

A-570-504

MAY 4 2000
Scope Review
PUBLIC DOCUMENT
Enforcement Group III: RMJ

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On February 7, 2000, the Department of Commerce (the Department) received a request from American Greetings Corporation (American Greetings) for a scope ruling on whether ten of its candles are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

In accordance with 19 CFR 351.225(k)(l), the Department has determined that all of American Greetings' ten candles (identified as Candles #1,2,3,4,5,6, 7,8,9 and 10) are covered by the scope of the antidumping duty order on petroleum wax candles from the PRC.

Enclosed is a memorandum containing the Department's analysis. We will notify the U.S. Customs Service of this decision. If you have any questions, please contact Thomas Killiam at (202) 482-5222.

Sincerely,

Richard Weible
Director, Office 8
AD/CVD Enforcement

Enclosure

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Scope Review
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MEMORANDUM Joseph A. Spetrini
FOR: Deputy Assistant Secretary
 Enforcement Group III

FROM: Richard Weible
 Director, Office 8
 AD/CVD Enforcement

SUBJECT: Final Scope Ruling; Antidumping Duty Order on Petroleum Wax
 Candles From the People's Republic of China (A-570-504); American
 Greetings Corporation

Summary

On February 7, 2000, the Department of Commerce (the Department) received a request from American Greeting Corporation (American Greetings) for a scope ruling on whether ten of its candles are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). The National Candle Association, petitioner in this case, submitted comments on American Greetings' request on April 5, 2000. In accordance with 19 CFR 351.225(k)(l), we recommend that the Department determine that all of American Greetings' candles are covered by the scope of the antidumping duty order on petroleum wax candles from the PRC.

Background

American Greetings filed its request for a scope ruling in proper form on February 7, 2000. The National Candle Association sought an extension of time to file comments on American Greetings' scope request on March 20, 2000. On March 22, 2000, the Department extended the deadline for interested parties' comments to April 6, 2000, and the deadline for the Department's final scope determination to April 20, 2000. Counsel for the National Candle Association met with Department officials on April 4, 2000 to examine sample merchandise submitted for the record by American Greetings; the National Candle Association's timely comments followed on April 5, 2000. On April 18, 2000, the Department extended the deadline for the final determination to May 4, 2000.

The regulations governing the Department's antidumping scope determinations are found at 19 CFR § 351.225. On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the determinations of the Secretary and the International Trade Commission (the Commission), the initial investigation, and the antidumping duty order. This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. See 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the five additional factors set forth at 19 CFR § 351.225(k)(2). These criteria are: i) the physical characteristics of the merchandise; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; iv) the channels of trade in which the product is sold; and v) the manner in which the product is advertised and displayed. The Department applies these criteria when it is unclear whether the product which is the subject of the scope ruling fits within the product descriptions contained in the petition, the determinations of the Secretary and the Commission, the investigation, and the order. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

In the instant case the Department has evaluated American Greetings' request in accordance with 19 CFR 351.225(k)(1), because the descriptions of the products contained in the petition, the final determinations of the Secretary and the Commission, the initial investigation, and the antidumping duty order are, in fact, dispositive.

Documents and parts thereof from the underlying investigation deemed relevant by the Department to this scope ruling were made part of the record of this determination and are referenced herein. Documents that were not presented to the Department, or placed by it on the record, do not constitute part of the administrative record for this scope determination.

In its petition of September 4, 1985, the National Candle Association requested that the Investigation cover:

[c]andles [which] are made from petroleum wax and contain fiber or papa-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars; votives; and various wax-filled containers. These candles may be scented or unscented ... and are generally used by retail consumers in the home or yard for decorative or lighting purposes.

Antidumping Petition, September 4, 1985 at 7.

The Department defined the scope of the investigation in its notice of initiation. This scope language carried forward without change through the preliminary and final determinations of sales at less than fair value and the eventual antidumping duty order:

certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers.

Petroleum Wax Candles from the People 's Republic of China: Initiation of Antidumping Duty

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

The Commission adopted a similar definition of the "like product" subject to its determinations, noting that the investigations did not include "birthday, birthday numeral and figurine type candles." See Determinations of the Commission (Final), USITC Publication 1888, August 1986, at 4, note 5, and A-2 (Commission Determination).

Also of relevance to the present scope inquiry is a notice issued to the United States Customs Service in connection with a July 1987 scope determination, which states:

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

CW N-212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987.

American Greetings' Scope Request

American Greetings argues that all of the models subject to this inquiry i) have physical characteristics that prevent them from being covered by the scope of the order; ii) are tapers or pillars with special designs that are integral to the candles and make them novelty items; iii) incorporate designs or shapes that make them suitable for use only in connection with specific holiday seasons; iv) are destined for use at special occasions and for special purposes, as opposed to everyday use; and v) incorporate hand-painted designs or are in specific shapes making them relatively expensive and, therefore, not intended for routine use. See American Greetings Scope Request, passim. American Greetings described its ten candles as follows:

Candle #1 is "a white taper that has affixed to it a molded red wax heart. The molded red wax heart cannot be removed without damaging the taper," thereby rendering the candle, according to American Greetings, outside the scope of the order. American Greetings further argues that this candle is "designed for use only in connection with Valentine's Day," as indicated by the attached red heart symbol, and by the inclusion of this product in Carlton Cards' Valentine's Day product catalog. See American Greetings Scope Request at 1, 5 and Exhibit 1.

Candle #2 is "a red taper that has affixed to it a molded wax Teddy Bear holding a red wax heart. The molded wax Teddy Bear cannot be removed without damaging the taper." As with Candle #1, American Greetings asserts that this candle is excluded both because the figurine cannot be removed without damaging the taper, and because it represents a holiday novelty candle intended for use only in connection with Valentine's Day, as indicated by its inclusion in the same Valentine's Day catalog. Id.

Candle #3 is a red taper that is adorned with "five molded white snowflakes of various sizes. The molded white snowflakes cannot be removed without damaging the taper" American Greetings maintains that as the snowflakes cannot be removed without destroying the pillar, this candle is outside the scope of the order. Additionally, American Greetings argues that this is a holiday novelty candle intended for use during the Christmas holiday, as indicated both by the attached label stating that it is a "Christmas Candle," and its inclusion in Carlton Cards' Christmas catalog. Id. at 2, 6 and Exhibit 2.

Candle #4 is a red pillar bearing hand painted white snowflakes of various sizes. American Greetings contends that this is a Christmas holiday novelty candle, as indicated by its inclusion in the Christmas products catalog at Exhibit 2. Id.

Candle #5 is a white pillar "that has affixed to it hand-painted molded gold stars of the same size. The molded gold stars cannot be removed without damaging the pillar.' Because the stars cannot be removed without damaging the pillar, American Greetings insists, this candle is outside the scope of the order. In addition, American Greetings posits the same basis for exclusion of this candle as with Candles # 3 and 4, i.e, it represents a Christmas novelty candle. Id. at 2, 7 and Exhibit 2.

Candle #6 consists of a snowman figurine, with a "blue taper, hand-painted with white snowflakes and green and red stripes. The green and white stripes constitute the hat of the molded snowman figurine..." The figurine makes up approximately one third of the candle's overall length, with the taper portion making up the rest. American Greetings avers that this candle, being in the shape of an identifiable object, is excluded from the scope of the order. Alternatively, American Greetings maintains that the product represents a Christmas holiday novelty candle, attested to by the label "Christmas Candle," and the candle's inclusion in the Christmas catalog at Exhibit 2. Id.

Candle #7 is a "white taper that has affixed to it a hand-painted molded design of green leaves with yellow and pink flowers, surrounded by a lavender bow. The molded design cannot be removed without damaging the taper." American Greetings maintains that because the flower design is not a decal, it is a novelty candle. Further, American Greetings suggests this candle is "designed for use only in connection with a specific holiday - Easter." Id. at 2, 8 and Exhibit 2.

Candle #8 is a white taper which includes a molded design of autumn leaves and acorns; American Greetings argues that, like Candle #7, the hand-painted design cannot be removed without damaging the taper, rendering the candle outside the scope of the order. American Greetings also argues that this candle represents a Thanksgiving holiday novelty candle. Id. at 2, 8, and Exhibit 4.

Candle #9 is similar to Candle #8 in that it consists of a red taper to which is affixed a molded design of "Indian" corn which, American Greetings claims, cannot be removed without damaging the taper; therefore, the product is outside the scope of the order. As with Candle #8, American Greetings further insists this represents a Thanksgiving holiday novelty candle. Id. at 2, 9, and Exhibit 4.

Candle #10 is described as "a taper [which] is etched and hand-painted to represent an ear of colorful 'Indian' corn." American Greetings suggests that as "an identifiable object," this candle is outside the scope of the order. In addition, as with Candles #8 and 9, American Greetings seeks exclusion of this candle as a Thanksgiving holiday novelty candle. Id.

Finally, with respect to all of these candles, American Greetings asserts that "these candles do not compete with any domestically produced candle. These types of candles, incorporating molded designs and hand painting are simply not produced in the United States." Id. at 11. American Greetings submitted samples of these ten candles for the administrative record.

The National Candle Association's Comments

In its comments the National Candle Association retraces the history of this antidumping duty order, including the import surges and resultant injury suffered by domestic manufacturers which prompted the original September 1985 antidumping petition. Turning specifically to American Greetings' request, petitioner asserts that "[a]ll of the candles described in [American Greetings'] request fall within the scope of the Order." National Candle Association Comments at 3. Petitioner maintains that the exclusion from the order for certain holiday novelty candles was narrowly drawn to address only candles "designed for use in connection with a specific holiday." Id. Such use, petitioner continues,

"must be clearly indicated by specific holiday scenes and symbols depicted in the candle design." Id., citing CIE N-212/85, supra, and Final Scope Ruling; Watkins, Inc., February 14, 1995, and Final Scope Ruling; Two's Company, January 13 1995 (Two's Company). "[A]dorning a taper, spiral, round, column or pillar candle with generic decorations does not, per se, transform an in-scope petroleum wax candle into an out-of-scope novelty candle." Id. at 4, quoting the Department's Final Results of Redetermination Pursuant to Court Remand; Springwater Cookie and Confections, Inc. v. United States, Court No. 95-03-00283, May 13, 1996.

With respect to the specific holiday novelty claims advanced by American Greetings, petitioner suggests that none meet the degree of specificity required to merit exclusion from the scope of the order. For example, with respect to the Valentine's heart, petitioner notes that the Department has previously concluded that "the year-round ubiquity of the heart shape renders it meaningless as a holiday scene or symbol." Id. at 4, quoting Final Scope Ruling; Springwater Cookie & Confections, Inc., February 14, 1995, aff'd Springwater Cookie & Confection v. United States (Springwater), Slip Op. 96-160 (CIT September 25, 1996). The same reasoning applies, petitioner maintains, to Candle #2 with its teddy-bear figurine. Likewise, according to petitioners, the Department has previously ruled that snowflake or star designs are not indicative of any specific holiday or special occasion. Id. at 5.

Concerning Candle #6, the snowman cum taper, petitioner argues that the "taper shape of the candle predominates over any consideration of the snowman shape at the bottom of the candle." Id. at 6. Therefore, petitioner concludes, this candle does not satisfy the Department's definition of candles "in the shape of identifiable objects." Petitioner is equally dismissive of American Greetings' claim that the taper with flowers qualifies as an Easter holiday candle, or that a candles with leaves and acorns or Indian corn figurines warrant exclusion as Thanksgiving holiday candles. Finally, petitioner insists that American Greetings' claims concerning Candle #10 fail on two counts; the candle's corn design is not indicative of any specific holiday or special occasion, nor is the taper itself truly in the shape of an identifiable object (i.e., an ear of Indian corn).

The National Candle Association concludes by noting what it characterizes as the long standing efforts of candle importers to "expand the 'novelty candle' loophole ... through a continuing stream of scope requests," and warns against attempts by PRC candle producers, importers, and retailers, such as American Greetings, to "further dilut[e] the effectiveness of the Order." Id. at 7.

Analysis

American Greetings argues that each of its candles should be found outside the scope of the order because it either represents a holiday novelty candle, or the design affixed to the candle cannot be removed without damaging the taper, or the candle is in the shape of an identifiable object. See American Greetings' Request at 5. According to American Greetings, any one of these three conditions is sufficient to render a product outside the scope of the order. In American Greetings' view, any taper bearing tiny molded design integral to the taper itself is outside the scope of the order if removing the design would cause damage to the taper. For the reasons discussed below, the Department cannot subscribe to American Greetings' interpretation.

When determining whether or not a particular product claimed as a "holiday novelty candle" is within the scope of the antidumping duty order, the Department's first line of inquiry is whether the shape of the candle is one delineated in the language of the order's scope, i.e., "tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers." If the candle is in one of these shapes, the Department next considers whether the candle is, in fact, a "holiday novelty candle," i.e., whether the candle is "specifically designed for use only in connection with a religious holiday or special event." See *Russ Berrie v. United States* (Russ Berrie), Slip Op. 99-61 at 18 and 21 (CIT July 13, 1999). As explained in the September 1987 Customs Information Exchange notice CIE N-212/85 and in previous scope rulings by the Department, such candles are

outside the scope of the order. Finally, if the candle does qualify as a holiday novelty candle, the Department may, if appropriate, determine if the holiday designs affixed to the candle (e.g., molded shapes) can be removed without damaging the candle. If the holiday designs in question can be easily removed, the Department may find that the candle is still within the scope of the order, notwithstanding the removable decoration. This same reasoning would apply to any candle in one of the shapes listed in the scope of the order.

With respect to the instant request, there is no question that each of these candles (with the exception of Candle #6, which is discussed separately at page 11, below) is in a shape covered by the scope of the order; American Greetings says as much in its request, describing each product as a taper or pillar, as appropriate. Thus, as nine of the ten candles are presumptively within the scope of the order, our inquiry next turns to American Greetings' claims that these are holiday novelty candles. We find that none of these products represents a "holiday novelty candle" as defined by the Department in previous scope inquiries. We have always defined the "holiday novelty" exclusion rather narrowly. See *Russ Berrie*, op. cit. Candles bearing designs or symbols of a general seasonal nature, for example, have not warranted exclusion as holiday novelty candles. The Department has noted on numerous occasions that the scope of the order does not mention any exclusion on the basis of seasonal marketing. *Id.*; see also, *Final Scope Ruling; Meijer, Inc.*, September 30, 1999 at 6 ("Leaf Candle" evokes the fall season and, thus, does not qualify as a holiday novelty candle); *Final Scope Ruling; Springwater Cookie & Confection*, February 14, 1995 at 4, *aff'd Springwater* (spiral candle described as suitable for "springtime decor" does not qualify as a holiday novelty candle); *Final Scope Ruling; Success Sales, Inc.*, July 27, 1994 at 3 ("Snow Scene" candle merely represents a calendar season, i.e., winter" and, therefore, is not a holiday novelty candle (candle excluded on other grounds)). Rather, as indicated in the *Russ Berrie* decision, "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*, op. cit. For each of the models submitted by American Greetings, we find the decorative elements at best evoke general seasonal themes and, as such, are not uniquely suited to a single holiday or special event (see discussion at pages 10 through 12, below).

Finally, we disagree with American Greetings' claim that these candles are excluded simply because they include figurines or other decorations which cannot be removed without damage to the candle. Our analysis of the ease or difficulty of removing decorative figurines is predicated on our first finding that the candle with the figurine would be excluded as a "holiday novelty candle." Thus, for example, where the Department previously considered a taper with an attached Santa Claus figurine, the Department found that the tapers (shapes covered by the scope of the order) could "clearly be identified as Christmas novelty candles due to the Santa Claus figurine," and further because the figurine could not be removed without destroying the taper, the candle was outside the scope of the order. See *Final Scope Ruling; A. J. Cohen*, June 6, 1994, at 4; see also *Final Scope Ruling; West Coast Liquidators, Inc.*, July 27, 1994, at 3 and 4 (tapers with irremovable Christmas and Halloween figurines were "holiday figurine candles outside the scope of the order"); *Final Scope Ruling; Kole Imports, Inc.*, June 6, 1994, at 3 (tapers with decorative holiday figurines which could not be removed without damaging taper outside scope); and *Letter from the Director, Office of Compliance to Global Marketing Services*, October 30, 1986 (*Global Marketing Ruling*) (taper with hand-painted wax Santa Claus figurine outside the scope because the "figurine could not be removed without damage to the taper").

Therefore, as we find these candles do not warrant exclusion from the scope of the order on the basis of the holiday novelty candle precedent, American Greetings' reliance on the *Global Marketing Ruling* in this case is misplaced. The candle at issue in the *Global Marketing* inquiry was a taper candle, a shape included *eo nomine* in the scope of the order. The sole basis for *Global Marketing's* scope exclusion request was a hand-painted wax Santa Claus figurine affixed about the mid-point of the taper. Absent the Santa Claus figurine, i.e., the Christmas holiday characteristic of the candle, it would have been included within the scope of the order. Thus, the Department examined the potential for removing the figurine because, if the Santa Claus figurine, the sole characteristic of this

candle meriting its exclusion from the order, was so superficially attached to the candle that it could be easily removed, parties could enter the candles with the attached Santa Claus figurines and then simply remove the figurines to sell the unadorned tapers, thereby evading antidumping duty liability. See Letter, Taft, Stettinus & Hollister (representing the National Candle Association), October 15, 1986 at 1. As the National Candle Association put it at the time, petitioner was

concerned that importers may attempt to circumvent the antidumping order through claims that their candles are novelty candles and therefore outside the scope of the order. This particular candle is considered borderline in our opinion because the only novelty is the wax Santa Claus which can be removed or added to the taper. Without the attached wax Santa Claus, the subject taper would clearly be within the scope of the order.

Id. (emphasis added).

As such, a candle in one of the shapes named in the order which includes an attached figurine is only outside the scope of the order if: i) the candle is a holiday novelty candle, and ii) the holiday figurine cannot be easily removed.

This conclusion is consistent with the scope of the investigation and order, as defined in the petition, and the Department's and the Commission's determinations. Indeed, any contrary conclusion would lead to absurd results. Consider a taper, which is clearly covered by the order, which is decorated with a figurine bearing little or no relationship to any specific occasion. Such a candle, considered either by itself or with the added decorative figurine, would be included in the scope of the order, irrespective of the ease (or lack thereof) with which the figurine may be removed. Consistent with past Department practice concerning candles of this type, the Global Marketing decision hinged on the fact that the candle was a "holiday novelty candle," due to the attached Santa Claus figurine, and that the figurine could not be removed without destroying the candle. We find that the candles subject to this inquiry simply are not "holiday novelty candles."

American Greetings argues that each of the ten candles are novelty candles as a result of the figurines or other decorations attached to the candles. However, as discussed below, these candles are not designed for use only in connection with a religious holiday or special event. Thus, we find that all ten candles are within the scope of the order, regardless of whether the decorative figurines can be easily removed. Either with or without the attached decorations, each of these candles are still tapers or pillars, specifically covered by the order, and are not classifiable as holiday novelty candles.

Candle #1 - Taper with Heart Decorative Figurine: Candle #1 is a white taper and, as such, falls clearly within the specific language of the order's scope. In addition, the Department has previously ruled that neither seasonal marketing and packaging, nor general seasonal decorative motif, suffice to exclude candles from the scope of the order. In a similar scope request the Department determined that while a heart-shaped symbol made a candle appropriate for use on Valentine's day, the design did not preclude use of the candle at some other time. See

Final Scope Ruling; Meijer, Inc., June 11, 1998, passim; see also Final Scope Ruling; Springwater Cookie & Confection, February 15, 1995. This latter determination was affirmed by the Court of International Trade in the Springwater case cited above. We do not consider Candle #1 to be a holiday candle because the heart symbol in no way limits this candle's use solely to Valentine's Day.

Since the heart figurine is insufficient to impart any specific holiday-novelty quality to this product, whether the added heart-shaped figurine can be removed without causing irreparable damage to the taper is not relevant; either with or without the heart figurine, this candle is clearly a taper within the scope of the order. Therefore, consistent with the logic guiding the Global Marketing ruling cited

above, as well as numerous Departmental scope rulings, we determine that American Greetings' Candle #1 is covered by the scope of the order.

Candle #2 - Taper with "Teddy-bear" Decorative Figurine: As with Candle #1, we consider this candle to be a taper candle, manifestly within the scope of the order. We also do not consider this candle to be a holiday candle because it could reasonably be used at times other than Valentine's Day. (See Springwater). For the same reasons set forth above, that the attached teddy-bear figurine cannot be removed without causing irreparable damage to the taper does not alter our finding that this candle is clearly covered by the order, as this candle falls within the scope of the order either with or without the teddy-bear figurine. Therefore, we find this candle to be covered by the scope of the order, in accordance with Global Marketing and the prior scope rulings cited above.

Candle #3- Taper with Snowflakes: This red taper candle decorated with a pattern of white snowflakes is a shape covered by the scope of the order. Further, as to American Greetings' holiday novelty candle claim, while this candle evokes the season of winter, it is not necessarily or exclusively devoted to Christmas use only. The Christmas use must be "clearly indicated by Christmas scenes and symbols clearly depicted in the candle design." CIE N-212/85; see also the cases cited above. The instant candle is not specific to Christmas but, rather, could be used generally throughout the winter season. See Springwater; see also, Final Scope Ruling; Mervyn's, Inc., December 9, 1996 (Mervyn's), and Two's Company. Therefore, we find this candle to be within the scope of the order.

Candle #4 - Pillar with Snowflakes: This candle is a pillar, a shape covered eo nomine by the scope of the order. See the scope language quoted at page 3, above. This product is similar in design to Candle #3 with the exception that the decorative snowflakes are depicted in varying, rather than uniform, size. Similarly, we find that this candle does not constitute a holiday novelty candle and is, therefore, within the scope of the order. See analysis of Candle #3, above, and Springwater.

Candle #5 - Pillar with Gold Stars: As with Candle #4, this is a pillar candle, a shape listed in the scope of the order. Furthermore, we find that the pattern of decorative gold stars cannot be said to represent any particular holiday or religious event. Therefore, as with Candles #3 and #4, nothing intrinsic to this candle's design renders it uniquely associated with Christmas or any other holiday or special occasion. Accordingly, we determine that Candle #5 is within the scope of the order. See analysis of Candles #3 and 4, above; Springwater; and Two's Company (candles bearing, inter alia, star, diamond, heart, and "jewel"-shaped decorations are within the scope).

Candle #6 - Snowman Taper: This candle consists of a taper candle with a snowman-shaped figurine at its base. The taper portion is decorated with a snowflake design. American Greetings asserts that this candle is shaped in the form of an identifiable object and should, therefore, be excluded from the scope of the order. As indicated in the description above, the majority (roughly two thirds) of the candle's length consists of a taper, a shape manifestly included in the scope of the order. The snowman-shaped figurine which forms the base of this candle is not sufficient to render the candle as a whole as an "identifiable object;" rather, we find that the taper shape is the predominant characteristic of this candle. American Greetings further claims that this candle warrants exclusion from the scope of the order because it is a Christmas novelty candle. However, nothing in the design of the snowman figurine suggests any specific holiday or special event; as such, the figurine does not limit the candle to use solely in connection with the Christmas holiday. We have, therefore, determined that American Greetings' Candle #6 does not qualify for exclusion either as an identifiable object or as a holiday novelty candle.

Candle #7 - Taper with "Easter" flowers: This candle is in the form of a taper which is covered by the scope of the order. This taper is adorned about its base with a molded decoration depicting multicolored flowers. As such, this candle is, at best seasonal in nature, and could even be said to represent more than one season, i.e., spring and summer. In a similar case the Department ruled

that a so-called "Easter candle" was included in the scope because it lacked specific symbols limiting the candle's use solely to the Easter holiday. See *Midwest*; see also *Final Scope Ruling*; *Institutional Financial Services*, on behalf of Hallmark Cards, April 9, 1997 (red and white peppermint motif failed to gain exclusion as a Christmas novelty candle). Thus, as in the cases of Candles #3 through 5 above, the seasonal motif, such as it is, cannot be tied solely to a specific holiday or special occasion.

Moreover, unlike candles #1 and 2 above, the flower design is not a figurine affixed to the candle but, rather, is an integral part of the candle mold itself. Thus, the flower design is more akin to the intrinsic design features previously found to be within the scope of the order (see, e.g., *Mervyn's*, *op. cit.*), and the discussion of Candles #3 through 5, above. Therefore, we conclude that the *Global Marketing* precedent is not applicable to this specific taper. Candle #7 is, therefore, a taper candle within the scope of the order.

Candle #8 - Taper with Acorns and Leaves Decorative Figurine: Candle #8 is a taper specifically covered by the scope of the order. This taper includes a figurine with autumn leaves and acorns at its base; therefore, this candle is another with seasonal decorations that do not limit its use solely to a specific holiday or special occasion. As such, the same analysis applicable to Candles #1 and 2, above, is equally applicable here; this candle is included within the scope of the order, irrespective of whether removing the figurine damages the taper. See the cases cited under Candle #1, above.

Candle #9 - Taper with "Indian Corn" Decorative Figurine: This candle is in the form of a taper which is covered by the scope of the order. It includes about its base a decorative figurine depicting several ears of Indian corn. We find the Indian corn decoration is seasonal in nature, and not uniquely tied to the Thanksgiving holiday (see *Springwater*). Therefore, the addition of the figurine does not suffice to bring an in-scope taper candle outside the scope of the order. Accordingly, as with Candles #1, 2 and 8, above, we conclude that this taper is included within the scope of the order.

Candle #10 - "Indian Corn" Taper: This taper, described as a replica of an ear of Indian corn, is clearly a taper candle, a shape within the scope of the order. We agree with petitioner that the addition of a pattern resembling variegated kernels of corn etched into its sides does not sufficiently alter the fundamental shape of the candle as to make it a candle "in the shape of an identifiable object." The candle is still in the form of a taper, with or without the decorative etched design, distinguishing this product from other "identifiable object" rulings in the past, most notably *Et-Al*, *Midwest* and *Sun-It*, where the relevant candles each resembled actual vegetables or pieces of fruit and, thus, were not shapes listed in the scope of the order. See the cases cited under Candle #6, above. Furthermore, nothing in the etched kernel design limits this candle's use solely to the Thanksgiving holiday; this candle could be used at any time during the autumn season. Accordingly, we conclude that this candle is a taper decorated with a pattern of corn kernels and, as such, is covered by the scope of the order.

Finally, concerning American Greetings' references to relative pricing and the absence of domestic competitors presently making the same items, we note that neither of these points provide any basis for finding a product outside the scope of this antidumping duty order. American Greetings offers no precedent or authority for so finding, nor do we find any such precedent among the scores of scope determinations issued since this order published. The order covers petroleum wax candles in certain shapes, scented or unscented, irrespective of cost or price. Furthermore, the petitioning domestic candle industry produces a broad array of "tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers." Whether the industry currently produces the specific products at issue in this inquiry is not relevant to the scope of the order as defined during the original investigation.

Recommendation

We recommend the Department find that all ten of American Greetings' candles, as described above, are within the scope of the antidumping duty order on petroleum wax candles from the PRC, as these represent tapers or pillars, specifically covered by the scope of the antidumping duty order, and because these candles lack any physical characteristics which would otherwise merit their exclusion from the scope of the order.

_____√_____ Agree _____ Disagree

If you agree, we will send the attached letter to the interested parties, and will notify the U.S. Customs Service of our determination.

Joseph A. Petrini
Deputy Assistant Secretary
Enforcement Group III

5-4-00

Date

Attachment