

A-570-504
Scope Review
PUBLIC DOCUMENT
Operations (6): NC

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On June 12, 2003, the Department of Commerce (the Department) received a request from Target Corporation (Target) for a scope ruling on two models of candles and one candle set 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)(2003), the Department has determined that these two models of candles and the candle set, imported by Target, 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 (CBP) 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 Mermelestein
Acting Director
AD/CVD Operations, Office 6

Enclosure

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

FROM: Dana Mermelestein
Acting 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); Target
Corporation

Summary

On June 12, 2003, the Department of Commerce (the Department) received a request from Target Corporation (Target) for a scope ruling to determine whether two models of candles (Stock No. X3200M-0298 and Stock No. 054 09 2002 TD298462-V) and one candle set (Stock No. 054 09 2026 TD298462-V) containing eight candles, are included within the scope of 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 all of Target's candles are within the scope of the Order.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

Target's scope request concerned one "cranberry" candle (Stock No. X3200M-0298), one "cucumber mint" candle (Stock No. 054 09 2002 TD298462-V) and one "stone" candle set (Stock No. 054 09 2026 TD298462-V), containing eight candles.

In its scope request, Target provided brief descriptions of the products and provided samples of the "cranberry" and "cucumber mint" candles, and the candles from the "stone" candle set. The Department's product descriptions are based on Target's description and the samples provided.

The "cranberry" candle (Stock No. X3200M-0298) is a red sphere with an etched design on the surface which is supposed to resemble a mass of cranberries. In addition, there are a number of green "leaves" scattered along the surface of the candle. The candle has a small flat base which, according to Target, prevents it from tipping and rolling. The candle is approximately 2 ½ inches in diameter.

The "cucumber mint" candle (Stock No. 054 09 2002 TD298462-V) is green with a shape that is supposed to resemble a mint leaf. The top of the candle is a flat surface with markings which, according to Target, depict the "ridges and vascularity" that are found on mint leaves. The sides of the candle slope inwards forming a flat narrow base. The candle is approximately 3 inches in length, 2 inches in width (at its widest point) and 1 inch in height.

The "stone" candle set (Stock No. 054 09 2026 TD298462-V) contains eight oval-shaped candles that are supposed to resemble stones. The set features three dark brown candles, three medium brown candles, and two off-white candles. According to Target, the "stone" candles are irregularly oval-shaped with rough surfaces. The candles range between 1 to 1-5/16 inches high and 1 to 1-1/2 inches in length and width.

Target's Request

Target argues that the candles in this scope request are outside the scope of the Order because the candles are either in the shape of identifiable objects or because the candles are exclusively associated with a special holiday. Thus, Target argues that its candles should not be included within the scope of the Order because its candles qualify for the novelty exception. Target argues that the Department's prior scope rulings support this position.

Target states that in order for a candle to not be included within the scope of the Order based on the novelty candle exception, it must meet certain criteria. The first criteria, Target states, is whether the candle falls within those shapes listed by the inclusive language of the Order's scope. See Final Scope Ruling: Petroleum Wax Candles from the People's Republic of China (A-570-504); Jo-Ann Stores (Jan. 29, 2002) (Jo-Ann Scope Ruling). Target states that if the candle's shape does not fall within the ones listed in the Order, the Department must then proceed to the second criterion, determining whether the candle is made from petroleum wax and has a fiber or

paper-cored wick. If the candle meets this second criteria, the Department must then decide upon the third and final criterion, determining whether the candle possesses the appropriate characteristics for the novelty candle exception established in the July 1987 Customs Notice.² If the candle's features meet the third criterion, Target argues, it would then qualify for the novelty candle exception. Target argues that since its candles meet all three criteria for the novelty candle exception, the Department should find that the "cranberry" candle, "cucumber mint" candle, and "stone" candle set fall outside of the scope of the Order.

Target claims that its candles are not in the shapes specifically included in the language of the scope of the Order. Target asserts that none of its candles are tapers, spirals, straight-sided dinner candles, columns, pillars, rounds, votives, or wax-filled containers. Target argues that the "cranberry" candle is similar to a ball, a shape not identified in the Order. Although, Target asserts, even if a ball were considered a shape within the scope of the Order, the "cranberry" candle's shape would still fall outside of the scope due to the candle's surface and the asymmetrical curvature. Target argues the "cucumber mint" candle is shaped like a leaf, a shape not included within the scope of the Order. The candles in the "stone" candle set, Target argues, are oval in shape, and therefore do not fit within any of the shape categories. Therefore, Target claims, all of the candles discussed in this scope request meet the first criterion.

In order for a candle to qualify for the second criterion, Target states, the Department must verify it is "made from petroleum wax and has a fiber or paper-cored wick . . ." Target affirms that all of the candles discussed in this request are made of petroleum wax and have fiber or paper-cored wicks. Therefore, Target states, the second criterion for the novelty exception is met for all of these candles.

Target argues that all of its candles in this scope request are identifiable objects and, thus, meet the third and final criterion for the novelty exception. Target claims that the "cranberry" candle is readily identifiable as "a mass of simulated cranberries" and therefore should not be included within the scope of this Order. Target argues that past Department rulings have established a practice of keeping identifiable objects outside of the scope of this Order. See Jo-Ann Scope Ruling (the Department determined that heart-shaped candles are outside the scope of the Order) and Final Scope Ruling; Petroleum Wax Candles from the People's Republic of China (A-570-504); J.C. Penney Purchasing Corporation (JCPPC) (March 21, 2001) (JCPPC Scope Ruling)

²The Customs Notice was a notice issued by the Department of Commerce to the U.S. Customs Service (now renamed U.S. Customs and Border Protection ("CBP")) in connection with a July 1987 scope determination concerning an exception to the Order for novelty candles, which states:

The Department of Commerce has determined that certain novelty candles, such as Christmas novelty candles, are not within the scope of the antidumping duty order on petroleum-wax candles from the People's Republic of China (PRC). Christmas novelty candles are candles specially designed for use only in connection with the Christmas holiday season. This use is clearly indicated by Christmas scenes and symbols depicted in the candle design. Other novelty candles not within the scope of the order include candles having scenes or symbols of other occasions (e.g., religious holidays or special events) depicted in their designs, figurine candles, and candles shaped in the form of identifiable objects (e.g., animals or numerals).

(the Department determined that certain candles shaped like hearts, houses, churches, pinecones, apples, pumpkins and gourds were not in the scope of the Order because they are identifiable objects). Target argues that the “cranberry” candle is just as recognizable as these candle shapes. Target also argues that the “bundle of cranberries” shape is identifiable from all angles. Target argues the design on the surface is more than minimally decorative and asserts that in similar cases, the Department has ruled that candles that are “more than minimally decorative” are excluded from 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); Leader Light Ltd. (December 12, 2002) (the Department stated that when considering a candle for the novelty exception, it will examine whether the characteristic which is claimed to render it a novelty candle is identifiable from most angles and whether or not it is minimally decorative, e.g., small and/or singularly placed on the candle). Finally, Target argues that the candle’s motif is “perceptible by one or more senses, especially vision or touch, a material thing.” Target argues that the “cranberry” candle resembles the “leaves,” “hearts,” and “pinecones” candles referenced in Final Scope Ruling from the People’s Republic of China (A-570-504); Avon Products, Inc. (April 8, 2002) at note 2 (Avon Scope Ruling) (the Department ruled that more specifically shaped material things such as leaves, hearts, and pine cones would constitute identifiable objects and, therefore, would qualify for the exception established in the July 1987 Customs Notice) and thus should qualify as a novelty object like those candles. Therefore, Target claims, the “cranberry” candle meets the third and final criterion and should be excluded from the scope of the Order.

Target asserts that the “cucumber mint” candle has the shape, color, and surface features that are characteristics of a mint leaf. Target argues that the candle is recognizable as a leaf from every angle. Target asserts that the Department has ruled in the past that specifically shaped material things such as leaves have constituted identifiable objects falling within the July 1987 novelty exception. See Avon Scope Ruling. Since the Department has recognized leaves as specifically shaped materials in the past, Target argues, the Department must do so here. Therefore, Target claims, the “cucumber mint” candle meets the third criterion and should be excluded from the scope of the Order.

Target argues that the eight candles in the “stone” candle set are shaped like common stones and are recognizable as stones from all angles. In addition, Target argues that the rough edges and surface design give the candles a visual appearance and texture similar to a common stone. Therefore, Target claims, since the candles in the “stone” candles set are identifiable as stones, they meet the third criterion and should be excluded from the scope of the Order.

The National Candle Association’s Comments

In its May 7, 2004 submission, the National Candle Association (NCA) retraces the history of the Order, including the import surges and resultant injury suffered by domestic manufacturers which prompted the original September 1985 antidumping petition. The NCA also argues that exceptions in an antidumping duty order should be construed as narrowly as possible to preserve the efficacy of the order. The NCA asserts that Target’s candles do not meet the specific criteria

required for exclusion from the scope of the Order based on the novelty candle exception. The NCA argues that the Department narrowly limited the novelty 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. See Customs Notice.

The NCA argues that in past rulings, the Department has determined that candles similar to the “cranberry” candle have been found to be within the scope of the Order. The NCA states that the Department has ruled that candles shaped as animals or numerals were identifiable objects, while candles with geometric shapes did not constitute identifiable objects. See Final Scope Ruling: Petroleum Wax Candles from the People’s Republic of China (A-570-504); Atico International (April 8, 2002) (Atico Scope Ruling). The NCA adds that, in Avon Scope Ruling, the Department determined that a candle with a shape that is similar to a sphere, but with a flat bottom, is not an identifiable object. The NCA cites Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Endar Corporation (February 13, 2002) in which the Department determined a candle with grooves in the shape of a pumpkin fell within the scope of the Order since it was still in the shape of a round. The NCA also cited the Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); American Greetings Corporation (May 4, 2000) (American Greetings Scope Ruling) involving an “Indian corn” candle which was supposed to resemble Indian corn with etchings of kernels of corn. In that case, the Department found that “the candle is still in the form of a taper, with or without the decorative etched design” (American Greetings Scope Ruling) and ruled that the “Indian corn” candle was within the scope of the Order. Therefore, the NCA argues, even with the etchings, the “cranberry” candle is still a round and within the scope of the Order.

The NCA argues that the size of the “cucumber mint” candle is not similar to a real mint leaf and therefore is not an identifiable object. The NCA argues that the candle’s length (3 inches long), width (2 inches at its widest point), and height (1 inch high) are not close to the true measurements of a mint leaf. They also argue real mint leaves do not have flat surfaces or bottoms, both of which are featured on the “cucumber mint” candle. The NCA asserts that the “cucumber mint” candles are short pillars and thus should be included within the scope.

With regard to the candles in the “stone” candle set, the NCA says there is nothing that would distinguish these candles from being more than just round candles. In addition, the NCA argues that the texture of the candles do not feature any distinctive properties which would allow them to be considered an identifiable object. The NCA states that since the candles in the set are not immediately identifiable as stones, these candles should be included within the scope of the Order.

The NCA argues that domestic candles and imported PRC candles are in direct competition. The NCA argues candles produced domestically and in the PRC “have the same physical characteristics, uses, customer expectations, channels of distribution and advertising.” Therefore, the NCA argues, the sale of Target’s candles without an antidumping duty order would severely injure the U.S. candle producers.

Finally, the NCA expressed its concern over the large volume of candle scope requests under the Order. The NCA argues that producers have attempted to expand the novelty candle loophole by continually filing scope requests. The NCA concludes that if Target is successful, the Department will be inundated with scope requests aimed at “further diluting the effectiveness of the Order.” The NCA argues that the scope requests have evolved from excluding figurines and holiday candles to requests which are trying to maneuver everyday candles out of the scope of the Order. The NCA claims that this request by Target is just another attempt to evade the Order. The NCA asserts that this Order is vital to the survival of the U.S. candle industry. The NCA concludes that the Department does not have the legal authority to narrow the scope of the Order.

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 factors 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. Also of relevance to the present scope inquiry is the Department’s instructions to 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.

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.”³ 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.

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.”⁴ 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.”⁵ Thus, as applied to this Order, there is no requirement, nor is it possible, for all the

³ 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).

⁴ Novosteel SA v. United States, 284 F.3d 1261, 1264 (Fed. Cir. 2002).

⁵ Id.

shapes of candles to be listed.⁶ 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.

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.

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.

⁶ 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”).

Analysis

After reviewing comments from both Target and the NCA, and examining the samples provided by Target, the Department has determined that the involved candles, by definition, are within the scope of the Order. The Department finds that, for the reasons outlined below, the “cranberry” candle (Stock No. X3200M-0298), the “cucumber mint” candle (Stock No. 054 09 2002 TD298462-V) and the “stone” candle set (Stock No. 054 09 2026 TD298462-V) in this scope request are included within the scope of the Order. The Department finds that none of these candles are easily identifiable objects; thus, they do not qualify for the novelty candle exception and are within the scope of the Order.

1. “Cranberry” candle (Stock No. X3200M-0298)

Target’s “cranberry” candle (Stock No. X3200M-0298) is predominantly red, with green “leaves” scattered along the surface. The candle is supposed to be immediately identifiable as a mass of cranberries. The candle is approximately 2 ½ inches in diameter. Based on Target’s description of its “cranberry” candle (Stock No. X3200M-0298) and upon our examination of the sample provided to the Department, we find that the “cranberry” candle (Stock No. X3200M-0298) falls within the scope of the Order.

The Department disagrees with Target’s assertion that the “cranberry” candle’s shape is outside the scope of the Order. Target claims that the “cranberry” candle is similar to a ball, a shape not identified in the Order. Although, Target asserts, even if a ball were considered a shape in the scope of the Order, the “cranberry” candle’s shape would still fall outside the scope due to the candle’s surface and the asymmetrical curvature. We find that the candle is a round – principally it is a three-dimensional entity in which all points are equidistant from the center⁷ – thus, the “cranberry” 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.

We agree with the NCA’s assertion that the additional etches on the surface of the candle do not sufficiently alter the fundamental shape of the candle. Past scope rulings have demonstrated that the etchings do not make the candle a different shape. See American Greetings Scope Ruling (where the Department found “Indian corn” candles with etchings resembling kernels of corn were still in the form of a taper).

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.”

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.

Target argues that its “cranberry” candle is as much a “recognizable object” as the candles in the JCPPC Scope Ruling in which certain candles – shaped like houses, churches, pinecones, apples, pumpkins and gourds – were determined to be outside the scope of the Order. The Department does not agree with Target’s assertion that the candle is immediately identifiable as a mass of cranberries. The Department finds that the candle is simply a red round with etchings on the surface. The etched designs on the candle do not create a surface that would make it immediately recognizable as a mass of cranberries.

In addition, the Department finds that the candle is not an object. Instead, the candle is in a shape that is expressly included within the scope of the Order (i.e., a round). 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).

Since the Department has determined Target’s “cranberry” candle (Stock No. X3200M-0298) is not an identifiable object, this candle does not qualify for the novelty exception, and therefore, falls within the scope of the Order.

2. “Cucumber Mint” candle (Stock No. 054 09 2002 TD298462-V)

Target’s “cucumber mint” candle (Stock No. 054 09 2002 TD298462-V) is green with a shape that, according to Target’s scope request, is supposed to resemble a mint leaf. The candle is approximately 3 inches in length, 2 inches in width (at its widest point) and 1 inch in height. The top of the candle is a flat surface with markings which, according to Target, depict the “ridges and vascularity” that are found on mint leaves. The sides of the candle slope inwards forming a

flat narrow base. Based on Target’s description of its “cucumber mint” candle (Stock No. 054 09 2002 TD298462-V) and upon our examination of the sample provided to the Department, we examined whether Target’s “cucumber mint” are included within the scope of the Order. The Department finds that the green “cucumber mint” candle, identified as (Stock No. 054 09 2002 TD298462-V), falls within the scope of the Order.

Target argues that leaves are not one of the shapes listed in the scope of the Order, and adds that in past rulings, the Department has recognized leaves as an identifiable object, which falls within the novelty exception. See Avon Scope Ruling. Target argues that its “cucumber mint” leaf (Stock No. 054 09 2002 TD298462-V) has the shape, color, and surface features found on a mint leaf. Target argues that its “cucumber mint” candle is immediately identifiable from all angles, therefore this candle should not be included within the scope of the Order. The Department agrees that the “cucumber mint” candle is not in a shape specifically listed in the language of the Order’s scope. Therefore, the Department evaluated whether the characteristics of this candle exempt it from the scope of the Order pursuant to the novelty candle exception established in July 1987 Customs Notice.

The Department finds that the “cucumber mint” candle is not in the shape of an identifiable object since the candle is not recognizable from a majority of angles as a mint leaf. See JCPenney Ruling (where an “autumn leaf” candle was ruled to be outside of the scope because it was identifiable as a leaf from most angles, *i.e.*, when viewed from above, the sides and the bottom). The Department finds that the flower motif for this “cucumber mint” candle is only visible when viewing the candle from the top. The surface has markings which, according to Target, supposedly depict the “ridges and vascularity” that are found on mint leaves. Viewed from above, the “cucumber mint” candle resembles a mint leaf. However, the candle’s dimensions result in it not being readily discernible as a leaf when being viewed from any other angle (*i.e.*, the sides). While the Department recognizes in certain situations leaf candles may not be included in the Order (see JCPenney Ruling), the “cucumber mint” candle in this case does not qualify for the novelty candle exception because its flower motif is not easily recognizable from multiple angles. Therefore, we find that the “cucumber mint” candle (Stock No. 054 09 2002 TD298462-V) is within the scope of the Order.

3. “Stone” candle set (Stock No. 054 09 2026 TD298462-V)

Target’s “stone” candle set (Stock No. 054 09 2026 TD298462-V) contains eight oval-shaped candles – three dark brown candles, three medium brown candles, and two off-white candles. According to Target’s scope request, the candles in the set are supposed to be immediately identifiable as stones. The candles range between 1 to 1-5/16 inches high and 1 to 1-1/2 inches in length and width. Based on Target’s description of the candles in its “stone” candle set (Stock No. 054 09 2026 TD298462-V) and upon our examination of the sample set provided, we find that the oval-shaped candles in the “stone” candle set (Stock No. 054 09 2026 TD298462-V) fall within the scope of the Order.

According to Target, the “stone” candles are irregularly oval-shaped with rough surfaces. Target argues that the candles in the “stone” candle set (Stock No. 054 09 2026 TD298462-V) are shaped like common stones and thus have a recognizable shape, which is identifiable from all angles. Target also argues that the visual appearance and texture of the candles’ surface place the set within the novelty candle exception.

The Department does not agree with Target’s assertion that the candles in the “stone” candle set are in the shape of identifiable objects and, therefore, are outside of the scope of the Order. We find that these candle 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 Atico Scope Ruling.

The Department has determined that these candles are in the shape of a round that gradually tapers off at both ends. 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.

Since these candles are rounds, and rounds are a shape specifically included within the explicit language of the Order’s scope, the Department finds that Target’s “stone” candle set is included within the Order’s scope.

The Department also agrees with the NCA that there are no features on the surface of the candles that would qualify them as identifiable objects. The Department concludes that the surface of the candles are not “rough-edged” as described by Target and therefore, not immediately identifiable as stones. Since the candles in this set are in a shape specifically listed by the language of the scope of the Order, specifically a round, the Department finds that this “stone” candle set (Stock No. 054 09 2026 TD298462-V) is within the scope of the Order.

Recommendation

We recommend finding that Target’s two candles and its candle set listed below are included within the scope of the Order. None of these candles are immediately identifiable objects and therefore do not qualify for the novelty candle exception.

- 1. “Cranberry” candle (Stock No. X3200M-0298)
- 2. “Cucumber Mint” candle (Stock No. 054 09 2002 TD298462-V)
- 3. “Stone” candle set (Stock No. 054 09 2026 TD298462-V)

If you agree, we will send the attached letter to the interested parties, and will notify the CBP of our determination.

_____ Agree

_____ Disagree

Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

Date