

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-504

Petroleum Wax Candles from the People's Republic of China: Preliminary Results of Request for Comments on the Scope of the Petroleum Wax Candles from the People's Republic of China Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On August 21, 2009, the Department solicited comments from the general public on the best method to consider whether novelty¹ candles should or should not be included within the scope of the Order² given the extremely large number of scope determinations requested by outside parties. See Petroleum Wax Candles from the People's Republic of China: Request for Comments on the Scope of the Antidumping Duty Order and the Impact on Scope Determinations, 74 FR 42230 (August 21, 2009). The general public was given two options (as well as the choice to submit additional options and ideas):

Option A: 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, pillars, 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 of the scope of the Order.

Option B: 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.

¹ The term "novelty candle," as defined in Scope Comments and prior scope rulings, refers to candles that are in the shapes of identifiable objects, or are holiday-themed.

² See Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1996) ("Order")

The Department received comments from interested parties by the appropriate deadline. In examining these comments and the administrative record since the less-than-fair value (“LFTV”) antidumping duty investigation, we have preliminarily developed a new interpretation for interpreting candle scope ruling requests. Moreover, we have preliminarily applied this new interpretation to all 388 pending scope determinations under the Order. See infra.

DATES: Parties may submit comments no later than 30 calendar days after date of publication of this notice and rebuttal comments 10 calendar days later.

FOR FURTHER INFORMATION CONTACT: Tim Lord, AD/CVD Operations, Office 9, Import Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482-7425.

COMMENTS FROM INTERESTED PARTIES

On September 16, 2009, the Department received comments from the following interested parties: the National Candle Association (“NCA”); the National Retail Federation (“NRF”); HSE USA, Inc. (“HSE”); Universal Candle Company (“UC”); Sourcing International (“SI”); the Retail Industry Leaders of America (“RILA”); and Trade Associates Group, Ltd. (“TAG”).

*Support for Option A*³

NRF and SI urge the Department to adopt Option A in its un-altered form. NRF argues this option is most consistent with the original scope of the case that retailers have operated under for over 20 years. HSE argues that Option A is the best way to ensure that the scope interpretation be “shape-based.” That is, HSE maintains, Option A will guarantee that only

³ With Option A, 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, pillars, 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.

candles in the shapes specifically enumerated in the scope of the Order—tapers, spirals, straight-sided dinner candles; rounds, columns, pillars; votives; and various wax-filled containers (“the enumerated shapes”)—be considered as within the scope. HSE also argues that the current scope language is exhaustive, not illustrative, and that Option A recognizes this fact.

Support for Option B⁴

UC specifically states that it is in favor of Option B, though it requests that its birthday and cake-top candles be considered outside of the scope because there is no domestic production of these candles.

Additional Proposals

NCA proposes a combination of Options A and B whereby all candle shapes, regardless of embellishment or holiday theme, would be included within the scope of the Order.

RILA argues that because much of the debate over what is or is not a holiday candle centers on what symbols or objects are specific to a holiday and how obvious those symbols or objects must be on the candle, the Department should develop objective criteria from prior rulings. Such criteria might include a list of symbols and objects that are specific to a holiday and numerical standards for what portion of the candle surface must be covered by such symbols. RILA also maintains the Department should engage more closely with U.S. Customs and Border Protection (“CBP”) to ensure that there is an accurate and consistent understanding of the scope of the Order and any guidelines established by the Department.

TAG argues that neither option should be chosen, and that the Department’s current practices should remain in effect. However, TAG maintains, the current practice that candles be

⁴ With Option B, 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.

recognizable from multiple angles is overly formalistic, and thus the identifiable object exception should be based on “realistic guidelines.”

NRF asserts that the Department should adopt some practices used by CBP, including having a designated Department employee whom importers can call to discuss scope issues.

SI and NCA argue that the Department’s regulations be amended to allow the Department to issue summary determinations so that the Department could issue a single ruling when there are multiple requests for what is essentially the same product. For instance, if an importer requests scope determinations on 25 pillar candles that differed only in their size, the Department would be able to issue one summary scope determination instead of 25.

Other Issues Raised by Parties

Although NRF requests that we choose Option A, it also argues that the choice of either option would cause the Department to have to address prior decisions where items that have been previously found to be within the scope of the Order would now be considered outside the Order, and vice-versa for items previously found to be outside the scope of the Order.

NCA asserts that the novelty candle exclusion established in the CBP Notice⁵ was baseless. NCA also maintains that the Department’s LTFV investigation and the Antidumping Petition⁶ did not exclude any petroleum wax candles from the scope of the investigation requested.

HSE argues that the Department’s should abandon the “JC Penney methodology,”⁷ because this interpretation no longer considers the shape of the candle to be dispositive in determining whether it is covered by the scope, and should return to its prior practice of looking at the shape of the candle in evaluating the scope. HSE continues that the JC Penney

⁵ The CBP Notice is discussed infra.

⁶ The Antidumping Petition is discussed infra.

⁷ The JC Penney ruling and JC Penney methodology are discussed infra.

methodology disregarded the history of the case and has also proven to be extremely burdensome by increasing the number of candle scope ruling requests.

BACKGROUND OF THE ORDER

In determining whether it is appropriate to formulate a new interpretation for interpreting the scope of this Order, the Department must examine documents from the LFTV investigation and subsequent segments of this proceeding to understand the validity of its current practices and to re-examine the products originally covered by the scope of the LTFV investigation. See 19 CFR 351.225(k)(1). In particular, the Department puts much weight on the original intent of the injured domestic industry, in this case, represented by NCA. Below is the Department's analysis of these documents, which are included in the Memorandum to the File through Alex Villanueva, Program Manager, from Tim Lord, Case Analyst, Certain Petroleum Wax Candles from the People's Republic of China: Placing Documents on the Record (August 9, 2010) ("Relevant Documents Memorandum").

Petition

The Petition illustrates that, contrary to its current assertions, NCA advocated for an exhaustive scope where those candles not specifically enumerated in the scope language, as well as figurine candles, "household," "utility," or "emergency"⁸ candles, were to be excluded from the investigation. For instance, when discussing its choice of a surrogate country, NCA states, "Korea was deemed a poor choice as a surrogate because its primary domestic production of candles consists of types of candles which are not similar to candles exported by the PRC. Korea produces mostly small, plain, white utility candles and hand-crafted novelty candles." See Antidumping Petition Submitted on Behalf of the National Candle Association in the Matter of:

⁸ Those candles known as "household," "utility," "emergency," or "household emergency candles" will be termed "utility candles" for purposes of this notice.

Petroleum Wax Candles from the People's Republic of China (September 3, 1985) (“Petition”) at 14; see also Relevant Documents Memorandum, at Tab A.

Additionally, NCA via a consulting firm, requested information from a market research firm in Malaysia on producers' prices for candles made and sold in Malaysia and stated that the candles they were concerned with were ordinary candles. NCA's consulting firm noted that they were uninterested in those candles not in the enumerated shapes. See Petition, at Exhibit 21; see also Relevant Documents Memorandum, at Tab A. Additionally, the Petition's like product definition itself indicates exclusivity:

The imported PRC candles are made from petroleum wax and contain fiber or paper-cored wicks. They are {emphasis added} 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. While manufactured in the PRC, these candles are marketed in the United States and are generally used by retail consumers in the home or yard for decorative or lighting purposes.”

See Petition, at 6-7; see also Relevant Documents Memorandum, at Tab A.

Initiation

The Initiation used language virtually identical to NCA's like product description:

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; rounds, columns, pillars; votives; and various wax-filled containers. The products are classified under the Tariff Schedules of the United States (TSUS) item 755.25, Candles and Tapers.

See Petroleum Wax Candles From the People's Republic of China; Initiation of Antidumping

Duty Investigation, 50 FR 39743 (September 30, 1985) (“Initiation”); see also Relevant

Documents Memorandum at Tab B.

ITC Preliminary Results

The description of the International Trade Commission's (“ITC”) like product was nearly the same as NCA's like product definition and the Initiation. The ITC was silent with regard to

novelty candles, although it devotes some discussion to Christmas candles.⁹ However, as noted infra, the ITC stated that there was no clear definition of a “Christmas/seasonal candle” and used candle color (red, white, or green) as an indicator of whether a candle is a Christmas/seasonal candle or not. Thus, the ITC Preliminary Results are not dispositive with regard to novelty candles based on shape or seasonal nature.

DOC Preliminary Results

The Department’s scope of the investigation remained unchanged from the Initiation, and novelty candles are not mentioned. See Petroleum Wax Candles From the People’s Republic of China; Preliminary Determination of Sales at Less Than Fair Value, 51 FR 6016, (February 19, 1986) (“DOC Preliminary Results”); see also Relevant Documents Memorandum at Tab D.

Memorandum Dated October 2, 1986:

Further insight into which candles NCA originally intended to be outside the scope of the investigation is found in a Departmental memorandum dated October 2, 1986. In this memorandum, the Department notes that on February 20, 1986 the Department issued instructions to the U.S. Customs Service (“Customs”)¹⁰ suspending liquidation on merchandise covered under Tariff Schedules of the United States (“TSUSA”) item 755.25, a basket category which included numerous different types of candles. The memorandum details subsequent clarifications issued after the initial February 20, 1986 instructions to the U.S. Customs Service:

⁹ The ITC deems the term “Christmas candle” as synonymous with “seasonal candle” and uses the terms interchangeably. For the purposes of this notice, the Department will use the term “Christmas/seasonal” to refer to this type of candle. No other holidays or special events are mentioned or equated with the term “seasonal.” See Candles from the People’s Republic of China: Determination of the Commission in Investigation No. 731-TA-282 (Preliminary) Under the Tariff Act of 1930, Together with the Information Obtained in the Investigation, USITC Publication 1768 (October, 1985) (“ITC Preliminary Results”) at A-22; see also Relevant Documents Memorandum at Tab C.

¹⁰ On July 28, 2006, the United States Customs Service since was renamed as the United States Bureau of Customs and Border Protection. See Homeland Security Act of 2002, Pub. L. 107-296, §1502, 116 Stat. 2135, 2308-09 (2002); Reorganization Plan Modification for the Department of Homeland Security, H.R. Doc. No.108-32, at 4 (2003).

Subsequent telephone complaints by some importers prompted another telex to customs on March 20, 1986, in which ‘candles not described above, such as birthday, birthday numeral, and figurine-type candles, are also outside the scope of this investigation.

See Memorandum to Bill Matthews through Bob Marenick from Elena Gonzalez, Subject: Scope of Investigation, Petroleum Wax Candles from the People’s Republic of China (October 2, 1986) (“Memorandum Dated October 2, 1986”); see also Relevant Documents Memorandum at Tab E. ***Memorandum Dated April 30, 1986:***

A memorandum dated April 30, 1986, describes two conversations between the Department and NCA’s counsel that illustrates that NCA did not intend for the scope of the Order to cover all petroleum wax candles:

On March 20, 1986, Mr. Randolph Stayin of Taft, Stettinus & Hollister, who represents the petitioner, advised by telephone that candles described as household candles, household emergency candles, or utility candles, which are white in color and 5” long x 3/4” diameter, do not fit the product description included in this petition and are therefore outside the scope of this investigation.

Earlier, Ann King, of the same law firm, had told me that birthday candles, birthday numeral candles and figurine-type candles are also outside the scope of this investigation.

See Memorandum to the File, from Michael Ready, Subject: Petroleum Wax Candles from the PRC – Scope of the Investigation (April 30, 1986) (“Memorandum Dated April 30, 1986”); see also Relevant Documents Memorandum at Tab F.

Scope Clarification Communication

Following the communications with NCA described above, the Department sent a telex to the U.S. Customs Service clarifying the scope of products subject to the LTFV investigation on March 20, 1986. See Communication to All U.S. Customs Field Officers from John Durant, Acting Director, Commercial Compliance Division: Petroleum Wax Candles from the People’s Republic of China: Clarification of Scope of Investigation (“Scope Clarification Communication”):

1. The scope of Investigation as defined in the Federal Register (February 19, 1986, page 6016) and referenced in our February 20, 1986 telex is as follows: ‘Scope of Investigation: The products covered by this investigation are certain scented or unscented petroleum wax candles made from petroleum wax and having paper or fiber-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. The products are classified under the Tariff Schedules of the United States (TSUS) Item 755 25, Candles and Tapers.’ 2. Candles not described above, such as birthday, birthday numeral, and figurine type candles are outside the scope of this investigation.

See Scope Clarification Communication; see also Relevant Documents Memorandum at Tab G.

The Memorandum dated October 1986, indicates that conversations between the Department and importers were an impetus for the exclusions of the Scope Clarification Communication, and the timing of communications with NCA (detailed in the Memorandum Dated April, 1986) indicate that NCA endorsed these exclusions. However, while the Department adhered to NCA’s opinion that candles not in the enumerated shapes and birthday candles were not covered by the scope of the investigation, it did not specifically state in the Scope Clarification Communication that utility candles were not covered.

DOC Final Results

The scope of the Order listed in the DOC Final Results is the same as that of the Initiation. See Petroleum Wax Candles From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 51 FR 25085 (July 10, 1986) (“DOC Final Results”); see also Relevant Documents Memorandum at Tab H. Record evidence that NCA did not intend for certain candles to be covered can also be seen in the DOC Final Results. Specifically, when addressing respondents’ comment that the Department should not have excluded candle imports from Jamaica in determining foreign market value, we defend our position by stating, “At the preliminary determination we excluded imports from Jamaica from consideration because we received information from petitioner that the Jamaican candles were

‘household candles’ not subject to this investigation.” See Relevant Documents Memorandum at Tab H.

ITC Final Results

The ITC lists “novelties” as among the types of candles it analyzed, although it gives no definition of the term. See 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) (“ITC Final Results”) at A-6; see also Relevant Documents Memorandum at Tab I.

The ITC also included Christmas/seasonal candles as among the types of candles it analyzed, and in response to respondents’ contention that seasonality is indicative of a lack of competition between domestic candles and Chinese imports, the Commission states:

Data on seasonality should be used with caution, as no clear definition of ‘Christmas candle’ has been offered. Some reporting companies indicated that all red, white, and green candles were reported as Christmas candles, whereas other companies indicated that they sell Christmas colors year round and reported sales for October through December as Christmas candles. See ITC Final Results at A-7, fn 1.

Thus, the ITC conceded that there was no concrete definition of a Christmas/seasonal candle, and noted that the most widely-used metric in determining whether a candle was Christmas/seasonal was based upon its color and/or the time of year in which it was sold. However, the ITC’s indication of what is considered a Christmas/seasonal candle does not signify it advocated that Christmas/seasonal candles in any shape should be within the scope of the investigation. Rather, it indicates that the ITC advocated that those candles in the enumerated shapes should not be considered outside the scope of the investigation simply because they are in “Christmas/seasonal colors.”

Order

The Department published the Order, with scope language identical to the Department's Initiation, Preliminary Results, and Final Results. See Order; see also Relevant Documents Memorandum at Tab J.

Novelty Exclusion Scope Rulings

The first novelty exclusion, issued in October 30, 1986, regarded a taper imported by Global Marketing Services' that had a Santa Claus figurine attached to the taper. The Department solicited comments from NCA before it made its final scope ruling. NCA agreed that the candle was outside of the scope, stating:

This particular candle is considered borderline in our opinion because the only novelty is the wax Santa Claus which can be removed or added to the taper. Without the attached wax Santa Claus, the subject taper would clearly be within the scope of the order. However, we consent to the exclusion of this specific taper only on the basis that the hand-painted wax Santa Claus is attached to each taper entered through Customs."

See Letter to the Department on Behalf of NCA, dated October 15, 1986 ("NCA's October 15, 1986 Letter"); see also Relevant Documents Memorandum at Tab K. In a letter explaining to Global Marketing Services why we excluded their candle, the Department stated:

Your tapers have a hand-painted figurine {emphasis added} molded to the candle, which could not be removed without damage to the taper. This different physical characteristic precludes inclusion of these candles in the scope of the order.

See Letter from the Department to Global Marketing Services, dated October 30, 1986 ("Department's October 30, 1986 Letter"); see also Relevant Documents Memorandum at Tab L.

It is therefore apparent from examining NCA's October 15, 1986, Letter and the Department's October 30, 1986, Letter that Global Marketing Service's Santa Claus candle was found outside of the scope not because of its Christmas/seasonal characteristics, but because of its figurine component.

The second novelty exclusion, issued in July 13, 1987, regarded candles with raised Christmas motifs imported by Giftco Inc. The Department solicited comments from NCA before it made its final scope ruling. NCA agreed that the candles were outside of the scope, stating:

{O}ur examination of the candles...revealed that they are novelty candles which are specially designed for Christmas. That is, they are holiday scenes and symbols. Both candles are square, four inches high, and have alternating raised motif scenes outlined by borders. The first candle is red and has the word 'JOY' written in yellow letters surrounded by green pine branches. The alternate scene has a red cardinal sitting on yellow cornets. The second candle is light blue and has the words 'Silent Night' surrounded by one large and several small stars painted yellow, blue, and white. The alternate scenes depict a yellow church with two green trees, green grass, and a snow-topped mountain in the background."

These specific candles are Christmas novelty candles that are outside the scope of the order. They are similar to the hand-painted Santa Claus figure candles that we have already agreed should be excluded from the order. However, not all raised motif candles should be excluded from the order. We specifically included petroleum wax candles that have raised motifs in the investigation since several of the petitioners produce them. For example, Candle-lite makes votive candles with raised flower motifs while Colonial Candle of Cape Cod attaches a small 'CCCC' motif to all of its candles.

See Letter to the Department on Behalf of NCA, dated May 4, 1987 ("NCA's May, 4 1987 Letter"); see also Relevant Documents Memorandum at Tab M. This statement may be interpreted in different ways. While one could argue this is evidence that NCA supported Christmas/seasonal candles being outside of the scope of the Order, one could also contend that NCA supported these candles as outside of the scope because they were in the shape of squares—not one of the enumerated shapes. Furthermore, even if one were to interpret this statement as NCA supporting the exclusion of Christmas/holiday candles, this point is moot because as stated above, the Department must reasonably determine the products originally covered by the scope of the LTFV investigation as well as the original intent of the injured domestic industry before the issuance of the Order. This scope ruling, however, came after the completion of the investigation and issuance of the Order.

CBP Notice

The Department issued instructions to the U.S. Customs Service in connection with the second novelty exclusion from the Order for Christmas/seasonal novelty candles (“CBP Notice”). While this notice included exclusions discussed during the course of the investigation (*i.e.*, numeral and “figurine-type” candles), the notice also introduced the idea of a novelty candle exclusion that clarified the candle types excluded from the Order beyond those discussed during the investigation:

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 scenes or 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 CBP Notice; see also Relevant Documents Memorandum at Tab N. While this exception for Christmas/seasonal and special occasion-themed candles appears to be in response to the first two novelty scope rulings for Christmas/seasonal candles, there is no evidence on record from the investigation to indicate that any religious, holiday, or special occasion-themed candles, otherwise within the shapes outlined in the scope,¹¹ were considered outside the scope of the investigation prior to the issuance of the Order.

JC Penney

In November 2001, the Department reconsidered its practice on the issue of candle shapes. See Final Scope Ruling Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A–570–504); JC Penney Purchasing Corporation, (November 9,

¹¹ As noted previously, the ITC’s discussion of Christmas/seasonal candles (*i.e.* those in red, white, or green) made no indication that these candles (if in one of the non-enumerated shapes) should be included within the scope.

2001) (“JC Penney”). In this ruling, the Department reviewed the text of the scope of the Order, beginning with the text of the first sentence of the scope which covers “{c}ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper–cored wicks.” See Order. The Department stated in JC Penney:

{t}he text following this broad inclusive sentence provides a list of shapes, which list is 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 arguably 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.’

See JC Penney at 4–5, fn 1; see also Relevant Documents Memorandum at Tab O. Furthermore, in JC Penney, the Department stated:

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.

See JC Penney at 5, fn 1; see also Relevant Documents Memorandum at Tab O.

Therefore, since 2001, the Department has followed the “JC Penney methodology” whereby it determines that if the candle is made from petroleum wax and has a fiber or paper–cored wick it falls within the scope of the Order regardless of shape unless the candle possesses the characteristics set out in the CBP Notice, in which case a candle falls within the Department’s novelty candle exception and is not within the scope of the Order.

However, a close review of the investigation record shows that, although addressing a key enforcement concern, the JC Penney methodology did not fully take into account record evidence from the investigation. While JC Penney stated that the scope of the Order was inclusive, the language of the Order indicates that the scope is exclusive, whereby only those candles in the enumerated shapes are considered inside the scope. For instance, the scope of the Order covers “{c}ertain scented or unscented petroleum wax candles” that “are sold in the

following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers” (emphasis added). That is, the language of the scope is overt in its exclusivity. As discussed above, NCA’s apparent concurrence with the scope clarifications issued to Customs further indicate that the scope was originally intended to include only those candle shapes described in the scope and to exclude birthday and utility candles).

PRELIMINARY DETERMINATION

A thorough review of the record clearly illustrates that NCA did not intend for the scope of the candles Order to include all candles. At the time of the LTFV investigation and the concomitant setting of the scope, NCA advocated a scope where only the enumerated shapes would be covered. For instance, NCA’s agreement in the Memorandum Dated April 30, 1986, that “figurine” candles were not within the scope of the Order indicates that candles in shapes other than those enumerated in the scope language were not included within the scope of the investigation. Furthermore, NCA also intended for the Order to exclude birthday candles and utility candles. While the Department adhered to the original intent of NCA in excluding birthday candles and candles not in the enumerated shapes through the Scope Clarification Communication and CBP Notice, we inadvertently did not specify that utility candles should also be excluded.

Thus, after examining the historical record of this case to determine the original intent of NCA, and taking into consideration the comments of interested parties, the Department is taking this opportunity to clarify how it will analyze candle scope requests so as to best reflect the products covered by the LTFV investigation. The Department agrees with NCA that there is no basis in the record of the LTFV investigation for excluding candles based upon holiday characteristics. In addition, the Department notes that, in contrast to JC Penney, record evidence

suggests that the scope of the Order is exclusive and that candles not in the shapes described in the scope fall outside the scope of the Order.

Therefore, the Department's proposed new interpretation for interpreting candle scope determination requests would entail Option A, with the addition that two specific types of candles—utility candles and birthday candles—would be excluded. The proposed new interpretation would be as follows:¹² The Department will consider all candle shapes identified in the scope of the Order¹³ (i.e., tapers,¹⁴ spirals,¹⁵ and straight-sided dinner candles;¹⁶ rounds,¹⁷ columns,¹⁸ pillars,¹⁹ votives;²⁰ and various wax-filled containers²¹) to be within the scope of the Order, regardless of etchings, prints, texture, moldings or other artistic or decorative

¹² The definitions used in the proposed new interpretation were taken from a variety of sources: 1) historical documents on record from the candles case, such as the Petition and Departmental memoranda; 2) past candle scope rulings; and 3) sources outside of the Department, including the NCA's website.

¹³ Note: The term "circumference" as used below denotes the length of the perimeter of a candle, whether measured at the base, top, etc. It can be used in reference to candles that have cylindrical or polygonal (i.e., multi-sided, with all sides being relatively straight) bases and tops.

¹⁴ A taper is a candle that has a circumference at its base of up to 5 inches, is typically six inches or longer and gradually decreases in width from base to top so that the width at the base is typically no more than 60 percent larger than the width at the top (the top of a taper candle is typically 1/6 of the candle's height from the tip of the candle, excluding the wick). The decrease in width may be continuously straight or slightly convex.

¹⁵ A spiral is a candle that has dimensions similar to a taper's and has helical indentations around its length.

¹⁶ A straight-sided dinner candle has dimensions similar to a taper's, although its width is constant through the length of the candle.

¹⁷ A round may come in two varieties: 1) a "spherical round" is one in which all points on the candle's surface (except for those on the base and top) are approximately equidistant from the candle's center; see Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China (A-570-504): Wal-Mart Stores, Inc. (December 17, 2004) at 13. Thus, a spherical round does not contain multiple surface angles (or embellishments so prominent that it could not be considered approximately spherical); 2) a "flattened round," is typically disc-shaped and has at its widest point an approximately circular circumference which is greater than its height. All horizontal radii of this circumference are approximately equidistant from the circumference's center. Thus, a flattened round does not contain multiple surface angles (or embellishments so prominent that it does not exhibit an approximately circular circumference). The top, bottom, and side of a flattened round may be slightly convex or non-convex.

¹⁸ A column is a candle that is often free-standing, has a width of up to 8 inches and a height of up to 14 inches. It typically maintains a constant circumference throughout its length. The base and top may have a cylinder or polygon shape.

¹⁹ A pillar is a candle that is often free-standing, has a width of up to 8 inches and a height of up to 12 inches. It typically maintains a constant circumference throughout its length. The base and top may have a cylinder or polygon shape.

²⁰ A votive candle is typically about 1.5 inches in diameter, 2 to 2.5 inches high, and typically designed to be placed in a container.

²¹ The exposed surface of the wax at the top of the container is typically horizontally flat. The container may be in any shape and be made of any material.

enhancements including any holiday-related art. However, even if they are one of the shapes listed within the scope of the Order, two types of candles will be excluded: (1) those candles known variously as “household candles,” “emergency candles,” or “utility candles,” (which are typically white in color, 5 inches long, .75 inch in diameter, and come in packs of two or more); and (2) birthday candles (which are typically small, thin, pillar-shaped candles that range in height from 2 inches to 3.5 inches, are .18 inch to .25 inch in width, and come in packs of 10 to 24), and birthday numeral candles (which are candles in the shape of numbers that typically range in height from 2 to 4 inches). All other candle shapes and types will be considered outside the scope of the Order.

ANALYSIS OF PARTIES’ COMMENTS

RILA suggests that the Department use objective criteria to make scope rulings more efficient, such as a list of symbols and objects that are specific to a holiday. We have not adopted this suggestion because our proposed interpretation would not take into account holiday ornamentation when determining whether a candle is outside of the scope of the Order.

TAG suggested that the identifiable object exclusion be based on “realistic guidelines.” We have not adopted this suggestion either, as the Department’s proposed interpretation would not take into account identifiability as a particular object, but rather candle shape and candle type in scope determinations.

In response to NRF’s suggestion that the Department should use practices such as utilizing a designated Department employee whom importers can call to discuss scope issues, the Department notes that it already has analysts who perform this function. However, while analysts may discuss scope issues with interested parties, no scope determination can be made by

telephone. An official scope ruling can only be made when an interested party formally submits its scope ruling request to the Department. See 19 CFR 351.225.

With regard to NCA's and SI's suggestion that the Department issue summary determinations, the Department notes that it already issues determinations that include multiples of what are essentially the same item. See, e.g., Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China: Final Scope Ruling, Fashion Craft-Excello, Inc. (April 12, 2007).

In response to the assertion by NRF and SI that a change in the Department's current practice would mean that it would have to address prior scope rulings, the Department notes that in previous instances where it has changed its scope ruling interpretation in the candles case, the Department has only applied the change to current and future scope rulings. See LDM Anticircumvention Determination²² and JC Penney.

APPLICATION OF INTERPRETATION

Given the above, the Department hereby preliminarily applies this new interpretation to the 388 pending scope determinations before us. See Memorandum to the File through Alex Villanueva, Program Manager, from Tim Lord, Case Analyst, Certain Petroleum Wax Candles from the People's Republic of China: Candle Scope Request Preliminary Determinations (August 9, 2010). The 388 requests consisted of 269 unique candles.²³ Of those 269 unique candles, 250 were preliminarily determined to be outside of the scope of the Order, while 19 unique candles were preliminarily determined to be within of the scope of the Order.

²² See Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 71 FR 59075 (October 6, 2006) ("LDM Anticircumvention Determination").

²³ "Unique candles" are those from a particular requestor that the Department deems identical. For example, if a requestor submitted three beach ball candles, and two of those were exactly the same size, shape, and color, while the third candle was not, the set of three candles would consist of two unique candles.

SUBMISSION OF COMMENTS

The Department invites interested parties to comment on these preliminary results and the proposed interpretation for analyzing scope requests under the Order. Persons wishing to comment should file one signed original and six copies of each set of comments by the date specified above. The Department will consider all comments received before the close of the comment period in reaching its final determination. Comments received after the end of the comment period may not be considered. All comments responding to this notice will be a matter of public record and will be available for inspection and copying at Import Administration's Central Records Unit, Room 1117. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies.

Comments filed in electronic form should be submitted either by e-mail to the Webmaster below, or on CD-ROM, as comments submitted on diskette is likely to be damaged by postal radiation treatment. Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration Web site at the following address: <http://www.ia.ita.doc.gov>.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration

Webmaster, at (202) 482-0866, e-mail address: webmastersupport@ita.doc.gov.

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date