

By Electronic Mail Notification

To All Interested Parties:

On November 10, 2003, the Department of Commerce (the Department) received a request from Direct Scent, Inc. (Direct Scent) for a scope ruling on whether three "Christmas candles" with item numbers: 01G020, 01G060 and 01G0073, should be included within the scope of 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)(2003), the Department has determined that one of the three models of Direct Scent candles with item number 01G060 is included within the scope of the order on petroleum wax candles from the PRC. The Department has further determined that two of the three models with item numbers 01G020 and 01G0073 are not included within the scope of the order.

Enclosed is a memorandum containing the Department's analysis. We will notify U.S. Customs and Border Protection (formerly the United States Customs Service) of this decision. If you have any questions, please contact Kimberley Hunt at (202) 482-1272 or Jacqueline Arrowsmith.

Sincerely,

Dana S. Mermelstein
Acting Office Director
AD/CVD Operations, Office VI
Import Administration

Enclosure

MEMORANDUM FOR: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

FROM: Dana S. Mermelstein
Acting Office Director
AD/CVD Operations, Office VI

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

Summary

On November 10, 2003, the Department of Commerce (the Department) received a request from Direct Scent, Inc., for a scope ruling on three sets of "Christmas candles" (item numbers: 01G020, 01G060 and 01G0073), to determine whether these candles are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). (Petroleum Wax Candles from the PRC: Final Determination of Sales at Less Than Fair Value, 51 FR 25085 (July 10, 1986) (Final Determination)); Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986) (Order). In accordance with 19 CFR 351.225(k)(1), the Department finds that one of the three Direct Scent "Christmas candles" (item number 01G060) is included within the scope of the antidumping duty order on petroleum wax candles from the PRC.¹ The Department further finds that two of the three Direct Scent "Christmas candles" (item numbers 01G020 and 01G0073) are not included within scope of the Order.

¹ The Department has developed an internet website that allows interested parties to access prior scope determinations regarding the order on petroleum wax candles from the PRC. This website lists all scope determinations from 1991 to the present. It can be accessed at <http://ia.ita.doc.gov/download/candles-prc-scope/>. The Department will update the website periodically to include newly issued scope rulings.

Background

a. Product Descriptions

Direct Scent's request concerned three separate "Christmas candles" identified by item numbers 01G020, 01G060 and 01G0073. Direct Scent submitted both photographs and samples of the three candles for our review. Attached to Direct Scent's November 10, 2003, submission are photocopies of photographs showing these three styles as sold and the three samples of the candles were submitted in their packaging as sold.

The first candle, identified as item number 01G020, is described as a "Merry Christmas Gel Candle." This candle is a clear gel-filled glass container, which has been decorated with a candy-cane rimmed top, has the words "Christmas" in gold which appear twice on the outside of the container, two Santa Clauses, each holding a bag, snow lining the top and the bottom of the container, two green Christmas-like trees, two blue Christmas-like trees, and two yellow stars. All of these decorations are securely affixed to the outside of the glass container. The candle is packaged in a clear gift box.

The second style of candle, identified as item number 01G060, is described as a "Holly Jolly Christmas Gel Candle." This candle is a clear shot-glass-like container, which has a sand-like substance on the bottom, and is filled with a clear sparkle gel with a figurine immersed in the gel.

The third candle, identified as item number 01G0073, is described as a "Merry Little Christmas Gel Candle" and is described by Direct Scent as a gel candle with a Santa Claus decorated glass container in a clear gift box. This candle is a blue gel-filled clear glass container, which has been decorated on the outside with what appears to be snow along the bottom, six snow flakes on two sides, four Christmas-like trees on two sides, a Santa Claus carrying a package on one side, and a wreath decorated with a red bow and ornaments on another side of the glass container. All of these decorations are securely affixed to the outside of the glass container.

b. Direct Scent's Request

Direct Scent properly filed a request for a scope ruling on November 10, 2003. National Candle Association (NCA), an interested party in this proceeding, filed comments opposing Direct Scent's request on October 28, 2003. No rebuttal briefs were filed.

Direct Scent argues that the Christmas theme of the “Christmas candles” subject to this inquiry (“Merry Christmas Gel Candle,” “Holly Jolly Christmas Gel Candle,” and “Merry Little Christmas Gel Candle”) qualify these candles for exclusion from the scope of the Order under 19 CFR 351.225(k)(1).

Direct Scent argues that the “Merry Christmas Gel Candle” should not be included within the scope of the Order because the Santa Clauses, the Christmas trees and letters of “Christmas” are permanently glued on the glass container and removal of any of the decorations would completely damage the product. Direct Scent claims that this candle is exclusively used for the Christmas holiday.

Direct Scent argues that the “Holly Jolly Christmas Gel Candle” should not be included within the scope of the Order because the removal of the embedded glass Santa Claus figurine would completely damage the product, which is proof that it is a candle that is exclusively used for the Christmas holiday.

Direct Scent finally argues that the “Merry Little Christmas Gel Candle” should not be included within the scope of the Order because the Santa Claus and the Christmas trees are permanently glued on the glass container, and removal of any of these decorations would completely damage the product and would render it un-sellable. Direct Scent claims that this is a candle that is exclusively used for the Christmas holiday.

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. The NCA contends that the antidumping statute and antidumping duty orders are remedial in nature and exceptions to them should be construed as narrowly as possible to preserve the efficacy of the order on petroleum wax candles from the PRC. In support of its assertion, the NCA cites a Court of International Trade (CIT) decision, with regard to the novelty exception, in which the CIT noted that “. . . a candle must be specifically designed for use only in connection with a religious holiday or special event to fall within the novelty candle exception.” Russ Berrie, 57 F. Supp. 2d at 1194-1195. Thus, the NCA argues that the Department narrowly limited the novelty candle exception to figurine candles, candles shaped in the form of identifiable objects, and candles specifically designed for use only in connection with the holiday season.

With respect to Direct Scent’s “Merry Little Christmas Gel Candle,” “Holly Jolly Christmas Gel Candle,” and “Merry Little Christmas Gel Candle,” the NCA argues that these candles are not in the shape of identifiable objects and are not designed for use only in connection with the holiday season and, therefore, fall within the scope of the Order. NCA argues that for all three candles, the Christmas design is not visible or identifiable from most angles, as is required for candles to qualify as associated with a recognizable holiday following the Final Scope Ruling: San Francisco Candle Company (June 12, 2003).

NCA argues that Direct Scent's "Holly Jolly Christmas Gel Candle" does not qualify as a Christmas holiday candle because the Santa Claus design attached to the outside of the candle can only be viewed from one side and when viewed from the top and all other angles, the Santa Claus cannot be seen. Additionally, NCA argues that the other designs on the candles do not qualify as Christmas designs. Secondly, NCA argues that the "Merry Christmas Gel Candle" falls within the scope of the Order because the Santa Claus is not visible from multiple angles.

Legal Framework

The Department examines scope requests in accordance with the Department's scope regulations, which may be found at 19 CFR 351.225(2003). On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (the Commission). See 19 CFR 351.225(k)(1). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether 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, with or without formal inquiry, after consideration of all evidence before the Department.

In the instant case, the Department has evaluated Direct Scent's request, in accordance with 19 CFR 351.225(k)(1), and the Department finds that the determinations of the Secretary (including prior scope determinations) and the Commission are, in fact, dispositive with respect to Direct Scent's three candle types. Therefore, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(1).

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 NCA 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.

See 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 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.

See Petroleum Wax Candles from the People’s Republic of China: Initiation of Antidumping Duty Investigation, 50 FR 39743 (September 30, 1985); 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); Final Determination; and Order.

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.” See Determinations of the Commission (Final), USITC Publication 1888, August 1986, at 4, note 5, and A-2 (Commission Determination). The Commission stated that “...we determine that the domestic like product shall consist only of petroleum wax candles.” See Commission Determination, at 9. In its discussion of like product, the Commission also stated:

Petroleum wax candles are those composed of over 50 percent petroleum wax, and may contain other waxes in varying amounts, depending on the size and shape of the candle, to enhance the meltpoint, viscosity, and burning power.

See Commission Determination, at 4-5.

The Department clarified the scope of the Order in relation to certain novelty candles. See Russ Berrie Ruling at 1194. In July 1987, the Department issued a notice to the United States Customs Service (since renamed CBP) in connection with a scope ruling which provides:

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 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 Customs Notice.

In November 2001, the Department changed its interpretation of the scope of the Order. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); J.C. Penney (November 9, 2001) (J.C. Penney Ruling). 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 text following this broad, inclusive sentence provides a list of shapes; this list is not modified by any express words of exclusivity. The result of our prior practice of not including within the scope of the Order candles of a shape other than those specifically listed in the Order was inconsistent with the fact that the candles were “scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.”² In J.C. Penney Ruling, the Department revised this practice because the former practice 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.

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

Although the specific scope decision in Duferco Steel has been overturned by the United States Court of Appeals of the Federal Circuit (CAFC) in Duferco Steel, Inc. v. United States, 296 F.3d 1087 (Fed.

² See, e.g., Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Eandar Corp. (January 11, 2000) (Eandar) (The Department determines that a “dragonfly” candle, in the shape of a rough-hewn stone with a dragonfly carved on top, should not be included within the scope because it is of a shape not specifically listed by the language of the scope), and Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); American Drug Stores, Inc. (March 16, 1998) (The Department determined that a sphere or ball-shaped candle should not be included within scope because it is a shape not specifically listed by the language of the scope).

Cir. 2002) (Duferco Steel II), the CAFC’s ruling does not undermine the Department’s scope determination in J.C. Penney Ruling. The plain language of the scope of the Order clearly states “{c}ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks . . . sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers” are included within the scope of the Order. Thus, the Order offers a descriptive list of the shapes of candles included within the Order, but, as the courts have recognized, there is no requirement that every single product covered must be identified in the scope. More specifically, the CAFC has stated that “the petitions that led to the issuance of the order did not need to specifically identify the {product} in order to cover {it}; our precedent, to say nothing of the regulations, makes clear that neither a petition nor an antidumping or countervailing duty order requires that level of specificity.”² The CAFC further stated “{a}s a matter of law, a petition need not list the entire universe of products . . . in order {for the petition} to cover those products.”³ Thus, as applied to this Order, there is no requirement, nor is it possible, for all the shapes of candles to be listed.⁴ In fact, if the list were exhaustive, there would have been no need for the Department to render a decision on novelty candles or any other candle that was not explicitly listed as a shape in the scope of the Order. However, the Department did issue the novelty candle exception, which offered a narrowly construed exception and left all other petroleum wax candles from the PRC covered by the Order.

When determining whether a particular novelty candle is within the scope of the Order, the Department will first determine whether the candle is made of petroleum wax. If the candle is made of petroleum wax, the Department will look to see if the shape of the candle falls within those shapes listed in the second sentence of the scope as defined in the Order, *i.e.*, “tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers.” If the Department determines that a candle is one of these shapes, it is within the scope of the Order.

However, if the Department finds that a candle’s shape is not among the shapes listed in the second sentence of the scope as defined in the Order, *i.e.*, taper, spiral, straight-sided dinner candle, round, column, pillar, votive, and various wax-filled containers, then the candle will be evaluated to determine whether it is a novelty candle. For a candle to qualify for this exception, the characteristic which is claimed to render it a novelty candle (*i.e.*, the shape of an identifiable object or a holiday-specific design), should be easily recognizable in order for the candle to merit not being included within the scope

² Novosteel SA v. United States, 284 F.3d 1261, 1264 (Fed. Cir. 2002).

³ Id.

⁴ See Petroleum Wax Candles from China, USITC Pub. No. 3226 Investigation No. 731-TA-282 (Review) (August 1999) (USITC Pub. No. 3226), at 18 (“Candles come in a wide variety of shapes and sizes. Major U.S. candle manufacturers reportedly will offer 1,000 to 2,000 varieties of candles in their product lines”).

of the Order. Specifically, among other determining factors, the Department will examine whether the characteristic is identifiable from most angles and whether or not it is minimally decorative, e.g., small and/or singularly placed on the candle. If the identifiable object or holiday-specific design is not identifiable from most angles, or if the design or characteristic is minimally decorative, the Department may determine that the candle should be included within the scope of the Order. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); J.C. Penney Purchasing Corp. (May 21, 2001) (J.C. Penney Ruling); Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); San Francisco Candle Co. (Feb. 12, 2001) (SFCC Scope Ruling); San Francisco Candle Company, Inc. v. United States, 265 F. Supp. 2d 1374, 1379 (CIT 2003) (SFCC); and Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Endar Corp. (January 11, 2000) (Endar). If the candle does not possess characteristics set out in the July 1987 novelty candle exception, and it is a scented or unscented petroleum wax candle made from petroleum wax and having a fiber or paper-cored wick, the Department will determine that the candle is within the scope of the Order.

Analysis of Direct Scent’s Candles

With respect to the involved scope request, the Department finds that for the reasons outlined below, one of Direct Scent’s “Christmas candles” with item number 01G060 is included within the scope of the Order. We find that this candle is included within the scope of the order because this candle is not a recognizable object, nor does the candle qualify for the holiday novelty exception because this candle does not have scenes and symbols visible from multiple angles that are exclusively associated with the Christmas holiday. The Department further finds that the other two Direct Scent “Christmas candles” with item numbers 01G020 and 01G0073 are not included within the scope of the Order because these candles have scenes and symbols visible from multiple angles which are exclusively associated with the Christmas holiday. Our analysis of each of these candles is provided below.

- 1. Merry Christmas Gel Candle (Item number 01G020)**
- 2. Merry Little Christmas Gel Candle (Item number 01G0073)**

Direct Scent describes its “Merry Christmas Gel Candle” as a Santa-Claus-decorated glass container, filled with gel, packed in a clear gift box. Direct Scent describes the “Merry Little Christmas Gel Candle” as a Santa-Claus-decorated glass container, filled with gel, packed in a clear gift box. Direct Scent states that the candles’ intended use is for the Christmas holiday season. Direct Scent claims that both of these “Christmas candles” are Christmas-only products. Direct Scent further argues that the “Merry Christmas Gel Candle” and the “Merry Little Christmas Gel Candle” have Christmas theme decorations which are permanently glued on, and the removal of which would destroy the candle.

The Department agrees with Direct Scent’s argument that the “Merry Christmas Gel Candle” (item number 01G020) and the “Merry Little Christmas Gel Candle” (item number 01G0073) are exclusively

associated with the Christmas holiday and therefore are not included within the scope of the order on petroleum wax candles from the PRC.

The “Merry Christmas Gel Candle” (item number 01G020) is decorated with the colors red, green, and white, which, consistent with the Department’s practice, are colors that are traditionally associated with Christmas. See SFCC Scope Ruling. The candle is in a glass container with the words “Christmas” written on both sides, two Santa Clauses in red Santa suits with white beards and red hats, all decorations which solely depict Christmas. In addition, the candle has a candy cane rimmed top and snow covering the bottom and top of the candle. The “Merry Christmas Candle” (item number 01G020) conveys the Christmas holiday season both from the written word “Christmas” which wraps around the entire candle and can be seen from any angle, from the candy-cane rimmed top, and from the Santa Claus on either side of the candle. See Final Scope Ruling: Kole Imports (Kole) (June 06, 1994) (the Department determined that candles packaged in boxes with Santa Claus characters on both front and back, with the words “In the Christmas Spirit” on the back panel of the box were not included within the scope of the Order). Thus, the Department finds that the instant candle with a readily discernible Santa Claus on each side of the candle, each with two eyes, a nose, a beard and moustache, each wearing red suits and hats, each carrying a bag, coupled with the words “Christmas” written in large letters encircling the candle, is a novelty candle. This candle qualifies for the novelty exception because it has “scenes or symbols of other occasions (e.g., religious holiday or special events) depicted in their designs” that are exclusively associated with Christmas. In addition, the Department finds that this candle qualifies for the novelty exception because when the candle is viewed from most angles, there are visible symbols and designs that exclusively relate to the Christmas holiday. See e.g., Russ Berrie Ruling. Finally, this candle is shaped in such a way that the Santa and the other Christmas decorations are visible when the candle is viewed from the top, the bottom, and from any other angle. This is consistent with the Department’s determination in the Remand Determination for SFCC Scope Ruling and affirmed by the CIT, where “the Department recognized that the ‘identifiable from most angles’ benchmark was appropriately applied...to candles allegedly associated with a recognized holiday as well as to candles in the shapes of identifiable objects, because these characteristics both fall under one and the same exception to the scope of the Order: the novelty candle exception.” See SFCC Scope Ruling. The Department finds that Direct Scent’s “Merry Christmas Gel Candle” (item number 01G020) contains scenes of Christmas that are “identifiable from most angles.”

The “Merry Little Christmas Candle” (item number 01G0073) is a wax-filled glass container which is decorated with a detailed Santa Claus carrying a wrapped present affixed to one side of the candle, and a decorated wreath on the other side of the candle. The Santa Claus and Christmas-like tree images are viewable from multiple angles of the candle. The candle additionally has a snow-rimmed bottom and several decorated Christmas trees. The candle has a distinct pine-cinnamon-like smell. Consistent with our practice, the Department finds that a readily discernible Santa Claus, whose image is viewable from multiple angles on a candle, qualifies for the holiday novelty candle exception, and thus is not within the scope of the Order. See Final Scope Ruling: Star Merchandise Inc. (Star) (July 27, 1994) (the Department determined that candles in tins, one with a scene of Santa presenting a child with a toy dog, and another with a snowman with a red Santa hat shown cradling a gift in one arm and a small Christmas tree in the other, with a poinsettia blossom at its feet, should not be included within the scope).

Additionally, the “Merry Little Christmas Gel Candle” (item number 01G0073) is decorated with the colors red, green and white which, consistent with the Department’s practice, are colors traditionally associated with Christmas. See SFCC Scope Ruling. The “Merry Little Christmas Candle” (item number 01G0073) conveys the Christmas holiday season from the detailed design of the Santa Claus carrying a wrapped present to the decorated Christmas trees to the wreath which is decorated with ornaments and a red bow. Thus, the Department finds that the instant candle is a novelty candle “{h}aving “scenes or symbols of other occasions (e.g., religious holiday or special events) depicted in their designs” because these colors are traditionally associated with Christmas, and when the candle is viewed from most angles there is an express Christmas holiday theme. See e.g., Russ Berrie Ruling. Finally, the manner in which the Santa Claus and the wreath are affixed to the candle makes these symbols visible when the candle is viewed from the top, the bottom and from any other angle. This is consistent with the Department’s determination in the Remand Determination for SFCC Scope Ruling and affirmed by the CIT, where “the Department recognized that the ‘identifiable from most angles’ benchmark was appropriately applied...to candles allegedly associated with a recognized holiday as well as to candles in the shapes of identifiable objects, because these characteristics both fall under one and the same exception to the scope of the Order: the novelty candle exception.” See SFCC Scope Ruling. The Department finds that Direct Scent’s “Merry Little Christmas Candle” (item number 01G0073) contain scenes of Christmas that are ‘identifiable from most angles,’ and therefore, this candle is not included within the scope of the Order.

3. Holly Jolly Christmas Gel Candle (Item number 01G060)

Direct Scent describes the “Holly Jolly Christmas Gel Candle” as a glass Santa Claus figurine, embedded within a gel candle, in a glass container. Direct Scent states that the candle is intended for use only during the Christmas holiday season, and further claims that this “Holly Jolly Christmas Candle” is exclusively used for the Christmas holiday. Direct Scent further argues that the “Holly Jolly Christmas Gel Candle” will be destroyed if the embedded glass Santa Claus is removed.

The Department disagrees with Direct Scent’s argument that the “Holly Jolly Christmas Candle” (item number 01G060) is exclusively associated with the Christmas holiday and the Department has determined that this candle is included within the scope of the Order, because the candle’s use is not attributable solely to the Christmas season.

The “Holly Jolly Christmas Candle” has a small glass figure dressed in an orange suit, the facial features of the figurine are distorted, the figure appears to have four feet, one eye is smaller than the other, the figure is standing on white sand and resembles an elf more than a Santa Claus. Therefore, the colors, the minimal resemblance to a Santa Claus, and the absence of any other decorations, do not indicate that this candle is exclusively associated with the Christmas holiday. More specifically, this candle is not a novelty candle “{h}aving scenes or symbols of other occasions (e.g., religious holiday or special events) depicted in their designs.” See e.g., Russ Berrie Ruling. There are no scenes or symbols of the Christmas holiday other than the glass figurine, which we have concluded does not resemble a Santa Claus. The Department has ruled in the past that candles which do not contain “scenes or symbols

specifically related to a holiday or other special event” are within the scope of the Order, because their use is not attributable solely to the holiday season. See e.g., Russ Berrie Ruling; see also Final Scope Ruling - Petroleum Wax Candles from the People’s Republic of China; See Star (1994) (the Department determined not to include a “snowman” candle within the scope of the Order where the candle was in the shape of a snowman with a red Santa hat, cradling a small gift in one arm and a small Christmas tree in the other). Thus, we find that this candle is included within the scope of the Order.

Recommendation

We recommend finding that Direct Scent’s candle “Holly Jolly Christmas Gel Candle” with item number 01G060 should be included within the scope of the order on petroleum wax candles from the PRC, because this candle does not have scenes or symbols that are exclusively associated with a particular holiday. We further recommend finding that the candles “Merry Christmas Gel Candle” and “Merry Little Christmas Gel Candle” with item numbers 01G020 and 01G0073, respectively, should not be included within the scope of the Order, because they are exclusively associated with the Christmas holiday, and their Christmas holiday designs and symbols are viewable from multiple angles. If you agree, we will send the attached letter to the interested parties, and will notify CBP of our determination.

_____ Agree

_____ Disagree

Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

Date