

SEP 30 1999

A-570-504
Scope Review
Public Document
Group III/7:JT

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On July 19, 1999, Meijer, Inc. ("Meijer") requested that the Department of Commerce ("the Department") issue a scope ruling on whether nine of its 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 nine 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 John Totaro at (202) 482-1374.

Sincerely,

Barbara E. Tillman
Director
Enforcement Group III, Office 7

Enclosure

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

FROM: Barbara Tillman
 Director
 Enforcement Group III, Office 7

SUBJECT: Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles from
 the People's Republic of China (A-570-504); Meijer, Inc.

SUMMARY

On July 19, 1999, Meijer, Inc. ("Meijer") requested that the Department of Commerce ("the Department") issue a scope ruling on whether nine of its candles are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China ("PRC"). The National Candle Association ("NCR") filed comments on Meijer's request on August 12, 1999. On September 2, 1999, the Department determined that it was impracticable to issue a scope ruling within the 45-day schedule established in section 351.225(c)(2) of the Department's regulations, and extended the deadline from September 2 to September 30, 1999. In accordance with 19 CFR 351.225(k)(l), we recommend that the Department determine that Meijer's "Star Candle" (Item 1), "Leaf Candle" (Item 2), and Green Floating Disk Candle (Item 4) are candles within the scope of the antidumping duty order on petroleum wax candles from the PRC, and that Meijer's "Feather Candle," "Flag Torches," "Garden Torches," "10" Yard Torches," "Flag Tapers," and "30" Yard Torches" (Items 3, 5, 6, 7, 8 and 9) are outside the scope of the antidumping duty order on petroleum wax candles from the PRC.

BACKGROUND

The regulations governing the Department's antidumping scope determinations are 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 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 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 it is unclear whether the product which is the subject of the scope ruling fits within the product descriptions contained in the petition, the determinations of the Secretary and the ITC, the investigation, and the order. 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 evaluated Meijer's request in accordance with 19 CFR §351.225(k)(l), 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 this scope ruling 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 ("ITC Determination").

Also of relevance to the present scope inquiry is a notice issued by 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.

Physical Characteristics of the Product in Question

Meijer described its nine candles as follows:

Star Candle (Item 1): This candle is approximately 9' high and 3.5" in diameter. When viewed from the top or bottom, the candle is in the shape of a five-sided star. It is made from red wax and is decorated with gold glitter. Meijer states that the candle is sold only at Christmas.

Leaf Candle (Item 2): This candle is a round pillar approximately 3.75" in height and 3.75" in diameter. It is made of translucent white wax, and has embedded within the pillar orange, yellow, gold and green fabric leaves. Meijer states that these colors are "shades of fall," and that the candle is sold only during the months of September, October and November.

Feather Candle (Item 3): This candle is approximately 12" long and 2" in diameter, and is shaped, according to Meijer, like a feather or a leaf. A label affixed to the packaging of this candle states that it is "made in Hong Kong."

Green Floating Disk Candle (Item 4): This is a round candle approximately 2" in diameter and 1 ½" in height. Meijer states that its "unique shape permits the candle to stay lit while floating in liquids."

Flag Torches (Item 5): These items are wax "summer novelty item[s]" consisting of tapered cylinders of wax formed around a 10" x 3/16" wooden dowel, and do not have a fiber or paper-cored wick. Meijer states that these items contain 1% citronella; the wax is colored with red and white stripes and white stars on a blue background. The packaging states that the items contain citronella and that they are for outdoor use only. A sticker containing the phrase "for repelling insects" is affixed to the outer packaging.

Garden Torches (Item 6): These are ovoid wax candles with fiber wicks shaped around 10" x ¼" square wooden stakes. Meijer states that they are "summer novelty items" designed to look like matches. The packaging states that they are for "outdoor use onl [sic]." Meijer states that the candles are sold during April, May and June.

10" Yard Torches (Item 7): These items are wax "summer novelty item[s]" consisting of tapered cylinders of wax formed around a 10" x 3/16" wooden dowel, and do not have a fiber or paper-cored wick. Meijer states that these items contain 1% citronella and are "in the shape of a Popsicle." The packaging states that the items contain citronella and that they are for outdoor use only. A sticker containing the phrase "for repelling insects" is affixed to the outer packaging.

Flag Tapers (Item 8): These are 10" taper candles colored with red and white stripes and white stars on a blue background. The packaging contains the phrase "July 4th," images of the Statue of Liberty, and the phrase "novelty candle."

30" Yard Torches (Item 9): These are wax "summer novelty items containing 1% citronella" consisting of tapered wax cylinders formed around a 30" x ¼" wooden dowel, and have a fiber wick.

Meijer states that items 1,2,3,4, and 6 fall within HTSUS #3406.00.0000, and that items 5, 7, 8, and 9 fall within HTSUS #3808.10.5000.

Comments of the Parties

1. Citronella

Meijer argues that items 5, 7, and 9 are outside of the scope of the order because the candles contain citronella oil. Without citing to a specific scope ruling, Meijer states that "Commerce has previously ruled that Citronella Oil imparts a different and significant utility to the candles as an insect repellent." In response, NCA suggests that the 1% citronella oil content of items 5, 7, and 9 is too low to repel insects, and urges the Department to create guidelines for citronella content in the context of this order. NCA also argues that these items are shapes within the scope of the order i.e. tapers, columns or pillars

2. Holiday Exception

Meijer argues that certain of the nine items fall outside of the scope of the order under the Department's holiday novelty exemption. First, Meijer asserts that item 1, the Star Candle, is sold only during the Christmas season, is in the shape of a Christmas symbol (a star), and has a color (red with gold glitter) that relates the candle to the specific holiday of Christmas. Second, Meijer states that item 2, the Leaf Candle, is sold only during the Fall season, that the leaves imbedded in the candle are Fall colored, and that the shape and color of the leaves are associated with the Thanksgiving and Halloween holidays. Third, Meijer argues that its items decorated with the American flag pattern, items 5 and 8, which it states are only sold at regular retail during the months of April, May and June, are specifically related to the Independence Day holiday. In response, NCA argues that the designs of these candles do not limit their use to a specific holiday or event, and therefore should not be the basis for their exclusion from the scope of the order.

3. "Identifiable Object" Clarification

Meijer also argues that three of its candles are outside the scope of the order under the Department's clarification for "identifiable objects." Meijer states that item 1 is shaped like a star, item 3 is shaped like a feather or a leaf, and item 6 is shaped like a match, and therefore these candles are not shapes covered by the scope of the order. In response, the NCA argues that when viewed from the side, Meijer's Star Candle is not identifiable as a star, but is as a multi-sided pillar. The NCA also asserts that the Department has ruled that a candle similar to Meijer's Star Candle was covered by the scope of the order. See Final Scope Ruling: Russ Berrie and Company. Inc. September 2, 1997.

The NCA argues that the packaging of Meijer's Feather Candle identifies the product as a "Flame Candle," and that the Department has found another "flame" candle to be within the scope of the order. See Final Scope Ruling: M.G. Maher and Company. Inc., September 25, 1997. NCA also states that this candle is shaped like neither a feather nor a leaf, because neither a feather nor a leaf have three sides.

4. Shape Outside Scope

Meijer also argues that its Green Floating Disk Candle (item 4) is outside the scope of the order because it is a shape not included in the scope of the order. The NCA counters that this candle is a "round," a shape identified in the scope of the order, and that the Department found a similarly shaped floating candle to be within the scope. See Final Scope Ruling: Ender Corp., December 24, 1999.

5. Items without Wicks Outside Scope

Finally, Meijer states that items 5 and 7 (the Flag Torches and 10" Yard Torches) are outside the scope of the order because they do not contain a fiber or paper cored wick as required by the scope. The NCA did not respond to this argument.

ANALYSIS

As an initial matter, we note that Meijer stated in its scope request that four of its candles (items 1,2,3, and 8) were manufactured by Shine Signal Industrial Ltd. ("Shine Signal" a company located in Hong Kong. This statement is supported by the "made in Hong Kong" label on item 3. Because the Department of Commerce considers Hong Kong to be a customs territory separate from the PRC, and because this order covers petroleum wax candles from the PRC, we sought clarification on this issue. On September 21, 1999, Meijer submitted a letter to the Department stating that the address it had provided in its scope request was the business address for Shine Signal, but that the Shine Signal factory, where production occurs, is located in the PRC. We determined that this information is a sufficient basis on which to conclude that these candles are produced in the PRC.

Star Candle (Item 1)

Meijer's Star Candle is a fluted pillar-shaped petroleum wax candle and contains a fiber wick. Neither the candle's color nor its shape appears to symbolize any specific holiday or event; therefore, this candle does not qualify for the holiday novelty exemption described above. Further, we examined a nearly identical candle for another importer in a prior scope ruling, and found that because that candle was not clearly identifiable as a star when viewed from all sides, it did not qualify for the Department's "identifiable object" clarification. See Final Scope Ru1ing:

Endar Corp. April 7, 1999; see also Final Scope Ruling: Russ Berrie. Inc. September 2, 1997. Similarly, Meijer's Star Candle is not clearly identifiable as a star or any other known object when viewed from all sides. Therefore, the identifiable object clarification does not apply to this candle. Meijer's Star Candle meets all the physical characteristics for merchandise within the scope of the order and does not have any characteristics which would otherwise warrant treating it as not within the scope of the order

Leaf Candle (Item 2)

This candle is a pillar-shaped petroleum wax candle with a fiber wick. Neither the candle's color (including the white petroleum wax and the yellow, gold, orange and green fabric leaves imbedded within the wax) nor its shape, nor the leaf-shaped decorations, appears to symbolize any specific holiday or event, i.e., Thanksgiving or Halloween. Further, "the Fall season" is not a holiday or special event that would trigger the holiday novelty exemption. Therefore, this candle does not qualify for the holiday novelty exemption described above. Meijer's Leaf Candle meets all the physical characteristics for merchandise within the scope of the order and does not have any characteristics which would otherwise warrant treating it as not within the scope of the order.

Feather Candle (Item 3)

Meijer argues that this item should be outside the scope because it is in the shape of an identifiable object, a feather or a leaf. As we stated above, the Department has clarified that the scope of the order does not include figurine candles and candles shaped in the form of identifiable objects (e.g., animals or numerals) because such candles do not fall within the enumerated shapes in the order. This item, a three-sided organic shape which resembles, in certain respects, the physical characteristics of both a feather and a leaf, is not clearly identifiable as either a feather or a leaf. However, this item is also not one of the shapes covered by the scope of the order: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, and votives. Therefore, we find that Meijer's Feather Candle is outside the scope of the order.

We disagree with the NCA's argument that Meijer's Feather Candle is similar to the "flame" candle the Department found to be within the scope of the order. See Final Scone Ruling: M.G. Maher and Company. Inc., September 25, 1997. In that ease, the candle was spiral-shaped, and spirals are one of the shapes specifically enumerated in the scope of the order on petroleum wax candles from the PRC. Meijer's Feather Candle is not spiral-shaped.

Green Floating Disk Candle (Item 4)

NCA correctly noted that we examined a similar candle in our scope ruling for Endar Corp. Endar's candle had a shape similar to Meijer's candle, a short cylinder with rounded edges, and, like Meijer's candle, was able to float on liquid while lit. In that case we found that the shape was one within the scope of the order, a "round." Following the same reasoning, we find that Meijer's Green Floating Disk Candle is within the scope of the order.

Flag Torches (Item 5)

This item lacks one of the two essential physical characteristics required by the scope. The scope covers "certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks." This item does not have a fiber or paper-cored wick. It is a tapered wax cylinder formed around a wooden dowel, in which one end of the dowel can, apparently, be lighted. Because this item lacks the essential characteristic of a fiber or paper-cored wick, we find that it is not covered by the scope of the order.

Garden Torches (Item 6)

Meijer argues that this item should be outside the scope because it is in the shape of an identifiable object, a match. As we stated above, the Department has clarified that the scope of the order does not include figurine candles and candles shaped in the form of identifiable objects (e.g., animals or numerals) because such candles do not fall within the enumerated shapes in the order. This item, an ovoid colored wax shape atop a square wooden stake, is not clearly identifiable as a match. However, this item is also not one of the shapes covered by the scope of the order: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, and votives. Therefore, we find that Meijer's Garden Torches are outside the scope of the order.

10" Yard Torches (Item 7)

This item lacks one of the two essential physical characteristics required by the scope. The scope covers "certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks." This item does not have a fiber or paper-cored wick. It is a tapered wax cylinder formed around a wooden dowel, in which one end of the dowel can, apparently, be lighted. Because this item lacks the essential characteristic of a fiber or paper-cored wick, we find that it is not covered by the scope of the order.

Flag Tapers (Item 8)

These candles are petroleum wax tapers with a fiber wick. The design of these candles (tapered dinner candles with red and white stripes and white stars on a blue background), as well as their packaging (printed with the phrase "July 4th" and images of the Statue of Liberty), clearly symbolizes a specific holiday: Independence Day. Therefore, these candles qualify for the holiday novelty exemption described above. Meijer's Flag Tapers meet all the physical characteristics for merchandise within the scope of the order, but have design characteristics which warrant treating it as not within the scope of the order.

30" Yard Torches (Item 9)

We examined a similar product in our scope ruling for Boston Warehouse Trading Corp., Inc. (December 18, 1998) ("Boston Warehouse"). In that case we examined torches that were cylindrical shapes that tapered at one end, and were mounted on bamboo stakes. We found that the shape of these products did not bring them outside the scope of the order. However, we found that because Boston Warehouse's

garden torches were candles labeled for outdoor use and labeled as containing citronella oil, those candles were substantially similar to the candles the Department had analyzed in an earlier ruling for Target Stores, A Division of Dayton-Hudson (December 15, 1998) ("Target"). In Target, we stated:

While the mere presence of citronella oil in a candle might not bring that product outside the scope of the order, those candles that the purchaser reasonably could expect to have an insect repellent function (for example, most candles labeled for outdoor use which also contain citronella oil) are not candles within the scope of the order. The reason for this distinction is that these candles are purchased, at least in part, for a purpose other than providing light or decoration, namely, repelling insects.

Therefore, we found that Boston Warehouse's garden torches were not standard petroleum wax candles and were outside the scope of the order on petroleum wax candles from the PRC. See also Final Scope Ruling: Star Merchandise Company, Inc., July 27, 1994 and Final Scope Ruling: Fabriccenters of America, Inc., September 3, 1991 (candles containing citronella oil found to be outside the scope of the order on petroleum wax candles from the PRC).

As we stated above, Meijer's candles contain citronella oil. Because the sample Meijer provided to the Department did not include packaging, we were unable to determine whether this product was labeled for outdoor use only. However, Meijer's 30" Yard Torches are clearly intended to be driven into soil or sand, and are substantially similar to the torches we examined in Boston Warehouse. Therefore, the facts indicate that this product was intended for outdoor use only. Following our reasoning in Boston Warehouse and Target, we find that because Meijer's 30" Yard Torches contain citronella oil and are for outdoor use, these products are not standard petroleum wax candles, and as such are outside the scope of the order on petroleum wax candles from the PRC.

RECOMMENDATION

We recommend the Department find that Meijer's "Star Candle" (Item 1), "Leaf Candle" (Item 2), and Green Floating Disk Candle (Item 4) are candles within the scope of the antidumping duty order on petroleum wax candles from the PRC, and that Meijer's "Feather Candle," "Flag Torches," "Garden Torches," "10" Yard Torches," "Flag Tapers," and "30" Yard Torches" (Items 3, 5, 6, 7, 8 and 9) are outside 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

09-30-99

Date

Attachment