

A-570-504
Scope Review
Public Document
JAN -6 1999
Grp.III:JBT

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 ten types of candles manufactured in the People's Republic of China ("PRC") and imported by Meijer are covered by the antidumping duty order on petroleum wax candles from the PRC.

On June 11, 1998, in accordance with section 351.225(k)(1) of the Department's Regulations, the Department determined that certain Meijer products were outside the scope of the antidumping duty order on petroleum wax candles from the PRC. One of these candles was a candle identified by Meijer as a "wax-filled porcelain bunny." On September 8, 1998, the Department initiated an inquiry under section 351.225(b) to reconsider whether the "wax-filled porcelain bunny" falls within the scope of the order.

We have determined that Meijer's candle is a wax-filled container which falls 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 John Totaro or Becky Hagen, at (202) 482-1374 or (202) 482-1102, respectively.

Sincerely,

Roland L. MacDonald
Executive Director
AD/CVD Enforcement Group III, Office 7

Enclosure

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

FROM: Roland L. MacDonald
Executive Director
Enforcement Group III, Office 7

SUBJECT: Final Affirmative 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") issue a scope ruling on whether ten types of candles manufactured in the People's Republic of China ("PRC") and imported by Meijer are covered by the antidumping duty order on petroleum wax candles from the PRC.

On June 11, 1998, in accordance with section 351.225(k)(l) of the Department's Regulations, the Department determined that certain Meijer products were outside the scope of the antidumping duty order on petroleum wax candles from the PRC. One of these candles was a wax-filled container in the shape of a rabbit, identified by Meijer as a "wax-filled porcelain bunny." On September 8, 1998, the Department initiated an inquiry under section 351.225(b) to reconsider whether the wax-filled container in the shape of a rabbit is within the scope of the order. We provided interested parties an opportunity to submit comments.

We have determined that Meijer's candle is a wax-filled container which falls within the scope of the antidumping duty order on petroleum wax candles from the PRC.

BACKGROUND

In its April 28, 1998 request for a scope ruling, Meijer described the candle subject to the inquiry as a wax-filled gray porcelain bunny with pink paws and belly, which measured three inches in height and ten inches in circumference at its widest point. Meijer asserted that the candle should have been excluded from the order because it is a three-dimensional identifiable object sold exclusively during the Easter season.

ANALYSIS

The regulations governing the Department's antidumping scope determinations are found at section 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 antidumping duty 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 section 351.225(d).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the five additional factors set forth at section 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 initial 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 also evaluated this request in accordance with section 351.225(k)(1), because the descriptions of the products contained in the petition, the final determinations of the Secretary and the ITC, the initial investigation, 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); 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 & Radzius, Ltd., July 13, 1987.

In the Department's original ruling on Meijer's request, we cited to the Department's June 9, 1993 scope ruling on Primark International ("Primark"). In that case, the Department clarified the holiday/novelty exemption from scope coverage by stating that "as the order specifically includes both candles and 'wax-filled containers,' exclusionary design characteristics may either be on the candle or the container on which the candle is held. Thus, a wax-filled container with scenes or symbols of other occasions (e.g., religious holidays or special events) on the container may be found outside the scope of the order." See Primark, June 9, 1993 at 3. This reference to Primark was inappropriate, because while Meijer's candle is a wax filled container, the container was not marked with "exclusionary design characteristics," i.e. holiday scenes or symbols, like those examined in Primark. In addition, Primark did not address the question of whether a wax-filled container shaped like a holiday symbol falls within the holiday/novelty exemption.

The Department concluded in its earlier analysis of Meijer's candle that "because Meijer's candle 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." See Meijer, April 28, 1998 at 6. The exclusion criterion to which the Department referred was the one pertaining to petroleum wax candles which are in the shape of identifiable objects. The Department considers candles which are not included in the list of shapes covered by the order to be novelty candles and, therefore, outside of the order. See Sun-It Corporation, May 16, 1995 (candles in the shape of fruit, flowers, and a flag were outside the scope): and San Francisco Candle Company, June 10, 1993 (candles in the shape of ovals and mushrooms were outside the scope).

A corollary to this "identifiable object" rule is that it applies solely to petroleum wax candles which themselves are in the shape of identifiable objects, and cannot be applied to exclude wax-filled containers from the scope of the order, even where the containers are in the shape of identifiable objects. As the Department stated in its September 25, 1997 determination in Russ Berrie Company, Inc. ("Russ Berrie"), "while the scope of the order is specifically limited to certain shapes for those candles not in containers, there is no such limitation for wax-filled containers. The scope of the order states that 'various wax-filled containers' are included without respect to their configuration." Further, the language of the Customs clarification excludes "figurine candles" and "candles shaped in the form of identifiable objects." See Russ Berrie, September 25, 1997 at 5 (a wax-filled container in the shape of a heart was within the scope); See also Star Merchandise Company, Inc., July 27, 1994 ("Star") (a wax-filled container in the shape of a heart was within the scope). The Department clarified in Star that a wax-filled container could fall outside the scope of the order as a "holiday candle" if symbols of specific

holidays or special occasions were inherent in the container's design, but not as an "identifiable object." See Star at 6.

Thus, the Department incorrectly applied the identifiable-object rule to Meijer by stating that the wax-filled container in the shape of a rabbit was outside the scope of the order because the container was in the shape of an identifiable object. This candle falls within the definition of "various wax-filled containers" covered by the scope of this order.

Moreover, although not addressed by the Department in its discussion of the "wax-filled porcelain bunny" in the original ruling in Meijer, this candle does not fall outside the scope based on the holiday exclusion. The Department noted with respect to another of Meijer's candles, the "Easter Bunny Head" candle, that a candle in the shape of a rabbit does not warrant exclusion from the scope of the order because it is not a shape sold exclusively in conjunction with the Easter holiday. See Meijer at 7. That determination was consistent with the Department's narrow application of the holiday exemption. Recently, in Kohl's Department Stores, Inc., ("Kohl's"), the Department found that certain wax-filled containers in the shape of a snowflake, star and tree, which Kohl's argued were symbols of Christmas, "lack the exclusionary characteristics to consider them outside the scope of the order." See Kohl's, August 24, 1998 at 6. Applying this position to Meijer's "wax-filled porcelain bunny," we find that it is within the scope of the order as a wax-filled container without holiday/special occasion design characteristics.

RECOMMENDATION

We recommend the Department find that Meijer's "wax-filled porcelain bunny" is a wax-filled container 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
Enforcement Group III

1-6-99

Date

Attachment