

OCT 14 1999

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

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On September 2, 1999, Meijer, Inc. ("Meijer") requested that the Department of Commerce ("the Department") issue a scope ruling on whether its Halloween Figurine Shape Taper S/2 candle ("Halloween Figurine") is 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)(l), the Department has determined that Meijer's Halloween Figurine candle is 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 John Totaro at (202) 482-1374.

Sincerely,

Barbara E. Tillman  
Director  
Enforcement Group III, Office 7

Enclosure

MEMORANDUM FOR: Joseph A. Spetrini  
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 September 2, 1999, Meijer, Inc. ("Meijer") requested that the Department of Commerce ("the Department") issue a scope ruling on whether one of its candles is 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), we recommend that the Department determine that Meijer's Halloween Figurine Shape Taper 5/2 candle ("Halloween Figurine") is 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)(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 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 & Radius, Ltd., July 13, 1987.

Physical Characteristics of the Product in Question

Meijer described its candle as a "Halloween Figurine Shape Taper S/2."

The candle is approximately 10" high and 1.25" in diameter. Meijer states that the candle is produced in three styles: stacked Jack-O-Lantern pumpkins, a witch, and a ghost/pumpkin combination. The candles are sold in packs of two. Meijer submitted a sample of the Jack-O-Lantern pumpkins candle,

along with photographs of the other two styles. The sample is made of orange wax with black and green decorations. Meijer states that the candle is sold only during the Halloween season. Meijer states that this item falls within HTSUS #3406.00.0000.

Comments of the Parties:

1. Holiday/Occasion Exception

Meijer argues that this item falls outside of the scope of the order under the Department's holiday novelty exemption. Meijer asserts that the Halloween Figurine candles are sold only during the Halloween season, are in the distinctive shapes of Halloween symbols (Jack-O-Lanterns, a witch, and a ghost), and are sold only during the months of September and October. Finally, Meijer asserts that consumers would not normally display or use these candles outside of the months of September and October because their shapes relate to the specific occasion of Halloween. Petitioners did not submit comments.

ANALYSIS

As an initial matter, we note that Meijer stated in its scope request that its candles were manufactured by Shine Signal Industrial Ltd. ("Shine Signal"), a company located in Hong Kong. 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.

Halloween Figurine Candle

Meijer's three styles of Halloween Figurine candles are petroleum wax candles that contain fiber wicks: Meijer refers to the shape of these candles as "tapers." The shapes are not those of traditional tapers; they resemble totem poles composed of vertically stacked Jack-o-Lantern, witch head, and ghost shapes.

While it could be argued that the Halloween Figurine candles are shapes within the scope of the order, other characteristics bring these candles outside the scope. The design of these candles clearly symbolizes a specific holiday: Halloween. The shapes of Jack-o-Lanterns, ghosts and witches are only suitable for the specific season of Halloween, and would not generally be purchased or used at any other time of the year. Therefore, we find that Meijer's candles are novelty candles specifically designed for use only in connection with Halloween. The design of these candles brings them outside the scope of the order based on the holiday novelty exemption described above.

RECOMMENDATION

We recommend the Department find that Meijer's Halloween Figurine candles are outside the scope of the antidumping duty order on petroleum wax candles from the PRC.

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

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

Joseph A. Spetrini  
Deputy Assistant Secretary  
Enforcement Group III

10-14-99

Date

Attachment