

JUN 11 1998

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

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On April 28, 1998, Meijer, Inc. (Meijer) requested that the Department of Commerce (the Department) issue a scope ruling on whether certain candles it imports 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(d) of the Department's regulations, the Department has determined that no formal inquiry is warranted. Further, under 19 CFR 351.225(k)(1), the Department has determined that the following Meijer candles are included in the scope of the antidumping duty order on petroleum wax candles from the PRC:

- Sweetheart Tapers, UPC# 02316706012
- Wax-filled glass container with decorative hearts, Item # 30085

In addition, we have determined that the following Meijer candles are not included in the scope of the antidumping duty on petroleum wax candles from the PRC:

- Wax-filled porcelain bunny, UPC# 70623669720
- Easter tapers with chick attached, UPC# 76023690981
- Easter Bunny head tea light, UPC# 76023678909
- Valentine hearts tea light, UPC# 76023690879
- Heart-shaped candle on wax heart base, Item # P59858
- "Candy kiss" candle, Item # P63797R/W/G
- Bunny Long Ears Flame Candle, UPC# 02316704130

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 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  
                      Enforcement Group III

FROM:              Richard Weible, Director  
                      Office Eight

SUBJECT:          Final Scope Ruling - Antidumping Duty Order on  
                      Petroleum Wax Candles From the Peoples Republic of  
                      China (A-570-504); Meijer Inc.

#### SUMMARY

On April 28, 1998, Meijer Inc. (Meijer) requested that the Department of Commerce (the Department) find that certain candles it imports are outside the scope of 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 351.225(k)(1), we recommend that the Department determine that the following Meijer candles are included in the scope of the order:

- Sweetheart Tapers, UPC# 02316706012
- Wax-filled glass container, Item # 30085

In addition, we recommend that the Department determine that the following Meijer candles are not within the scope of the antidumping duty on petroleum wax candles from the PRC:

- Wax-filled porcelain bunny, UPC# 70623669720
- Easter tapers with chick attached, UPC# 76023690981
- Easter Bunny head tea light, UPC# 76023678909
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- "Candy kiss" candle, Item # P63797R/W/G
- Bunny Long Ears Flame Candle, UPC# 02316704130

#### BACKGROUND

On April 28, 1998, Meijer wrote to the Department seeking clarification as to whether ten candles it imports are covered by the antidumping duty order on petroleum wax candles from the PRC (51 FR

30686, August 28, 1986). Meijer describes the candles for which it is requesting a scope determination as follows:

- 1) A wax-filled gray porcelain bunny with pink paws and belly; 3" tall and 10" in circumference at its widest point. Meijer asserts that exclusion from the order is warranted because the candle is a three-dimensional identifiable object sold exclusively during the Easter season.
- 2) 3 1/2" tall poly-resin Easter Bunny figurine designed to hold a "bunny ear" candle. Meijer claims this candle is sold exclusively during Easter and that it should accordingly be excluded from the scope of the order.
- 3) A set of two 10" yellow tapers with orange molded chick attached which Meijer asserts is a novelty candle sold exclusively during Easter.
- 4) A set of six 2" white petroleum wax "Easter Bunny head" tea lights. Meijer argues that these candles are identifiable objects sold only during the Easter season.
- 5) A set of six red Valentine heart tea lights sold exclusively, Meijer argues, for Valentine's Day. Meijer also claims these candles represent an identifiable object.
- 6) 3" by 9 1/2" glass container filled with pink vegetable wax and decorated with yellow chicks, Easter eggs, and spring flowers. While candles made from vegetable wax are not included in the scope of the order on petroleum wax candles from the PRC, Meijer requests that the Department advise it as to whether this candle would be included in the scope of the order if it were made instead of petroleum wax.
- 7) A set of two red "sweetheart taper" candles 10" in height with individual heart shapes stacked atop one another. The word "LOVE" is spelled in gold on the front of each candle. Meijer contends this candle is both an identifiable object and limited to use for Valentine's Day.
- 8) A wax-filled glass candle holder decorated with hearts. Meijer maintains this candle is sold exclusively for Valentine's Day.
- 9) A heart-shaped candle supported by a heart-shaped wax base; 4" tall with "My Heart Burns for You" written in white letters across the front. Meijer claims it is both an identifiable object and sold only for Valentine's Day.
- 10) Gold "candy kiss" candle 5" tall and 10" in circumference that is, according to Meijer, an identifiable object that should be excluded as a novelty candle.

## 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 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 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:

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.

Also of relevance to Meijer's 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; see also Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987.

#### 1) Wax-filled Porcelain Bunny

Meijer asserts that a wax-filled porcelain bunny which it imports is an identifiable object sold solely in connection with the Easter season and that as such, this candle meets the criteria set forth for exclusion from the scope of the order. The Department has previously addressed several scope requests involving wax-filled containers. In each of these scope rulings, the Department considered the physical configuration of the container as well as the candle itself when making its determination. As the order specifically lists both candles and wax-filled containers, exclusionary design characteristics may either be found on the candle or the container in which the candle is held. See, e.g., Final Scope Ruling, Primark International, June 9, 1993. As indicated above, Meijer's product is a three-dimensional porcelain bunny filled with petroleum wax. Because we consider the physical characteristics of a container in which a candle is held in making our scope determination, and because Meijer's porcelain container is an identifiable object (i.e., a bunny), we have determined that this candle meets the criterion set forth for exclusion from the scope of the order on petroleum wax candles from the PRC.

#### 2) 'Bunny Long Ears "Flame Candle

Regarding Meijer's "bunny long ears" flame candle, while the Department considers the physical characteristics of a container in which a candle is placed in making its determinations, we note that this particular poly-resin figurine is not a wax-filled container per se. Meijer's bunny figurine wears a hat which has been hollowed out to accommodate the wax "bunny long ears" candle. The poly-resin figurine is, then, much like a candle holder designed to hold taper or dinner candles. Accordingly, in making our determination regarding Meijer's candle we have not evaluated the characteristics of the poly-resin figurine because we do not consider this product to be a wax-filled container. The issue before the Department, then, is whether the candle is itself subject to the scope of the order. Meijer's candle, which measures approximately 3 1/2" height, is shaped in the form of an identifiable object (i.e., "bunny ears"). As such, the company's "bunny long ears" flame candle qualifies for exclusion from the scope of the antidumping duty order on candles from the PRC.

#### 3) Yellow Tapers with Chicks Attached

With regard to Meijer's yellow tapers, we note that the letter to Customs on September 21, 1987 (see above) clearly includes figurine candles within the definition of novelty candles excluded from the scope of the order. In a prior scope ruling covering a product similar to Meijer's Easter tapers, we determined that figurine candles are excluded from the scope of the order when the removal of the figurine would cause damage to the taper. See Global Marketing Services Final Scope Ruling, October 30, 1986. See also Final Scope Ruling, Two's Company, January 13, 1995 (taper with angel figurine outside scope), and Final Scope Ruling, A.J. Cohen Co., June 16, 1994 (taper with Santa Claus figurine outside scope). After physical inspection of Meijer's candle, we conclude that the chick, which is an identifiable object, cannot be removed without damaging the candle. Therefore, we have determined that this candle clearly meets the description of a novelty candle, merchandise specifically excluded from the scope of the order on petroleum wax candles from the PRC.

#### 4, 5) 'Valentine Heart" and 'Easter Bunny Head" Tea Lights

Meijer asserts that these particular candles are identifiable objects which should be excluded from the scope of the order as novelty candles. In the past, the Department has ruled that certain candles shaped as identifiable objects qualify for exclusion from the scope of the order on petroleum wax candles from the

PRC. See, e.g., Sun-It Corporation Final Scope Ruling, May 16, 1995 ("gigantic fruit" and pumpkin candles outside scope) and San Francisco Candle Company Final Scope Ruling, June 10, 1993 (mushroom candle outside scope). While we do not agree with Meijer that these candles warrant exclusion from the scope of the order on the basis of being "holiday" candles sold exclusively for Valentine's Day or Easter, we do agree that these candles qualify for exclusion because they are identifiable objects (i.e., a heart and a bunny).

#### 6) Vegetable Wax Candle in a Decorative Glass

As indicated above, Meijer has asked the Department to clarify whether or not this candle would be included in the scope of the antidumping duty order on petroleum wax candles were it made instead of petroleum wax. While Meijer correctly assumes that a candle made from vegetable wax is not included in the scope of the order, we are unable to offer an advisory opinion on the hypothetical issue of whether or not the same candle filled with petroleum wax would qualify for exclusion. Meijer is welcome to file a separate scope inquiry with the Department at such time it begins importing petroleum wax candles in decorative glass jars.

#### 7) Sweetheart Tapers

Meijer suggests that its 10" sweetheart tapers should be excluded from the scope of the order because the candles are formed of "heart shapes stacked one on top of the other" which meet the "identifiable object" criterion. While we agree with Meijer that candles in the form of identifiable objects are excluded from the scope of the order, we cannot agree that this particular candle meets the "identifiable object" exclusion criterion. Meijer's "sweetheart taper," as indicated by its packaging, does not appear to be an identifiable object when viewed as a whole. Rather, this product is merely a red taper candle with a fiber wick made of petroleum wax, specifically included in the scope of the order. In addition, in response to Meijer's implication that the presence of the word "love" on the face of the taper limits its use to Valentine's Day, we note that "love" is not indicative of a particular holiday nor is it associated exclusively with Valentine's Day. See Final Scope Ruling, Meijer, Inc., December 15, 1997 (candles embossed with "Joy" and "Peace" found within scope). Therefore, we determine that these "sweetheart tapers" are included in the scope of the order on petroleum wax candles from the PRC.

#### 8) Wax-filled Glass Container with Decorative Hearts

In its request Meijer suggests that the decorative hearts appearing on this wax-filled glass container limit its use to Valentine's Day. The Department has previously issued scope rulings involving various wax-filled containers. For example, we found that wax-filled containers with floral, fruit, and marine patterns imported by Star Merchandise were within the scope of the order because there was nothing inherent in the design of the candle itself that related to a specific holiday or other special occasion. See Final Scope Ruling, Star Merchandise Co., Inc., July 27, 1994 at 6. As with the Star products, there is nothing about the Meijer candle itself nor its glass container that limits its use solely to Valentine's Day. The year-round ubiquity of a heart renders it meaningless as a holiday scene or symbol. Meijer's candle is merely a petroleum wax-filled container, and as such is included in the scope of the order on petroleum wax candles from the PRC.

#### 9) Heart-shaped Candle on a Wax Heart Base

Like Meijer's "Valentine Heart" and "Easter Bunny Head" candles, the company's heart-shaped candle with a wax heart base qualifies for exclusion from the order on petroleum wax candles from the PRC on the grounds that it is an identifiable object (i.e., a heart) and not because of Meijer's suggestion that it is sold exclusively in connection with Valentine's Day. As noted above regarding Meijer's wax-filled glass with decorative hearts, we do not consider a heart to be a holiday scene or symbol because of its year-round ubiquity. See *Spring-water Cookie & Confection, Inc. v. United States*, Slip Op. 96-160 (CIT 1996).

10) Candy Kiss Candle

Meijer asserts that its gold "candy kiss" candle wrapped in cellophane warrants exclusion from the scope of the order as an identifiable object. We agree with Meijer that this particular candle meets the criterion set forth for exclusion. Shaped and colored to resemble a candy kiss chocolate candy, Meijer's candle represents an identifiable object and is therefore not included in the scope of the order on petroleum wax candles from the PRC.

CONCLUSION

Based on the evidence in the record of this scope inquiry, we conclude that Meijer's wax-filled porcelain bunny, yellow Easter tapers, "bunny long ears" flame candle, "bunny head" and Valentine heart tea lights, heart-shaped candle on a wax heart base, and "candy kiss" candle are outside the scope of the order on petroleum wax candles from the PRC. In addition, we have also determined that Meijer's wax-filled glass container with decorative hearts and sweetheart tapers are within the scope of the order on petroleum wax candles from the PRC.

RECOMMENDATION

We recommend that the Department find Meijer's wax-filled porcelain bunny, "bunny long ears" flame candle, yellow Easter tapers, "bunny head" and heart-shaped tea lights, heart-shaped candle on a wax heart base, and "candy kiss" candle outside the scope of the antidumping duty order on petroleum wax candles from the PRC.

\_\_\_\_\_ a \_\_\_\_\_ Agree \_\_\_\_\_ Disagree

We also recommend that the Department find Meijer's wax-filled glass container with decorative hearts and sweetheart tapers within the scope of the order on petroleum wax candles from the PRC.

\_\_\_\_\_ a \_\_\_\_\_ Agree \_\_\_\_\_ Disagree

If you agree, we will send the attached letter to interested parties and notify the U.S. Customs Service of our determination

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

6-11-98

Date