Inc. (M.G. Maher) requested that the Department of Commerce (the Department) issue a scope ruling finding that its "flame 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 353.29(i)(1), we recommend that the Department determine that M.G. Maher's flame candles are covered by the scope of the antidumping duty order.

#### BACKGROUND

In its February 4, 1997 request for a scope ruling, M.G. Maher (M.G. Maher Request) maintains that its flame (spiral shaped) candles meet the established criteria for exclusion from the scope of the order covering candles from the PRC. M.G. Maher submitted a sample of the product with its request. On May 15, 1997, the National Candle Association (NCA), petitioner in the original less-than-fair-value investigation, submitted comments in support of its contention that the subject candles fall within the scope 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).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the additional factors set forth at 19 CFR 353.29(i)(2). These criteria, commonly referred to as the "Diversified Product" criteria, are: i) the physical characteristics of the merchandise; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; and iv) the channels of trade. See 19 CFR 353.29(i)(2); see also *Diversified Products v. United States*, 572 F. Supp. 883 (CIT 1983); *Kyowa Gas Chemical v. United States*, 582 F. Supp. 887 (CIT 1984); and *Smith-Corona v. United States*, 678 F. Supp. 285 (CIT 1987). The Department applies the Diversified Products criteria when comparison of the merchandise which is subject to a scope inquiry to the product descriptions contained in the petition, the determinations of the Secretary and the ITC, the investigation and the order reveals ambiguity or uncertainty as to its proper class or kind. 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 M.G. Maher's candles are covered by the scope of the order. We have evaluated this request in accordance with 19 CFR 353.29(i)(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:

[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-212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radius, Ltd., July 13, 1987.

M.G. Maher argues that the subject candles are novelty candles in the shape of a "swirl"; therefore, not formed in any of the shapes described in the scope. See M.G. Maher Request, February 4, 1997. NCA counters that regardless of M.G. Maher's description of it's candle as a 12 inch "flame" candle, it is in fact a "spiral" candle and "spiral" candles are specifically listed in the scope of the definition. NCA also contends that the subject candle is not a novelty candle for it is not specifically designed for use only in connection with the Christmas holiday season or any other season. See NCA's Letter to the Department, May 15, 1997.

We agree with M.G. Maher that certain novelty candles are excluded from the scope of the order, as the Department stated in our July 1987 letter. However, we cannot agree that the subject flame candles meet the criteria for exclusion specified in the 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.

Nothing inherent in the design of the subject candles would limit their use to a specific occasion. The flame candles are merely red spirals; this color and design is not exclusively associated with a particular holiday season nor does it represent an identifiable object.

In addition, the language of the order is also dispositive in regards to the flame (spiral-shaped) candles subject to the scope of the inquiry. The flame candles are "spiral-shaped" as defined in the order and lack the exclusionary characteristics necessary to consider them outside the scope of the order.

#### RECOMMENDATION

We recommend the Department find M.G. Maher's flame candles, described as petroleum wax candles in the shape of a spiral, 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 our determination.

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

9/25/97

Date

Attachment