

A-570-504
Scope Review
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By Certified Mail, Return Receipt Requested

To All Interested Parties:

On September 10, 2001, the Department of Commerce (the Department) received a request from Leader Light Ltd. (Leader Light) for a scope ruling on whether 73 models of candles it imports 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)(1), the Department has determined that 26 of Leader Light's candles fall 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 the U.S. Customs Service of this decision. If you have any questions, please contact Sally Gannon at (202) 482-0162 or Julio Fernandez at (202) 482-0961.

Sincerely,

Barbara E. Tillman
Director
Office of AD/CVD Enforcement VII
Import Administration

Enclosure

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

FROM: Barbara E. Tillman
Director
Office of AD/CVD Enforcement VII

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

Summary

On September 10, 2001, the Department of Commerce (the Department) received a request from Leader Light Ltd. (Leader Light) for a scope ruling on 73 models of candles (assorted pillar candles, "star" candles, "brick" candles, wax-filled containers, candle "gardens," floating candles, jar candles, and assorted figurines) to determine if they are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) (Petroleum Wax Candles from the PRC: Final Determination of Sales at Less Than Fair Value, 51 FR 25085 (July 10, 1986) (Final Determination)). In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that 26 of Leader Light's candles are covered by the scope of the antidumping duty order on petroleum wax candles from the PRC.¹

Background

Leader Light submitted its request for a scope ruling with respect to 66 models of candles. As outlined in Leader Light's various submissions, Leader Light argues that certain of its candles

¹ The Department has developed an internet website that allows interested parties to access prior scope determinations regarding the antidumping duty Order on Petroleum Wax Candles from the People's Republic of China. 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/>, and will be updated periodically, to include newly-issued scope determinations.

should be excluded from the scope of the order of petroleum wax candles from the PRC based on the chemical composition of the candles in question.

Leader Light filed its request for a scope ruling in proper form on September 10, 2001. On November 16, 2001, January 25, 2002, February 19, 2002, and June 5, 2002, counsel for the National Candle Association (NCA), an interested party in this proceeding, filed comments on Leader Light's request. Leader Light filed its rebuttal to the NCA's comments in a letter dated February 28, 2002. On April 24, 2002, and June 21, 2002, counsel for Russ Berrie and Company, Inc. (Russ Berrie and Co.), an interested party in this proceeding, submitted rebuttals to the NCA's comments regarding Leader Light's request. On April 25, 2002, counsel for another interested party in this proceeding, Avon Products, Inc. (Avon) submitted comments regarding Leader Light's request. On August 2, 2002, September 3, 2002, and October 7, 2002, counsel for The Companion Group (The Group), an interested party in this proceeding, submitted comments. On August 23, 2002, Department officials met with a representative of petitioner and petitioner's counsel to discuss issues raised by The Group in its submissions. See Memorandum to the File from Jessica Burdick through Sally C. Gannon Regarding Scope Requests under the Order of Petroleum Wax Candles from the People's Republic of China (Aug. 23, 2002). On September 20, 2002, petitioner's counsel submitted comments regarding the soot levels produced by paraffin wax and palm oil candles for the record of this proceeding. Subsequently, The Group's counsel submitted a response on October 8, 2002. On October 18, 2002, the NCA responded to The Group's October 8, 2002 submission. Memoranda regarding the Department's decisions to extend the 45-day deadline for this scope inquiry have been placed on the record. See Memorandum to the File through Sally C. Cannon from Julio A. Fernandez, Petroleum Wax Candles from the People's Republic of China: Scope Inquiry from Leader Light Ltd. (Oct. 29, 2001); see also Memorandum to the File through Sally C. Gannon from Brett L. Royce, Petroleum Wax Candles from the People's Republic of China: Change in Practice Regarding Scope Reviews as a Result of the JCPenney Purchasing Corporation Ruling (Nov. 28, 2001). On October 24, 2002, the Department received comments from counsel to TIJID, Inc. and Palm Beach Home Accents, Inc. (Saul Enterprises), interested parties in this proceeding.

On October 29, 2001, the Department contacted Leader Light and requested that Leader Light provide test results regarding the palm oil wax composition for the following sample candles no later than November 29, 2001²: Item No. C-2065; Item No. C-0192; Item No. C-2804-0; Item No. C-2903-0; Item No. C-3045-1; and Item No. M - 0633-1. On December 5, 2001, the Department received a letter from Leader Light requesting an extension of time for the submission of test results. The Department granted Leader Light's request, and extended the deadline date until January 11, 2002. At that time, the Department requested samples of the following candles, and this latter request was also due by January 11, 2002: Item No. C-0553; Item No. C-2628-0; and Item No. C-1495.

² On November 16, 2001, the NCA requested testing by an independent U.S. laboratory of the candles subject to this request (among other scope requests before the Department) which allegedly contain less than 50 percent petroleum wax.

Leader Light provided the sample candles requested by the Department, along with the test results, in a letter dated January 7, 2002.³ The Department's original request for testing included six types of candles: Item No. C-2065; Item No. C-0192; Item No. C-2804-0; Item No. C-2903-0; Item No. C-3045-1; and Item No. M - 0633-1. However, as part of its submission, Leader Light provided testing certificates for three of the six sample candles requested by the Department: Item No. C-2065; Item No. C-0192; and Item No. C-3045-1. Leader Light did not submit test results with respect to the following candles: Item No. C-2804-0; Item No. C-2903-0; and Item No. M - 0633-1, stating that these items will no longer be part of their product line, and thus, withdrew its request for a scope ruling on these candles. Additionally, Leader Light also included eight new models of candles as part of its January 7, 2002 submission, for which it requested scope rulings: Item No. C-3339-0; Item No. C-3340-0-A and B; Item No. C-3775-0; Item No. C-3776-0; Item No. C-2502-0 and C-2503-0. Therefore, for purposes of this scope ruling, the Department is issuing a determination for a total of 73 models of candles.⁴ In its January 25, 2002 submission, the NCA alleges that test results submitted by Leader Light (in support of its alleged "palm oil" candles) are "not sufficient to establish that the subject candles are in fact palm oil candles," because "test results submitted by Leader are based upon Fourier Transform Infrared Spectroscopy (FTIR)." Thus, as part of its February 28, 2002 rebuttal submission, Leader Light submitted revised testing certificates, from an independent testing facility, which were conducted in accordance with Customs Method 34-07.

The regulations governing the Department's antidumping scope determinations are found at 19 CFR 351.225 (2001). 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(k)(1).

³ Section 351.103(b) of the Department's regulations states that "no document will be considered as having been received by the Secretary unless it is submitted to the Central Records Unit (CRU) with the date and time of receipt." Since Leader Light's submission, dated January 7, 2002, was received directly by the analyst and not CRU, it was filed by the Department on January 10, 2002 as a courtesy and an addition to the September 10, 2001 request.

⁴ Leader Light's September 10, 2001 request included 53 models of candles. In its January 10, 2002 submission, Leader Light withdrew its request for a scope determination for nine of the original 53 models (Item No. M - 06331-1, Item Nos. C-2903-0 A through B, and Item Nos. C-2804-0 A and B) while simultaneously requesting a scope determination for 29 new models of candles. Thus, for purposes of this scope determination, the Department has examined a total of 73 models of candles.

Conversely, where the descriptions of the merchandise are *not* dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: I) the physical characteristics of the merchandise; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; iv) the channels of trade in which the product is sold; and v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

In the instant case, the Department has evaluated Leader Light's request in accordance with 19 CFR 351.225(k)(1) and the Department finds that the descriptions of the products contained in the petition, the final determinations of the Secretary (including prior scope determinations) and the Commission, the initial investigation and the antidumping duty order are, in fact, dispositive. Therefore, the Department finds it unnecessary to consider the additional factors set forth at 19 CFR 351.225(k)(2).

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 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

(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:

[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); Preliminary Determination of Sales at Less Than Fair Value, 51 FR 6016 (February 19, 1986); Final Determination; See also Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986) (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” (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 U.S. Customs Service in connection with a July 1987 scope determination concerning an exception from 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), (CIE –212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987) (Customs Notice) (emphasis added).

Leader Light’s Request

Leader Light provided color photographs of all candles included in its request, and also provided a sample for certain candles in response to our request for samples of certain candles. Leader Light did not provide explanations as to why it believes the subject candles are outside the scope of the Order beyond its arguments regarding the descriptions of the candles, including dimensions, percent of wax compositions, and any alleged holiday-related designs.

The National Candle Association’s Comments

In its comments, the NCA retraces the history of this antidumping duty order, including the import surges and resultant injury suffered by domestic manufacturers which prompted the original September 1985 antidumping petition. Petitioner contends that the antidumping statute and antidumping duty orders are remedial in nature and exceptions to them should be construed as narrowly as possible to preserve the efficacy of the Order on petroleum wax candles from the PRC. In support of its assertion, petitioner cites a Court of International Trade (CIT) conclusion, with regards to the novelty exception, while the Court noted that “. . . a candle must be specifically designed for use only in connection with a religious holiday or special event to fall within the novelty candle exception.” See Russ Berrie & Co., Inc. v. United States, 57 F. Supp.

2d 1184, 1194 (CIT July 1999) (Russ Berrie). Thus, petitioners argue that the Department narrowly limited the novelty candle exception to figurine candles, candles shaped in the form of identifiable objects, and candles specifically designed for use only in connection with the holiday season. The NCA commented on all of Leader Light's subject candles.

With respect to Leader Light's alleged palm oil candles, the NCA argues (in its January 25, 2002 comments submitted to the Department) that Leader Light withdrew its request with respect to certain candles in its January 7, 2002 submission to the Department, and, thus, did not submit appropriate testing certificates, demonstrating the chemical composition of the alleged palm oil candles, as requested by the Department. Therefore, the NCA argues, all alleged candles for which Leader Light did not submit test results, should be found to be within the scope of the order on petroleum wax candles from the PRC. The NCA further argues that the testing method used for Leader Light's candles, Fourier Transform Infrared Spectroscopy (FTIR), is not able to appropriately measure the level of palm oil in a candle, because the FTIR method does not separate the individual components of the subject candle, and, therefore, "cannot perform a quantitative analysis of candles with a mix matrix such as those submitted by Leader Light" (NCA's January 25, 2002 comments at 5). Thus, the NCA recommends that Leader Light's alleged palm oil candles undergo additional testing using gas chromatography, a procedure that has the ability to break down very complex mixtures into component parts. The NCA further recommends that testing be conducted using U.S. Customs laboratory methods 34-07 or 34-08.

With respect to Leader Light's "Musical Candles" (Item No. C-0553), the NCA asserts these candles are in the shape of a round or pillar, and are specifically covered by the scope of the Order (NCA's January 25, 2002 comments at 6). Additionally, the NCA argues that Item Nos. C-0902 and C-0902-1, Leader Light's "Brick Candles," are straight-sided, rectangular columns, and points to Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504), Barthco Trade Consultants (Apr. 30, 2001) (Barthco)⁵ as a previous case where the Department determined this shape to be within the scope of the Order (NCA's January 25, 2002 comments at 7). In Barthco, the Department determined that ". . . [t]he Mini Loaf candles, are in fact, straight-sided, rectangular shaped column candles. Column candles come in a variety of shapes, including those with straight sides . . ." and also noted that ". . . [t]he Order does not place restrictions on the sizes and dimensions of the types of candles named in the Order."

With respect to Leader Light's "Pillar Candle Gift Set" (Item No. C-2594-0), the NCA contends this candle is made from petroleum wax and is in the shape of a round or pillar. The NCA also notes that "the addition of beads clamped to the outside of the candle does not convert an in-scope candle into a Christmas candle" (NCA's January 25, 2002 comments at 7). The NCA also argues that Item No. C-2595-0, Leader Light's "Star Candles," is a petroleum wax candle, containing a wick, and is in the shape of a five-sided pillar. The NCA further argues that "the

⁵ The Department's previous scope determinations are on file in the Central Records Unit, room B-099 of the main Department building.

Department has been consistent in requiring that the novelty design or shape of a candle must be capable of being seen from multiple angles,” and cites Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504), Meijer, Inc. (Sept. 30, 1999) (Meijer) in support of its assertion, wherein the Department determined that Meijer’s star candle was not eligible for an exception as an identifiable object because the candle was not clearly identifiable as a star when viewed from all sides (NCA’s January 25, 2002 comments at 8).

Leader Light’s “Ceramic Filled Candle,” Item No. C-2638-0, the NCA argues, is a set of three wax-filled containers, which are specifically outlined in the scope of the Order. Additionally, the NCA argues that there is no particular design on this candle that would limit the candle’s use specifically to the Christmas holiday season (NCA’s January 25, 2002 comments at 8). The NCA also argues that Leader Light’s “Candle Gardens” (Items No. C-2584-0 and C-2584-0B) are sets of four petroleum wax candles with wicks, and that the shapes of the candles (three pillars and one round) are specifically outlined in the scope of the order. (Id.)

The NCA asserts that Leader Light’s “Floating Candles” (Item No. C-2628-0) are candles that contain petroleum wax made in the PRC, and also contain a wick. The NCA adds that “there is no decoration on the container or in the wax,” and further notes that “[t]he addition of an artificial flower to the packaging is irrelevant” (NCA’s January 25, 2002 comments at 9).

The NCA notes that Leader Light’s candles compete in the same channels of trade as the candles subject to the Order, and that their sale without the antidumping duty will severely injure the U.S. candle producers. The NCA further notes what it characterizes as the long-standing efforts of candle importers to “expand the ‘novelty candle’ loophole in the Order through a continuing stream of scope requests, causing the Order on PRC candles to be subjected to over seventy Final Scope Rulings and many more requests.” Petitioner maintains that “[t]he success of the scope requests in eroding the Order has resulted in geometric increases in the volume of PRC candles coming into the United States” (NCA’s January 25, 2002 comments at 10). Petitioner concludes by stating that Leader Light is now asking the Department to narrow the scope of the Order on petroleum wax candles from the PRC so that it excludes everyday candles, claiming that they are novelty candles, and that the Department does not have such legal authority.

As part of its February 19, 2002 supplemental comments, the NCA included supplemental information asserting that “palm oil alone cannot be used as candle wax, that it must be chemically modified for use in candles, and that after hydrogenation, the carbon chain chemistry in the palm wax is identical to the chemistry of petroleum-derived paraffin wax” (NCA’s February 19, 2002 comments at 1). Thus, the NCA argues, “Leader Light’s palm oil candles are the same or similar to petroleum wax candles and, therefore, should be included within the scope of the Order.” (Id.)

In its June 5, 2002 comments, the NCA notes that testing results provided by Leader Light (as part of its February 28, 2002 submission) “. . . [i]ndicate a variety of combinations of paraffin wax and palm oil wax which add up to 100% of the candle.” The NCA goes on to add that

“[t]his is impossible since candles contain scents, color, dye, a wick, and/or other additives which compose a significant part of the candle” (NCA’s June 5, 2002 comments at 4). Additionally, the NCA notes that “[t]he Department has previously made clear that a product developed after the petition and investigation cannot be specifically excluded from the scope of a formal investigation,” and cites to Television Receiving Sets, Monochrome and Color, Final Scope Ruling; 56 FR 66841 (December 26, 1991) in support of its assertion (NCA’s June 5, 2002 comments at 2). According to the NCA, because Leader Light’s palm wax candles were not ready for mass commercial production at the time of the petition and original investigation, these candles warrant consideration by the Department under Section 351.225(k)(2) of the regulations. Further, the NCA also argues that “Leader Light’s candles have the same intrinsic qualities and essential characteristics of petroleum wax candles . . .” (Id.)

In its September 20, 2002 submission, pursuant to its August 23, 2002 meeting with the Department, the NCA rebuts the allegations contained in The Group’s August 2, and September 3, 2002, submissions regarding Leader Light’s request. Specifically, the NCA argues that candle makers take into account the wick size of a candle, matching it with certain parameters of a candle (fuel type, size and diameter, color and fragrance), adding that “[t]he reality is that only under conditions of improper use does soot-forming tendency become an issue” (NCA’s September 20, 2002 comments at 1).

In comments filed by the NCA on October 18, 2002, the NCA addresses a submission filed by The Group on October 8, 2002. The NCA’s submission further supports its argument with regard to soot-forming tendency “. . . that the basic reactions taking place in the flames of the two types of waxes [paraffin and palm] are the same.” (Id.)

Leader Light’s Rebuttal

In its February 28, 2002 rebuttal to the NCA’s comments, Leader Light argues that certain candles should be excluded from the scope of the Order on petroleum wax candles from the PRC based on their design or their chemical composition. With respect to Item No. C-0902-1 (“brick” candle) Leader Light argues that although the star and snowflake designs are ubiquitous, the Christmas tree design is specifically related to the Christmas season. Leader Light also argues that Item No. C-2628-0 (“floater” candle) resembles a ball rather than a round, and thus does not fall into the Order’s scope definition. Additionally, Leader Light states that, in response to the NCA’s concerns over appropriate testing methods, it has resubmitted testing certificates obtained from an independent testing facility, which were conducted in accordance with Customs Method 34-07.

Russ Berrie and Company, Inc.’s Comments

In its April 24, 2002 comments, Russ Berrie and Co. argues that the ITC, in the initial investigation, determined that the domestic like product would consist only of petroleum wax

candles, and that the ITC “. . . defined petroleum wax candles as candles ‘composed of over 50 percent petroleum wax, and may contain other waxes in varying amounts, depending on the size, and shape of the candle . . .’ ” (Russ Berrie and Co.’s April 24, 2002 comments at 4). Additionally, Russ Berrie and Co. asserts that the palm oil in Leader Light’s candles is derivative of certain types of palm trees, and not petroleum wax, as the name implies. Russ Berrie and Co. further argues that the Department has previously “. . . excluded candles that are composed of less than 50 percent petroleum wax from the scope of the antidumping duty order . . . ” (Russ Berrie and Co.’s April 24, 2002 comments at 6).

Further, in its June 21, 2002 comments, Russ Berrie and Co. argues that Leader Light’s candles are not later-developed merchandise, as alleged by the NCA, because “. . . candles primarily made of hydrogenated vegetable oils such as the palm oil candles subject to this scope inquiry were commercially available prior to the initiation . . . ” of the investigation for this proceeding (Russ Berrie and Co.’s June 21, 2002 comments at 3). Additionally, Russ Berrie and Co. argues that the ITC, in the context of examining the domestic product in greater detail, recognized that “. . . specialty candle making operations do have requirements for the more ‘exotic’ types of wax, such as hydrogenated vegetable oil . . . ” and also recognized that “. . . the domestic like product shall consist only of petroleum wax candles . . . ” (Russ Berrie and Co.’s June 21, 2002 comments at 3). Lastly, Russ Berrie and Co. asserts that “Candles made from hydrogenated vegetable oil cannot be later-developed products because hydrogenated vegetable oil is not a new feature or technological development derived from petroleum wax candles as evidenced by the ITC’s findings in the initial investigation . . . ” (Russ Berrie and Co.’s June 21, 2002 comments at 4).

Avon Products, Inc.’s Comments

In its April 25, 2002 submission, Avon argues that, in establishing what constitutes a petroleum wax candle during the initial investigation regarding the scope of the affected merchandise, the ITC established a petroleum wax candle as “. . . 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” (Avon’s comments at 4). Avon also argues that “. . . the test method advanced by the NCA, ‘Customs Method 34-07,’ readily distinguishes between ‘paraffin wax’ and other waxes.” Further, it argues that “[t]he testing procedure is designed to detect the presence of paraffin and other substances such as palm oil based on their respective carbon levels by use of the Fourier transform infrared spectroscopy (‘FTIR’) method” (Avon’s comments at 5). Additionally, Avon asserts that petroleum/paraffin candles and non-paraffin candles “. . . are further differentiated by, not only, the apparent attraction of being ‘petroleum free,’ but a significant difference in cost between paraffin and vegetable candles.” (*Id.*)

The Companion Group's Comments

In comments submitted on August 2, 2002, The Group argues that “[c]andles composed of less than 50 percent petroleum wax are not covered by the order on petroleum wax candles from the PRC,” adding that “there is no legal basis for bringing such candles into the order” (The Group’s August 2, 2002 comments at 1). The Group argues that petitioner “. . . is without legal or factual basis in asserting that such non-petroleum candles meet the statutory requirements for ‘later-developed merchandise,’ ” adding that the NCA is incorrect in asserting that the production process for the candles in question is so similar to that used in the production of petroleum wax candles “that they should appropriately be included in the scope.” (*Id.* at 2) Further, in addition to including a statement addressing issues raised by the NCA (the sooting propensity of certain types of waxes, sooting levels, chemical structure, and issues relating to scientific testing of palm oil wax), The Group asserts that both the Department and the ITC “have specifically rejected the notion that non-petroleum candles are covered by the order.” (*Id.*) The Group further argues that “[t]he facts, legal reasoning and precedent all clearly demonstrate that non-petroleum candles cannot be considered candles of petroleum wax.” (*Id.*)⁶

The Group submitted comments on September 5, 2002 correcting a clerical error in its August 2, 2002 submission. A revised statement was included by The Group in its September 5, 2002 submission to the Department. Additionally, The Group also filed comments on October 8, 2002, in response to comments filed by the NCA on September 20, 2002. In its submission, and with respect to the NCA’s position that palm wax and paraffin wax have similar basic combustion properties, The Group argues that the NCA “has failed to establish a credible basis” for this position (The Group’s October 8, 2002 comments at 2).

Saull Enterprises' Comments

In comments submitted on October 24, 2002, TIJID, Inc. and Palm Beach Home Accents, Inc. (Saull Enterprises) argue that palm oil candles included in Leader Light’s request are not “later developed merchandise,” as argued by the NCA in its June 5, 2002 comments. Specifically, Saull Enterprises argues “. . . that NCA is without legal or factual basis in asserting that such non-petroleum wax candles meet the statutory requirements for ‘later developed merchandise,’ ” adding that such candles “. . . are not within the scope of the Order” (Saull Enterprises’ comments at 2). Saull Enterprises included a news article from the *Financial Times (London)*, that palm oil candles were commercially available in Malaysia at the time of the original investigation. Further, Saull Enterprises argues that the scope of the Order clearly indicates that

⁶ In its submission, The Group points to a scope ruling made by the Department at the request of Meijer Inc., wherein the Department determined that “Meijer correctly assumes that a candle made from vegetable wax is not included in the scope of the order. . . .” See Memorandum for Joseph A. Spetrini From Richard Weible; Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Meijer Inc. (June 11, 1998).

“only candles made from petroleum wax are within the scope of the Order” (Saul Enterprises’ comments at 5).

Saul Enterprises concludes its comments by stating that the Department has previously held that non-petroleum wax candles are not covered under the scope of the Order, and argues that the ITC has determined that “[p]etroleum wax candles are those composed of over 50 percent petroleum wax” (Saul Enterprises’ comments at 6).

Analysis

When determining whether or not a particular product claimed as a 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 falls within those shapes listed by the inclusive 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 a candle falls within one of the above delineated shapes, it will be determined to be within the Order’s scope. Candles of a shape not listed by the inclusive language of the Order’s scope will then be evaluated to determine whether they are “scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.”

In November 2001, the Department changed its practice on the issue of candle shapes. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); JCPenney (November 9, 2001) (JCPenney 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, which list is not modified by any express words of exclusivity. The result of our prior practice of excluding candles of a shape other than those listed was inconsistent with the fact that such candles were “scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.”⁷ In JCPenney Ruling, the Department determined to revise this practice because it 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. Accordingly, in order to give full effect to the first sentence of the inclusive language of the scope, the Department now will normally evaluate whether candles of a shape not listed by the inclusive language of the

⁷ 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. (Jan. 11, 2000) (Endar Corp.) (“dragonfly” candle, in the shape of a rough-hewn stone with a dragon fly carved on top, not within scope because it is of a shape not listed by the scope), and American Drug Stores, Inc. (Mar. 16, 1998) (sphere or ball shaped candle not within scope because it is a shape not listed by the scope).

Order's scope are scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.

This approach of evaluating such candles in light of the entire text of the scope is in keeping with the opinion of the CIT, 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. Duferco Steel, Inc. v. United States, 146 F. Supp. 2d 913 (May 29, 2001) (Duferco Steel). Such an approach is a departure from past CIT precedent that required Commerce to give ample deference to the petitioner's intent when examining a petition's description of the subject merchandise. See, e.g., Torrington Co. v. United States, 995 F. Supp. 117, 121 (CIT 1998).

Although the specific scope decision in Duferco Steel has recently 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. July 12, 2002) (Duferco Steel II), we do not believe that the Court's decision undermines the Department's decision in JCPenney 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" fall within the scope of the Order. Thus, the Order offers a descriptive list of the shapes of candles falling 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."⁸ 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."⁹ Thus, as applied to this Order, there is no requirement, nor is it possible, for all the shapes of candles to be listed.¹⁰ 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 render the novelty candle exception that offered a narrowly-construed exclusion, leaving all other petroleum wax candles from the PRC covered by the Order.

If the Department determines that the candle is made from petroleum wax and has a fiber or paper-cored wick, but the candle possesses characteristics set out in the July 1987 novelty candle

⁸ Novosteel SA v. United States, 284 F.3d 1261 (March 26, 2002).

⁹ Id.

¹⁰ 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.").

exception, it will fall outside the scope of the Order. In order 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 exclusion from 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 does not qualify for exclusion from the Order under the novelty candle exception. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); JCPenney Purchasing Corp. (May 21, 2001) (JCPenney Corp); San Francisco Candle Co. (Feb. 12, 2001) (SFCC); Endar Corp. If a candle does not possess characteristics set out in the July 1987 novelty candle exception, and it is a scented or unscented petroleum wax candle made from petroleum wax and having fiber or paper-cored wick, the Department will determine that the candle is within the scope of the Order.

Before applying the above-described novelty candle analyses to the 73 types of candles for which Leader Light has requested a scope ruling, we address the issue of whether the claimed palm oil candles are within the scope of the order.¹¹ The Department’s determinations with respect to these claimed palm oil candles are enumerated below.

- 1. Palm Oil / Petroleum Wax Pillar Candle (Item No. C-2065)**
- 2. Palm Oil / Petroleum Wax Pillar Candle (Item No. C-2066)**
- 3. Palm Oil / Petroleum Wax Pillar Candle (Item No. C-2067)**
- 4. Palm Oil / Petroleum Wax Pillar Candle (Item No. C-2068)**
- 5. Palm Oil / Petroleum Wax Pillar Candle (Item No. C-2069)**

The Department determines that candles #1-5, which are smooth pillar candles with a “sparkle” marble finish, and which are manufactured in a variety of sizes and colors, are outside the scope of the Order on petroleum wax candles from the PRC. In its original request for a scope determination (September 10, 2001), Leader Light indicated that the majority component for candles #1-5 is palm oil. In its February 28, 2002 submission, Leader Light included test results for this candle, which were obtained using Customs Method 34-07. These test results indicate that this candle is comprised of 37.4 percent paraffin wax and 62.6 percent palm oil wax.

¹¹ The test results submitted by Leader Light from an independent testing facility, with respect to certain candles selected by the Department and those included in Leader Light’s February 28, 2002 submission, indicate that the majority component for these candles is not petroleum wax. However, the Department notes that, while the aforementioned test results may assist the Department in making its scope ruling, such results may not be dispositive of the exact composition of candles of this item number when such candles are presented at a future time for entry at one of the several U.S. Customs ports of entry.

We disagree with the NCA's argument that the Department should include within the scope of the Order all candles for which Leader Light failed to provide testing certificates. Leader Light has been fully compliant with the Department's requests for additional information, samples, and testing documentation. The Department requested that Leader Light test only certain sample candles among its various groups of submitted candles. Therefore, Leader Light was not deficient in its testing; rather it complied with the Department's request to have candles selected by the Department tested.¹²

We have reviewed the information on the record, including the description of the claimed palm oil candles #1-5 above, as well as the test certificates included in Leader Light's February 28, 2002 submission, and agree with Leader Light that, based on the candles' palm oil content, these candles should be granted an exclusion from the Order for candles #1-5.¹³ Consistent with our past practice on candles in which petroleum (paraffin) or petroleum-based products were not the majority component, and per the Commission's definition that petroleum wax candles are those composed of over 50 percent petroleum,¹⁴ the Department agrees that these items should be found outside the scope of the Order because their petroleum-based content is less than 50 percent, according to the test results submitted on February 28, 2002. (See e.g., Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504), Ocean State Jobbers (December 18, 1998) (Ocean State); JCPenney Corp.; and Candles from the People's Republic of China, USITC Pub. 1888, Aug. 1986, at 4-5).

Further, the ITC has defined the domestic like product in this proceeding as "petroleum wax candles."¹⁵ In the Commission Determination, the ITC determined ". . . [t]hat the domestic like product shall consist only of petroleum wax candles. The domestic industry, therefore, consists of the producers of petroleum wax candles." See Commission Determination at 11-12. In the

¹² We also disagree that the candles which Leader Light dropped from its candle line, and from its request before the Department, should be ruled inside the scope of the Order. In its original request, Leader Light requested a scope determination for 53 models of candles. Leader Light subsequently withdrew its request for a scope determination for nine of the original 53 models (Item No. M - 06331-1, Item Nos. C-2903-0 A through B, and Item Nos. C-2804-0 A and B), noting they were no longer part of its product line. We consider these candles to have been withdrawn from the scope request and, therefore, have not ruled on these candles (Item No. C-2804-0, Item No. C-2903-0, and Item No. M - 0633-1) because they are no longer part of Leader Light's product line. If any entries are made of these candles, they would be considered covered by the scope until the Department determines otherwise.

¹³ See Leader Light's February 28, 2002 submission containing a testing certificate for Item No. C-2065-0.

¹⁴ See Commission Determination at 5.

¹⁵ See USITC Pub. No. 3226 at 4-5, wherein the Commission reaffirmed its long-standing definition of domestic like product.

process of examining the domestic product in greater detail, the ITC recognized the existence of specialty candle-making operations, and, more importantly, such operations' potential requirement for more "exotic" or different types of waxes. Specifically, as noted by Russ Berrie, the ITC stated the following regarding the domestic product:

Waxes. – There are two broad categories of wax used for commercial purposes: natural and synthetic. The bulk of candle manufacturing utilizes natural waxes, principally paraffins, microcrystallines, stearic acid, and beeswax. However, specialty candle making operations do have requirements for the more "exotic" types of wax, such as hydrogenated vegetable oil or jojoba.

See Commission Determination at 51-52. In addition, the Department recognizes that palm oil (and palm oil wax, as in the instant case) is not obtained from petroleum sources, nor is there a reasonable argument that the origin of palm oil is petroleum-based. With respect to the NCA's argument that Leader Light's candles should be considered under the "later-developed merchandise" criteria of section 351.225(k)(2) of the regulations, the Department finds that it is not appropriate to consider such an allegation in the context of a scope inquiry under 19 CFR 351.225(k)(1). Therefore, the Department, at this time, is not making a determination as to whether Leader Light's palm oil candles are "later-developed merchandise" as identified by section 351.225(k)(2) of the regulations.

Consequently, because candles #1-5 have a majority composition of palm oil, we find that candles #1-5 are not covered by the Order. Therefore, candles #1-5 are found to be outside the scope of the Order.

- 6. Palm Oil / Petroleum Wax Pillar Candle (Item No. C-0192)**
- 7. Palm Oil / Petroleum Wax Pillar Candle (Item No. C-0194)**
- 8. Palm Oil / Petroleum Wax Pillar Candle (Item No. C-0196)**
- 9. Palm Oil / Petroleum Wax Pillar Candle (Item No. C-0197)**
- 10. Palm Oil / Petroleum Wax Pillar Candle (Item No. C-0202)**
- 11. Palm Oil / Petroleum Wax Pillar Candle (Item No. C-0203)**

The Department finds that items #6-11 also fall outside the Order's scope. These candles, containing a "sparkle" marble finish, are pillar candles available in varying sizes and colors. Test results submitted by Leader Light, and obtained using Customs Method 34-07, indicate that candle #6 (the only candle of this group the Department requested to be tested), Item No. C-0192, is comprised of 64.9 percent palm oil and 35.1 percent paraffin wax. As with candles #1-5, items #6-11 have a majority composition of palm oil. Therefore, for the reasons stated above in the analysis of candles #1-5, Leader Light's "sparkle" marble finish, majority palm oil, pillar candles fall outside the scope of the Order.

12. **Palm Oil / Petroleum Wax Pillar Candle (Item No. C-3076-0-A)**
13. **Palm Oil / Petroleum Wax Pillar Candle (Item No. C-3076-0-B)**
14. **Palm Oil / Petroleum Wax Pillar Candle (Item No. C-3077-0-A)**
15. **Palm Oil / Petroleum Wax Pillar Candle (Item No. C-3077-0-B)**
16. **Palm Oil / Petroleum Wax Pillar Candle (Item No. C-3078-0-A)**
17. **Palm Oil / Petroleum Wax Pillar Candle (Item No. C-3078-0-B)**

The Department finds that, for the reasons outlined below, items #12-17 fall outside the scope of the Order. These candles, wax-filled glass jar containers, are filled with various items, including stars, natural sea shells, insects, or artificial flowers. As with candles #1-11, according to Leader Light, these candles' majority component is not petroleum wax (55 percent palm oil). The Department's October 26, 2001 request for testing of certain sample candles in Leader Light's scope request included a sample from this group of candles (Item No. C-2804-0), but Leader Light subsequently removed this item from its product line.

However, with respect to Leader Light's remaining candles, the Department has ruled in the past that candles that are less than 50 percent petroleum-based are outside the Order's scope. See JCPenney Corp.; see also Ocean State; Candles from the People's Republic of China, USITC Pub. 1888, Aug. 1986, at 4-5. These candles, therefore, fall outside the Order's scope.

18. Palm Oil / Petroleum Wax Pillar Ceramic Duck Candle (Item No. C-3045-1)

Based on the composition of candle #18, the Department finds that it is outside the scope of the Order. This item, a set of three ceramic duck figurines filled with wax and set on a ceramic plate, measures approximately 12 inches in length. The individual duck figurines measure an estimated 5 inches in width. In its February 28, 2002 submission, Leader Light included revised test results for this candle, which were obtained using Customs Method 34-07. These test results indicate that this candle is comprised of 23.3 percent paraffin wax and 76.7 percent palm oil wax.

As noted for candles #1-17, the Department has previously ruled that candles in which petroleum-based products were not the majority component should fall outside the scope of the Order. This item, therefore, falls outside the scope of the Order.

19. Palm Oil / Petroleum Wax Molded Candle (Item No. C-3339-0)

The Department finds that item #19 should be included in the scope of the Order. This candle, a pillar measuring approximately 3 inches in diameter and 6 inches in height, contains a textured surface. In its February 28, 2002 submission, Leader Light included revised test results for this candle, which were obtained using Customs Method 34-07. These test results indicate that this candle is comprised of 52.5 percent paraffin wax and 47.5 percent palm oil wax. Because the majority component for this candle is not palm oil, but instead paraffin wax, this candle falls within the scope of the Order.

- 20. Palm Oil / Petroleum Wax “Rustic” Candle (Item No. C-3340-0-A)**
- 21. Palm Oil / Petroleum Wax “Rustic” Candle (Item No. C-3340-0-B)**

The Department finds that these items should fall outside the scope of the Order. This candle is a pillar candle containing a “rustic,” textured outer surface. Test results provided by Leader Light in its February 28, 2002 submission indicate that this candle contains 54.8 percent palm oil wax and 45.2 percent paraffin wax. Thus, the majority component of this product is palm oil wax. Therefore, Leader Light’s “Rustic” candle should be excluded from the scope of the Order.

- 22. Palm Oil / Petroleum Wax “Crackle Finish” Candle (Item No. C-3775-0)**

The Department finds that candle #22 is not eligible for exclusion from the Order’s scope, based on its composition of palm oil. Leader Light’s “Crackle Finish” candle, a pillar candle measuring approximately 3 inches in diameter and height, contains a “crackle” finish outer surface. Leader Light included test results for this candle in its February 28, 2002 submission, which demonstrate that the candle contains 69.6 percent paraffin wax and 30.4 percent palm oil wax. Thus, the majority component of this candle is not palm oil wax, but rather paraffin wax. Therefore, this product does not merit an exclusion from the scope of the Order.

- 23. Palm Oil / Petroleum Wax Smooth Candle (Item No. C-3776-0)**

The Department finds that this candle is not covered by the scope of the Order. This candle is a smooth pillar and is manufactured in varying sizes and multiple colors. As part of its February 28, 2002 submission, Leader Light included test results regarding the candle’s composition which demonstrate that this candle contains 49.2 percent paraffin wax and 50.8 percent palm oil wax. As the majority component of this candle is not petroleum wax, based on testing documentation, and also similar to the analyses for candles #1-18, this candle should fall outside the scope of the Order.

- 24. - 31. Palm Oil / Petroleum Wax “Tin Box” Candle (Item No. C-2502-0) A - H**
- 32. - 39. Palm Oil / Petroleum Wax “Tin Box” Candle (Item No. C-2503-0) A - H**
- 40 - 47. Palm Oil / Petroleum Wax “Tin Box” Candle (Item No. C-2505-0) A - H**

For the reasons indicated below, the Department finds that candles #24-47 fall outside the scope of the Order. These candles, wax-filled tin containers, are manufactured in varying sizes and multiple colors. Leader Light included test results for those candles from this group that were selected by the Department for testing. These results demonstrate that the candles contain 49.5 percent paraffin wax and 50.5 percent palm oil wax. For the same reasons outlined above, Leader Light’s “Tin Box” candles fall outside the scope of the Order.

The remaining 26 candles included in Leader Light’s request were not claimed to contain a majority of palm oil wax content. Therefore, we are examining these candles based on Leader Light’s request that they meet the novelty candle exception.

48. **“Merry Christmas” Musical Candle (Item No. C-0553-A)**
49. **“Merry Christmas” Musical Candle (Item No. C-0553-B)**
50. **“PEACE” Musical Candle (Item No. C-0553-A)**
51. **“PEACE” Musical Candle (Item No. C-0553-B)**
52. **“Happy Birthday” Musical Candle (Item No. C-0553-A)**
53. **“Happy Birthday” Musical Candle (Item No. C-0553-B)**
54. **“Season’s Greetings” Musical Candle (Item No. C-0553-A)**
55. **“Season’s Greetings” Musical Candle (Item No. C-0553-B)**

These items, battery-operated pillar “musical” candles, are decorated with the words “Merry Christmas,” “Season’s Greetings,” “Peace,” and “Happy Birthday” inscribed on the candles’ surface. These subject candles are also decorated with multi-colored designs: a depiction of three candles on the “Season’s Greetings” candle, a depiction of a sleigh on the “Merry Christmas” candle, a depiction of a cake on the “Happy Birthday” candle, and a depiction of bells on the “Peace” candle. Leader Light states in its September 10, 2001 submission that its musical candles are comprised of 87 percent petroleum wax. The Department has previously held that candles containing the word “PEACE” are not specifically related to a holiday and are 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), Meijer, Inc. (December 15, 1997) (Meijer 1997). Therefore, Leader Light’s “Peace” musical candles are covered by the scope of the Order.

Leader Light’s “Happy Birthday” and “Season’s Greetings” candles are not novelty candles “[h]aving scenes or symbols of other occasions (e.g., religious holidays or special events) depicted in their designs” nor are they in the shape of an identifiable object. Therefore, these candles do not qualify for the novelty candle exception to the Order and are covered by the scope of the Order. See Customs Notice. With respect to Leader Light’s “Merry Christmas” candle, this candle is related specifically to the Christmas holiday. In addition to the words “Merry Christmas,” this candle is decorated with significant (molded) decorative holiday designs, which if removed, would cause significant damage to the candles. Therefore, Leader Light’s “Merry Christmas” candle is eligible for exclusion from the Order under the holiday novelty exemption.

56. **Brick Candle (Item No. C-0902-A)**
57. **Brick Candle (Item No. C-0902-B)**
58. **Brick Candle (Item No. C-0902-1-A)**
59. **Brick Candle (Item No. C-0902-1-B)**

The Department finds that Leader Light’s “Brick” candles, items #14-16, are within the scope of the Order. Leader Light’s “Brick” candle (Item No. C-0902-1) measures approximately 9 inches in length, and is embossed with three designs, a tree, a star, and a snowflake on one side of the candle. A second design of this candle (Item No. C-0902) is embossed with the word “Joy” in the candle’s side. Leader Light, in its submission, states that this candle is comprised of 100 percent petroleum wax. The Department has previously held that candles with stars and snowflakes are not eligible for a holiday novelty exemption, and has also held that candles containing the word “Joy” are within the scope of the Order. See Meijer 1997.

In SFCC, the Department ruled that a pillar candle containing a carved Christmas tree with a star was outside the scope of the Order because the tree and star were indicative of a Christmas tree. However, nothing about the tree design on Leader Light's candle is indicative of a Christmas tree or the Christmas season. Leader Light's "Brick" candles, therefore, are covered by the Order's scope. See e.g., Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504), American Greetings (May 4, 2000) (American Greetings); see also Meijer 1997.

60. Pillar Candle Gift Set (Item No. C-2594-0)

The Department determines that this candle is covered by the Order's scope. Leader Light notes that this candle, a gift set, comprised of a pillar candle which Leader Light states contains 100 percent petroleum wax, is intended for use during the Christmas holiday season. The subject candle measures approximately 3 inches in height, and is a smooth pillar with sides decorated by "clamped" beads. However, nothing in the appearance of this candle suggests that it would be used solely for the Christmas holiday, i.e., there are no characteristics which would render it to be a holiday novelty candle. Therefore, this candle remains within the scope of the Order. See Final Determination.

61. Star Candles (Item No. C-2595-0)

As with candle #60 above, the Department finds that this candle is covered by the scope of the Order. Leader Light notes that this candle gift set, comprised of a star-shaped candle (which Leader Light states contains is made of 100 percent petroleum wax), is intended for use during the Christmas holiday season. This item measures approximately 4 inches in length, approximately 2 inches high, and is manufactured in red or silver. The Department has previously ruled that star-shaped candles are within the Order's scope. See Barthco; see also Meijer. Also, nothing in the appearance of these candles suggests that they would be used solely for the Christmas holiday, i.e., there are no characteristics which would render them to be holiday novelty candles. Leader Light's star candles, therefore, fall inside the scope of the Order.

62. Ceramic Filled Candles (Item No. C-2638-0)

The Department finds that, for the reasons outlined below, Leader Light's "Ceramic Filled" candles fall within the Order's scope. This item is made up of a set of three ceramic wax-filled containers, which, according to Leader Light, are decorated with various "concaved" Christmas patterns (stars, snowflakes, and trees) and are comprised of 100 percent petroleum wax. The subject candles measure approximately 3 inches in height and width. Nothing in the "concaved" patterns, depicting stars, snowflakes, and trees, is expressly connected with the Christmas holiday. The scope language clearly includes "[a]nd various wax-filled containers." See Final Determination. Further, in previous scope rulings, the Department has determined that wax-filled containers fall inside 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 (August 31, 1998). These candles are, therefore, ruled to be covered by the scope of the Order.

63. Candle Garden (Item No. C-2584-0-A)

64. Candle Garden (Item No. C-2584-0-B)

The Department finds that, for the reasons outlined below, Leader Light’s “Candle Garden” candles fall within the Order’s scope. These “Candle Gardens” are each comprised of three pillar candles and one ball-shaped candle and are available in two different colors. These items rest on a ceramic plate decorated with various artificial accessories. Pillar candles are specifically covered under the scope of the Order, and the Department has ruled ball-shaped candles to be 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), Avon Products, Inc. (April 8, 2002) (Avon). For these reasons, Leader Light’s Candle Garden candle sets fall within the scope of the Order.

65. Floating Candles (Item No. C-2628-0-A)

66. Floating Candles (Item No. C-2628-0-B)

67. Floating Candles (Item No. C-2628-0-C)

68. Floating Candles (Item No. C-2628-0-D)

69. Floating Candles (Item No. C-2628-0-E)

The Department finds that candles #65-69 fall within the scope of the Order. These items are smooth floating candles measuring approximately two inches in height. Although Leader Light notes that these candles, packaged in sets of six, are for use during the Christmas season, nothing inherent in the design connects these candles to the holiday season. Further, the Department has ruled in the past that floating round candles are within the scope of the Order. These candles are, therefore, included in the Order’s scope. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504), Endar Corp. (December 24, 1998) (Endar Corp. 1998); see also Meijer.

70. Artificial Flower Candles (Item No. C-1495-A)

71. Artificial Flower Candles (Item No. C-1495-B)

72. Artificial Flower Candles (Item No. C-1495-C)

73. Artificial Flower Candles (Item No. C-1495-D)

The Department finds that these candles fall within the scope of the Order. These candles are wax-filled containers, in varying colors, and according to Leader Light, comprised of 100 percent petroleum wax. Further, these items are packaged with decorative artificial flowers and wrapped in clear fabric. As with candle #19, these products are clearly wax-filled containers covered specifically by the Order’s scope, and should, therefore, be included in the scope of the Order.

Recommendation

We recommend finding that the following candles are not covered by the scope of the Order; either because they contain less than 50 percent petroleum-based products or because they meet the novelty candle exception. See Customs Notice.

| Item No. | Description |
|--|---|
| C-2065 C-2066 C-2067 C-2068 C-2069 | Palm Oil/Petroleum Wax Pillar Candles |
| C-0192 C-0194 C-0196 C-0197 C-0202 C-0203 | Palm Oil/Petroleum Wax Pillar Candles |
| C-3076-0-A C-3076-0-B C-3077-0-A C-3077-0-B C-3078-0-A C-3078-0-B | Palm Oil/Petroleum Wax Pillar Candles |
| C-3045-1 | Palm Oil/Petroleum Wax Pillar Ceramic Duck Candle |
| C-3340-0-A C-3340-0-B | Palm Oil/Petroleum Wax "Rustic" Candles |
| C-3776-0 | Palm Oil/Petroleum Wax Smooth Candle |
| C-2502-0 A-H C-2503-0 A-H C-2505-0 A-H | Palm Oil/Petroleum Wax "Tin Box" Candles |
| C-0553-A C-0553-B | "Merry Christmas" Musical Candles |

We recommend finding that the following candles are covered by Order's scope, because they are more than 50 percent petroleum and they do not meet the novelty candle exception.

| Item No. | Description |
|--------------------------|--|
| C-3339-0 | Palm Oil/Petroleum Wax Molded Candle |
| C-3775-0 | Palm Oil/Petroleum Wax "Crackle Finish" Candle |
| C-0553-A C-0553-B | "PEACE" Musical Candles |
| C-0553-A C-0553-B | "Happy Birthday" Musical Candles |
| C-0553-A C-0553-B | "Season's Greetings" Musical Candles |
| C-0902-A C-0902-B | Brick Candles |
| C-0902-1-A C-0902-1-B | Brick Candles |
| C-2594-0 | Pillar Candle Gift Set |
| C-2595-0 | Star Candles |
| C-2638-0 | Ceramic Filled Candles |
| C-2584-0-A C-2584-0-B | Candle Gardens |
| C-2638-0 A-E | Floating Candles |
| C-1495 A-D | Artificial Flower Candles |

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

_____ Agree

_____ Disagree

Joseph A. Spetrini
Deputy Assistant Secretary
for Import Administration, Group III

Date

Attachment