

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

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On February 5, 2003, the Department of Commerce (the Department) received a request from Target Corporation (Target) for a scope ruling to determine whether a candle (“Snowball” candle (Stock No. 08 0968)) and a candle set (“Snowball Candles” set (Stock No. 08 0959)) it imports 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 these two models of candles, 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 February 5, 2003, the Department of Commerce (the Department) received a request from Target Corporation (Target) for a scope ruling to determine whether a candle ("Snowball" candle (Stock No. 08 0968)) and candle set ("Snowball Candles" set (Stock No. 08 0959)) it imports 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 "Snowball" candle (Stock No. 08 0968), and one "Snowball Candles" set (Stock No. 08 0959), containing six candles. In its scope request, Target presented brief descriptions of the subject merchandise and provided samples of both the "Snowball" candle and the "Snowball Candles" set. The Department's product descriptions are based on Target's description and our review of the samples provided.

Although the "Snowball" candle (Stock No. 08 0968) and the candles in the "Snowball Candles" set (Stock No. 08 0959) are different candles, both candles are similar in appearance. Both the "Snowball" candle (Stock No. 08 0968) and the candles in the "Snowball Candles" set (Stock No. 08 0959) are white spheres with a surface design intended to resemble a snowball. Both the "Snowball" candle and the candles in the "Snowball Candles" set feature wax protrusions, indentations and ridges, and a light dusting of reflective emerald "glitter" creating a surface design intended to mimic the irregular surface of a packed snowball. Both candles also have a small flat base which, according to Target, keep them from tipping. The "Snowball" candle is approximately 3 inches in diameter and is individually packed in plastic wrapping. The candles in the "Snowball Candles" set are approximately 1 inch in diameter and are packed in a box as part of a half-dozen set.

Target's Request

Target argues that the "Snowball" candle (Stock No. 08 0968) and the candles in the "Snowball Candles" set (Stock No. 08 0959) in this scope request are identifiable objects (*i.e.*, snowballs) that do not have a shape delineated in the scope of the Order. Thus, Target argues that these candles qualify for the novelty exception and therefore are outside the scope of the Order. Target contends that the Department's prior scope rulings support its argument.

Target states that in order for a candle to be excluded from the scope of the Order based on the novelty candle exception, it must meet certain criteria. The first criterion, according to Target, is whether the candle falls within those shapes specifically listed by the inclusive language of the Order's scope.² Target argues that these candles are not tapers, spirals, straight-sided dinner candles, columns or pillars or wax-filled containers. Target adds that neither the "Snowball" candle (Stock No. 08 0968) nor the candles in the "Snowball Candles" set (Stock No. 08 0959) qualify as "rounds" or "votives." Target defines a "round" as "having every part of the surface or circumference equidistant from the center." Target states that both of the candles in this scope request have a downward sloping area that is greater in volume than the upward sloping area (*i.e.*, if cut in half they would not yield identical semi-circles). Target contends that the irregular texture, with its protrusions and indentations, give both candles surface points with varying

² The Order describes candles falling within the scope as those "sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers."

distances from the center. For these reasons, Target argues, these candles do not qualify as rounds. Target also argues the “Snowball” candle (Stock No. 08 0968) and the candles in the “Snowball Candles” set (Stock No. 08 0959) candles do not fit within the National Candle Association’s (NCA’s) definition of a “votive candle.”³ Target states that both the “Snowball” candle (Stock No. 08 0968) and the candles in the “Snowball Candles” set (Stock No. 08 0959) are designed and produced as free-standing items. Therefore, Target argues, these candles do not qualify as votives. Since the candles in this scope request are not a shape delineated within the language of the scope of the Order, Target contends, the candles meet the first requirement.

Target argues that if the candle’s shape does not fall within one of the scopes specifically listed in the Order, the Department must then proceed to the second criterion. In order for a candle to qualify for the second criterion, Target argues, the Department must verify that the candle is made from petroleum wax and has a fiber or paper-cored wick. Target states that all of the candles discussed in this request are made of petroleum wax and have fiber or paper-cored wicks. Therefore, Target concludes, the second criterion for the novelty exception is met for all of these candles.

If the candle meets this second criterion, according to Target, the Department must then decide upon the third and final criterion – determining whether the candle possesses the appropriate characteristics to qualify the candle for exclusion from the Order under the novelty candle exception established in the July 1987 Customs Notice.⁴ If the candle’s features meet the third criterion, Target argues, the candles would not be included within the Order. Target argues that the “Snowball” candle (Stock No. 08 0968) and the candles in the “Snowball Candles” set (Stock No. 08 0959) are readily identifiable as simulated snowball candles and, as such, are as recognizable as other objects which have been excluded from the scope of the Order in previous cases. 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) (the Department determined that

³ Definition of a “votive candle” is “a candle produced for use fully within a candle accessory, specifically, a votive holder” see the National Candle Association web-site at www.candles.org/CandleIndustry/terminology.htm.

⁴ The 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).

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) (May 21, 2001) (JCPPC Scope Ruling) (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 adds that the snowball shape is identifiable when viewed from all angles. (See JCPPC Scope Ruling).

Target states that the “Snowball” candle (Stock No. 08 0968) and candles in the “Snowball Candles” set (Stock No. 08 0959) are more than minimally decorative. Target argues that the “snowball” texture is found on the entire surface of both the “Snowball” candle and the candles in the “Snowball Candles” set. Target claims that this feature is not “small and/or singularly placed on the candle” but rather covers the entire surface of both types of candles. Target 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). Since both the “Snowball” candle and the candles in the “Snowball Candles” set possess the required characteristics established in the July 1987 Customs Notice, Target contends that these candles should qualify as a novelty object like those candles. Thus, Target claims, the “Snowball” candle (Stock No. 08 0968) and the candles in the “Snowball Candles” set (Stock No. 08 0959) meet the third and final criterion and should not be included within the scope of the Order.

Target references a previous scope determination by the Department, whose ruling, Target argues, should not bear on the decision of this scope request. Target argues, despite the similar candle names, the factual and legal premises for Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China (A-570-504); Atico International, Inc. (November 1, 2002) (Atico Snowball Ruling) (the Department determined that a “snowball” candle with “pearlized” glitter on the surface was representative of the winter season but not specific to a certain holiday or event as required by July 1987 Customs Notice and therefore was within the scope of the Order) are inapplicable to the circumstances in this scope request. Target states that the candle in the Atico Snowball Ruling was a “round” with pearlized glitter on the surface and had neither the irregular shape or surface of Target’s “snowball” candles. Target argues that the candle in the Atico Snowball Ruling case was found to be within the scope of the Order because the Department found that the snowball was “representative of the winter holiday season” and not a specific Christmas candle. Target states that the candle in Atico Snowball Ruling was not in the shape of an identifiable object, however, the candles in this scope request qualify for the novelty candle exception because the involved candles are clearly identifiable objects based on the irregular shape and surface of its “snowball” candles. Therefore, Target argues, the Atico Snowball Ruling is not applicable to the Department’s determinations concerning the involved candles.

The National Candle Association's Comments

On February 26, 2003, the NCA submitted comments in response to Target's scope request. In its response, the 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 argues that exceptions in an antidumping duty order should be construed as narrowly as possible to preserve the efficacy of the order. The NCA argues 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 asserts that the Department defined the novelty candle exception in a narrow way to only include: 1) figurine candles, 2) candles shaped in the form of identifiable objects, and 3) candles specifically designed for use only in connection with the holiday season. See Customs Notice.

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 Customs Notice and 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 if the candles can be used on occasions other than particular holiday seasons, they do not qualify for the novelty candle exception. They state that in order for a candle to qualify for the novelty candle exception as a Christmas candle, the candle must feature scenes or symbols that dominate the candle that it could not be used on other occasions.

The NCA also refutes Target's argument that the candles are in the shape of a snowball. The NCA states that the candles are not identifiable objects. They say the candles are similar to the "ball-shaped candle" submitted by Avon Products, Inc. in Final Scope Ruling from the People's Republic of China (A-570-504); Avon Products, Inc. (April 8, 2002) (Avon Scope Ruling) (the Department ruled that more specifically shaped material things such as leaves, hearts and pinecones would constitute identifiable objects and therefore would qualify for the exception established in the July 1987 Customs Notice). The NCA argues that the Department concluded that Avon's candle was not in the shape of a snowball because it has a flat bottom and therefore is not in the shape of an identifiable object. For the same reasons, the NCA argues, Target's candles do not qualify as identifiable objects and are not included within the scope of the Order.

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

Finally, the NCA expresses its concern over the large volume of candle scope requests from the PRC. The NCA argues that producers have attempted to expand the novelty candle loophole by continually requesting scope rulings. The NCA concludes that if Target is successful, the Department will be inundated with scope requests "further diluting the effectiveness of the Order."

The NCA argues that the scope requests have evolved from requests to exclude 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 (2002). 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.”⁵ 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.”⁶ 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.”⁷ Thus, as applied to this Order, there is no requirement, nor is it possible, for all the shapes of candles to be listed.⁸ In fact, if the list were exhaustive, there would have been no need for the

⁵ 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 determined 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).

⁶ Novosteel SA v. United States, 284 F.3d 1261, 1264 (Fed. Cir. 2002).

⁷ Id.

⁸ 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”).

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.

Analysis

After reviewing comments from both Target and the NCA, and examining the samples provided by Target, the Department determined whether subject merchandise should be included within the scope of the Order. The Department finds, for the reasons outlined below, that Target's "Snowball Candle" (Stock No. 08 0968) and "Snowball Candles" set (Stock No. 08 0959) are included within the scope of the Order. The shape of the candles does not prevent them from being included within the scope of the Order. The Department finds that these candles are not easily identifiable as "snowballs." Therefore, these candles do not qualify for the novelty candle exception and are within the scope of the Order. Our analysis of these candles follows below.

1. **Snowball Candle (Stock No. 08 0968)**
2. **Snowball Candles Set (Stock No. 08 0959)**

When determining whether a candle is within the scope of the Order, the Department must first determine whether the candle is made of petroleum wax. The Department finds that both the "Snowball Candle" and candles in the "Snowball Candles" set are made of petroleum wax.

If the Department finds that a candle is made of petroleum wax, the candle will then be evaluated to determine whether its shape falls within the scope of the Order. The Department finds that when viewed from all angles, these "snowball" candles are rounds, a shape specifically listed within the scope of the Order. The Department agrees with the NCA's assertion that the additional etches on the surface of the candles do not sufficiently alter the fundamental shape of the candles. Thus, the candles are still in a shape delineated within the scope. See 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) (the Department determined an "Indian corn" candle which was supposed to resemble Indian corn with etchings of kernels of corn was within the scope of the Order because "the candle is still in the form of a taper, with or without the decorative etched design"). Therefore, the Department finds that both of these "snowball" candles fall within the scope of the Order.

Additionally, the Department finds that Target's "Snowball" candle (Stock No. 08 0968) and candles in the "Snowball Candles" set (Stock No. 08 0959) do not feature the appropriate characteristics to qualify for the novelty candle exception. The Department disagrees with Target's assertion that these candles are easily and readily identifiable as snowballs. Target argues that its "snowball" candles are as much "recognizable objects" 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. In order for a candle to qualify for the novelty candle 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 from multiple angles. Target's candles only minimally resemble a snowball, *e.g.*, a round mass of snow pressed or rolled together. When viewed from multiple angles, the candles resemble textured

rounds with no distinguishable features. Nothing about the texture, shape or design of Target's candles specifically identifies them as snowballs. Therefore, the Department finds that these candles are not easily and readily identifiable as snowballs.

In addition, the Department finds that these "snowball" candles are not objects. 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 pinecones, 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.

As stated above, the Department finds that these candles are in a shape that is expressly included within the scope of the Order (i.e., a round) and do not have specific, distinguishable features that identify them as snowballs. For these reasons, the Department finds the "Snowball" candle (Stock No. 08 0968) and candles in the "Snowball Candles" set (Stock No. 08 0959) do not qualify for the novelty candle criteria and therefore, fall within the scope of the Order.

Recommendation

We recommend finding that Target’s two candles listed below are included within the scope of the Order. These candles are not immediately identifiable objects and therefore do not qualify for the novelty candle exception.

- 1. Snowball Candle (Stock No. 08 0968)**
- 2. Snowball Candles Set (Stock No. 08 0959)**

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