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September 16, 2009

Case No. A-570-504

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**Comments on the Scope of the AD Order in
Petroleum Wax Candles
from the People's Republic of China**

PUBLIC DOCUMENT

VIA HAND DELIVERY

Secretary of Commerce
U.S. Department of Commerce
Import Administration
APO/Dockets Unit
Room 1870
U.S. Department of Commerce
14th Street & Constitution Avenue, NW
Washington, DC 20230

Attn: Alex Villanueva

Re: Comments on the Scope of the Antidumping Duty Order and the Impact
on Scope Determination in *Petroleum Wax Candles from the People's
Republic of China* (A-570-504)

Dear Mr. Secretary:

On behalf of our client, HSE USA, Inc. ("HSE"),¹ we hereby submit comments in
response to the Department's Request for Comments on the Scope of the Antidumping

¹ HSE is an importer and distributor of subject merchandise and is therefore an "interested party" pursuant to 19 U.S.C. 1677(9)(A).

Order and the Impact of Scope Determinations in *Petroleum Wax Candles from the People's Republic of China*. See 74 Fed. Reg. 42230. While HSE takes no position with respect to the coverage of certain holiday novelty candles, we respectfully submit that the inclusion of HSE's novelty figurine candles described below would constitute an unlawful expansion of the scope of the AD order.

I. INTRODUCTION

Founded in 2001, HSE USA, Inc. is a home décor novelty goods company catering to the party favor and gift markets. HSE sells to discount stores, dollar stores, and party stores. Among other products, HSE produces various designs of novelty wax figurine candles crafted in the shape of numerals or other identifiable objects. Examples of HSE's novelty wax figurine candles are provided in **Exhibit 1**. These novelty figurine candles are all unquestionably formed in recognizable shapes other than the candle shapes enumerated in the scope of the AD order.

On August 21, 2009, the Department of Commerce published in the Federal Register a Request for Comments on the Scope of the Antidumping Duty Order and the Impact of Scope Determinations in *Petroleum Wax Candles from the People's Republic of China*. See 74 Fed. Reg. 42230. The purpose of the notice was to request comments on the potential reinterpretation of the methodology used to analyze scope inquiries for the AD order against petroleum wax candles. The order dates back to 1986, when the Department issued their Final Determination of Sales at Less than Fair Value. See 51 Fed. Reg. 25085 (July 10, 1986). Until 2001, the Department employed a practice of excluding candles of shapes not listed in the scope language of the Order. In 2001, the

Department reversed their practice (“JC Penney methodology”), finding that the shapes listed were merely descriptive and that the Department would consider candle shapes not listed to be within the scope.

This change in policy has resulted in hundreds of scope inquiries and uncertainty regarding the order’s coverage, which has been very burdensome for the Department.

The Department proposed two options to clarify the standard for scope inquiries in this case in order to provide for more certainty. Option A is described below:

The Department would consider all candle shapes identified in the scope of the Order, (i.e., tapers, spirals, and straight-sided dinner candles; rounds, columns, pillar, votives; and various wax-filled containers) to be within the scope of the Order, regardless of etchings, prints, moldings, or other artistic or decorative enhancements including any holiday-related art. All other candle shapes would be considered outside the scope of the Order.

Option B states that:

The Department would consider **all candle shapes, including novelty candles**, to be within the scope of the Order including those not in the shapes listed in the scope of the Order, as that is not an exhaustive list of shapes, but simply an illustrative list of common candle shapes. (emphasis added)

As discussed below, the shapes listed in the Order were intended to comprise an exhaustive list of shapes, and not an illustrative list as the Department suggests with Option B. Therefore, HSE respectfully argues that Option B is incongruous with the scope of the Order. HSE does not express an opinion on the merits of Option A in its entirety, but does assert that any interpretation of the scope should include a provision limiting the scope to the enumerated shapes.

II. ANALYSIS

In determining whether a product is within the scope of an antidumping duty order, the actual language of the AD order should receive the greatest weight. *See, e.g., Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1097 (Fed. Cir. 2002) (noting that “a predicate for the interpretive process is language in the order that is subject to interpretation.”). The Department may also consider the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Department and the International Trade Commission (“ITC”) to assist in interpreting the language of the AD Order. 19 CFR § 351.225(k)(1); *Allegheny Bradford Corp. v. United States*, 342 F. Supp. 2d 1172, 1183-84 (Ct. Int’l Trade 2004). Commerce has the inherent authority to define and clarify the scope of an antidumping duty investigation. *See Koyo Seiko v. United States*, 17 CIT 1076, 1078, F. Supp. 1401, 1403 (1993), *aff’d* 31 F.3d 1177 (Fed. Cir. 1994). However, Commerce only has the power to interpret the scope of the antidumping duty order once it is issued; it cannot change or expand the scope of the order. *See, e.g., Ericsson GE Mobile Communications, Inc. v. United States*, 60 F.3d 778, 782 (Fed. Cir. 1995). Option B is proposing to change the scope of the Order against petroleum wax candles.

A. The Plain Language of the Order and the Original AD Investigation Demonstrate That the Scope Was Intended to be Limited to the Enumerated Shapes

The Department’s proposal in Option B to include “all candle shapes” in the Order contradicts the clear language used by the Department during the course of the initial investigation. The essential scope language remained the same from the initiation of the investigation to the final determination, and is described as follows:

The products covered by this investigation are certain 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; columns, pillars; votives; and various wax-filled containers.

See Petroleum Wax Candles from the People's Republic of China: Final Determination of Sales at Less than Fair Value, 51 Fed. Reg. 25085 (July 10, 1986); *Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 50 Fed. Reg. 39743 (Sept. 30, 1985).

Notably, this scope language consistently included the qualification that only “certain” scented or unscented petroleum wax candles were within the scope. The inclusion of the word “certain” is a clear indication that the scope was never intended to encompass all candle shapes. Moreover, the scope language states that the subject candles “are sold in the following shapes.” This language does not suggest that the list of candle shapes was intended merely to be illustrative. Instead, the chosen language is a clear indication that the list of shapes was intended to be exhaustive.

This conclusion is confirmed by other statements on this issue from the original investigation. During the course of the investigation, the Department issued a clarification regarding the shapes of candles subject to the investigation. In the International Trade Commission Final Report on Petroleum Wax Candles, the ITC quoted a Department of Commerce communication to Customs field offices regarding the scope of the investigation:

On March 20, 1986, Commerce clarified the scope of the products subject to investigation in a communication to all customs field offices. Commerce specified that the products under investigation are certain scented or unscented petroleum wax candles sold as tapers, spirals, straight-sided dinner candles, rounds, columns, pillars, votives, and various wax-filled candles. ***Candles not described, such as birthday,***

birthday numeral, and figurine type candles, are outside the scope of the investigation.

Candles from the People's Republic of China, USITC Inv. No. 731-TA-282 (Final), Pub. No. 1888, at A-2 (Aug. 1986) (emphasis added); **Exhibit 2**.

This statement was made by Commerce during the investigation, and therefore manifestly demonstrates Commerce's intent to exclude non-mentioned shapes from the subsequent order. Accordingly, this statement by the Department should resolve any ambiguity concerning the scope of the order with respect to candle shapes not specifically mentioned. See, e.g., *Duferco Steel, Inc.*, 296 F.3d at 2096-97 (stating that it is the responsibility of the Department, not the petitioners, to establish the scope of the order). As noted above, the Department is not free now to expand the scope of the Order to include types of candles that were outside the intended scope of the AD order. See, e.g. *Ericsson GE Mobile Communications, Inc. v. United States*, 60 F. 3d 778, 782 (Fed. Cir. 1995) ("The Commerce Department enjoys substantial freedom to interpret and clarify its antidumping orders. But while it may interpret those orders, it may not change them.").

B. The Department Had a Longstanding Practice of a Shape-Based Interpretation of Scope in the Years Following the Order

The Department's actions after the Order further confirms that candles in shapes other than those listed should be excluded. In 1987, one year after the antidumping order, the Department issued the following scope clarification:

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 specially designed for use only in connection with the Christmas holiday season. Other novelty candles not within the scope of the order include candles having scenes or symbols of other occasion (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).

See 74 Fed. Reg. 42230, 42230 (emphasis added). The Department continued applying their interpretation of the Order excluding candles of shapes other than those listed, which demonstrates that the shape of the candle is a necessary aspect of the dumping order and not merely provided for illustrative purposes. For example, in 1993, San Francisco Candle Company requested that certain candles be declared outside of the scope of the Order due to the industry definition of “round.” See *Final Scope Ruling, Petroleum Wax Candles from the People’s Republic of China, San Francisco Candle Company* (May 28, 1993); **Exhibit 3**. The Department found the candles to be outside the scope of the Order, noting the exclusivity of the shapes listed in the scope: “As the order *specifically lists the shapes that it does encompass*, and because ball-shaped candles are not one of these shapes, ball-shaped candles are found outside the scope of the order.” *Id.* In 1996, the Department engaged in a similar analysis focusing on the shape of the candle, this time finding that square and cube-shaped candles were “very similar in physical characteristics to the column and pillar candles covered by the order.” See *Final Scope Ruling, Petroleum Wax Candles from the People’s Republic of China, Mervyn’s, Enesco, and Midwest of Cannon Falls* (Dec. 9, 1996); **Exhibit 4**.

C. The JC Penney Methodology Has Proven That Disregarding the Shape Language in the Scope Creates Ambiguities and is Administratively Impractical

In clarifying the scope of a dumping order, one factor the Department must consider is how they have interpreted the scope in prior scope determinations. See 19 C.F.R. § 351.225(k)(1). The Department can reinterpret the scope but must do so reasonably. See *Duferco Steel v. United States*, 296 F.3d 1087, 1089 (CIT 2002) (“Scope

orders may be interpreted as including subject merchandise only if they contain language that specifically includes the subject merchandise or may be reasonably interpreted to include it.”). Nevertheless, in 2001, the Department stated that it was changing its practice and would no longer consider the shape of the candle to be dispositive in determining whether it was covered by the Order. *See Final Scope Ruling, Petroleum Wax Candles from the People’s Republic of China, JC Penney Purchasing Corporation* (July 27, 2001); **Exhibit 5**. This change in policy clearly disregarded the history of the case and prior definitive statements concerning the scope of subject merchandise, and has also proven to be extremely burdensome, evident in the 596 scope determinations for the petroleum wax candles that have been issued since 2001 and the 308 currently pending scope determinations. *See* 74 Fed. Reg. 42230, 42231. In order to remedy the ambiguities created by the JC Penney methodology, the Department should return to its prior practice of looking at the shape of the candle in evaluating the scope. Endorsing a shape-based scope is not only strongly supported by record evidence in the initial investigation, but also by numerous scope rulings issued by the Department prior to the institution of the JC Penney methodology.

III. CONCLUSION

The Department of Commerce should reject Option B as a possible reinterpretation of the scope of the Order because it does not reflect the intention to exclude non-enumerated shapes from coverage. The intent to exclude such shapes is clearly evidenced by the plain language of the order itself, Commerce’s own language during the investigation to exclude “candles not described,” and the findings in numerous

scope rulings by the Department between 1987 and 2001. Therefore, any change in policy should adequately characterize the true scope of the Order by limiting it to the enumerated shapes. For the reasons discussed, we respectfully request that the Department reject Option B for future scope determinations in the order against *Petroleum Wax Candles from the People's Republic of China*.

The undersigned certify pursuant to 19 C.F.R. §351.303(g), that they have read the attached submission, and based on the information made available to them by HSE USA, Inc., they have no reason to believe that this submission contains any material misrepresentation or omission of fact.

Please contact the undersigned should you have any further questions regarding this matter.

Sincerely,

Grunfeld Desiderio Lebowitz
Silverman & Klestadt, LLP

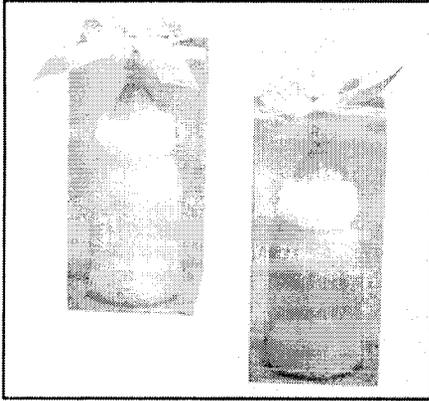


Mark E. Pardo
Nikolas Takacs¹

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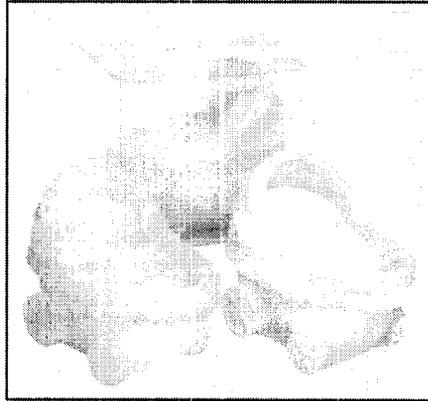
¹ Bar admission pending, work is conducted under the supervision of Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt, LLP attorneys.

Exhibit 1



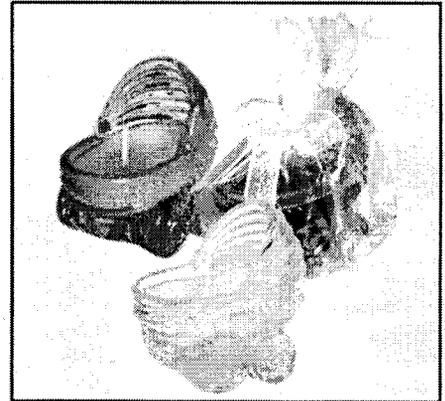
ITEM BY001

Qty: 48pcs/carton Wt.: 10.58 Lbs
 Burn time: 15-25hrs Size: 4½" H



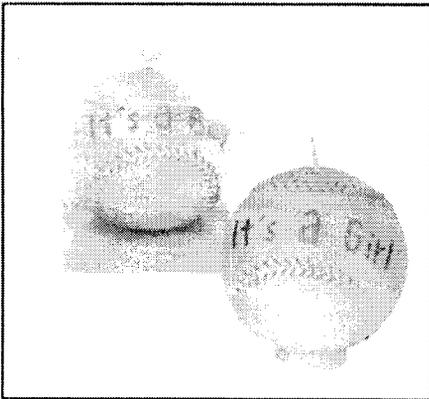
ITEM BY004

Qty: 48pcs/carton Wt.: 13.45 Lbs
 Burn time: 10-15hrs Size: 3" H



ITEM BY005

Qty: 48pcs/carton Wt.: 29 Lbs
 Burn time: 5-10hrs Size: 3" H



ITEM BY006

Qty: 48pcs/carton Wt.: 14 Lbs
 Burn time: 10-15hrs Size: Ø2½"



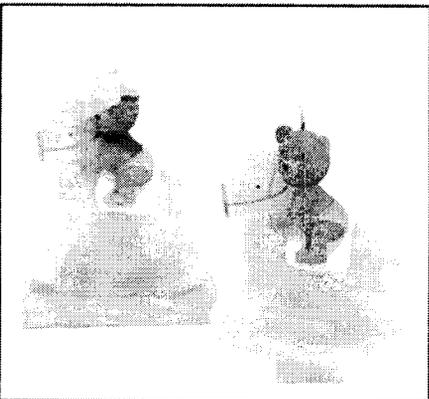
ITEM BY007

Qty: 48pcs/carton Wt.: 10.8 Lbs
 Burn time: 15-25hrs Size: 3½" H



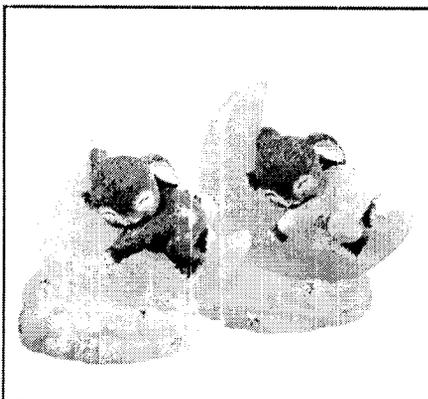
ITEM BY008*

Qty: 48pcs/carton Wt.: 13.23 Lbs
 Burn time: 8-10hrs Size: 4" H



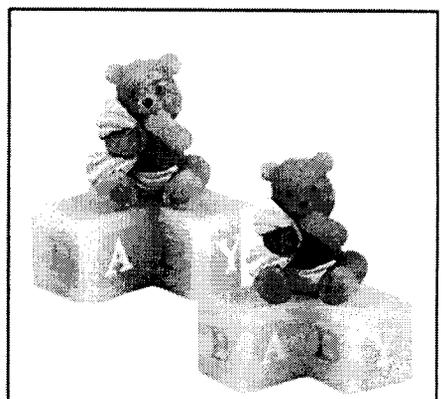
ITEM BY009

Qty: 48pcs/carton Wt.: 16.5 Lbs
 Burn time: 15-25hrs Size: 4" H



ITEM BY010*

Qty: 48pcs/carton Wt.: 17 Lbs
 Burn time: 15-20hrs Size: 4" H



ITEM BY011(Location:CA)*

Qty: 48pcs/carton Wt.: 16.1 Lbs
 Burn time: 15-25hrs Size: 3½" H



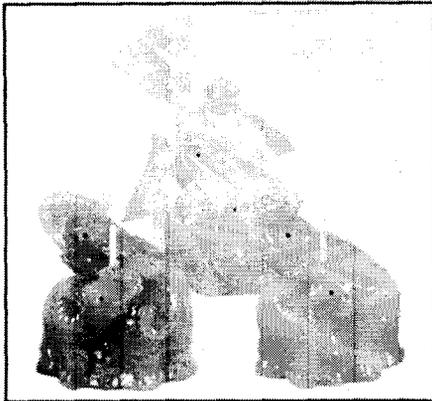
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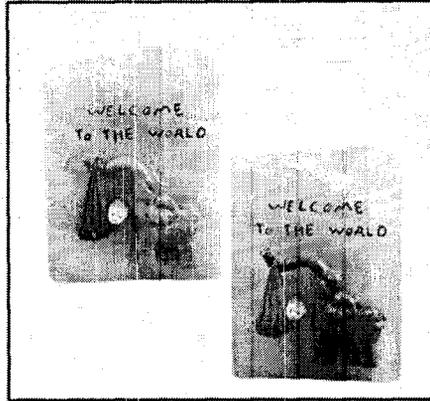
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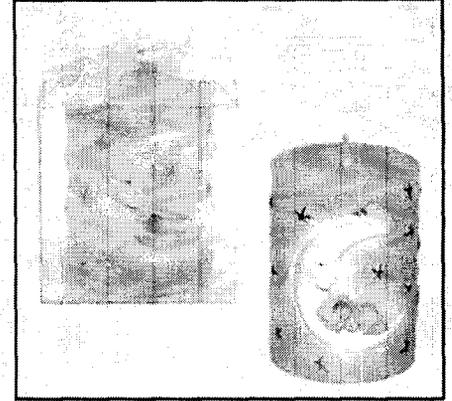
ITEM BY012

Qty: 48pcs/carton Wt.: 15.2Lbs
Burn time: 15-20hrs Size: 3 $\frac{1}{2}$ "H



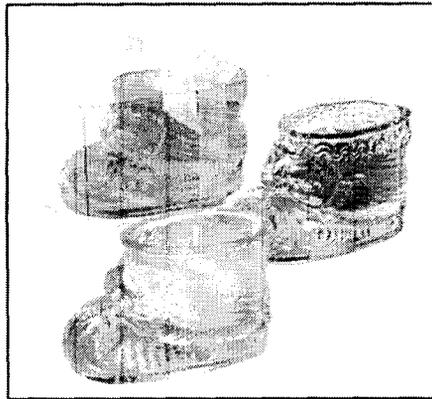
ITEM BY015*

Qty: 48pcs/carton Wt.: 15.4Lbs
Burn time: 10-20hrs Size: 3 $\frac{3}{4}$ "H



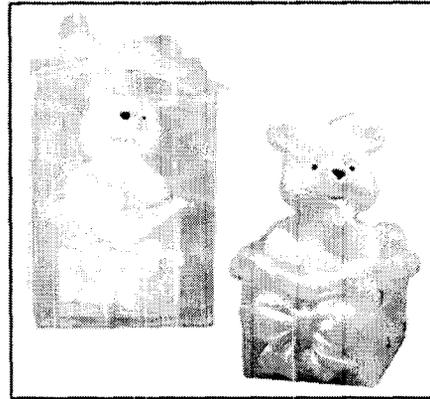
ITEM BY016

Qty: 48pcs/carton Wt.: 21.1 Lbs
Burn time: 15-25hrs Size: 2 $\frac{3}{4}$ "x3"H



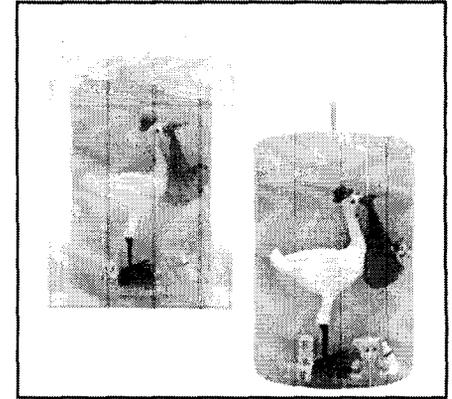
ITEM BY017

Qty: 48pcs/carton Wt.: 29 Lbs
Burn time: 5-10hrs Size: 2"H



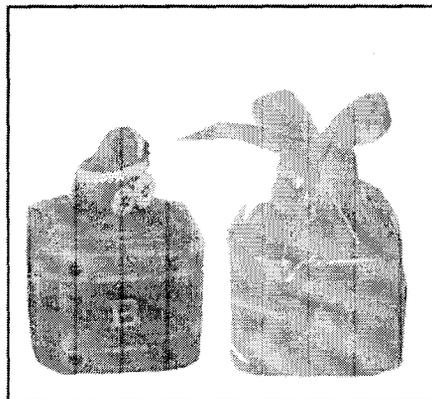
ITEM BY019*

Qty: 48pcs/carton Wt.: 18Lbs
Burn time: 15-25hrs Size: 3 $\frac{3}{4}$ "H



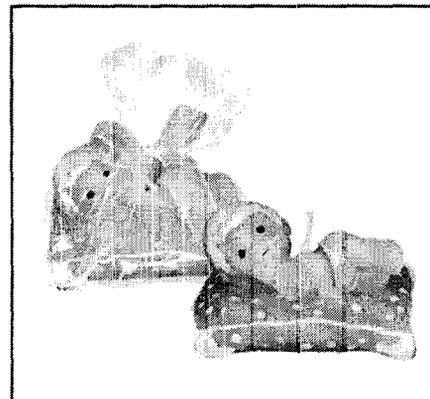
ITEM BY021

Qty: 48pcs/carton Wt.: 16Lbs
Burn time: 15-25hrs Size: 3 $\frac{1}{2}$ "H



ITEM BY022(Location:CA)*

Qty: 48pcs/carton Wt.: 15.4Lbs
Burn time: 15-25hrs Size: 3"H



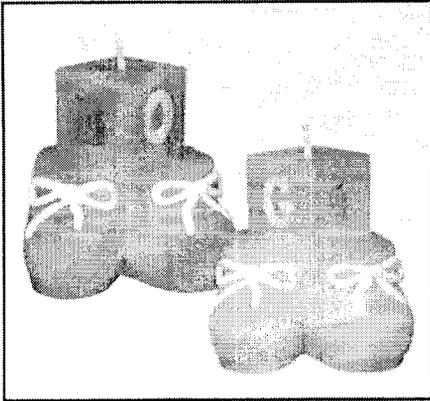
ITEM BY023

Qty: 48pcs/carton Wt.: 12.54Lbs
Burn time: 8-10hrs Size: 2"H



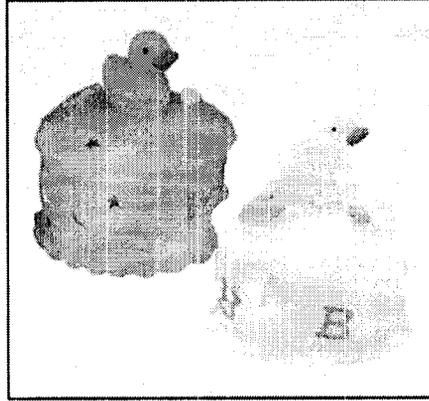
ITEM BY027*

Qty: 48pcs/carton Wt.: 15.5Lbs
Burn time: 15-25hrs Size: 3"H



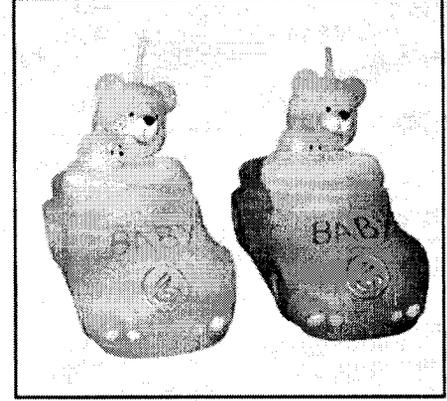
ITEM BY028*

Qty: 48pcs/carton Wt.: 17Lbs
 Burn time: 15-25hrs Size: 3" H



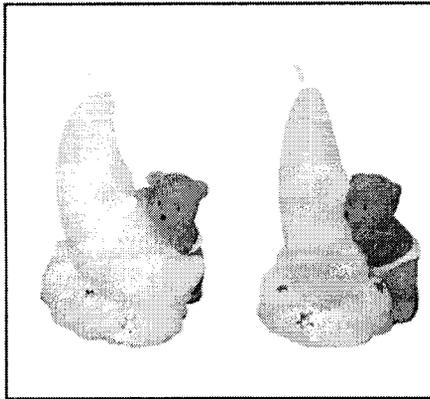
ITEM BY029

Qty: 48pcs/carton Wt.: 15.8 Lbs
 Burn time: 10-20hrs Size: 3" H



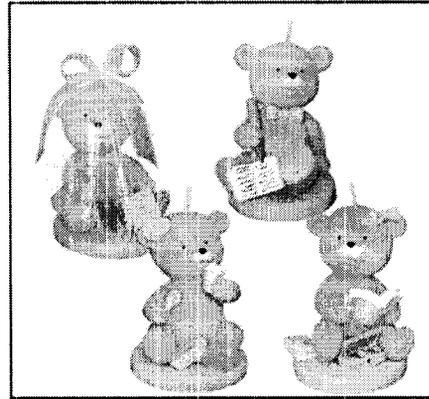
ITEM BY030(Location:CA)

Qty: 48pcs/carton Wt.: 12.5 Lbs
 Burn time: 10-15hrs Size: 3" H



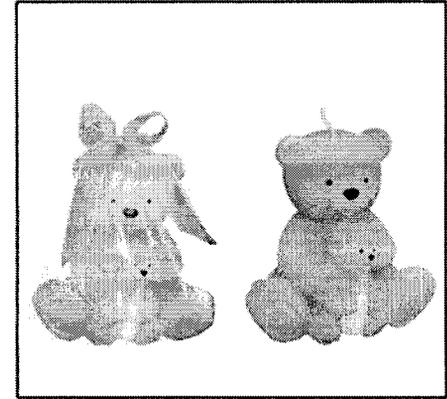
ITEM BY031*

Qty: 48pcs/carton Wt.: 12.5Lbs
 Burn time: 10-15hrs Size: 3 1/2" H



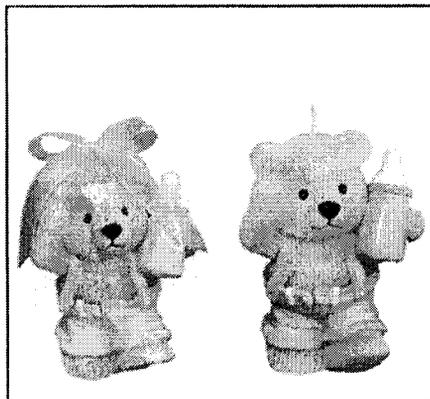
ITEM BY032*

Qty: 48pcs/carton Wt.: 13.81Lbs
 Burn time: 15-20hrs Size: 3 1/2" H



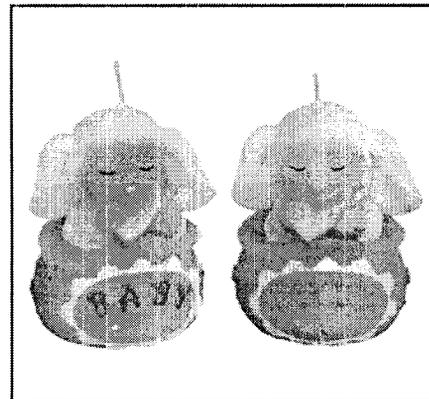
ITEM BY033

Qty: 48pcs/carton Wt.: 19.2Lbs
 Burn time: 15-25hrs Size: 3 1/2" H



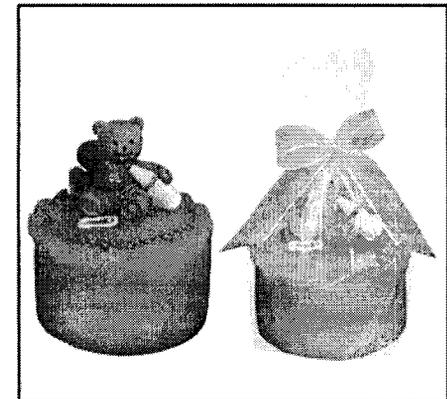
ITEM BY034*

Qty: 48pcs/carton Wt.: 15.5Lbs
 Burn time: 15-25hrs Size: 3 3/4" H



ITEM BY035*

Qty: 48pcs/carton Wt.: 21.8Lbs
 Burn time: 15-25hrs Size: 3 1/2" H



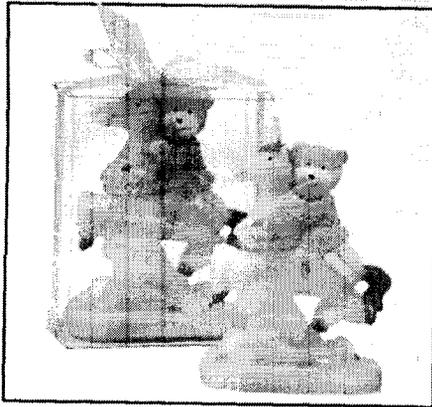
ITEM BY036*

Qty: 48pcs/carton Wt.: 16.1Lbs
 Burn time: 15-25hrs Size: 3" H

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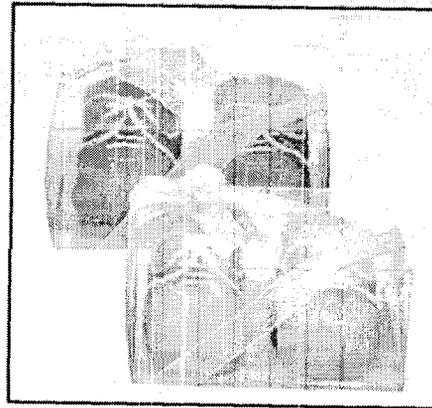


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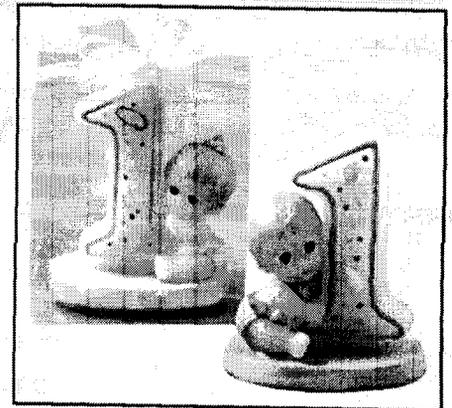
ITEM BY039

Qty: 48pcs/carton Wt.:12.54Lbs
 Burn time:10-15hrs Size: 4 1/2" H



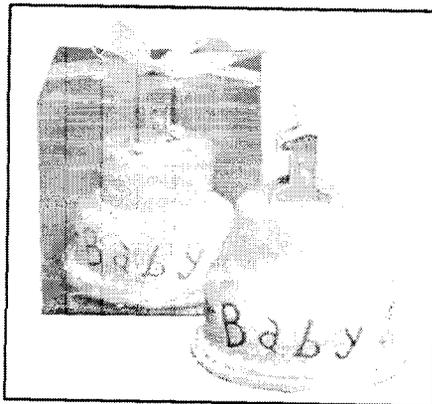
ITEM BY041

Qty: 48pcs/carton Wt.:14.52Lbs
 Burn time: 10-20hrs Size: 3" H



ITEM BY042(Location:CA)*

Qty: 48pcs/carton Wt.: 7.32Lbs
 Burn time: 2-4hrs Size: 3" H



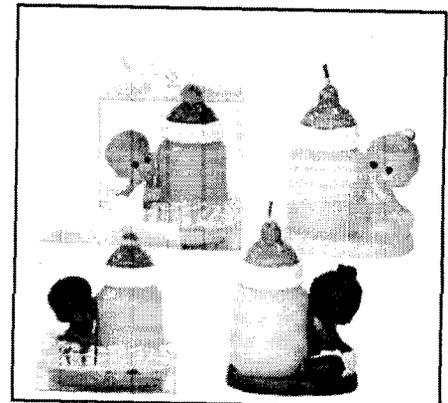
ITEM BY043

Qty: 48pcs/carton Wt.:9.52 Lbs
 Burn time: 4-8hrs Size:3"H



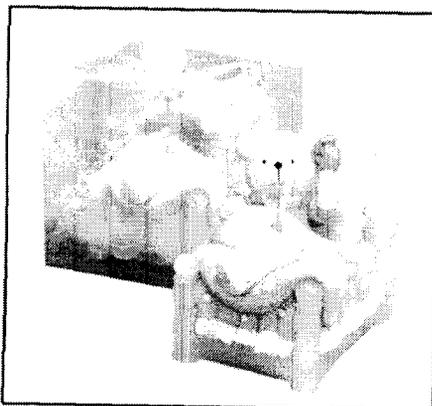
ITEM BY044

Qty: 48pcs/carton Wt.:9.90Lbs
 Burn time:3-5hrs Size:3 3/4" H



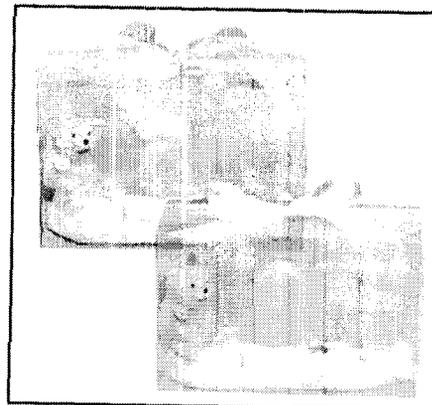
ITEM BY045(w. K)

Qty: 48pcs/carton Wt.: 9.91lbs
 Burn time:3-5hrs Size:3 1/2" H



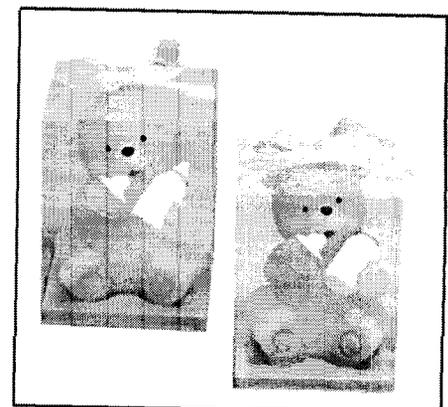
ITEM BY047

Qty: 48pcs/carton Wt.:9.91Lbs
 Burn time:5-8hrs Size: 2 1/4" H



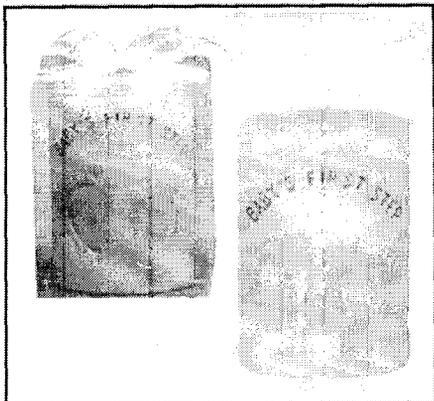
ITEM BY048(BY024)

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 Burn time:10-15hrs Size:2 1/2" H



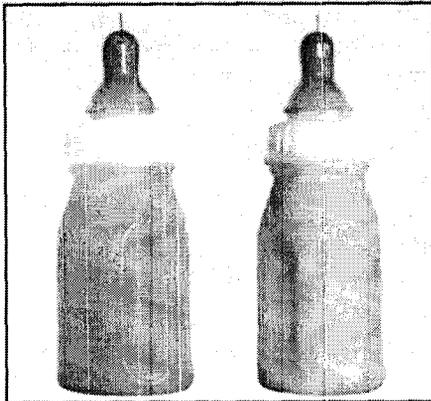
ITEM BY049

Qty: 48pcs/carton Wt.: 10.58Lbs
 Burn time: 15-25hrs Size: 3" H



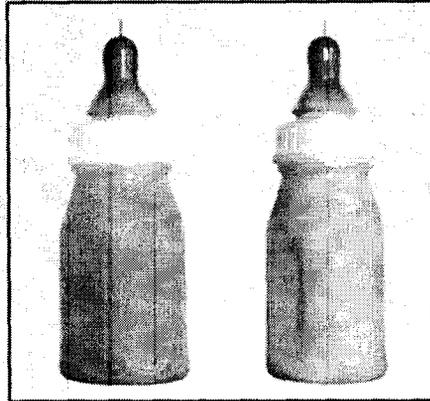
ITEM BY050(BY026)

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 Burn time: 15-25hrs Size: 3" H



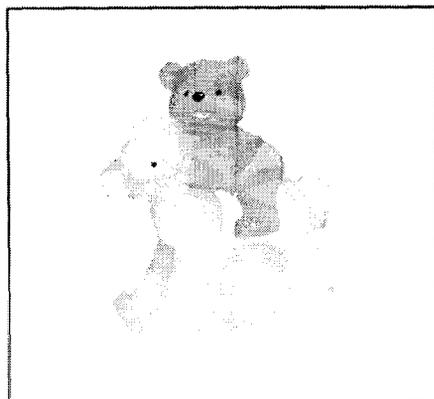
ITEM BB001

Qty: 1pcs/carton Wt.: 6.71Lbs
 Burn time: 80-100hrs Size: 15" H



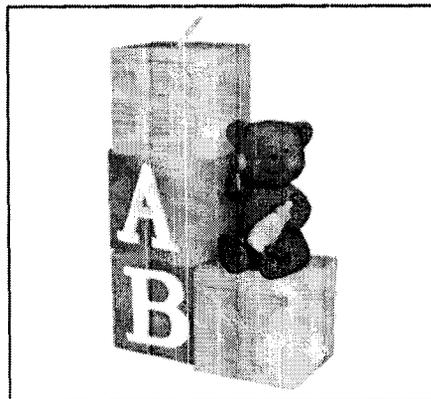
ITEM BB002

Qty: 12pcs/carton Wt.: 30Lbs
 Burn time: 40-60hrs Size: 11" H



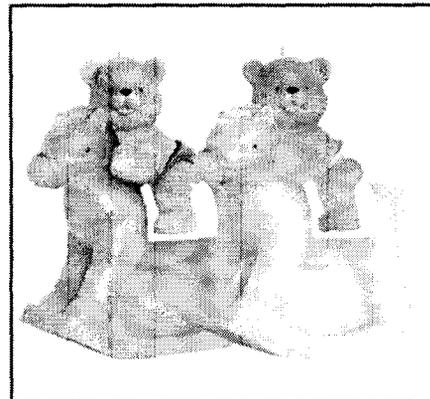
ITEM BB009

Qty: 1pcs/carton Wt.: 10.8Lbs
 Burn time: 80-120hrs Size: 13 1/2" H



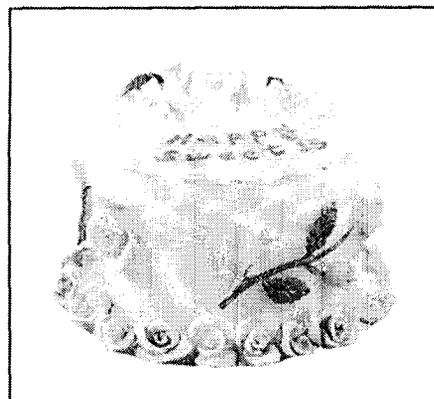
ITEM SB011L

Qty: 6pcs/carton Wt.: 45 Lbs
 Burn time: 50-60hrs Size: 9" H



ITEM SB020

Qty: 6pcs/carton Wt.: 45 Lbs
 Burn time: 30-50hrs Size: 7" H



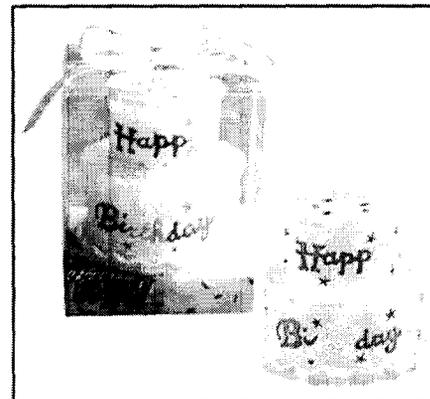
ITEM HS011

Qty: 48pcs/carton Wt.: 18.6 Lbs
 Burn time: 15-25hrs Size: 2" H



ITEM HS012

Qty: 48pcs/carton Wt.: 11.24Lbs
 Burn time: 15-25hrs Size: 2 1/2" H



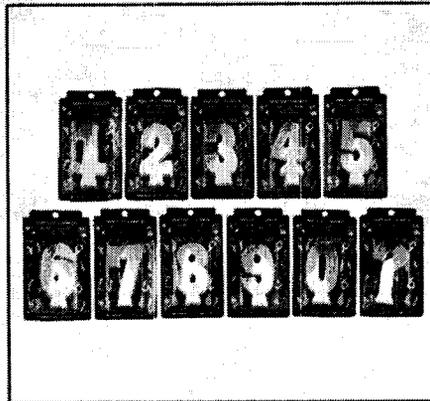
ITEM HS013

Qty: 48pcs/carton Wt.: 12.79Lbs
 Burn time: 15-25hrs Size: 2 1/2" H



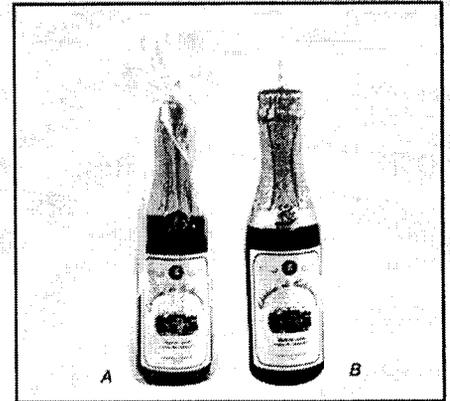
ITEM HS014

Qty: 36pcs/carton 8boxes/carton
 Wt.:33Lbs Burn time:3-5mins



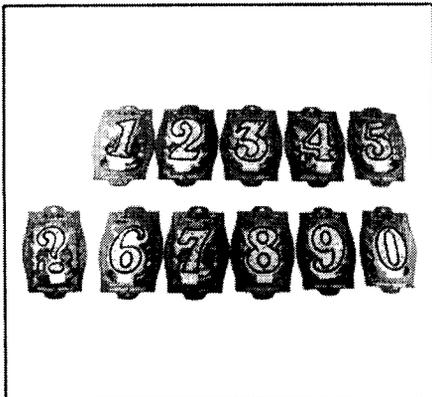
ITEM HS015

Qty: 12pcs/carton 30boxes/carton
 Wt.:30.9Lbs Burn time:0.5-1mins



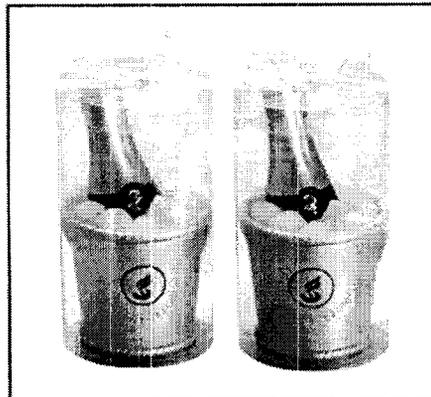
ITEM HS018(Location:CA)

Qty: 48pcs/carton Wt.:23.6Lbs
 Burn time: 15-20hrs Size: 6 3/4" H



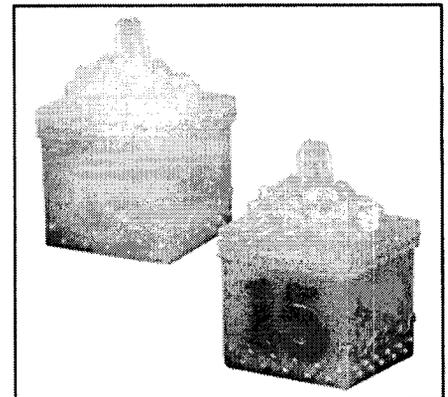
ITEM HS023(Location:CA)

Qty: 288pcs/carton Wt.: 30.9Lbs
 Burn time: 0.5-1mins



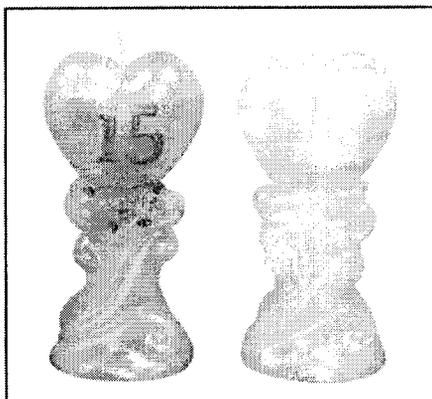
ITEM HS028

Qty: 48pcs/carton Wt.:19.5Lbs
 Burn time: 10-20hrs Size: 4 1/2" H



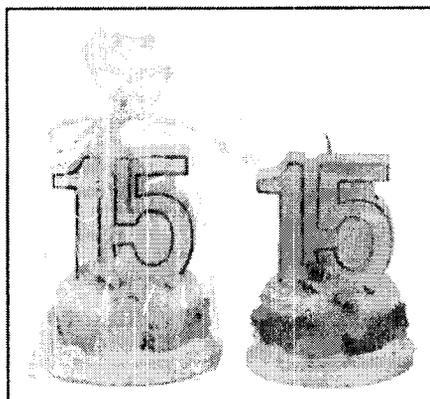
ITEM HS030*

Qty: 48pcs/carton Wt.:18.70Lbs
 Burn time:10-15hrs Size: 3" H



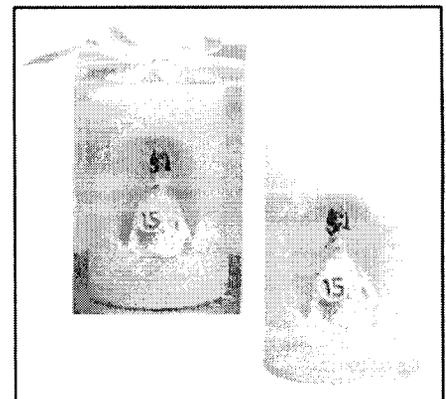
ITEM HS031*

Qty: 48pcs/carton Wt.: 15.62Lbs
 Burn time: 10-15hrs Size: 4 1/2" H



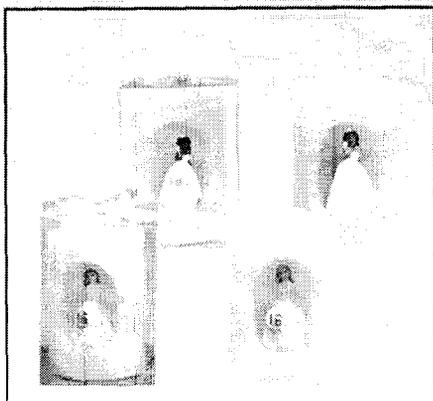
ITEM HS032(Location:CA)*

Qty: 48pcs/carton Wt.: 16.28Lbs
 Burn time:15-25hrs Size: 4 1/2" H



ITEM HS035W

Qty: 48pcs/carton Wt.: 17.4Lbs
 Burn time:3-5hrs Size:02 1/4" x 3 3/4" H



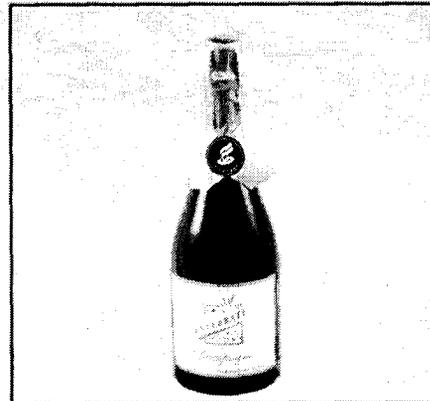
ITEM HS036(w. K)

Qty: 48pcs/carton Wt.: 17.4Lbs
 Burn time: 3-5hrs Size: $\text{O}2\frac{1}{4} \times 3\frac{3}{4}$ "H



ITEM HS037K

Qty: 48pcs/carton Wt.: 12.35 Lbs
 Burn time: 10-20hrs Size: 6" H



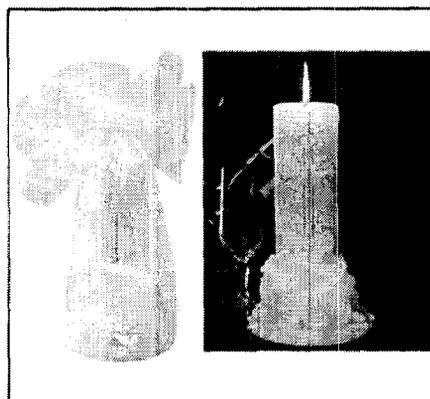
ITEM HH001

Qty: 12pcs/carton Wt.: 20Lbs
 Burn time: 40-50hrs Size: $\text{O}3\frac{1}{4} \times 12$ "H



ITEM HH002

Qty: 24pcs/carton Wt.: 31.5Lbs
 Burn time: 40-50hrs Size: $\text{O}3\frac{3}{4} \times 12$ "H



ITEM HH018(Location:CA)

Qty: 6pcs/carton Wt.: 23.6Lbs
 Burn time: 90-120hrs Size: 10 $\frac{1}{2}$ "H



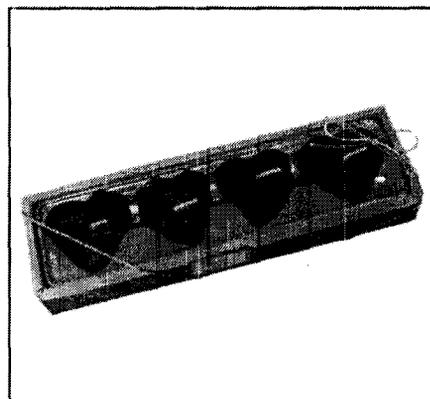
ITEM HH019(Location:CA)

Qty: 12pcs/carton Wt.: 25.5Lbs
 Burn time: 80-100hrs Size: $\text{O}3 \times 9$ "H



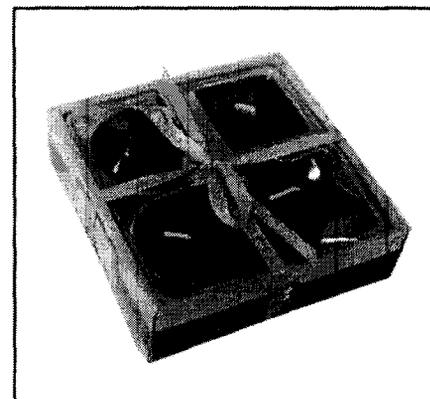
ITEM HH021

Qty: 6pcs/carton Wt.: 19.8Lbs
 Burn time: 10-30hrs Size: 10 $\frac{1}{2}$ "H



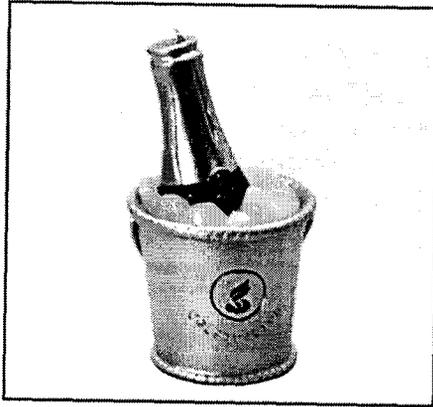
ITEM HH024(Location:CA)

Qty: 48pcs/carton Wt.: 16.9Lbs
 Burn time: 3-5hrs Size: 1" H



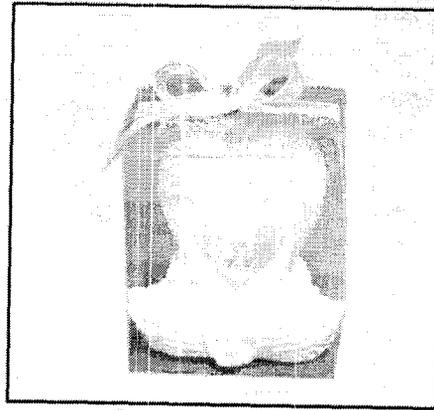
ITEM HH025(Location:CA)

Qty: 48pcs/carton Wt.: 16.5Lbs
 Burn time: 3-5hrs Size: 1" H



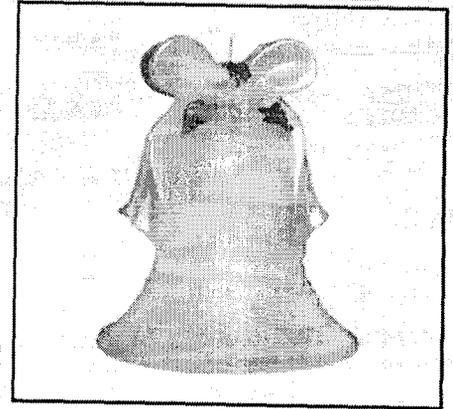
ITEM HH028

Qty: 6pcs/carton Wt.: 16.1Lbs
 Burn time: 20-30hrs Size: 9 1/2" H



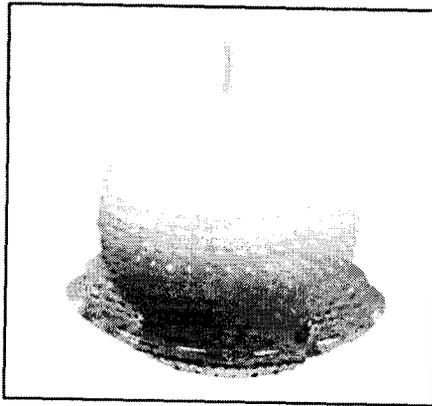
ITEM WD001

Qty: 48pcs/carton Wt.: 14.1Lbs
 Burn time: 15-25hrs Size: 3" H



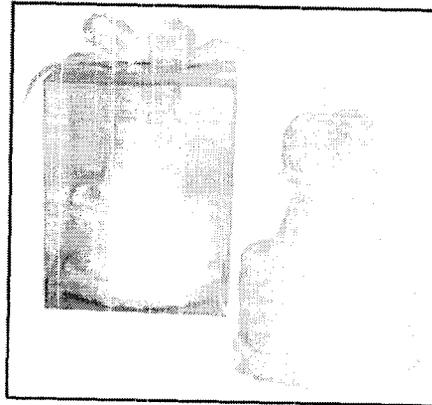
ITEM WD003

Qty: 48pcs/carton Wt.: 16.2Lbs
 Burn time: 15-25hrs Size: 3 1/4" H



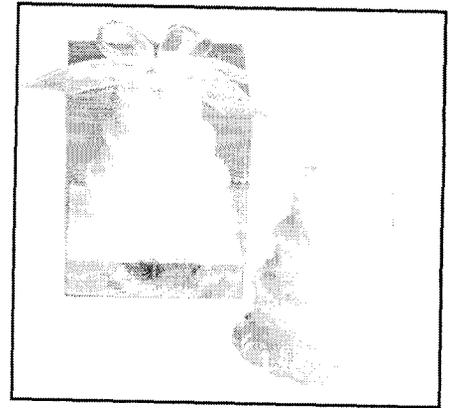
ITEM WD005

Qty: 48pcs/carton Wt.: 22.93Lbs
 Burn time: 15-20hrs Size: Ø3"



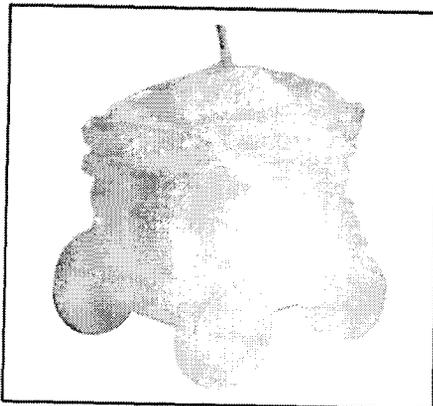
ITEM WD006

Qty: 48pcs/carton Wt.: 13Lbs
 Burn time: 15-25hrs Size: 3 1/2" H



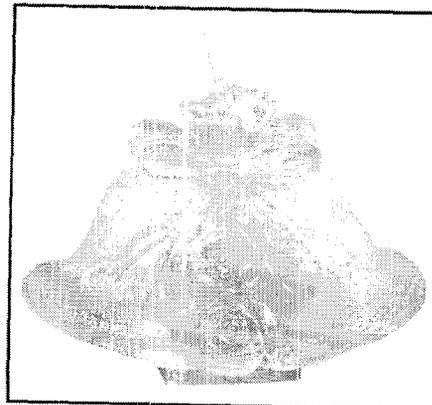
ITEM WD008

Qty: 48pcs/carton Wt.: 14.02Lbs
 Burn time: 15-25hrs Size: 3" H



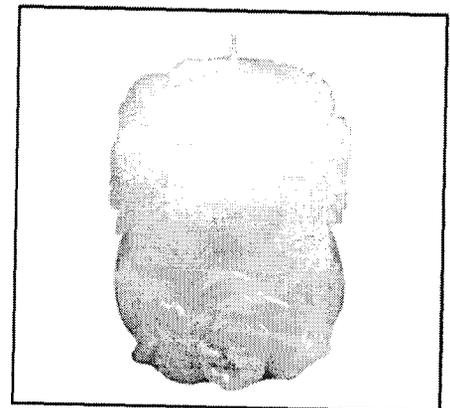
ITEM WD011*

Qty: 48pcs/carton Wt.: 16Lbs
 Burn time: 10-15hrs Size: 3 1/4" H



ITEM WD012(Location: CA)*

Qty: 48pcs/carton Wt.: 13.42Lbs
 Burn time: 10-15hrs Size: 3" H



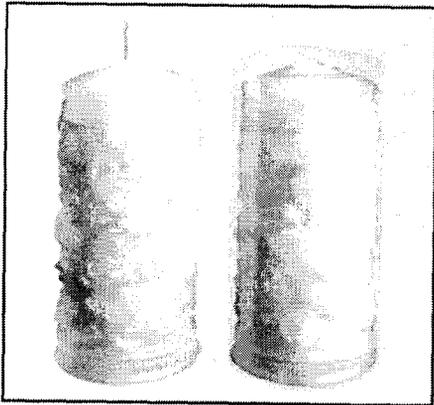
ITEM WD013(Location: CA)*

Qty: 48pcs/carton Wt.: 48.2Lbs
 Burn time: 20-30hrs Size: Ø3"x4"H

☆ LA info@hseusa.com
 5709 E. 61st Street Commerce, CA 90040
 T: 323.278.0888 F: 323.278.0999

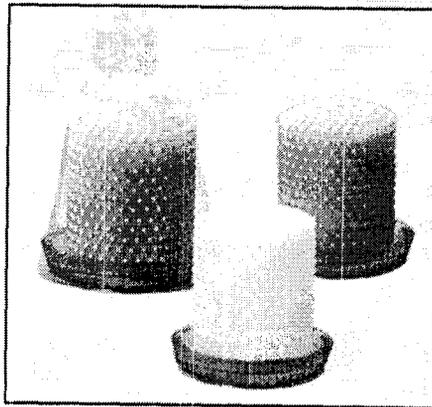


☆ NYC http://www.hseusa.com
 5202 3rd Avenue Brooklyn, NY 11220
 T: 718.567.3388 F: 718.567.8221



ITEM WD015(Location:CA)*

Qty: 48pcs/carton Wt.:20.9Lbs
 Burn time: 20-30hrs Size:Ø2¼"x5"H



ITEM WD018

Qty: 48pcs/carton Wt.:32Lbs
 Burn time:20-30hrs Size:2½"x3" H



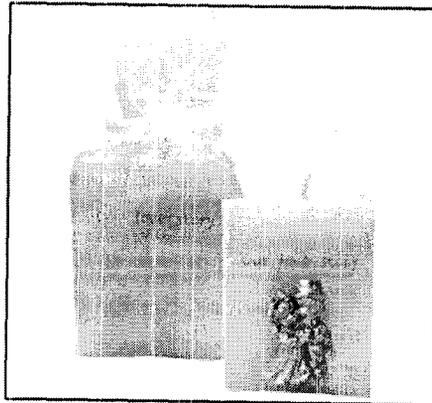
ITEM WD019*

Qty: 48pcs/carton Wt.: 12.5Lbs
 Burn time: 20-25hrs Size:5" H



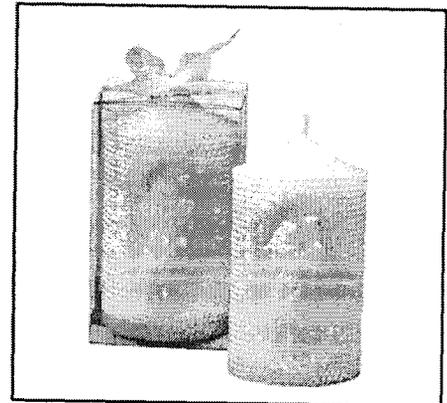
ITEM WD020*

Qty: 48pcs/carton Wt.: 18.2Lbs
 Burn time:15-20hrs Size: 4" H



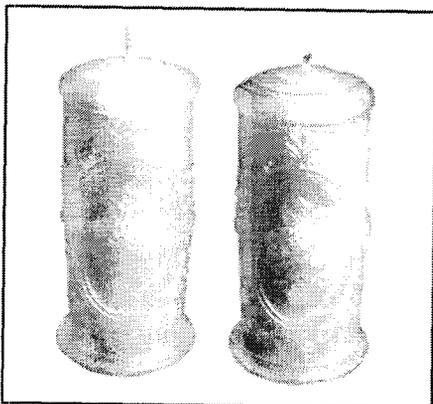
ITEM WD021*

Qty: 48pcs/carton Wt.: 19.2Lbs
 Burn time:15-20hrs Size: 4" H



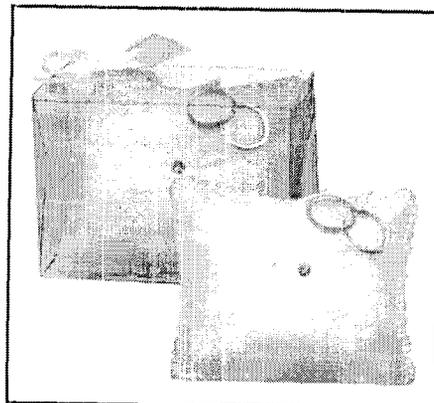
ITEM WD025

Qty: 48pcs/carton Wt.: 18.70Lbs
 Burn time:20-30hrs Size:Ø3"x5" H



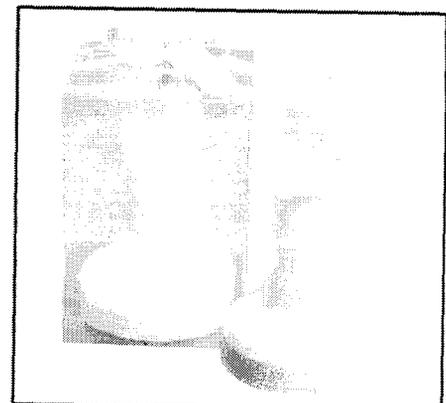
ITEM WD014(Location:CA)*

Qty: 48pcs/carton Wt.:19.8Lbs
 Burn time: 20-30hrs Size:Ø2¼"x5" H



ITEM WD026

Qty: 48pcs/carton Wt.: 18.04Lbs
 Burn time:4-6hrs Size: 3" H



ITEM WD027

Qty: 48pcs/carton Wt.:11.02Lbs
 Burn time:9-11hrs Size: 4" H

Exhibit 2

CANDLES FROM THE PEOPLE'S REPUBLIC OF CHINA

**Determination of the Commission in
Investigation No. 731-TA-282
(Final) Under the Tariff
Act of 1930, Together With
the Information Obtained in
the Investigation**



USITC PUBLICATION 1888

AUGUST 1986

Nature and Extent of Sales at LTFV

On July 10, 1986, Commerce issued its final determination that petroleum wax candles from China are being, or are likely to be, sold in the United States at a weighted-average margin of 54.21 percent ad valorem. In making its decision of sales at LTFV, Commerce compared the U.S. price with the foreign market value. The U.S. price was represented by the purchase price of the subject merchandise on the basis of c.i.f. prices with deductions, when applicable, for ocean freight and marine insurance. Commerce concluded that China is a state-controlled economy, so the foreign-market value was based on the weighted-average price of candles imported into the United States from Malaysia.

In responding to petitioner's allegation that imports of petroleum wax candles from China present "critical circumstances", Commerce found that import levels of the subject merchandise for equal periods immediately preceding and following the filing of the petition were not massive; this analysis also took seasonal factors into consideration. Therefore, Commerce determined that critical circumstances within the meaning of section 735(a)(3) of the Tariff Act of 1930 (19 U.S.C. 1673d(a)(3)) do not exist for imports of candles from China.

On March 20, 1986, Commerce clarified the scope of products subject to investigation in a communication to all customs field offices. Commerce specified that the products under investigation are certain scented or unscented petroleum wax candles sold as tapers, spirals, straight-sided dinner candles, rounds, columns, pillars, votives, and various wax-filled containers. Candles not described, such as birthday, birthday numeral, and figurine type candles, are outside the scope of the investigation.

The Products

Description and uses

A candle is made of solid, fusible, combustible waxes or fatty substances surrounding and saturating a combustible wick. Candles are used to give light, heat, or scent, or are used for celebration or votive purposes.

As a candle burns, its flame is fed by a supply of melted wax that flows up the wick as a result of capillary action. Wax is melted as the flame runs down the wick, and a cup of melted wax forms as the outside layer of the candle is cooled by the upward current of air produced from the heat of the candle. A candle burning properly is the result of interactions among candle diameter, wax, wick, air movements, drafts, and other factors. 1/

History.--Candles were among the earliest inventions, as shown by candlesticks from Egypt and Crete dating back to 3000 B.C. By the 13th century, tallow candles were in wide use, with 71 candle makers named in a 1292 Paris tax list. 2/

1/ Coggshall & Morse, Beeswax, Ithaca, NY, 1984, p. 127.

2/ New Encyclopedia Britannica, vol. 2-Micropaedia, 1985, p. 798.

Exhibit 3

May 28, 1993
A-570-504
Scope Review
Public Document
OADC:SLY

By Certified Mail, Return Receipt Requested

On November 12, 1992, the San Francisco Candle Company (the Company), requested that the Department of Commerce (the Department) issue a scope ruling that the Company's candles, numbered 30814, 30804, 30820, 36642, be found outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China.

On December 16, 1992, the Company requested that additional candles be found outside the order, based on the industry definition of a "round." The same letter also requested exclusion from the order based on the origin of the raw materials used in producing them. Finally, the Company requested exemption from the order based on a previous scope ruling relating to scenes or symbols of religious holidays.

We evaluated the Company's application in accordance with 19 C.F.R. §353.29(i)(1). Based on the product descriptions contained in the petition, the initial investigation, and the determinations of the Department and the International Trade Commission (ITC), the Department determines that all spherical candles (including candles 30804 and 36642), candles numbered 30814 and 30812 (oval-shaped), and candle 30820 (in the shape of a mushroom) to be novelty candles outside of the scope of the order. The Department finds all holiday candles specifically included in the request to be within the scope of the order. Finally, the Department finds that all candles made for the company with U.S. petroleum wax to be within the scope of the order.

Enclosed is a memorandum explaining our decision. We will notify Customs of this decision. If you have any questions, please contact Sandra Yacura at (202) 482-4851.

Sincerely,

Laurie A. Lucksinger
Division Director
Office of Antidumping Compliance

Enclosure

May 28, 1993

A-570-504
Scope Review
Public Document
OADC:SLY

MEMORANDUM FOR: Joseph A. Spetrini
Deputy Assistant Secretary for Compliance
THROUGH: Roland L. MacDonald, Director
Office of Agreements Compliance

FROM: Holly A. Kuga, Director
Office of Antidumping Compliance

SUBJECT: Final Scope Ruling - Petroleum Wax Candles From the People's Republic of China (A-570-504): San Francisco Candle Company

1. SUMMARY

On November 12, 1992, the San Francisco Candle Company (the Company) requested that the Department of Commerce (the Department) issue a ruling that the Company's candles, numbered 30814, 30804, 30320 and 36642, are outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

An additional request was received dated December 16, 1992 from the same company, requesting that all their candles be found outside the order, based on the origin of the raw materials used in producing them. The same letter also requested a ruling that all of the Company's sphere-shaped candles be found outside the scope of the antidumping duty order, based on the industry definition of a "round." A last request for exemption from the same order was for all of the Company's holiday candles, based on a previous scope ruling relating to "scenes and symbols" of religious holidays.

The product descriptions contained in the petition, the initial investigation, and the determinations of the Department and the International Trade Commission (ITC) are dispositive concerning whether the merchandise in question is within the scope of the order. Therefore, a formal investigation was not initiated.

The Department determines that all spherical candles (including candles 30804 and 36642), candles numbered 30814 and 30812 (oval-shaped), and candle 30820 (in the shape of a mushroom) are novelty candles outside of the scope of the order. The Department determines that the holiday candle argument is moot, as the holiday candles listed are spherical-shaped. Finally, the Department finds that all candles made for the company with U.S. petroleum wax to be within the scope of the order.

2. BACKGROUND

a. Scope of the Order

The products covered by this order are "certain 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." (See Petroleum Wax Candles from the People's Republic of China: Final Determination of Sales at Less than Fair Value, July 10, 1986 (Final Determination).)

The need for scope clarification has arisen on several occasions prior to this scope determination request. In a notice to the U.S. Customs Service, the Department clarified that "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 and numerals)." (See CIE N-212/85, September 21, 1987 (Emphasis added).)

b. Request

On November 12, 1992, San Francisco Candle Company filed a letter with the Department requesting a scope determination to ascertain whether four specific candles imported by the Company fall within the scope of the order on candles from the PRC. Candle numbered 30820 is mushroom-shaped, 30814 is oval or egg-shaped, 30804 and 36642 are spherical. The Company stated that the candles are shaped in the form of "identifiable objects" and therefore requested that they be found outside the scope of the order. (See letter from San Francisco Candle Company to the Department, November 12, 1992.)

An additional letter by the same company requested that all candles imported by the Company be found outside the order based on the origin of the raw materials used in the production of their candles. The Company stated

that the candles are made of petroleum wax from the United States which is shipped to the PRC for processing. The Company considers the production of these candles as a value-added process and, for this reason, requests exclusion from the antidumping duty order for all of its candles. (See letter from San Francisco Candle Company to the Department, December 16, 1992.)

In the same letter, the Company requested that all spherical candles be found outside the same order on the basis that, in the language of the candle industry, the term "rounds" refers to "pillars" or "columns" and not "spheres" and this specific type of candle is not included in the list of shapes covered in the order. (See *ibid.*)

The last ruling request was that all holiday candles made by the Company be found outside the same antidumping duty order. This request is based on a previous scope ruling relating to "scenes and symbols" of "religious holidays." (See *ibid.*)

In conjunction with its letters, the Company sent a brochure containing photographs of the candles in question as well as product samples. All candles are multicolored with cotton wicks and made from petroleum wax.

3. ANALYSIS

In accordance with Section 353.29 (i)(l) of the Department's regulations, in analyzing the scope request in this proceeding, the Department took into account the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Department and the ITC.

The candles submitted to the Department by the Company are made of petroleum wax and contain a cotton wick. Thus, on their face, these candles would appear to fall within the scope of this order. Accordingly, the Department must determine whether there are any other distinguishing characteristics that provide a basis for their exclusion.

In its letter, the Company requested that its candles numbered 30814, 30804, 30820 and 36642 be found outside the order, based on the fact that these candles are "shaped in the form of identifiable objects." The Company's candles numbered 36642 and 30804 are spherical in shape. Therefore, any determination based on the shape of these two candles would also apply to the request made by the Company for a ruling on all its spherical-shaped candles. The Company requests that all of its spherical-shaped candles be found outside the duty order based on the fact that, in the language of the candle industry, the term "rounds" refers to "pillars" or "columns" and not "spheres."

The petition and order specifically listed the shapes: "tapers, spirals, and straight—sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers." The petitioner supports the Company's claim that industry definition of "'rounds' refers to round shaped columns or pillars." (See Letter from Barnes & Thornburg on behalf of the National Candle Association, May 3, 1993.) Therefore the order did not specifically encompass ball-shaped candles.

As the order specifically lists the shapes that it does encompass, and because ball-shaped candles are not one of these shapes, ball-shaped candles are found outside the scope of the order. This argument also applies to Candle 30814, which is oval-shaped, and Candle 30820, which is mushroom-shaped. The petitioner did not object to the exclusion of the candles of these shapes. (See *ibid.*)

The Company's additional argument that these same candles be excluded from the order under the "identifiable object" precedent, is moot as the candles have been found outside the scope.

The Company requested that all of its candles be found outside the scope of the order based on the origin of the raw materials used in producing them. However, U.S. origin of input materials does not necessarily preclude inclusion within the scope of an order. The input materials are transformed into candles in the PRC. Moreover, the candles enter the United States as products of the PRC, a fact that appears not to be disputed. As no contrary information or argument has been presented, the Department has no basis to question the country of origin of these candles as the PRC.

The Company's additional argument, that its "Christmas Pattern" candles should be excluded from the order

under the holiday novelty candle precedent, is also moot, as these candles have been found outside the scope based on their spherical shape.

4. CONCLUSION

The product descriptions contained in the petition, the initial investigation, and the determinations of the Department and the ITC are dispositive concerning whether the merchandise in question is within the scope of the order. Ball-shaped candles are not included on the list of shapes of candles encompassing the order. Shapes not specifically listed are considered novelty candles and are therefore found outside of the order. Candles 30814 and 30820, which are oval and mushroom-shaped, are excluded from the order on this same basis.

The Company's "Christmas Pattern" argument was not considered, as these candles were excluded from the order based on their spherical shapes.

The Company's candles made from U.S. petroleum wax are found inside the order, as U.S. origin of input materials does not necessarily preclude inclusion within the scope of an order.

5. RECOMMENDATION

That the Department find candle numbered 30820, in the shape of a mushroom, outside the scope of the antidumping duty order on petroleum wax candles.

Agree Disagree

That the Department find candles numbered 30814, 30804, and 36642 and all spherical-shaped candles outside the scope of the antidumping duty order on petroleum wax candles.

Agree Disagree

That the Department find specific holiday candles within the scope of the antidumping duty order on petroleum wax candles.

Agree Disagree

If you agree, we recommend sending the attached letter to interested parties.

Agree Disagree

Joseph A. Spetrini
Deputy Assistant Secretary for Compliance
6/9/93

Date

Attachment

Exhibit 4

DEC 9 1996

A-570-504
Scope Inquiry
Public Document
AD/CVD Enforcement: RMT

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

To All Interested Parties:

On March 28, 1995, the Department of Commerce (the Department) received a request from Mervyn's for a ruling on whether a candle in the shape of a cube or square is outside the scope of the order on petroleum wax candles from the People's Republic of China (PRC). On October 11, 1995, Enesco Corporation (Enesco) requested that the Department determine whether its square or cube shaped candles are outside the scope of the order. Similarly, on December 5, 1995, Midwest of Cannon Falls (Midwest) requested that the Department issue a ruling on whether its cube or square shaped candles are within the scope of the order.

Because these inquiries presented an issue of significant difficulty, the Department preliminarily determined that the above referenced products are within the scope of the order. Interested parties were invited to comment on this preliminary determination. Pursuant to 19 CFR 353.29(i)(2), the Department has reached a final determination that petroleum wax candles in the shape of a cube or square, imported by Mervyn's, Enesco, and Midwest, are within the scope of the order.

We will notify the U.S. Customs Service of this decision. If you have any questions concerning this matter, please contact Ron Trentham or Zev Primor at (202) 482-5253.

Sincerely,

Holy A. Kuga
Senior Director
AD/CVD Enforcement, Group II

Enclosure

DEC 9 1996

Scope Inquiry
Public Document
AD/CVD Enforcement: RMT

MEMORANDUM Jeffrey P. Bialos
FOR: Principal Deputy Assistant Secretary
 for Import Administration

FROM: Holly A. Kuga, Senior Director
 Office of AD/CVD Enforcement, Group II

SUBJECT: Final Scope Ruling--Antidumping Duty Order on Petroleum
 Wax Candles from the People's Republic of China--Request
 for Rulings on a Petroleum Wax Candle in the Shape of a
 Cube or Square

Summary

Pursuant to 19 CFR 353.29(i) (2), we recommend that the Department of Commerce (the Department) determine that petroleum wax candles in the shape of a cube or square, imported by Mervyn's, Enesco Corporation (Enesco) and Midwest of Cannon Falls (Midwest) are within the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) (51 PR 20686, August 28, 1986)

Background

On March 28, 1995, Mervyn's wrote to the Department seeking clarification as to whether a candle in the shape of a cube or square, imported by Mervyn's, is covered by the antidumping duty order on petroleum wax candles from the PRC. The candle in question is made of petroleum wax and it is in the shape of a cube or square which has a wick and measures 3" x 3" x 3". The National Candle Association (NCA), petitioner in the original less than fair value (LTFV) investigation, objected to Mervyn's exclusion request in a June 12, 1995, letter.

Based on Mervyn's request, the Department initiated a formal scope inquiry on June 28, 1995, to determine whether the product in question is included within the scope of the antidumping duty order pursuant to 19 CFR 353.29(b). Interested parties were invited to submit comments and/or factual information concerning the matter. Comments were received from Mervyn's and NCA on July 18, 1995. Rebuttal comments were received from NCA on July 28, 1995.

On October 11, 1995, Enesco requested that the Department determine that its candles of blue, red, or white wax, approximately 3" x 3" x 3" with a star, moon or sun decoration and with gold glitter are outside the scope of the order. Enesco argues that its candles are outside the scope of the order because the Department has ruled 'that only "listed shapes are within the scope of the order" and cube or square is not one of the shapes listed. Similarly, on December 5, 1995, Midwest requested that the Department finds its cube shaped candles which are described as being 3-1/4" x 3-1/4" x 3-1/4" and consisting of white transparent petroleum wax outside the scope of the order. According to Midwest, under the surface of the candles, there are pine cones and pine branches that are visible on the surface. Midwest claims that its candle should be excluded because it is not one of the listed shapes covered by the order. Further, Midwest contends that the decorative material on or in the wax excludes the candle from the order.

On January 26, 1996, NCA submitted comments in response to Enesco's submission.

According to NCA, the physical characteristics of cube-shaped candles are similar to those of straight-sided column or pillar candles which are covered by the order and, thus, are within the scope of the order. In addition, NCA argues that neither the colors nor the star, moon, or sun decorations in gold glitter provide anything that differentiates these candles from those that are subject to the order. In addition, on July 19, 1996, NCA submitted comments in response to Midwest's scope request. NCA maintains that square shaped candles fall in the category of straight-sided or column candles. Further, it claims that the pine cones and pine branches are not exclusionary characteristics that limit the candles to a specific holiday.

On October 23, 1996, the Department issued a preliminary determination that the cube or square candles, imported by Mervyn's, Enesco, and Midwest, are within the scope of the order. Interested parties were invited to comment within 25 days of the date of the preliminary determination. No interested party submitted comments.

Analysis

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 353.29. On matters concerning the scope of an antidumping duty order, the normal bases for determining whether a product is included within the scope of the order are the descriptions of the product contained in the determinations of the Secretary and the ITC, the petition, and subsequent scope rulings. This determination may take place with or without a formal scope inquiry (see 19 CFR 353.29(b)). If these descriptions are not dispositive, the Department refers to the criteria listed under 19 CFR 353.29(i)(2).

Documents, or parts thereof, from the underlying investigations and prior scope rulings 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 record for this scope determination.

The petition stated that the candles subject to investigation were made "from petroleum wax and contain fiber or paper-cored wicks." According to the petition, the candles 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...

See Petition at 6-7.

The ITC in its final determination stated that the imports from the PRC are:

scented and unscented petroleum wax candles having fiber or paper-cored wicks. They are made in various shapes and sizes, including tapers, spirals, straight-sided dinner candles, rounds, columns, pillars, votives, and various wax filled containers as provided in the Tariff Schedules of the United States (TSUSA) item number 755.25 "Candles and Tapers."

See Candles from the People's Republic of China, (Final) USITC Publication 1888, August, 1986, at 4.

The Department defined the scope of the order as:

[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.

See Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986).

Relevant to the present scope issue is a notice issued to the United States Customs Service (Customs) by the Department 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).

See CIE N-212/85. September 21, 1987; Letter, Director, Office of Compliance to Burditt, Bowles & Radzius. Ltd., July 13, 1987.

The issue presented by this scope inquiry is whether the cube or square shaped candles imported by Mervyn's, Enesco, and Midwest are straight-sided pillar or column candles covered by the scope of the order. Since the underlying record established in this scope inquiry--the petition, the Department and ITC final determinations and the order--does not provide a definition of the shapes included within the scope of the order, the Department has considered the factors provided under 19 CFR 353.29(i) (2), known commonly as Diversified Products criteria. These criteria are: (1) physical characteristics of the product; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product, and (4) the channels of trade. In considering these criteria we will discuss almost entirely submissions regarding Mervyn's candle because the arguments presented by Enesco and Midwest mirror those presented by Mervyn's and because the comments presented for the record by both the applicant and petitioner in Mervyn's scope inquiry are more extensive. However, because of the similarity of the candles covered by the Mervyns, Enesco and Midwest request, we intend that this ruling apply to Enesco and Midwest as well.

Physical Characteristics

The candle imported by Mervyn's is a petroleum wax candle in the shape of a cube or square which has a wick and measures 3" x 3" x 3". In addition, the candle possesses a raised relief design of the sun with a face. Mervyn's asserts that it is clear from the language of the order that a candle in the shape of a cube or square is not within the scope of the order. According to Mervyn's, the order specifically names the shapes covered, and cube or square shaped candles are not listed. Moreover, Mervyn's alleges that the Department in a scope ruling issued to the San Francisco Candle Company (the Company) on May 28, 1993, clarified its intent to limit the scope to the shapes named in the order by stating that "[s]hapes not specifically listed are considered novelty candles and are therefore outside the order." See Mervyn's Letter, March 28, 1995. Further, Mervyn's argues that by its very definition, a cube or square is not a column nor is it a pillar. Mervyn's maintains that "[t]he definitional exclusion of 'cube' or 'square' candles from the traditional columns' or 'pillars' defined in the order" is evidenced by the pages from the 1994 catalogue of Colonial Candle of Cape Cod which show "that the industry distinguishes 'square candles' from 'pillar' candles." Moreover, Mervyn's claims that the "peculiar cube shape" of its candle "in conjunction

with the permanent molded raised-relief design of the sun with a face clearly makes the candle a novelty candle outside the scope of the order." See Mervyn's Letter, July 18, 1995.

The NCA counters that the physical characteristics of the candle, imported by Mervyn's, are the same as those candles subject to the scope of the order. NCA states that the candle in question is not a Christmas or novelty candle and that the design of the sun with a face does not relate to any holiday recognized in the United States. Further, NCA contends that Mervyn's candle is a scented or unscented petroleum wax candle, it has a wick, it burns and it emits light, and it is sold in the shape of a pillar or column. NCA explains that pillars or 'columns come in various shapes and sizes, including straight-sided, fluted, triangular, hexagonal and cylindrical shapes. According to NCA, the candle, imported by Mervyn's, is a straight-sided column or pillar, and therefore falls within the scope of the order. See NCA Letter, July 18, 1995. Finally, as support for its claim that the subject merchandise is a column or pillar, NCA attaches as Exhibit 1 to its July 28, 1995, submission, a page from a CandleLite Company catalogue, which contains variations of the Terrazzo model pillars, including a cube or square shaped candle. See NCA Letter, July 28, 1995.

We note that Mervyn's candle, like the merchandise subject to the LTFV investigation, is made of petroleum wax and contains a wick. Moreover, the dimensions of Mervyn's candle (height and width) are similar to columns and pillars covered in the petition (see Petition Exhibits 13 and 14). Although the underlying record established in this order does not provide a clear definition of the shapes covered by its scope, a product brochure submitted to the Department by a respondent, the China Native Product and Animal By-Products Corporation, in the LTFV investigation, indicates that the respondent considered cube or square shaped candles to be pillars (see Questionnaire Response on Behalf of the China Native Product and Animal By-Products Corporation, January 3, 1986, Exhibit B--Sunflower Candles). Moreover, the generic terms column and pillar include straight-sided as well as covered cylinder-like articles. Therefore, based on the common usage of these terms and the information in the record of this order, we conclude that Mervyn's candles appear to fall within the description of straight-sided or column candle. Furthermore, neither the raised relief design of the sun on Mervyn's candle, nor the decorative characteristics displayed by Enesco's candle (star, sun, moon, etc.) and Midwest's candle (pine cones and pine branches) symbolize any religious holiday or special event that would otherwise justify these candles' exclusion. Accordingly, we conclude that the cube candle is very similar in physical characteristics to the column and pillar candles covered by the order.

Expectations of the Ultimate Purchaser and Ultimate Use

Only the petition and the ITO determinations address the intended uses of the merchandise subject to the LTFV investigation and neither the petition nor the determinations of the Department and ITC address the expectations of the ultimate purchaser. The petition states that "these candles...are generally used by retail consumers in the home or yard for decorative or lighting purposes." See Petition at 7. The ITC reports that the subject candles are intended to be used "so as to give light, heat, or scent or used for celebration or votive purposes." See Candles from the People's Republic of China, (Final), USITC Publication 1888, August 1986, at A-2.

According to Mervyn's, the ultimate consumer purchases the square or cube shaped candle with the expectation of using it as a novelty candle. Mervyn's contends that consumers do not buy the candle for light but rather for the aesthetic effect of the smiling sun design. Furthermore, Mervyn's claims that consumers do not expect to use the candle as a dinner candle, which Mervyn's argues is the traditional way tapers, spirals, columns and pillars are put to use. See Mervyn's Letter, July 18, 1995.

NCA counters that the expectations of the ultimate purchaser and the ultimate use of the candle are not limited. According to NCA, the product at issue is a decorative candle which can be used for light or heat on many occasions throughout the year. In other words, "the uses are not confined for specific instances (i.e., Christmas, Halloween)."

Mervyn's has provided no evidence to support its contention that people do not intend to burn this candle. The product appears to be a candle that will be used by the retail consumer in the home or yard for decoration and to provide heat or light, a description that is completely consistent with the scope coverage the petition sought to achieve. Moreover, the use of these candle types is not confined to specific religious holidays or special events during the year. As they can be used on many occasions throughout the year, we conclude that the expectations of the ultimate purchaser and the ultimate use of the square or cube shaped candle are similar to the ultimate expectations and use of merchandise covered by the scope of the order.

Channels of Trade

The ITC found that the candles subject to the order are sold directly to department stores, specialty (gift) stores, mass merchandisers, and wholesale distributors (see *Candles from the People's Republic of China, (Final)*, USITC Publication 1888, August, 1986, at A-17). Moreover, the Department has found that novelty candles, e.g., Christmas candles, are sold by retailers who customarily carry candles; however, "such candles may be sold in a different channel of trade as well, because they are sold during a specific limited time period and some merchants who do not normally sell candles may sell these candles in conjunction with holiday gift material and decorations" (see Letter, Director, Office of Compliance to Burditt, Bowles and Radzius, Ltd., July 12, 1987).

Mervyn's argues that because its cube shape candle is a novelty candle it is often marketed with figures and other peculiar-shaped candles which do not meet the traditional definitions that are set out in the antidumping order (see Mervyn's Letter, July 18, 1995). NCA counters that the subject candle is marketed along with other pillars and columns (see NCA Letter, July 28, 1995).

A review of Mervyn's submission of July 18, 1995, included the pages from the 1994 catalog of Colonial Candle of Cape Cod, which does not show that the product in question is sold in a different channel of trade or marketed separately from candles subject to the scope of the order. On the contrary, we note that the catalogue indicates that square or cube shaped candles are marketed with other candles, e.g., cylindrical pillars, covered by the scope of the order (see, Mervyn's Letter, July 18, 1995). Thus, on the basis of the review of the record, we conclude that the product in question is sold and marketed in the same channels of trade as candles subject to the scope of the order.

Conclusion

In summary, based on our review of the record of this scope request, the physical characteristics of the candle type in question, the expectations of the ultimate purchaser, the ultimate use of the product, and the channels of trade, all support the conclusion that the cube or square shaped candles, imported by Mervyn's, Enesco and Midwest, are within the same class or kind as the merchandise covered by the scope of the order.

Recommendation

We recommend that the Department determine that the cube or square shaped candles, imported by Mervyn's, Enesco, and Midwest, are within the scope of the

antidumping duty order on petroleum wax candles from the PRC.

_____√_____ Agree _____ Disagree

If you agree, we will send a letter, enclosing this memorandum, to interested parties. Further, we will notify the U.S. Customs Service of our determination.

Jeffrey P. Bialos
Principal Deputy Assistant Secretary
for Import Administration

December 9, 1996

Date

Exhibit 5

A-570-504
Scope Review
PUBLIC DOCUMENT
DAS III (7): MR

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On July 27, 2001 the Department of Commerce (the Department) received requests from JCPenney Purchasing Corporation (JCPPC) for scope rulings on whether three types of candles it plans to import 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 these candles 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 Matthew Renkey at (202) 482-2312.

Sincerely,

Barbara E. Tillman
Director
Office of AD/CVD Enforcement VII
Import Administration

Enclosure

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

FROM: Barbara E. Tillman
Director
Office of AD/CVD Enforcement VII

SUBJECT: Final Scope Ruling; Antidumping Duty Order on Petroleum Wax
Candles From the People's Republic of China (A-570-504);
JCPenney Purchasing Corporation

Summary

On July 27, 2001, the Department of Commerce (the Department) received a request from JCPenney Purchasing Corporation (JCPPC) for scope rulings on three candles (two "rose blossom" candles and one "autumn leaf" candle) to determine if they are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) (the Order) (Petroleum Wax Candles from the PRC: Final Determination of Sales at Less Than Fair Value, 51 FR 25085 (July 10, 1986) (Final Determination)). In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that these candles are outside the scope of the Order.

Background

JCPPC filed its request for a scope ruling in proper form on July 27, 2001. On September 10, 2001, the National Candle Association (NCA), petitioner in this proceeding, filed comments on JCPPC's request. On September 19, 2001, JCPPC filed a rebuttal to the NCA's comments. A memo regarding the Department's decision to extend the 45-day deadline for this scope inquiry has been placed on the record. See, Memo to the File through Sally C. Gannon from Matthew Renkey, Petroleum Wax Candles from the People's Republic of China: Scope Inquiries from Avon Products, Inc., JCPenney Purchasing Corporation, and Premier Candle Corp.

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 (the Commission), 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 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 JCPPC's requests in accordance with 19 CFR 351.225(k)(1) and the Department finds that the descriptions of the products contained in the petition, the final determinations of the Secretary (including prior scope determinations) and the Commission, the initial investigation, and the antidumping duty order are, in fact, dispositive. Therefore, the Department finds it unnecessary to consider the additional factors set forth at 19 CFR 351.225(k)(2).

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); Preliminary Determination of Sales at Less Than Fair Value, 51 FR 6016 (February 19, 1986); Final Determination; and Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986).

The Commission 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” (Determinations of the Commission (Final), USITC Publication 1888, August 1986, at 4, note 5, and A-2 (Commission Determination)).

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 concerning an exception from the Order for novelty candles, 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) (emphasis added).

JCPPC's Scope Request

JCPPC argues that all candles subject to this inquiry, the rose blossom and leaf candles, are in the form of identifiable objects, which are not covered by the scope of the Order. JCPPC also contends that the “autumn leaf candle” should also be excluded from the Order's scope under the holiday novelty exclusion since it meets U.S. Customs' criteria to be classified as a festive article. JCPPC included a sample of each candle with its scope request.

NCA's Comments

The NCA contends that JCPPC's candles lack the characteristics necessary to exclude them from the scope of the Order. The NCA argues that JCPPC's rose candles are in fact rounds, a type of candle within the scope of the Order, and are not in the shape of roses since the candles have flat bottoms. The NCA concludes that the decorative effect of a rose on these round candles is not grounds for excluding a candle from the Order's scope. The NCA also states that JCPPC's leaf

candle is not in the form of an identifiable object, since it too has a flat bottom, and also lacks leaf veins or other designs on the bottom to make it look like a leaf. The NCA concludes that JCPPC's leaf candle is simply a column candle possessing the decorative effect of a leaf.

JCPPC's Rebuttal

JCPPC argues that the scope of the Order is limited to the shapes specifically named therein. JCPPC states that its two rose-shaped candles are in the shape of three-dimensional large open pink rose blossoms with clearly defined petals, and that its maple leaf-shaped candle is in the form of a three-dimensional maple leaf with leaf veins imprinted on clearly defined leaf segments. JCPPC cites a prior scope ruling by the Department for a previous request it filed which stated that certain candles in the shapes of pinecones, apples, pumpkins, gourds, Christmas ornaments, houses and churches are outside the scope of the Order (Final Scope Determination, JCPPC, May 21, 2001). Given these facts, JCPPC concludes that its rose blossom and leaf candles should be found outside the scope of the Order as identifiable objects.

As an additional basis for determining that its leaf candle should be outside the scope of the Order, JCPPC contends that it is a festive article pertaining to the autumn season and should thus be considered under the holiday novelty exemption.

Analysis

When determining whether or not a particular product claimed as a novelty candle is within the scope of the antidumping duty order, the Department's first line of inquiry is whether the shape of the candle falls within those shapes listed by the inclusive language of the Order's scope, *i.e.*, "tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers." If a candle falls within one of the above delineated shapes, it is within the Order's scope. Candles of a shape not listed by the inclusive language of the Order's scope normally will be evaluated to determine whether they are "scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks."¹ If it possesses

¹ The Department is changing its practice on this issue. In past scope rulings the Department has determined that candles not of a shape listed by the language of the Order's scope were outside the scope. See, e.g., Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Endar Corp. (Jan. 11, 2000) ("dragonfly" candle, in the shape of a rough-hewn stone with a dragonfly carved on top, not within scope because it is of a shape not listed by the scope); American Drug Stores, Inc. (Mar. 16, 1998) (sphere or ball shaped candle not within scope because it is a shape not listed by the scope); San Francisco Candle Co. (June 10, 1993) (ball shaped candle not within scope because it is of a shape not listed by the scope). The reason for the change is that, upon review of the text of the scope of the Order, the text of the first sentence of the scope covers "scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks." The text following this broad inclusive sentence provides a list of shapes, which list is

characteristics set out in the July 1987 exception, a candle falls outside the scope of the Order. In order for a candle to be found outside the Order's scope as a novelty candle under the July 1987 exception, the characteristic(s) which are claimed to render it a novelty candle must be visible from most angles, as opposed to minimally visible. See Final Scope Rulings – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); JCPenney Purchasing Corp. (May 21, 2001); San Francisco Candle Co. (Feb. 12, 2001); Endar Corp. (Jan. 11, 2000).

With respect to the instant request, we find that for the reasons outlined below, these candles fall outside the scope of the Order.

Floating Pink Rose Blossom (Style D3201P)

This candle, in the shape of an open rose blossom, is approximately 4 inches wide and 1¼ inches high, and has carved individual petals rising from the base. This candle is shaped as an identifiable object (an open rose blossom) and is identifiable as such from most angles. Thus, this candle falls within the July 1987 novelty candle exception.

not modified by any express words of exclusivity. The result of our prior practice of excluding candles of a shape other than those listed was inconsistent with the fact that such candles were “scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.” We now determine that this practice was incorrect because it had the effect of narrowing the broad coverage of the first sentence of the Order's scope. The list of shapes in the second sentence of the Order's scope does not provide a textual basis for such a narrowing of the coverage of the first sentence of the Order's scope. Accordingly, in order to give full effect to the first sentence of the inclusive language of the scope, the Department in this and future cases normally will evaluate whether candles of a shape not listed by the inclusive language of the Order's scope are scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.

This approach of evaluating such candles in light of the entire text of the scope is in keeping with the recent opinion of the Court of International Trade (CIT), noting that a better approach in scope rulings is to avoid subjective issues of intent and, instead, look to the petitioner's language to determine whether the class or kind of merchandise at issue was expressly included. Duferco Steel, Inc. v. United States, 146 F. Supp. 2d 913 (Ct. Int'l Trade 2001). Such an approach is a recent departure from past CIT precedent that required Commerce to give ample deference to the petitioner's intent when examining a petition's description of the subject merchandise, see, e.g., Torrington Co. v. United States, 995 F. Supp. 117, 121 (Ct. Int'l Trade 1998).

Floating Pink Rose Blossom (Style C-1013A)

This item is similar to the Floating Pink Rose Blossom above, but measures approximately 2½ inches wide and 1 inch high, with the same style of petals rising from the base. This candle is shaped as an identifiable object (an open rose blossom) and is identifiable as such from most angles. Thus, this candle falls within the July 1987 novelty candle exception.

Autumn Leaf (Lot #3035)

This candle is in the shape of a leaf, with clear delineation of the leaf edges and points, and with veins imprinted on the leaf surface. When viewed from above, the candle is easily identifiable as a leaf. From the sides and bottom, one can still distinguish the leaf edges and points. Thus, like the rose blossom candles discussed above, this candle is in the form of an identifiable object and is identifiable as such from most angles.

In its request, JCPPC argues that this item should also be outside the Order's scope because it is a festive article associated with the fall season. The Department does not consider this a valid argument for excluding this candle from the Order's scope. Whether or not a candle can be classified as a festive article is immaterial to the Department's scope determination. The festive article classification pertains only to the Harmonized Tariff Schedule of the United States (HTSUS) number assigned to merchandise entered into the United States. The holiday novelty concept embodied in the July 1987 novelty exception is separate and distinct from a festive article HTSUS classification. To qualify for the July 1987 novelty exception, a candle must contain designs, inter alia, specific to a particular holiday (emphasis added). There is no basis within the July 1987 novelty exception for determining candles to be outside the Order's scope based on generic seasonal characteristics, such as an HTSUS classification as a festive article associated with the fall season.

Summary

JCPPC's "rose blossom" and "autumn leaf" candles are in the shape of identifiable objects. Thus, these candles fall within the July 1987 novelty candle exception as identifiable objects. This conclusion is consistent with the scope of the investigation and the Order, as defined in the petition, as well as the Department's and the Commission's prior determinations.

Recommendation

Based on the preceding analysis, we recommend that the Department find that the “rose blossom” and “autumn leaf” candles are outside the scope of the Order.

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

_____ Agree

_____ Disagree

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

Date

Attachment