

A-570-504
Scope Review
PUBLIC DOCUMENT
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By: E-mail Notification

To All Interested Parties:

On March 7, 2003, the Department of Commerce (the Department) received a request from Illuminations Stores, Inc. (Illuminations) for a scope ruling on two models and two sets of candles it imports to determine whether these candles 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)(2002), the Department has determined that both models and both sets of candles, imported by Illuminations, 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 U.S. Customs and Border Protection of this decision. If you have any questions, please contact Nicholas Czajkowski at (202) 482-1395 or Jacqueline Arrowsmith at (202) 482-5255.

Sincerely,

Dana Mermelstein
Acting Office Director
AD/CVD Operations, Office 6

Enclosure

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

FROM: Dana Mermelstein
Acting Office Director
AD/CVD Operations, Office 6

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

Summary

On March 7, 2003, the Department of Commerce (the Department) received a request from Illuminations Stores, Inc. (Illuminations) for a scope ruling to determine whether two models of "Christmas" candles (Item No. 1050-0593 and Item No. 1050-0594) and two "Christmas" candle sets (Item No. 1050-0591 and Item No. 1050-0592), each containing three candles, are within the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC), 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 all of Illuminations' candles are within the scope of the Order on petroleum wax candles from the PRC.¹

¹ The Department has developed an Internet website that allows interested parties to access prior scope determinations regarding the Order. 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.

Product Descriptions

Illuminations' scope request, dated March 7, 2003, concerned two models of candles (one "gold ornament" candle (Item No. 1050-0593) and one "red ornament" candle (Item No. 1050-0594)) and two "ornament" candle sets (Item No. 1050-0591 and 1050-0592), each containing three candles.

In its scope request, Illuminations presents brief descriptions of the subject merchandise. Included with its scope request, Illuminations provided photographs of each model and one "red ornament" candle as a sample. Therefore, the Department's product descriptions are based on the sample provided, the accompanying pictures of the candles, and Illuminations' descriptions.

The "gold ornament" candle (Item No. 1050-0593) appears to be gold with a band of sparkling red glitter around the circumference of the sphere. Based on the pictures provided, the ornament does not appear to feature any other decorations.

The "red ornament" candle (Item No. 1050-0594) appears to be red with a gold glitter inset molded crown draped over the top third of the sphere. The ornament does not feature any other decorations.

The "ornament" candles sets (Item No. 1050-0591 and 1050-0592) each contain three candles comparable to the "gold ornament" and "red ornament" candles described above. The candles in these sets do not appear to feature any other decorations.

Illuminations' Request

Illuminations argues that the company's candles are outside the scope of the Order because they are not one of the shapes listed in the Order, i.e., tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers. Illuminations argues, in recent years, the Department has unlawfully expanded the scope of the Order to include shapes not specifically identified in the language of the Order, citing Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From The People's Republic of China (A-570-504); J.C. Penney Purchasing Corporation (November 9, 2001) (J.C. Penney Ruling) and Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); San Francisco Candle Co. (June 10, 1993) (SFCC 1993 Ruling). Illuminations contends that the Department's rulings have reversed a decade of precedent, which excluded "ball" and "spherical" candles.

Illuminations also argues that its candles should be excluded from the scope of the Order because they are identifiable as "Christmas ornaments" pursuant to the novelty candle exception promulgated in the CIE –212/85, September 21, 1987, Letter from the Director, Office of Compliance, to Burditt, Bowles

& Radzius, Ltd., July 13, 1987 (Customs Notice). Illuminations states the Department has previously ruled that “Christmas ornaments” are identifiable objects. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Endar (April 7, 1999) (Endar April 7, 1999, Ruling). Illuminations further argues that its candles should be excluded from the scope of the Order because they are specially designed novelty candles for use exclusively in connection with the “Christmas season.” Illuminations argues that the shape in combination with the symbols, colors, and patterns are clearly evocative of “Christmas ornaments.”

Illuminations states that in cases where the above criteria is dispositive, the Department is obligated to consider a second set of criteria pursuant to 19 CFR 351.225(k)(2). In such situations, Illuminations argues, the Department must further consider: i) the physical characteristics of the product; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; iv) the channels of trade in which the products are sold; and v) the manner in which the product is advertised and displayed. Illuminations argues that these secondary criteria remove any doubt that these candles should be excluded from the scope of the Order. Illuminations asserts it specifically designs, advertises and displays these candles as “Christmas ornament” candles. According to its scope request, Illuminations markets the candles only during the “Christmas season,” and not during the “winter” season. Illuminations argues that the “Christmas ornaments” are specifically linked to Christmas trees and the Christmas holiday, and thus, these candles should be excluded from the scope of the Order.

Finally, Illuminations states that in its ruling, the Department should establish a cogent set of standards that are as objective as possible for the benefit of the import community. Illuminations contends that the Department’s ever more subjective scope rulings have generated indecision on the part of customs officials who, when faced with candle imports at the port of entry, are deferring scope judgments to the Department. The end result, according to Illuminations, is that U.S. Customs and Border Protection (CBP) decisions that were once easy and routine, are now uncertain and delayed.

The National Candle Association’s Comments

The National Candle Association (NCA) describes Illuminations’ candles as round candles. The NCA notes that the round-shaped candle is specifically described in the scope of the Order. Therefore, the NCA argues, the Department should rule that Illuminations’ candles are within the scope of the Order. The NCA adds that the Department has previously determined that ball- and spherical-shaped candles are within the scope of the Order. See e.g., J.C. Penny Scope Ruling. The NCA also contends that, since Illuminations’ candles do not feature any Christmas images or scenes, the candles were not specifically designed for use during the Christmas season. Therefore, the candles should not be considered “Christmas ornaments.” The NCA says that the addition of a textured surface to a round candle does not transform an in-scope candle into an out-of-scope candle. NCA also argues that the candles’ decorations are not sufficient to establish that it is intended for use exclusively during the Christmas holiday.

In its comments, the NCA retraces the history of this Order, including the import surges and resultant injury suffered by domestic manufacturers, which prompted the original September 1985 antidumping petition. The NCA contends 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 these orders. In support of its assertion, the NCA cites the Court of International Trade (CIT) ruling, with regard to the novelty candle 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 v. United States, 57 F. Supp. 2d 1184, 1194 (July 1999)). 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.

The NCA notes that Illuminations’ candles compete in the same channels of trade as the candles subject to the Order, and that their sales without the antidumping duty will severely injure the U.S. candle producers. The NCA further notes what it characterizes as the long-standing efforts of candle importers to “. . . expand the ‘novelty candle’ loophole in the Order through a continuing stream of scope requests, causing the Order on PRC candles to be subjected to over seventy Final Scope Rulings and many more requests.” The NCA maintains that “{t}he success of the scope requests in eroding the Order has resulted in geometric increases in the volume of PRC candles coming into the United States.” (NCA’s comments at 5). The NCA argues that Illuminations is now asking the Department to narrow the scope of the Order to exclude everyday candles. The NCA states the Department does not have any legal authority to narrow the scope of the Order. With respect to the Customs Notice, 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. (NCA’s comments at 4).

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 or not the product 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.

Pursuant to 19 CFR 351.225(k)(1), the Department will examine the description of the subject merchandise from the petition, the initial investigation, and the Commission's determinations. 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 melt-point, 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 57 F. Supp 2d at 1194. In 1987, the Department issued a notice to the United States Customs Service (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 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 Customs Notice.

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 November 2001, the Department changed its interpretation of the scope of the Order. See 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 the 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.

² See, e.g., Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Endar Corp. (January 11, 2000) (Endar) (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).

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).

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. Cir. 2002) (Duferco Steel II), the CAFC's ruling does not undermine the Department's scope determination in the 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."³ 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."⁴ Thus, as applied to this Order, there is no requirement, nor is it possible, for all the shapes of candles to be listed.⁵ 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 whether 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.

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

⁴ Id.

⁵ 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").

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 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); 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 Ruling); San Francisco Candle Company, Inc. v. United States, 265 F. Supp. 2d 1374, 1379 (CIT 2003) (SFCC); and Endar. If the candle does not possess characteristics set out in the 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

With respect to the involved request, the Department finds, for the reasons outlined below, that Illuminations' two "Christmas ornament" candles (Item No. 1050-0593 and Item No. 1050-0594) and two "Christmas ornament" candle sets (Item No. 1050-0591 and Item No. 1050-0592) are within the scope of the Order. The sphere shape of the candles does not prevent them from being included within the scope of the Order. Additionally, these candles do not have any scenes or symbols that are associated with the Christmas holiday or that would otherwise render them outside the scope of the Order on the basis of the novelty candles exception.

1. "Gold Ornament" candle (Item No. 1050-0593)

Illuminations' "gold ornament" candle (Item No. 1050-0593) is mostly painted gold with a band of sparkling red glitter around the circumference of the candle. According to Illuminations' scope request, the "gold ornament" candle is three inches in diameter. Based on Illuminations' description of its "gold ornament" candle (Item No. 1050-0593) and upon our examination of the photographs provided to the Department, we examined whether the "gold ornament" candle (Item No. 1050-0593) should not be

included within the scope of the Order. We determined that the spherical candle, identified as Item No. 1050-0593, mostly painted gold with a band of sparkling glitter, falls within the scope of the Order.

We find that a sphere is the same shape as a round – principally it is a three-dimensional entity in which all points are equidistant from the center⁶ – thus, the “gold ornament” candle is a round, a shape specifically listed in the scope of the Order. The explicit language of the Order states:

{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 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.

In its scope request, Illuminations argues the Department should exclude the “gold ornament” candle (Item No. 1050-0593) from the scope of the Order because the candle is an identifiable object. We find that the candle is not an object. Instead, the candle is in the form of a shape that is expressly included within the scope of the Order. In prior scope rulings, we have established the difference between a shape and an object in making our determinations:

The difference between a shape and an object generally is one of specificity. A shape is generally the characteristic surface configuration of a thing, the outline or contour... An object is more specific, something perceptible by one or more senses, especially vision or touch, a material thing ...We would not consider the geometric shape of a half-sphere to constitute a material thing that has sufficient specificity to warrant treatment as an identifiable object under the July 1987 novelty candle exception. Rather, more specifically shaped material things such as leaves, hearts and pine cones, all ruled outside of the scope of the Order by the Department in the past, would constitute identifiable objects falling within the July 1987 novelty exception. See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China (A-570-504): Atico Scope Ruling (April 8, 2002).

With respect to Illuminations’ argument that this candle is a holiday candle, and therefore should not be

⁶ Definition of “round” (adjective): according to Merriam-Webster online (www.m-w.com) as “having every part of the surface or circumference equidistant from the center.” While one definition of a “sphere” (noun) according to Merriam-Webster online is a “solid that is bounded by a surface consisting of all points at a given distance from a point constituting its center.”

included in the scope of the Order, we find the involved candle does not qualify for the novelty exception because this candle is not a holiday candle. The involved candle does not contain any scenes, symbols, or other decorations specific to the Christmas holiday. We disagree that the surface design, gold with red glitter, is particularly evocative of a “Christmas ornament,” nor does it make the candle exclusively related to the Christmas holiday. The Department has ruled in the past that candles not containing “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 Christmas or another holiday. Thus, the Department finds the “gold ornament” candle (Item No. 1050-0593) does not qualify for the holiday exception and, therefore, is included within the scope of the Order.

2. “Red Ornament” candle (Item No. 1050-0594)

Illuminations’ “red ornament” candle (Item No. 1050-0594) is mostly red with a gold glitter inset molded crown draped over the top third of the sphere. According to Illuminations’ scope request, the “red ornament” candle is three inches in diameter. Based on Illuminations’ description of its “red ornament” candle (Item No. 1050-0594) and upon our examination of the photographs and sample provided to the Department, we examined whether the “red ornament” candle (Item No. 1050-0594) should not be included within the scope of the Order. We determined that the spherical candle, identified as Item No. 1050-0594, mostly red with a gold glitter inset molded crown draped over the top third of the sphere, falls within the scope of the Order.

We find that a sphere is the same shape as a round – principally it is a three-dimensional entity in which all points are equidistant from the center⁷ – thus, the “red ornament” candle is a round, a shape specifically listed in the scope of the Order. The explicit language of the Order states:

{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 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.

In its scope request, Illuminations argues the Department should exclude the “red ornament” candle (Item No. 1050-0594) from the scope of the Order because the candle is an identifiable object. We

⁷ Definition of “round” (adjective): according to Merriam-Webster online (www.m-w.com) as “having every part of the surface or circumference equidistant from the center.” While one definition of a “sphere” (noun) according to Merriam-Webster online is a “solid that is bounded by a surface consisting of all points at a given distance from a point constituting its center.”

find that the candle is not an object. Instead, the candle is in the form of a shape that is expressly included within the scope of the Order. In prior scope rulings, we have established the difference between a shape and an object in making our determinations:

The difference between a shape and an object generally is one of specificity. A shape is generally the characteristic surface configuration of a thing, the outline or contour... An object is more specific, something perceptible by one or more senses, especially vision or touch, a material thing ...We would not consider the geometric shape of a half-sphere to constitute a material thing that has sufficient specificity to warrant treatment as an identifiable object under the July 1987 novelty candle exception. Rather, more specifically shaped material things such as leaves, hearts and pine cones, all ruled outside of the scope of the Order by the Department in the past, would constitute identifiable objects falling within the July 1987 novelty exception. See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China (A-570-504); Atico Scope Ruling (April 8, 2002).

With respect to Illuminations' argument that this candle is a holiday candle, and therefore should not be included in the scope of the Order, we find the involved candle does not qualify for the novelty exception because this candle is not a holiday candle. The involved candle does not contain any scenes, symbols, or other decorations specific to the Christmas holiday. We disagree that the surface design, red with gold glitter, is particularly evocative of a "Christmas ornament," nor does it make the candle exclusively related to the Christmas holiday. The Department has ruled in the past that candles not containing "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 Christmas or another holiday. Thus, the Department finds the "red ornament" candle (Item No. 1050-0594) does not qualify for the holiday exception and, therefore, is included within the scope of the Order.

3. "Gold Ornament" candle set (Item No. 1050-0591)

4. "Red Ornament" candle set (Item No. 1050-0592)

Illuminations' "gold ornament" candle set (Item No. 1050-0591) contains three gold candles similar to the "gold ornament" candle (Item No. 1050-0593). Illuminations' "red ornament" candle set (Item No. 1050-0592) contains three red candles similar to the "red ornament" candle (Item No. 1050-0594). According to Illuminations' scope request, the candles in both of these sets are two and a half inches in diameter. Based on Illuminations' description of the candles, and upon our examination of the photographs provided to the Department, we examined whether the "gold ornament" candle set (Item No. 1050-0591) and the "red ornament" candle set (Item No. 1050-0592) should not be included within the scope of the Order. We determined that the spherical candles in both sets fall within the scope of the Order.

We find that a sphere is the same shape as a round – principally it is a three-dimensional entity in which

all points are equidistant from the center⁸ – thus, the candles in the “gold ornament” and “red ornament” candle sets are rounds, a shape specifically listed in the scope of the Order. The explicit language of the Order states:

{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 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.

Illuminations argues the Department should exclude the “gold ornament” (Item No. 1050-0591) and “red ornament” (Item No. 1050- 0592) candle sets from the scope of the Order because the candles in these sets are identifiable objects. We find that these candles are not objects. Instead, these candles are in the form of a shape that is expressly included within the scope of the Order. In prior scope rulings, we have established the difference between a shape and an object in making our determinations:

The difference between a shape and an object generally is one of specificity. A shape is generally the characteristic surface configuration of a thing, the outline or contour... An object is more specific, something perceptible by one or more senses, especially vision or touch, a material thing ...We would not consider the geometric shape of a half-sphere to constitute a material thing that has sufficient specificity to warrant treatment as an identifiable object under the July 1987 novelty candle exception. Rather, more specifically shaped material things such as leaves, hearts and pine cones, all ruled outside of the scope of the Order by the Department in the past, would constitute identifiable objects falling within the July 1987 novelty exception. See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China (A-570-504): Atico Scope Ruling (April 8, 2002).

With respect to Illuminations’ argument that these candles are holiday candles, and therefore should not be included in the scope of the Order, we find the involved candles do not qualify for the novelty exception because they are not holiday candles. The involved candles do not contain any scenes, symbols, or other decorations specific to the Christmas holiday. We disagree that the colors or glitter designs on the surface of these candles are particularly evocative of a “Christmas ornament,” nor do they make the candles exclusively related to the Christmas holiday. The Department has ruled in the

⁸ Definition of “round” (adjective): according to Merriam-Webster online (www.m-w.com) as “having every part of the surface or circumference equidistant from the center.” While one definition of a “sphere” (noun) according to Merriam-Webster online is a “solid that is bounded by a surface consisting of all points at a given distance from a point constituting its center.”

past that candles not containing “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 Christmas or another holiday. Thus, the Department finds both candle sets (Item No. 1050-0591 and Item No. 1050-0592) do not qualify for the holiday exception and, therefore, are included within the scope of the Order.

Recommendation

We recommend finding that all of Illuminations’ candles (“gold ornament” candle (Item No. 1050-0593) and “red ornament” candle (Item No. 1050-0594)) and candle sets (“gold ornament” candle set (Item No. 1050-0591) and “red ornament” candle set (Item No. 1050-0592)) in the involved request be included within the scope of the Order. All of these candles are rounds, a shape which falls within the explicit language of the scope of the Order. Additionally, none of these candles qualify for exclusion under the novelty exception.

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