

A-570-504
Scope Review
PUBLIC DOCUMENT
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By Electronic Mail Notification

To All Interested Parties:

On February 21, 2003, the Department of Commerce (the Department) received a request from Wal-Mart Stores Inc. (Wal-Mart) for a scope ruling on whether these two candle sets and two wax-filled containers it imports (identified by Style Numbers SC02-319, SC02-320, SC02-325 and SC02-328), are included within the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

In accordance with 19 CFR 351.225(k)(1)(2003), the Department has determined that these candles are included 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 Customs and Border Protection of this decision. If you have any questions, please contact Jacqueline Arrowsmith at (202) 482-5255.

Sincerely,

Dana S. Mermelstein
Acting Office Director
AD/CVD Enforcement VI
Import Administration

Enclosure

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

FROM: Dana S. Mermelstein
Acting Office Director
AD/CVD Enforcement VI

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

Summary

On February 21, 2003, the Department of Commerce (the Department) received a request from Wal-Mart Stores, Inc. (Wal-Mart) for a scope ruling to determine whether candles with four style numbers: SC02-319 (a "Christmas tree ball ornament" candle set); SC02-320 (a "snowball" candle set); SC02-325 (a single "snowball" candle which "floats" in a clear goblet) and SC02-328 (a single "snowball" candle which "floats" in a red goblet) should be included within the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). Petroleum Wax Candles from the PRC: Final Determination of Sales at Less Than Fair Value, 51 FR 25085 (July 10, 1986) (Final Determination); Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986)(Order). In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that these two candle sets and two single "snowball" candles "floating" in goblets are within the scope of the antidumping duty order on petroleum wax candles from the PRC.¹

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

Background

Wal-Mart properly filed its request for a scope ruling on February 21, 2003. The National Candle Association (NCA), an interested party in this proceeding, filed comments on Wal-Mart's request on May 15, 2003. No rebuttal briefs were filed.

a. Product Descriptions

Wal-Mart's request concerns two sets of candles which it calls "Christmas tree ball ornament" and "snowball" candles and two wax-filled containers, which it calls "snowball" candles in clear and red goblets.² Wal-Mart identifies the candles with the following style numbers: SC02-319, SC02-320, SC02-325, and SC02-328. We did not receive any samples of Wal-Mart's candles for these four style numbers so we cannot confirm the dimensions of any of these candles. Attachments 1 through 3 of Wal-Mart's February 21, 2003, submission provides copies of the digital photographs showing the style of candle or candle sets.³

Style number SC02-319 consists of three spherical candles painted silver with "glitter" decorations ("snowflakes" and decorative dots) around the circumference of the candles sitting on a silver tray. According to Wal-Mart's product description, this candle is approximately 2.5 inches in diameter.

Style number SC02-320 consists of three "pure white" spherical candles covered with "tiny peaks and valleys" to give the appearance of "fluffiness" of a loosely packed snowball sitting on a silver tray. According to Wal-Mart's product description, each of these candles is approximately three inches in diameter with a slightly flat bottom.

Style number SC02-325 consists of a single "pure white" spherical candle. The candle sits in a clear goblet, which is decorated with silver bows and bells that are securely attached to the goblet stem by a silver cord. According to Wal-Mart's product description, the candle is approximately three inches in diameter. Wal-Mart also describes these candles as "floaters," in its product description, because the "snowball" candle floats in a glass goblet.

² The "Christmas tree ball ornament" candles set (Style SC02-319) consists of three spherical candles sitting on a tray. The "snowball" candle set (Style SC02-320) also consists of three spherical candles sitting on a tray. Styles SC02-325 and SC02-328 each consists of one "snowball" candle in a clear or red goblet.

³ Because the photographs provided in Attachments I through III of the February 21, 2003, submission were not clear, the Department requested that Wal-Mart email these digital photographs. These photographs are on the record of this proceeding. See Memorandum from Jacqueline Arrowsmith to the File, dated October 28, 2004.

Style number SC02-328 consists of a single “pure white” spherical candle. According to Wal-Mart, the candle sits in a red goblet, which is decorated with an arrangement of gold bows, green holly and red berries that are securely attached to the goblet stem by a gold cord. According to Wal-Mart’s product description, the candle is approximately three inches in diameter. Wal-Mart describes these candles as “floaters,” in its product description, because the “snowball” candle floats in a goblet.

b. Wal-Mart’s Scope Request

Wal-Mart properly filed its request for a scope ruling on February 21, 2003. On May 15, 2003, the NCA, petitioner and an interested party in this proceeding, filed comments on Wal-Mart’s request.

Wal-Mart argues that the shapes, colors, and patterns of certain spherical ornamental Christmas candles, as well as the marketing and display of these candles, qualify these candles for an exclusion from the scope of the Order.

Wal-Mart argues that the Department should consider the scope of an order in order to determine whether a particular product is included within the scope. Wal-Mart states that the candles included in this request are all spherical in shape. According to Wal-Mart, this is a shape that was not included in the scope of the Order. Wal-Mart argues that the Department’s reversal of a decade of precedents excluding ball and spherical candles is unlawful. See, e.g., Final Scope Ruling - Petroleum Wax Candles from the People’s Republic of China (A-570-504); San Francisco Candle Company (May 28, 1993) (SFCC Scope Ruling), Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From People’s Republic of China (A-570-504); J.C. Penney Purchasing Corporation (November 9, 2001) (J.C. Penney Scope Ruling). Wal-Mart states that the Department may not “re-include” merchandise without a new injury investigation.

Wal-Mart argues that the letter from the Director, Office of Compliance, U.S. Customs Service to Burditt, Bowles & Radzius, Ltd., dated September 21, 1987, in connection with a July 1987 scope determination (CIE 212/85) (Customs Notice), clarifies that “identifiable objects” are excluded from the Order.⁴ Further, Wal-Mart argues that the involved candles are clearly

⁴ The Customs Notice is the notice issued by the Department to the U.S. Customs Service (renamed U.S. Customs and Border Protection (CBP)) in connection with a July 1987 scope determination concerning an exception to the Order for novelty candles, which states:

The Department of Commerce has determined that certain novelty candles, such as Christmas novelty candles, are not within the scope of the antidumping duty order on petroleum-wax candles from the People’s Republic of China (PRC). Christmas novelty candles are candles specially designed for use only in connection with the Christmas holiday season. This use is clearly

identifiable as “snowballs” or “Christmas tree ball ornaments.” Wal-Mart notes that in past rulings, the Department has stated that the object has to be identifiable from multiple angles and must have more than minimally decorative features characteristic of the object. According to Wal-Mart, its candles (Style numbers SC02-320, SC02-325 and SC02-328) are unmistakably sculpted as “snowballs,” while Style number SC02-319 depicts a traditional “Christmas tree ball ornament.”

Wal-Mart argues that the Department has previously issued scope rulings on certain “snowball” candles, but the scope rulings did not address the specific characteristics of the candles subject to this request or all of the arguments raised in support of the exclusion from the candles order in the instant request. See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From People’s Republic of China (A-570-504); Atico International, Inc.

(November 1, 2002) (Atico 2 Scope Ruling)(where the Department determined that a “snowball” candle should be included within the scope of the Order, despite its reminders of the winter holiday season.) Wal-Mart argues that the Department’s past rulings, which held that a “snowball” is not a symbol specific to Christmas, are not relevant in the instant case. According to Wal-Mart’s interpretation of the Customs Notice, the more important test is whether the candles were “designed for use exclusively during the Christmas holiday season.” Wal-Mart further argues that its candles meet this test because they were designed for sale and use during the Christmas season.

Wal-Mart argues that if there is any doubt as to whether these candles were designed for Christmas, the Department should commence a formal scope inquiry. Wal-Mart further argues that an objective review of the Diversified Products Criteria outlined in the Department’s regulations at 19 CFR 351.22(k)(2) would dispositively establish that these candles meet the criteria for exclusion from the scope of the Order. Wal-Mart argues that the Diversified Products criteria are central to the novelty exclusion, in light of the Customs Notice. Wal-Mart states that these candles are purchased and/or displayed sometime after Thanksgiving. Wal-Mart argues that the Christmas holiday season lasts roughly from the second week in December to the end of the calendar year, while the winter season lasts from December 21 through March 21. Wal-Mart also argues that it is not accurate to classify these candles as winter candles when many of these candles are purchased in areas of the country that never see snow. Wal-Mart concludes that these candles are used to enhance the celebration of the Christmas holiday to the extent that they evoke snow, sleighs, Santa, and reindeer (February 21, 2003, submission at 10).

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, figurines candles, and candles shaped in the form of identifiable objects (i.e., animals or numerals).

c. The National Candle Association's 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. Turning specifically to Wal-Mart's request, the NCA asserts that, with respect to the novelty exception, 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. Citing the Atico Scope Ruling (where the Department explains the difference between a shape and an object and why we do not consider a half-sphere to constitute a material thing that has sufficient specificity to warrant treatment as an identifiable object under the 1987 novelty candle exception), the NCA asserts that geometric shapes do not constitute identifiable objects.

The NCA argues that Wal-Mart's three candles in its "snowball" candle set (Style SC02-320) and the two "snowball" candles in the clear or red goblets (Styles SC02-325 and SC02-328) are made in the PRC from petroleum wax, have fiber or paper-cored wicks, and are round candles that should be included within the scope of the Order. The NCA cites two prior scope rulings in which we have determined that ball- or spherical-shaped candles are included within the scope of the Order. See J.C. Penney Scope Ruling (where the Department reversed its practice of excluding shapes that were not specifically listed by the language of the Order's scope and instead started evaluating candles on a case-by-case basis to see if they should be excluded) and Atico Scope Ruling. The NCA argues that, in the Atico Scope Ruling, the Department explained that it does not consider a half-sphere to constitute a material thing that has sufficient specificity to warrant treatment as an identifiable object under the July 1987 novelty candle exception. See Atico Scope Ruling, footnote 2. The NCA argues that for this reason, Wal-Mart's candles cannot be excluded from the Order on the basis that they are in the shape of a sphere. The NCA argues that Wal-Mart's "snowball" candles do not qualify as identifiable objects.

The NCA argues that the "snowball" candle with Style number SC02-320, which is in the shape "of a traditional rough-hewn snowball" has a flat bottom and this flat bottom can be viewed from all sides. The NCA states that a snowball is made of snow and that a snowball does not have a flat bottom. (May 15, 2003, comments at 4). The NCA cites the Department's previous findings when it argues that the addition of the textured surface does not change a candle from being a round candle subject to the Order. See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China (A-570-504); American Greetings Corporation (May 4, 2000) (where the Department determined that various taper candles and one pillar candle were within the scope of the Order because they were tapers and pillars regardless of the attached figurines). The NCA argues that the candle with Style number SC02-319 is similar to SC02-320 and that this candle is not in the shape of a snowball or any other identifiable object. The NCA argues that the candles (Styles SC02-3219 and SC02-320) be included specifically within the scope of the Order.

The NCA argues that the "snowball" candles with Style numbers SC02-325 and SC02-328 are the same candle – plain, spherically-shaped, and approximately three inches in diameter. The NCA states

that this spherical candle is a floating candle that is intended to float in goblets that are clear or red. The NCA further argues that the goblets – either the style or any decorations on them are irrelevant to whether these candles should be included within the scope of the Order. The NCA argues that there is nothing to distinguish this candle as a “snowball,” and that snowballs do not float in water. The NCA concludes that this candle is a round candle that falls within the scope of the Order. (May 15, 2003 comments at 5).

The NCA argues that Wal-Mart’s candles are not specifically designed for use during the Christmas season. The NCA cites the Atico 2 Scope Ruling, where it states that the Department has previously ruled that a snowball is representative of the winter season, but is not specific to a certain holiday or event. See Atico 2 Scope Ruling at 10. The NCA quotes from the Final Affirmative Scope Ruling – Antidumping Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504): Kohl’s Department Stores, Inc. (Kohl’s Scope Ruling) (August 24, 1998) to establish that a candle with a snowflake design lacks the exclusionary characteristics necessary to consider them outside the scope of the Order.

With respect to the holiday exception, the NCA argues that if the candle can be used other than during the holiday season, it does not fall within this exception. The NCA further argues that to establish that a candle can only be used during the Christmas holiday, Christmas scenes or symbols must so dominate the candle that it cannot be used on other occasions (Kohl’s Scope Ruling at 5).

The NCA argues that Wal-Mart’s candles compete in the same channels of trade as the candles subject to the Order, and that their sale in the absence of the antidumping duty will severely injure the U.S. candle producers. The NCA notes what it characterizes as the long-standing efforts of candle importers to expand the ‘novelty candle’ loophole in the Order through a continuing stream of scope requests, causing the Order on PRC candles to be subjected to over seventy final scope rulings and many more requests. The NCA maintains that the success of the scope requests in eroding the Order has resulted in large increases in the volume of PRC candles coming into the United States. The NCA further argues that if the Department grants Wal-Mart’s requests, it will severely damage the efficacy of the Order (NCA’s March 15, 2003, comments at 6).

Legal Framework

The Department examines scope requests in accordance with the Department’s scope regulations, which may be found at 19 CFR 351.225 (2003). On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (the Commission). See 19 CFR 351.225(k)(1). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the product is covered by the order. See 19 CFR 351.225(d).

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

Pursuant to 19 CFR 351.225(k)(1), the Department will examine the description of the subject merchandise from the petition, the initial investigation, and the Commission's determinations. In its petition of September 4, 1985, the NCA requested that the investigation cover:

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

See Antidumping Petition (September 4, 1985) at 7.

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

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

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

The Commission adopted a similar definition of the "like product" subject to its determinations, noting that the investigations did not include "birthday, birthday numeral and figurine type candles." See Determinations of the Commission (Final), USITC Publication 1888, August 1986, at 4, note 5, and A-2 (Commission Determination). The Commission stated that ". . . we determine that the domestic like product shall consist only of petroleum wax candles." See Commission Determination, at 9. In its discussion of like product, the Commission also stated:

Petroleum wax candles are those composed of over 50 percent petroleum wax, and

may contain other waxes in varying amounts, depending on the size and shape of the candle, to enhance the melt-point, viscosity, and burning power.

See Commission Determination, at 4-5.

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.

The Department clarified the scope of the Order in relation to certain novelty candles. See Russ Berrie Ruling at 1194. In 1987, the Department issued a notice to the United States Customs Service (since renamed CBP) in connection with a scope ruling which provides:

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

See Customs Notice.

In November 2001, the Department changed its interpretation of the scope of the Order. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); J.C. Penney (November 9, 2001) (J.C. Penney Ruling). In this ruling, the Department reviewed the text of the scope of the Order, beginning with the text of the first sentence of the scope which covers “[c]ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.” See Order. The text following this broad, inclusive sentence provides a list of shapes; this list is not modified by any express words of exclusivity. The result of our prior practice of not including within the scope of the Order candles of a shape other than those specifically listed in the Order was inconsistent with the fact that the candles were “scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.”⁵

⁵ See, e.g., Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Endar Corp. (January 11, 2000) (Endar) (The Department determines that a “dragonfly” candle, in the shape of a rough-hewn stone with a dragonfly carved on top, should not be included within the scope because it is of a shape not specifically listed by the language of the scope), and Final Scope Ruling – Antidumping Duty

In the J.C. Penney Ruling, the Department revised this practice because the old practice had the effect of narrowing the broad coverage of the first sentence of the Order's scope. The list of shapes in the second sentence of the Order's scope does not provide a textual basis for such a narrowing of the coverage of the first sentence of the Order's scope.

This approach of evaluating candles in light of the entire text of the Order's scope is in keeping with Duferco Steel, noting that a better approach in scope rulings is to avoid subjective issues of intent and, instead, look to the petition's language to determine whether the class or kind of merchandise at issue was expressly included. See Duferco Steel, Inc. v. United States, 146 F. Supp. 2d 913 (CIT 2001) (Duferco Steel).

Although the specific scope decision in Duferco Steel has been overturned by the United States Court of Appeals of the Federal Circuit (CAFC) in Duferco Steel, Inc. v. United States, 296 F.3d 1087 (Fed. Cir. 2002) (Duferco Steel II), the CAFC's ruling does not undermine the Department's scope determination in the J.C. Penney Ruling. The plain language of the scope of the Order clearly states “[c]ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks . . . sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers” are included within the scope of the Order. Thus, the Order offers a descriptive list of the shapes of candles included within the Order, but, as the courts have recognized, there is no requirement that every single product covered must be identified in the scope. More specifically, the CAFC has stated that “the petitions that led to the issuance of the order did not need to specifically identify the {product} in order to cover {it}; our precedent, to say nothing of the regulations, makes clear that neither a petition nor an antidumping or countervailing duty order requires that level of specificity.”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

Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); American Drug Stores, Inc. (March 16, 1998) (The Department determined that a sphere or ball-shaped candle should not be included within scope because it is a shape not specifically listed by the language of the scope).

⁸ Novosteel SA v. United States, 284 F.3d 1261, 1264 (Fed. Cir. 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”).

Department to render a decision on novelty candles or any other candle that was not explicitly listed as a shape in the scope of the Order. However, the Department did issue the novelty candle exception, which offered a narrowly construed exception and left all other petroleum wax candles from the PRC covered by the Order.

When determining whether a particular novelty candle is within the scope of the Order, the Department will first determine whether the candle is made of petroleum wax. If the candle is made of petroleum wax, the Department will look to see whether the shape of the candle falls within those shapes listed in the second sentence of the scope as defined in the Order, *i.e.*, “tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers.” If the Department determines that a candle is one of these shapes, it is within the scope of the Order.

However, if the Department finds that a candle is not shaped like the shapes listed in the second sentence of the scope as defined in the Order, *i.e.*, taper, spiral, straight-sided dinner candle, round, column, pillar, votive, and various wax-filled containers, then the candle will be evaluated to determine whether it is a novelty candle. For a candle to qualify for this exception, the characteristic, which is claimed to render it a novelty candle (*i.e.*, the shape of an identifiable object or a holiday-specific design) should be easily recognizable in order for the candle to merit not being included within the scope of the Order. Specifically, among other determining factors, the Department will examine whether the characteristic is identifiable from most angles and whether or not it is minimally decorative, *e.g.*, small and/or singularly placed on the candle. If the identifiable object or holiday-specific design is not identifiable from most angles, or if the design or characteristic is minimally decorative, the Department may determine that the candle should be included within the scope of the Order. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); J.C. Penney Purchasing Corp. (May 21, 2001); Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); San Francisco Candle Co. (Feb. 12, 2001) (SFCC Ruling); San Francisco Candle Company, Inc. v. United States, 265 F. Supp. 2d 1374, 1379 (CIT 2003) (SFCC); and Endar. If the candle does not possess characteristics set out in the July 1987 novelty candle exception, and it is a scented or unscented petroleum wax candle made from petroleum wax and having a fiber or paper-cored wick, the Department will determine that the candle is within the scope of the Order.

Analysis of Wal-Mart’s Candles

With respect to the involved request, the Department finds that, for the reasons outlined below, Wal-Mart’s two candle sets (with Styles SC02-319 and SC02-320) and the two wax-filled containers – the “snowball” candles which float in a clear or red goblets (with Styles SC02-325 and SC02-328) – are included within the scope of the Order, because these candles are not identifiable objects as claimed by Wal-Mart and these candles do not have any scenes or symbols that are exclusively associated with the Christmas holiday.

1. “Christmas Tree Ball Ornament” Candle Set (Style SC02-319)

Wal-Mart's "Christmas tree ball ornament" candle set (Style SC02-319) consists of three spherical candles painted silver with "glitter decorations" ("snowflakes" and decorative dots) around the circumference, which are sitting on a silver tray. According to Wal-Mart's February 21, 2003, scope request, each of these "Christmas tree ball ornament" candles is approximately two and half inches in diameter.

Based on Wal-Mart's description of its "Christmas tree ball ornament" candle set (Style SC02-319) and upon our examination of the photographs emailed to the Department, we examined whether the "Christmas tree ball ornament" candles in the set (Style SC02-319) are included within the scope of the Order. We determined that the three spherical candles, identified as Style SC02-319, painted with "glitter" decorations ("snowflakes" and decorative dots) are rounds. Rounds are among the shapes, which are specifically listed in the explicit language of the Order's scope. We found that these candles are rounds because every part of their circumferences appears to be equidistant from their centers.

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

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

A sphere is a "round" object – a three-dimensional object with all points at a given distance from its center – which is among the shapes identified in the scope of the order.¹¹ The "Christmas tree ball ornament" candles are rounds, a shape specifically listed in the Order's scope; we have determined that this is a shape and not an identifiable object. As such Wal-Mart's arguments that we should exclude the candles in the "Christmas tree ball ornament" candle set (Style SC02-319) because they are identifiable objects are inapposite, because we find that these candles are in a shape expressly included in the scope of the Order. In prior scope rulings, we have established that the difference between a shape and an object is one of specificity. A shape is generally the characteristic surface configuration of a thing, the outline or contour. See Atico Scope Ruling. An object is more specific, something perceptible by one or more senses, especially vision or touch, a material thing. See Atico Scope Ruling.

¹¹ Definition of a "round" (adjective) according to Merriam-Webster's online dictionary (www.m-w.com): as having "every part of the surface or circumference equidistant from the center." While one definition of a "sphere" (noun) according to Merriam-Webster's online dictionary is a "solid that is bounded by a surface consisting of all points at a given distance from a point constituting its center."

With respect to Wal-Mart's argument that the involved candles qualify for the novelty exception, as holiday candles, the Department has ruled in the past that candles not containing "scenes or symbols specifically related to a holiday or other special event" are within the scope of the Order, because their use is not attributable solely to Christmas or any specific holiday. The "Christmas tree ball ornament" candle set (Style SC02-319) does not contain decorations specific to the Christmas holiday. Neither the decorative balls nor the snowflake designs are specific to nor limited to the Christmas holiday; the colors and the shapes of both of these designs are evocative of the winter season. In order to qualify for the holiday novelty exception, the candles scenes, symbols, or motifs must be specific to the Christmas holiday, not merely an evocation of the winter season. See Atico 2 Scope Ruling. Thus, we find that this "Christmas tree ball ornament" candle set (Style SC02-319) does not qualify for the holiday exception and should be included within the scope of the Order.

2. "Snowball" Candle Set (Style SC02-320)

Wal-Mart's "snowball" candle set (Style SC02-320) consists of three "pure white" spherical candles covered with "tiny peaks and valleys" to give the appearance of "fluffiness" of a loosely packed snowball sitting on a silver tray. Wal-Mart did not provide a sample of this candle set. According to Wal-Mart's February 21, 2003, scope request, each snowball candle is approximately three inches in diameter with a slightly flat bottom.

Based on Wal-Mart's description of its "snowball" candle set (Style SC02-320) and upon our examination of the photographs emailed to the Department, we examined whether the "snowball" candle set (Style SC02-320) should be excluded from the scope of the Order. See Memorandum to the File from Jacqueline Arrowsmith, dated October 28, 2004. We determined that the three candles in this "snowball" candle set (Style SC02-320) are rounds. Rounds are among the shapes, which are specifically listed in the explicit language of the Order's scope. We found that these candles are rounds because every part of their circumference appears to be equidistant from the center.

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

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

A sphere is a "round" object – a three-dimensional object with all points at a given distance from its center – which is among the shapes identified in the scope of the order. The "snowball" candles are rounds, a shape specifically listed in the Order's scope. Therefore, we have determined that this is a

shape and not an identifiable object. Wal-Mart's argument that we should exclude the candles in this candle set (Style SC02-320) because they are identifiable objects is inapposite, because we find that these candles are in a shape expressly included within the language of the scope of the Order. Thus, we find that this candle set (Style SC02-320) should be included within the scope of the Order.

With respect to Wal-Mart's argument that we find the involved candles qualify for the novelty exception as holiday candles, the Department has ruled in the past that candles not containing "scenes or symbols specifically related to a holiday or other special event" are within the scope of the Order, because their use is not attributable solely to the Christmas holiday. The "snowball" set (Style SC02-320) does not contain decorations specific to the Christmas holiday. Snowballs are evocative of the winter season. See Atico 2 Scope Ruling. However, in order to qualify for the holiday novelty exception, the candles scenes, symbols, or motifs must be specific to the Christmas holiday, not merely an evocation of the winter season. Thus, we find that this candle set (Style SC02-320) does not qualify for the holiday exception and should be included within the scope of the Order.

3. "Snowball" Candle in Clear Goblet (Style SC02-325)

4. "Snowball" Candle in Red Goblet (Style SC02-328)

Wal-Mart's "snowball" candle in clear goblet (Style SC02-325) and "snowball" candle in red goblet (Style SC02-328) each consist of a "pure white" spherical candle, approximately three inches in diameter, which sits in a goblet. The goblet is clear for Style SC02-325 and red for Style SC02-328. According to Wal-Mart, the stem of the clear goblet (for Style SC02-325) is decorated with silver bows and bells that are securely attached to the goblet stem by a silver cord. According to Wal-Mart, the stem of the red goblet is decorated (for Style SC02-328) with an arrangement of gold bows, green holly and red berries that are securely attached to the goblet's stem by a gold cord.

Based on Wal-Mart's comments, we examined whether the "snowball" candles in goblets (Style SC02-325 and Style SC02-328) were in fact "identifiable objects." We determined that the "snowball" candles in both the clear and the red goblets (Styles SC02-325 and SC02-328) are rounds which "float" in a wax-filled container (the clear or red goblets). Both rounds and wax-filled containers are specifically listed in the explicit language of the Order's scope. We found that the "snowball" candles are rounds, because every part of their circumference appears to be equidistant from their centers.

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

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

A sphere is a “round” object – it is a three dimensional object with all points at a given distance from its center – which clearly would fall within the scope of the Order. In prior scope rulings, we have established that the difference between a shape and an object is one of specificity. A shape is generally the characteristic surface configuration of a thing, the outline or contour. See Atico Scope Ruling. An object is more specific, something perceptible by one or more senses, especially vision or touch, a material thing. Id.

Furthermore, the clear or red goblets with decorations¹², as shown in the digital photographs submitted by Wal-Mart, are clearly wax-filled containers. Therefore, we determine that Wal-Mart’s argument that the “snowball” candle in clear goblet (Style SC02-325) and the “snowball” candle in red goblet (Style SC02-328) should be excluded because they are identifiable objects or because they qualify as holiday candles, and should, therefore, not be included within the scope of the Order, are inapposite because we find that these candles are in a shape expressly included within the language of the scope of the Order. Thus, we find that the “snowball” candle in the clear goblet (Style SC02-325) and the “snowball” candle in the red goblet (Style SC02-328) should be included within the scope of the Order.

With respect to Wal-Mart’s argument that these candles qualify for the holiday exception, we find that the involved candles do not qualify for the holiday novelty exception. The Department has ruled in the past that candles not containing “scenes or symbols specifically related to a holiday or other special event” are within the scope of the Order, because their use is not attributable solely to the Christmas holiday. See e.g., Russ Berrie Scope Ruling. The “snowball” candle in the clear goblet (Style SC02-325) and the “snowball” candle in the red goblet (Style SC02-328) do not contain any Christmas decorations. In order to qualify for the holiday novelty exception, the scenes, symbols, or motifs on the candles must be specific to the Christmas holiday, not merely an evocation of the winter season. See Atico 2 Scope Ruling. Given that there is no decoration on either of these candles that indicates that these candles are exclusively used as Christmas candles, these candles do not qualify for the holiday novelty exception. Thus, we find that the involved candles do not qualify for the 1987 novelty candle exception, and thus, are included within the scope of the Order.

Recommendation

We recommend finding that all of Wal-Mart’s candles in the involved request (“Christmas Tree Ball Ornament” Candle Set (Style SC02-319), “Snowball” Candle Set (Style SC02-320), “Snowball” Candle in Clear Goblet (Style SC02-325), and “Snowball” Candle in Red Goblet (Style SC02-328)) are included in the scope of the order on petroleum wax candles from the PRC, because the “Christmas tree ball ornament” and all of the “snowball” candles are rounds,

¹² The decorations attached to the red goblet are discernible from the photograph as a gold bow and some type of red berries. However, the shiny green visible in the photograph is not clearly discernible as holly leaves.

one of the enumerated shapes defined in the scope of the Department's investigation and carried forward through the final determination of sales at less than fair value to the antidumping duty order.

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

_____ Agree

_____ Disagree

Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

Date

Wal-Mart Stores Inc - Product Samples



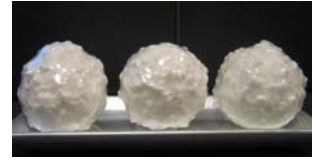
SCO2-319
Snowflake Candle [Top]



SCO2-319
Snowflake Candle [Front]



SCO2-320
Snowball Candle [Top]



SCO2-320
Snowball Candle [Front]



SCO2-325
Candle Beside Clear Glass



SCO2-325
Candle In Clear Glass



SCO2-325
Candle Beside Red Glass



SCO2-325
Candle In Red Glass