

DEC 15 1997

A-570-504

Scope Review
Public Document
Grp.III:CCR

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On October 29, 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)(1), the Department has determined that three of Meijer's products (JOY, PEACE, and flame) are within the scope and two products (NOEL, and Happy Valentine's Day) are 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 October 29, 1997, Meijer Inc. (Meijer) requested that the Department of Commerce (the Department) issue a scope ruling finding that its five (JOY, PEACE, NOEL, Happy Valentine's Day, and Flame) 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)(1), we recommend that the Department determine that Meijer's JOY, PEACE, and flame candles are covered by the scope of the antidumping duty order and that the NOEL and Happy Valentine's Day candles are not included within the scope of the antidumping duty order.

BACKGROUND

In its October 29, 1997 request for a scope ruling, Meijer argues that each one of its NOEL, PEACE, and JOY candles, measuring 7" high and 2 ¼" on each side, "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 that once the holiday season is over they will be discounted until sold.

Meijer also contends that the flame candle, measuring 10" high and 4" round at its widest point, which is painted "Christmas green" but also is available in gold and "Christmas red", should be considered a "novelty candle". Again, Meijer argues that the flame candle will only be sold during the Christmas season and that after the holiday season it too will be discounted until sold.

Finally, Meijer claims that the wax-filled Valentine's day mug, measuring 3 ½" in height, described as a white mug covered with red hearts and the word love on two sides with a saying of "Happy Valentine's Day" on the inside, and filled with a scented red wax, should be considered a "novelty candle" as well. Meijer reiterates that the Valentine's Day candle will only be sold during the Valentine's Day season and that after the holiday season it too will be discounted until sold.

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 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 & Radzius, Ltd., July 13, 1987.

Meijer provided samples of two-dimensional, geometric, column candles which are embossed with the words "NOEL", "JOY", or "PEACE", that are painted gold with green and burgundy accents. 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 flame candle, according to Meijer, is a candle painted in either Christmas green and red, or gold, and packaged in a box decorated with holly leaves and berries. Again, Meijer argues that the flame candle is a Christmas novelty candle that will be discounted until sold after the Christmas season.

Meijer's wax-filled Valentine's Day candle is a white mug decorated with red hearts, the words "Love" on two sides, and the phrase "Happy Valentine's Day" on the inside. The mug is filled with red scented wax.

On numerous occasions the Department has addressed the issue of Christmas scenes and symbols. 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); Dollar Tree Stores, Inc., April 9, 1997 (Holly sprig held to be a symbol associated with Christmas) and Enesco Corporation, October 30, 1996 (Angels, wreaths on doorways, Santa Claus and reindeer in combination held to be a Christmas scene).

Conversely, the Department has determined that a round candle with red and white stripes as to resemble a peppermint candy did not contain scenes or symbols of holidays nor were "shaped in the form of identifiable objects" such as animals or numerals. See Institutional Financing Services and Hallmark Cards, Inc., April 9, 1997. Likewise, the Department has found that a candle that features raised relief figurines representing a horse-drawn sleigh with two occupants was not indicative of a specific holiday or occasion but in fact merely represented a calendar season - winter. See Success Sales, Inc., July 27, 1994

We find parallels between the arguments that "peppermint candy" and "winter scenes" are Christmas scenes or symbols and Meijer's claim that the words "PEACE" and "JOY" are likewise Christmas scenes or symbols. The words "PEACE" and "JOY", however, are not indicative of a particular holiday and are not exclusively representative of Christmas.

In addition, the language of the order is also dispositive concerning the two aforementioned candles subject to the scope of this inquiry. The two candles with the words "PEACE" and "JOY" are "columns," 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.

Based on the evidence in the record of this scope inquiry, we conclude that JOY and PEACE 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.

With regard to Meijer's comments regarding its NOEL and wax-filled Valentine's Day candles, the Department agrees with Meijer that these particular candles are Christmas and Valentine's Day novelty candles that are specifically designed for use only in connection with the Christmas and Valentine's Day seasons, and, therefore, are not covered by the scope of the order. The Department has determined from samples submitted by Meijer that the NOEL and Valentine's Day candles, having the words "NOEL" and "Happy Valentine's Day" embossed on them, are holiday novelty candles that are clearly associated with the Christmas and Valentine's Day seasons. The word "Noel" is defined by Webster's II, New Riverside University Dictionary (1994), to mean Christmas or a Christmas Carol. The words "Happy Valentine's Day" and "Noel" limit the use of the two candles to their respective holidays.

Finally, with regard to Meijer's flame candle, the Department has ruled on this same candle in a past decision, concluding that it was a spiral candle which, by definition, is specifically listed in the scope of the order. See, e.g., M.G. Maher and Company, Inc., September 25, 1997. For the same reasons stated in this previous decision, we find that Meijer's "flame candle" is within the scope of the order.

RECOMMENDATION

We recommend the Department find Meijer's JOY, PEACE, and flame candles, 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 NOEL, and Valentine's Day candles, not to be 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

12-12-97

Date

Attachment