

A-570-504
Scope Review
PUBLIC DOCUMENT
Enforcement Group III: MER

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On April 4, 2001, the Department of Commerce (the Department) initiated a scope determination at the request of JCPenney Purchasing Corporation (JCPPC) on whether 44 types of candles it imports 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 20 of these 44 candles are within the scope of the antidumping duty order on petroleum wax candles from the PRC.

Enclosed is a memorandum containing the Department's analysis. We will notify the U.S. Customs Service of this decision. If you have any questions, please contact 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 (JCPPC)

Summary

On February 27, 2001 and April 4, 2001,¹ the Department of Commerce (the Department) received requests from JCPenney Purchasing Corporation (JCPPC) for a scope ruling on 44 candles to determine if they are covered by the antidumping duty order (the Order) on petroleum wax candles from the People's Republic of China (PRC) (Petroleum Wax Candles from the PRC, 51 FR 25085 (July 10, 1986)). The National Candle Association (NCA), petitioner in this case, submitted comments on JCPPC's request on March 30, 2001. In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that 20 of JCPPC's candles are covered by the scope of the antidumping duty order on petroleum wax candles from the PRC.

Background

The Department received JCPPC's request for a scope ruling in proper form on February 27, 2001 and April 4, 2001. The NCA's timely comments followed on March 30, 2001.

¹JCPPC sent several different requests which arrived at the Department on different dates; however, section 351.103(b) of the Department's regulations states that "no document will be considered as having been received by the Secretary unless it is submitted to the Central Records Unit (CRU) with the date and time of receipt." Since JCPPC's requests arrived directly at the mail stop for the office handling this scope determination and not to the Central Records Unit, the scope requests were collectively filed by the Department at one time after confirming with JCPPC that all had arrived (in this case, February 27, 2001). The Department received an additional scope request for one candle on March 16, 2001. Since this document was received directly by the analyst and not CRU, it was filed by the Department on April 4, 2001 as an addition to the February 27, 2001 request.

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 Department applies these criteria when it is unclear whether the product which is the subject of the scope ruling fits within the product descriptions contained in the petition, the determinations of the Secretary and the Commission, the investigation, and the order. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

In the instant case, the Department has evaluated JCPPC's request in accordance with 19 CFR 351.225(k)(1); 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.

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:

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 (*Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 50 FR 39743 (September 30, 1985); *see also Preliminary Determination of Sales at Less Than Fair Value*, 51 FR 6016 (February 19, 1986), *Final Determination*, 51 FR 25085 (July 10, 1986), and *Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China* 51 FR 30686 (August 28, 1986)).

The 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, 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, “Customs Notice”).

JCPPC’s Scope Request

JCPPC argues that its models subject to this inquiry are: i) novelty candles eligible for the holiday novelty exemption, bearing holiday motifs that cannot be removed without damaging the candle; ii) novelty candles in the shape of identifiable objects; or, iii) in shapes not outlined in the scope of the Order. JCPPC included a sample of each candle with its scope request.

The National Candle Association’s Comments

In its comments, the NCA retraces the history of this antidumping duty order, including the import surges and resultant injury suffered by domestic manufacturers which prompted the original September 1985 antidumping petition. Turning specifically to JCPPC's request, petitioner asserts that, "Commerce has denied exclusion to candles that depict scenes, symbols or items related to late fall and winter months, or mere generic decorations, such as flowers, leaves, berries, jingle bells or winter scenes. . . Commerce found that [the] bell, reindeer, tree and star-shaped wax-filled terra cotta containers are within the scope of the Order. (NCA's comments at 4). The NCA also argues that "[t]he angel has become a very popular icon on countless types of non-Christmas products for year-round consumption" (NCA's comments at 5). The NCA also notes throughout its comments that JCPPC may not yet have imported some of the candles included in the request.

The NCA concludes by noting what it characterizes as the long standing efforts of candle importers to "evade or circumvent the Order. The Order is vital to the survival of the U.S. candle industry. JCP[PC] is now asking Commerce to narrow the scope of the Order so that it excludes everyday candles claiming that they are novelty candles. Commerce does not have the legal authority to narrow the scope of the Order. Furthermore, if Commerce grants JCP[PC]'s requests, it will severely damage the efficacy of the Order" (NCA's comments at 12).

JCPPC's Rebuttal

JCPPC maintains that all, or nearly all, of the candles in its scope request should be excluded from the scope of the Order because they are festive articles, shapes not included in the scope of the Order, because they are not petroleum wax candles, or because they lack other core characteristics of the candles subject to the Order (JCPPC's Rebuttal at 2). JCPPC also contends that the Department does indeed have the authority to make scope determinations prior to the importation of subject merchandise (JCPPC's Rebuttal at 6).

Analysis

The three factors noted above are those which JCPPC contends render its candles outside the scope of the Order as holiday novelty candles. With regard to the matter of issuing scope rulings prior to importation, at least one of each candle has entered the United States, and 19 CFR 351.225 grants the Department broad authority to issue a scope ruling. With regard to some of JCPPC's candles and for the reasons discussed below, the Department cannot subscribe to JCPPC's interpretation of the scope of the Order. Some of JCPPC's candles are, however, eligible for novelty exemptions as either holiday novelty candles or novelty candles in the form of identifiable objects. When determining whether or not a particular product claimed as a holiday novelty candle is within the scope of the Order, the Department's first line of inquiry is whether the shape of the candle is one delineated in the language of the Order's scope, *i.e.*, "tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers." As explained in the September 1987 Customs Information Exchange notice CIE N-212/85 and in previous scope rulings by the Department, novelty candles which are

in a shape otherwise within the scope of the Order fall outside the scope of the Order due to the characteristic that renders them novelty candles. Characteristics that can exclude a candle from the Order's scope under the novelty exemption are limited to: i) if a candle depicts scenes or symbols of a specific holiday; ii) if a candle is in the form of a figurine; and iii) if a candle is in the shape of an identifiable object.

JCPPC's candles are numbered in the order they appear in its February 27, 2001 request, with the additional candle from the March 16, 2001 submission being the last. For some of its candles, JCPPC did not contend that they were outside the scope of the Order. We list these at the end of the **Analysis** section, but we use the numbers in which they appeared in JCPPC's request. Each candle's style or lot number is also designated. With respect to the instant request, a determination for each of JCPPC's candles follows below.

1. Dark Green Holly Pillar (Style #X0103(P6)36)

JCPPC contends that the molded, raised holly images found on this item are symbols of Christmas and therefore render this candle outside the scope of the Order. The Department agrees with this assertion. The holly images represent significant decorations and are visible from multiple angles. While holly has green leaves and red berries, and the images on the candle are a uniform green color with gold-colored dusting, the designs are clearly recognizable as holly. This candle is therefore ruled to be outside the scope of the Order. This decision is consistent with Springwater Cookie & Confections v. United States (Slip Op. 96-160, CIT, September 25, 1996), which determined that holly is a symbol of Christmas, and that candles bearing holly motifs are excluded from the scope of the Order.

2. Dark Green "Cracked" Holly Pillar (Style #X0105(36))

JCPPC contends that the molded, raised holly images found on this item are symbols of Christmas and therefore render this candle outside the scope of the Order. The Department agrees with this assertion. The candles has holly leaves and berries intermingled with other types of leaves. The holly images represent significant decorations and are visible from multiple angles. While holly has green leaves and red berries, and the images on the candle are a uniform green color with gold-colored dusting, the designs are clearly recognizable as holly. This candle is therefore ruled to be outside the scope of the Order. This decision is consistent with Springwater Cookie & Confections v. United States (Slip Op. 96-160, CIT, September 25, 1996).

3. Dark Red Santa Claus Pillar (Style #X0103(P3))

This candle has two molded Santa Claus faces on opposite sides of the candle. The visages are clearly identifiable as Santa Claus, are specific to the Christmas holiday, and cannot be removed without damaging the candle. This candle is thus eligible for a holiday novelty exemption as described in the **Background** section of this determination.

4. Dark Green Holly Pillar (Style #X0103(P2))

JCPPC contends that the molded, raised holly images found on this item are symbols of Christmas and therefore render this candle outside the scope of the Order. The Department does not agree with this assertion. While holly is a symbol of Christmas, the botanical design on this candle neither resembles actual holly leaves and berries nor the holly designs on JCPPC's other candles which have been deemed outside the scope of the Order. Unlike actual holly plants, the design on this candle features a cluster of numerous berries surrounded by leaves which fan out in all directions. The leaves themselves do not resemble typical holly leaves. Thus, the Department cannot exclude this item from the scope of the Order.

5. Ivory Pillar with Bells (Style #X0103(P4))

Similar in design to candle #3, this candle has the images of two bells (in lieu of the Santa Claus faces) molded on opposite sides of the candle. Nothing about bells, however, is specific to the Christmas holiday. In fact, bells are used for a wide variety of occasions, such as weddings and baby showers. In a previous ruling, the Department found that a "Christmas Bells" candle was outside the scope of Order, but it made that determination because, in addition to the bells, other Christmas-like designs, such as pine boughs and holiday bows, were present on the candle (Final Scope Ruling, Success Sales, July 27, 1994). With respect to this particular item, there are no additional ornamental features which lend a Christmas-like theme to this candle. For instance, wedding bells are often decorated with bows as well. This item therefore remains within the scope of the Order.

6. Red Oval Holly Pillar (Style #X0103(P6)O)

JCPPC contends that the molded, raised holly images found on this item are symbols of Christmas and therefore render this candle outside the scope of the Order. The Department agrees with this assertion. The holly images represent significant decorations and are visible from multiple angles. While holly has green leaves and red berries, and the images on the candle are a uniform red color with gold-colored dusting, the designs are clearly recognizable as holly. This candle is therefore ruled to be outside the scope of the Order. This decision is consistent with Springwater Cookie & Confections v. United States (Slip Op. 96-160, CIT, September 25, 1996).

7. Dark Green Oval Angel Pillar (Style #X0103(P1))

This candle has the images of the faces and wings of two angels on opposite sides of the candle. JCPPC claims that this candle should be excluded from the scope of the Order because it depicts a symbol of the Christmas holiday. However, nothing about angels is specific to the Christmas holiday. Angels are used for a wide variety of decorative purposes. JCPPC's own comments acknowledge that angels "have exclusively religious origins and continue to be closely associated with religion today" (JCPPC's Rebuttal at 9). Thus, angels are a religious symbol in general, and

are not specifically tied to the Christmas holiday. Furthermore, with respect to this particular item, there are no additional ornamental features which lend a Christmas-like theme to this candle. This item therefore remains within the scope of the Order. In a scope inquiry, the Department must focus, above all, on the product at issue, irrespective of the reasons given for marketing the product. The Department only considers secondary criteria when descriptions of the merchandise are *not* dispositive. In this case, the Department does not reach an analysis of secondary criteria, because the product description is dispositive of its inclusion in the scope.

9. Red House Candle (Style #X5305)

10. Chocolate House Candle (Style #X5304)

11. Church Candle (Style #X7153)

JCPPC claims that candles #9-11 should be found outside the scope of the Order because they are in the shape of identifiable objects. The Department agrees with this assertion. When viewed from a majority of angles, each candle is clearly identifiable as a house or church, respectively, and thus eligible for a novelty exemption. These three candles therefore are outside the scope of the Order.

13. Green Square Candle with Angels (Style #X0103(P1)S)

This candle has the raised image of an angel's head, shoulders and wings on all four vertical faces. JCPPC claims that this candle should be excluded from the scope of the Order because it depicts a symbol of the Christmas holiday. However, as described above, nothing about angels is specific to the Christmas holiday. Angels are used for a wide variety of decorative purposes. Furthermore, with respect to this particular item, there are no additional ornamental features which lend a Christmas-like theme to this candle. This item therefore remains within the scope of the Order.

14. Red Square Candle with Holly (Style #X0103(P6)S)

JCPPC contends that the molded, raised holly images found on this item are symbols of Christmas and therefore render this candle outside the scope of the Order. The Department agrees with this assertion. The holly images represent significant decorations and are visible from multiple angles. While holly has green leaves and red berries, and the images on the candle are a uniform red color with gold-colored dusting, the designs are clearly recognizable as holly. This candle is therefore ruled to be outside the scope of the Order. This decision is consistent with Springwater Cookie & Confections v. United States (Slip Op. 96-160, CIT, September 25, 1996).

15. Cream Colored Square Candle with Pinecones and Leaves (Style #X0103(P5)S)

This candle has molded images of pinecones and leaves on all four faces of the candle. In its original request, JCPPC did not argue that this candle should be excluded from the scope of the

Order. The NCA, in its comments, agreed, citing a prior ruling that did not exclude a candle decorated with pinecones (NCA's comments at 6). In its rebuttal, JCPPC then argued that pinecones are decorative and novel, and that this candle should be excluded from the Order. At best, however, pinecones represent general seasonal decorations and are not specific to a particular holiday. The Department, as noted by the NCA, has previously determined that candles decorated with pinecones are within the scope of the Order (Final Scope Ruling, Midwest of Cannon Falls, October 30, 1996). Therefore, this item is deemed within the scope of the Order.

16. Brown "JOY," "PEACE," and "NOEL" Pillar (Style #X-3)

This is a straight-sided pillar candle with the words "joy," "peace," and "noel" inscribed on all four vertical faces. The Department has previously determined that candles with the words "Joy" and "Peace" inscribed on them are not specific to the Christmas holiday. However, the Department has ruled that a candle with "Noel" inscribed on it is outside the scope of the Order, since "Noel" is a direct reference to the Christmas holiday (Final Scope Ruling, Meijer, Inc., December 15, 1997). Therefore, the Department finds that this candle qualifies for a holiday novelty exemption and is excluded from the scope of the Order.

17. Cream Colored Holly Pillar (Style #C-5312-2)

JCPPC contends that the molded, raised holly images found on this item are symbols of Christmas and therefore render this candle outside the scope of the Order. The Department agrees with this assertion. The holly images represent significant decorations and are visible from multiple angles. Holly has green leaves and red berries, and the images on the candle follow that pattern and are clearly recognizable as holly. This candle is therefore ruled to be outside the scope of the Order. This decision is consistent with Springwater Cookie & Confections v. United States (Slip Op. 96-160, CIT, September 25, 1996).

18. White Square Candle with Poinsettias (Style #152133B)

This candle has the image of a red and green flower present on all four vertical faces of the candle. However, the botanical design depicted is not readily identifiable as a poinsettia, and there are no other features on this candle that would exclude it from the scope of the Order. Since the design is not identifiable as a poinsettia, the Department did not analyze whether or not such a design would be a basis for excluding a candle from the scope of the Order. The Department therefore cannot grant a holiday novelty exemption for this item, and, thus, this candle remains within the scope of the Order.

19. Red, White and Blue Stacked Star Candles (Lot 1432)

20. Red, White and Blue Stacked Star Candles (Lot 1431)

JCPPC argues that these candles should be excluded from the scope of the Order because they represent identifiable objects, and that when viewed from the side, both candles are identifiable as stars. Candle #20 has the same design as #19, except that it is shorter. The Department cannot subscribe to this assertion. While the candles can be identified as stars when viewed from the top and bottom, from the side, they appear to be multi-sided pillar candles. The Department has previously ruled that similar pillar candles are within the Order's scope (Final Scope Ruling, Meijer, Inc., September 30, 1999). These candles are therefore found to be within the scope of the Order.

21. Hollow Candle with Tea-Light Candles (Style #X0109(R))

The hollow "candle" does not contain a wick and is therefore not considered a candle; rather, it is a candle holder. Candle holders are not within the scope of the Order. The tea-light candles included with the set are within the scope of the Order since they are wax-filled containers (Final Scope Ruling, Simcha Candle Co., February 12, 1993).

22. Pinecone Tea-Light Candle (Style #NX827G16T)

JCPPC argues that this item should be excluded from the scope of the Order because it is in the form of an identifiable object. The Department has ruled in the past that tea-light candles are within the scope of the Order as wax-filled containers (Final Scope Ruling, Simcha Candle Co., February 12, 1993). Those tea-lights were undecorated and did not have any features that would exclude them from the scope of the Order. The instant item is a tea-light, but has the form of a pinecone which rises above the metal casing. The Department finds that this tea-light can thus be excluded from the scope of the Order as an identifiable object.

23. Christmas Ornament Candle (Style #X16M)

24. Pinecone Candle (Style #X0113)

25. Apple Candle (Style #X0110(S6))

26. Pumpkin Candle (Style #X0112(S6))

27. Gourd Candle (Style #X0116(S6))

JCPPC claims that candles #23-27 should be found outside the scope of the Order because they are in the shape of identifiable objects. The Department agrees with this assertion. When viewed from all angles, each candle is clearly identifiable, respectively, as a Christmas ornament, pinecone, fruit or vegetable, and, thus, eligible for a novelty exemption. These five candles are therefore outside the scope of the Order.

28. Glass Bowl with Three Floating Snowflake Candles (Style #X0119)

JCPPC contends that the snowflake candles should be excluded from the scope of the Order due to the fact that they are in the form of identifiable objects. However, the candles are only identifiable as snowflakes when viewed from the top, due to a molded-on snowflake pattern.

The Department has ruled in the past that designs molded on the tops of candles do not render such candles identifiable objects (Final Scope Ruling, Cherrydale Farms, October 5, 2000). The candle's shape is fundamentally that of a six-sided pillar, and neither the molded snowflake pattern nor the minor rounded protuberances along the candles' edges alter that fact.

- 29. Ghost Face and Web Pillar (Style #HC0105)**
- 30. Jack-O'-Lantern, Web and Bat Pillar (Style #HC010(R))**
- 31. Set of Six Jack-O'-Lantern Tea-Light Candles (Style #HC0102)**
- 32. Set of Four Ghost Tea-Light Candles (Style #HC0103)**

JCPPC claims that candles #29-32 should be found outside the scope of the Order because they possess characteristics unique to the Halloween holiday. The Department agrees with this assertion. In a prior scope ruling, the Department ruled that candles which incorporated Jack-O'-Lanterns and ghosts in their design were specific to the Halloween holiday (Final Scope Ruling, Meijer, Inc., October 14, 1999). The designs are significant decorations and are visible from multiple angles. Each design is clearly identifiable as a Halloween symbol. The Department therefore determines that these candles qualify for a holiday novelty exemption and are excluded from the scope of the Order.

- 33. Olive-Shaped Candle with Snake Skin Pattern (Style #D4401/2)**
- 34. Block-Shaped Candle with Snake Skin Pattern (Style #D4427)**
- 37. Round-Shaped Candle with Curvy Lines (Style #D7109/1)**
- 38. Oval-Shaped Candle with Curvy Lines (Style #D5224)**

JCPPC argued in its original request that candles #33, #34 and #38 should be found outside the scope of the Order since olive, oval or block shaped candles are identifiable shapes. JCPPC did not argue in its original request that candle #37 be excluded from the scope of the Order. In its rebuttal comments, JCPPC clarifies that candle #33, while a round, should be excluded because the snake-like skin pattern makes it unique. Also in its rebuttal, JCPPC argues that candle #37 is in the shape of a round ball or sphere, and that the Department has ruled that such candles are outside the Order's scope (JCPPC's Rebuttal at 7.).

Regarding candle #33, the olive-shaped item, the Department notes that adorning a standard round candle with generic decorations is not grounds for excluding that item from the scope of the Order. Such an exclusion would lead to absurd results and be an unwarranted narrowing of the Order's scope, with generically decorated candles suitable for everyday use becoming eligible for the novelty exemption currently reserved for holiday candles, and candles in the form of identifiable objects or figurines. This candle is, therefore, within the scope of the Order.

The Department believes that candle #34, the block-shaped item, is a straight-sided column. The block shape in and of itself is not a recognizable object; furthermore, the Customs Notice, referenced in the **Background** section above, specifies that only candles in the form of recognizable *objects*, not shapes, can be excluded from the scope of the Order. The Department

has previously ruled that similar rectangular-shaped candles are straight-sided columns and within the scope of the Order (Final Scope Ruling, Barthco Trade Consultants, Inc., April 30, 2001). Likewise, the block-shaped candle also has the characteristics of a straight-sided column and is thus included within the scope of the Order.

Candle #37 is not a round ball or sphere. Rather, it is a cylindrical pillar, a common shape which is within the scope of the Order.

With respect to #38, the oval-shaped item, the Department notes that numerous other candles listed in this scope request are described by JCPPC as “oval pillars.” The Department believes that candle #38 is nothing more than another version of an oval pillar and lacks any other characteristics that would render it outside the Order’s scope. The Department, therefore, finds that candle #38 is an oval-shaped pillar and within the scope of the Order.

39. Pillar with Christmas Trees and Stars and Rose Petal Top (Style #X0102)

This candle is a cylindrical pillar with a carved rose petal top. Engraved images of Christmas trees are visible around candle. In its original request, JCPPC did not argue that this candle should be excluded from the scope of the Order. In its comments, the NCA agreed, stating that stars and evergreen trees are not specific to the Christmas holiday (NCA’s Comments at 10). In its rebuttal, JCPPC then asserts that this candle bears the carved images of Christmas trees with decorations and stars on top. The Department agrees that the Christmas tree motifs, which cannot be removed without damaging the candle, are grounds for excluding this candle from the scope of the Order, and has ruled in the past that a candle with a similar carved design is outside the scope of the Order (Final Scope Ruling, San Francisco Candle Company, Inc., February 12, 2001).

40. “Build Your Own Candle” Set (Style #CX61)

This item consists of wax chips and wicks packaged together in a bag. The package contains instructions for placing the wax chips and wicks inside a glass container to make a candle. JCPPC argued in its original request that the holly leaves and berries are identifiable objects, even though they would be melted when placed in a glass container and lit. The NCA contends that this item has wax chips and wicks which are to be placed in a container to create a candle, and that it thus should be treated as a wax-filled container. In its rebuttal comments, JCPPC contends that this item is not classifiable as a candle, but as a wax chip. The Department believes that the wax chips, which are in the form of holly leaves and berries, would be rendered largely unrecognizable when placed in a container and melted. However, JCPPC’s argument that this item is not a candle is valid. As the instructions included with this item state, the wax chips and wicks included with this kit are meant to be placed inside a glass container to form a candle. However, as mentioned before, no wax container is provided with this kit. This fails to satisfy the doctrine of entireties, which has been stated as follows:

“It is now well settled that separate components covered by the same entry, although designed and intended to be used together, are not properly classifiable as an entirety

where the components do not comprise a complete commercial entity, *but instead must be assembled with additional components to form a complete article of commerce.*”
Nichimen Co. v. United States, 5 CIT 141, 143-144, 565 F.Supp. 148, 151 (CIT 1983),
affirmed, 726 F.2d, 1580 (Fed Cir. 1984).

Relying on this doctrine, the Department previously determined that a similar candle-making kit constituted a wax-filled container (Final Scope Ruling, Polardreams International, Inc., May 6, 1998). However, that kit included a glass container, and this item does not. Since the additional component (a glass container) required to make this item complete is not included with the kit, the Department finds that this item is neither a wax-filled container nor a candle within the scope of the Order.

41. Ocean Blue Pillar Candle (Style #SC01(46))

42. Cream Colored Cube Candle with Seashells (Style #NG565)

In its original request, JCPPC did not argue that this candle should be excluded from the scope of the Order. In its comments, the NCA agreed, stating that a candle with seashell designs has been found to be within the scope of the Order (NCA’s Comments at 8). In its rebuttal, JCPPC contends that seashells are decorative and novel, and that the candles should be excluded from the Order. The Department has ruled in the past that generic or seasonal decorations, including specifically seashells, are not grounds for excluding a particular candle from the Order’s scope (Final Scope Ruling, American Greetings, May 4, 2000 and Final Scope Ruling, Midwest of Cannon Falls, October 30, 1996). Therefore, these candles remain within the scope of the Order.

43. 58 Percent Palm Oil/ 42 Percent Petroleum Wax Square Candle with Santa Figures (Style #152133C)

JCPPC argues that only candles in which petroleum wax is the majority component should be included in the scope of Order. Consistent with our most recent ruling on candles in which petroleum wax was not the majority component, and per the Commission’s definition that petroleum wax candles are those composed of over 50 percent petroleum wax, the Department agrees that this item should be excluded from the scope of the Order (Final Scope Ruling, Ocean State Jobbers, December 18, 1998 and *Candles from the People’s Republic of China, USITC Pub. 1888*, Aug. 1986, 4-5). Furthermore, the Santa figures found on all four sides of the candle would exempt this candle from the Order due to the holiday novelty clause.

44. Round Candle with Star Cutout (Lot 1414)

This candle is approximately ten inches in diameter and two inches tall. JCPPC contends that the star cutout in the center of the candle can be seen from a distance since the candle is only two inches tall. However, the star cutout does not fundamentally alter that candle’s shape as that of a round. The Department has previously determined that short rounds are covered by the Order (Final Scope Ruling, Cherrydale Farms, October 5, 2000). This candle is, therefore, within the scope of the Order.

Neither in its original request, nor in its rebuttal to the NCA's comments, did JCPPC state that it believed the following candles are outside the scope of the Order:

- 8. Red Oval Pinecones and Leaves Pillar (Style #X0103(P5)O)**
- 12. Cream Colored Square Candle with Embedded Gold Foil (Style #C-901-2G)**
- 35. Column with Snake Skin Pattern (Style #D6259)**
- 36. Column with Curvy Lines (Style #D7109/2)**

Accordingly, the Department did not analyze whether or not these items would be excluded from the scope of the Order. As such, these candles remain within the scope of the Order.

JCPPC also contends that its square-shaped candles are not within the scope of the Order because that shape was not designated in the scope language of the petition and investigation. However, the Department has previously determined that square or cube-shaped candles are within the scope of the Order (Final Scope Ruling, American Fun & Toy Creators, Inc., September 30, 1999; and Final Scope Ruling, Mervyn's, December 9, 1996). The Department also determined that cube-shaped candles possess the characteristics of straight-sided pillar candles, and are therefore within the Order's scope.

JCPPC also claims that some of its candles should be classified as festive articles under the Harmonized Tariff Schedule of the United States (HTSUS), pursuant to Midwest of Cannon Falls v. United States, (Slip Op. 96-19, CIT, January 18, 1996). However, whether or not certain items are classifiable as festive articles under the HTSUS is not relevant to the Department's scope determination since it is not listed among the descriptions identified in 19 CFR 351.225(d) as applicable to scope determinations.

Summary

The foregoing analysis demonstrates that in 22 of 44 cases, JCPPC's candles should be considered under the novelty exemption as either holiday candles or candles in the form of identifiable objects. Furthermore, item #43 is less than 50 percent petroleum wax and therefore outside the Order's scope, in addition to being excluded under the holiday novelty exemption. In one additional instance (item #21), the hollow candle holder is not a candle and, therefore, not within the scope of the Order. Also, item #40, the candle kit, is not candle, and is therefore excluded from the Order. Thus, a total of 24 candles are excluded from the Order's scope. Moreover, our analysis of the ease or difficulty of removing decorative figurines or images is predicated on a finding that the candles with the figurine or image would be excluded as a holiday novelty candle (Final Scope Ruling, American Greetings Corporation, May 4, 2000 at 8). Some of the designs found on JCPPC's candles are not specific to the Christmas holiday. In a scope inquiry, the Department must focus, above all, on the product at issue, irrespective of the season during which the product is sold.

JCPPC argues that its items are holiday novelty candles, novelty candles in the form of identifiable objects, in shapes not outlined in the scope of the Order, composed of less than 50 percent petroleum wax, or are not classifiable as candles. We find that 20 of JCPPC's candles,

along with the tea-lights included with the hollow candle holder, as described above, are within the scope of the Order. Conversely, the remaining 24 candles fall outside the scope of the Order. 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 determinations.

Recommendation

Based on the preceding analysis, we recommend that the Department find that 20 of JCPPC's candles, along with the tea-lights included with the hollow candle holder, as described above, are within the scope of the antidumping duty order on petroleum wax candles from the PRC. We also recommend that 24 of JCPPC's candles, as described above, be excluded from 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
Enforcement Group III

Date