

A-570-504
Scope Review
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By Electronic Mail Notification

To All Interested Parties:

On August 2, 2004, the Department of Commerce (“the Department”) received a request from Abrim Enterprises, Inc. (“Abrim”), for a scope ruling on whether twelve types of candles it plans to import are covered by the antidumping duty order on petroleum wax candles from the People’s Republic of China (“PRC”) (“Order”).

In accordance with 19 CFR 351.225(k)(1)(2002), the Department has determined that ten of Abrim’s candles are included within the scope of the Order. We further determine that two of its candles fall outside the scope of the Order.

Enclosed is a memorandum containing the Department’s analysis. We will notify the U.S. Customs and Border Protection (“CBP”) of this decision. If you have any questions, please contact Steve Winkates at (202) 482-1904.

Sincerely,

Brian C. Smith
Program Manager
AD/CVD Enforcement NME, Office 9
Import Administration

Enclosure

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

FROM: James C. Doyle
Director, Office 9
Import Administration

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

Summary

On August 2, 2004, the Department of Commerce (“the Department”) received a request from Abrim Enterprises, Inc. (“Abrim”), for a scope ruling to determine whether twelve types of candles are included within the scope of the antidumping duty order on petroleum wax candles from the People’s Republic of China (“PRC”). 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 ten of Abrim’s candles are included within the scope of the Order. In addition, we further recommend that the Department determine that two of its candles fall outside the scope of the Order.¹

Background

On August 2, 2004, the Department received a letter from Abrim, dated July 30, 2004, requesting a scope ruling on twelve types of candles. On October 25, 2004, we provided counsel for the National Candle Association (“NCA”), petitioner and the domestic producer in this proceeding, with an

¹ The Department has developed an internet website that allows interested parties to access prior scope determinations regarding the Order. This website lists all scope determinations from 1991 to the present. It can be accessed at <http://ia.ita.doc.gov/download/candles-prc-scope/index>, and will be updated periodically, to include newly-issued scope determinations.

opportunity to examine the samples Abrim provided in its scope ruling request (see October 25, 2004, memorandum to the file entitled “Meeting with Petitioner’s Counsel and Viewing of Samples”). On November 12, 2004, NCA submitted comments on Abrim’s scope ruling requests.

Abrim’s Scope Request

Abrim argues that all twelve of its candles fall outside the scope of the Order because they are either (a) holiday candles or (b) in the shape of identifiable objects, thus making them eligible for the novelty exception.

a. Product Descriptions

The following are brief excerpts of Abrim’s descriptions of its candles from its August 2, 2004, submission:

The candles are known as “Rainbow Color-Changing Candles.” Common to all subject candles is an internal sensor powered by a lithium battery which causes the candle to change colors when lit. Therefore, while the color of each of the candles appears white, when in use the candles will emit variable and varying colors including blue, indigo, purple, yellow, orange, etc.

The candles are in the shape of identifiable objects, but some also depict scenes or symbols from Christmas, Easter, and Halloween. All candles are made from 100 percent petroleum-based wax and have fiber core wicks.

Strobile-M (Model No. CS0710-M)

The Strobile candle is identifiable from all angles as a pinecone.

Halloween Skull-A (Model No. HS1010)

The Halloween Skull candle is identifiable as a human skull from all angles, with clear skull features including eye sockets, cheekbones, etc. While uniform in color (when unlit), these features are clearly discernible without close observation.

Easter Egg/Flower Basket (Model No. EE0810)

The Easter Egg/Flower Basket is recognizable as an egg from all angles. It also has an engraved flower basket pattern running around the entire candle.

Tulip Bud-L (Model No. FT0708)

The Tulip Bud-L candle is shaped and easily recognizable as an open tulip bud from all angles. The candle shows clearly defined, textured tulip petals rising from the base which appear to be “in bloom,” i.e., partially open with the petals slightly bent over at the top.

Birthday Cake-S (Model No. PB0907)

The Birthday Cake-S candle is recognizable from most angles as a three-tiered festive cake. The perimeter of each cake tier is adorned with a ribbon-like relief, and equally spaced roses or other flowers.

Square-M Angel (“Four Angels”) (Model No. PA1010)

The Square-M Angel candle is almost a square-shaped candle (3.5" x 3.5" x 3.9") which depicts an identifiable object, a raised, full-image relief of a winged angel holding a lute, on all four sides of the candle. Each angel is framed by carved ornamentation: church-like arches capped by a star situated above the angel’s head. The angel relief is identical on all four sides of the candle.

Censer (Model No. PC0907)

The Censer candle is an identifiable object, a censer, or thurible. There is significant detail carved on the censer-shaped candle, including three detailed column-like legs upon which the censer pot sits, and a highly decorated main vessel. The subject candle also has two short (one inch) protrusions extending upward from the rim of the censer to which a “chain” would be attached on an actual censer for suspending or swinging the censer during important religious ceremonies.

Garlic-L (Model No. BG0810)

The Garlic-L candle is shaped in the form of a vegetable garlic and is identifiable as such from all angles. There are clearly visible vertical ridges on the candle, roughly delineating the underlying garlic cloves.

Easter Egg-E (Model No. EE0608-E)

The Easter Egg-E candle is in the shape of a true egg.

X-Mas Tree-A (Model No. CT0713)

The X-Mas Tree candle is 5.2 inches in overall height and 3 inches in width at the very bottom

{and} follows the form of a traditional conical Christmas tree with a wide base narrowing to a point at the top. The “needles” or “leaves” of the subject candle are covered with clumps of “snow.”

Snowman (Wife) (Model No. CS0710-A)

The Snowman (Wife) candle is a figurine in the shape of a full-length snowman, with clear traditional features identifying it as such from all angles. The “snowman” has a round torso, scarved neck, round head, a brimmed hat pinned back in the front with a flower, and a pointy nose (suggesting a carrot). The snowman’s two arms are clearly visible on the sides of the candle. As with an actual snowman, the candle does not have “legs.” The snowman wife is also wearing a cloak with a top button, indicated by texturing and grooves on the candle.

Snowman (Husband) (Model No. CS0710-B)

The Snowman (Husband) candle, like the Snowman (Wife) candle, is a figurine in the shape of a full-figured snowman. The only notable differences between the two candles are that: (1) the Husband’s brimmed hat is not pinned back in the front, as it is on the “Wife” snowman; (2) the Husband snowman’s scarf also appears somewhat different. Other than those minor differences, the two candles are virtually identical.

b. Scope Request

To support its argument that its candles qualify for the novelty exception, Abrim quotes from the notice which the Department issued to the U.S. Customs Service (now renamed U.S. Customs and Border Protection (“CBP”)) in connection with a July 1987 scope determination concerning an exception 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).

See Petroleum-Wax Candles from the People’s Republic of China - Antidumping - A-570-504; C.I.E. -212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987 (“CBP Notice”).

Abrim included samples of its candles with its scope request, as well as photographs in response to a subsequent request from the Department (see October 15, 2004, Letter from the Department to Abrim).

NCA 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. The NCA 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. In support of its assertion, the NCA cites a Court of International Trade (“CIT”) decision, which states 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 1999). Thus, the NCA argues 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 argues that all of Abrim’s candles are petroleum wax candles made in the PRC having fiber or paper-cored wicks and thus fall specifically within the Order. The NCA contends that, with the exception of the “Snowman (Wife)” and “Snowman (Husband)” candles, Abrim’s candles are not in the shape of identifiable objects, nor are they designed for use only in connection with any specific holiday. Therefore, the NCA contends, these candles should be included within the scope of the Order.

The NCA argues that the “Strobile-M” candle is not easily recognizable as a pinecone or any other identifiable object. Therefore, the NCA contends that this candle should fall within the scope of the Order.

The NCA argues that the human skull characteristic of the “Halloween Skull-A” candle can only be observed by looking “straight on at one side of the candle,” and therefore cannot be identified from multiple angles. Therefore, the NCA contends that this candle should fall within the scope of the Order.

The NCA argues that the “Easter Egg/Flower Basket” candle is not identifiable as an egg from any angle. In addition, the NCA claims that there is nothing in the design on the candle that limits its use to the Easter holiday. Therefore, the NCA contends that this candle should fall within the scope of the Order.

The NCA argues that the “Tulip Bud-L” candle is not recognizable as a tulip bud from most angles, noting that the flower bud can only be discerned clearly by looking straight down onto the top of the candle. Therefore, the NCA contends that this candle should fall within the scope of the Order.

The NCA argues that the “Birthday Cake-S” candle is not identifiable as any known object when viewed from any angle. Therefore, the NCA contends that this candle should fall within the scope of the Order.

The NCA argues that the “Square-M Angel” candle is not in the shape of an identifiable object. Furthermore, the NCA contends that the angel design is not specific to the Christmas holiday, and even if it was, the angel design is not able to be viewed from multiple angles. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); JC Penney Purchasing Corp. (May 21, 2001) (“JC Penney Corp.”). Therefore, the NCA contends that this candle should fall within the scope of the Order.

The NCA argues that the “Censer” candle is not in the shape of an identifiable object when viewed from any angle. Therefore, the NCA contends that this candle should fall within the scope of the Order.

The NCA argues that the “Garlic-L” candle is not in the shape of an identifiable object when viewed from any angle. Therefore, the NCA contends that this candle should fall within the scope of the Order.

The NCA argues that the “Easter Egg-E” candle is not in the shape of an identifiable object when viewed from any angle, and further contends that if this were in fact an Easter egg, it would have decorations on it. Therefore, the NCA contends that this candle should fall within the scope of the Order.

The NCA argues that the “X-mas Tree-A” candle is not identifiable as a Christmas tree when viewed from multiple angles. Therefore, the NCA contends that this candle should fall within the scope of the Order.

The NCA also noted that Abrim’s “Snowman (Wife)” and “Snowman (Husband)” candles are figurines in the shape of a snowman, and therefore conceded that these candles fall outside the scope of the Order.

The NCA notes that Abrim’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 U.S. candle producers. The NCA further notes the long-standing efforts by candle importers to “expand the ‘novelty candle’ loophole in the Order through a continuing stream of scope requests, causing the Order 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 geometric increases in the volume of PRC candles coming into the United States. The NCA claims that Abrim is now asking the Department to narrow the scope of the Order so that everyday candles are not included within the scope of the Order, claiming that they are novelty candles. Finally, the NCA argues that the Department does not have the legal authority to narrow the scope of the Order.

Legal Framework

The regulations governing the Department's antidumping scope determinations are found at 19 CFR 351.225 (2004). 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 U.S. International Trade Commission ("ITC"). 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).

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: (1) the physical characteristics of the merchandise; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of trade in which the product is sold; and (5) 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 Abrim's requests in accordance with 19 CFR 351.225(k)(1) and the Department finds that the descriptions of the products contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the ITC are dispositive with respect to all twelve of Abrim's candles. 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 that the Department deemed relevant to this scope ruling were made part of the record of this determination and are referenced herein. Documents that the Department did not present, or place on the record, do not constitute part of the administrative record for this scope determination.

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 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); 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); Petroleum Wax Candles from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 51 FR 25085 (July 10, 1986) (“Final Determination”); and Order.

The ITC 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 Candles from the People’s Republic of China: Determination of the Commission in Investigation No. 731-TA-282 (Final), Publication 1888 (August 1986) (“ITC Determination”), at 4, note 5, and A-2.

Also of relevance to the present scope inquiry is the Department’s instructions to CBP (see Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987 (“CBP Notice”)), issued 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).

See CBP Notice (emphasis added).

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); JC Penney (November 9, 2001) ("JC Penney"). 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."² In JC Penney, 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, 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 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 Order's 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

² 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") ("dragonfly" candle, in the shape of a rough-hewn stone with a dragonfly carved on top, is not within scope because it is of a shape not listed by the scope), and Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); American Drug Stores, Inc. (March 16, 1998) (sphere or ball shaped candle is not within scope because it is a shape not listed by the scope).

merchandise at issue was expressly included. See 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 the Department to give ample deference to the NCA’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 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 CAFC’s decision undermines the Department’s decision in JC Penney. The plain language of the scope of the Order clearly states that “{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.”³ 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.”⁴ Thus, as applied to this Order, there is no requirement, nor is it possible, for all the shapes of candles to be listed.⁵ 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 exception, 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 CBP Notice, 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 not being included within the scope of the Order. Specifically, among other determining factors, the Department will examine

³ Novosteel SA v. United States, 284 F.3d 1261, 1264 (March 26, 2002).

⁴ Id.

⁵ 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.”).

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 is included within the scope of the Order. See JC Penney Corp.; 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”); and Endar. If a candle does not possess the 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.

Analysis

With respect to the instant request, we find that for the reasons outlined below, Abrim’s “Easter Egg/Flower Basket,” “Square-M Angel,” “Garlic-L,” “Easter Egg-E,” “Strobile-M,” “Censer,” “X-Mas-Tree-A,” “Halloween Skull-A,” “Tulip Bud-L,” and “Birthday Cake-S” candles are included within the scope of the Order. Further, we find that Abrim’s “Snowman (Wife)” and “Snowman (Husband)” candles fall outside the scope of the Order.

“Easter Egg/Flower Basket”

Abrim contends that the “Easter Egg/Flower Basket” petroleum wax candle, with a fiber-cored wick, is shaped in the form of an identifiable object: an Easter egg. Further, Abrim contends that this candle is associated with the Easter holiday. We disagree with Abrim that this candle is in the shape of an Easter egg. We find that this candle is in the shape of a round that gradually tapers to a point at the top, similar to Atico International, Inc.’s “Easter Egg” candle that the Department determined to be included within the scope of the Order (see Final Scope Ruling: Atico International, Inc. (April 8, 2002)). Therefore, we disagree with Abrim that this candle qualifies as being in the shape of an identifiable object. Moreover, we find that this candle is not exclusively associated with any specific holiday. The engraving that is included around the surface of the candle (i.e., flowers contained in flower baskets) do not constitute items that are exclusively associated with the Easter holiday. Therefore, we disagree with Abrim that this candle is in the shape of an identifiable object and that this candle is specific to the Easter holiday. Thus, the Department finds that this candle does not fall within the July 1987 novelty candle exception (see CBP Notice). Therefore, this candle is included within the scope of the Order.

“Square-M Angel”

Abrim contends that the “Square-M Angel” petroleum wax candle, with a fiber-cored wick, is a novelty candle that, due to its incorporation of an angel, should be included within the novelty exception

because it is a holiday candle. This candle contains an angel carrying a lute, underneath an arched frame, with a star above on each side. We disagree with Abrim because angels, one of which is present on each side of the candle, are not associated with a specific holiday or special event. (See IC Penny Corp., in which the Department determined that angels are not associated with a specific holiday.) In addition, we disagree with Abrim’s argument that the other items visible on the candle (*i.e.*, lute, arched frame, or stars) combined with the angel would distinguish it as specific to any holiday or special event. We find that there is nothing intrinsic to these particular items that, combined with the angel, make this candle specific to any particular holiday. Therefore, we disagree that Abrim’s “Square-M Angel” candle is a holiday candle. Thus, the Department finds that this candle does not fall within the July 1987 novelty candle exception (see CBP Notice), and we find that this candle is included within the scope of the Order.

“Garlic-L”

Abrim contends that the “Garlic-L” petroleum wax candle, with a fiber-cored wick, is shaped in the form of an identifiable object: a garlic bulb. We disagree that this candle is shaped in the form of a garlic bulb or any other identifiable object. This candle is in the shape of a round that gradually tapers to a point at the top (see Final Scope Ruling: Avon Products (June 11, 2001) (“Avon”), in which the Department determined that Avon’s “Teardrop” candle, which is similar to the “Garlic-L” candle in terms of shape, was included within the scope of the Order). (See also, *e.g.*, *Webster’s Third New International Dictionary* (1993) (including as a definition of a taper, “regularly narrowed toward a point”). Further, we disagree with Abrim that the vertical ridges present on the candle successfully represent the vertical ridges present on a garlic bulb. The ridges on this candle are all molded in a perfectly straight fashion, whereas the ridges on an actual garlic bulb are often crooked and irregular. There is nothing else present on this candle that would make it identifiable as a garlic bulb. Therefore, we disagree with Abrim that this candle qualifies as being in the shape of an identifiable object. Thus, the Department finds that this candle does not fall within the July 1987 novelty candle exception (see CBP Notice). Therefore, this candle is included within the scope of the Order.

“Easter Egg-E”

Abrim contends that the “Easter Egg-E” petroleum wax candle, with a fiber-cored wick, is shaped in the form of an identifiable object: an Easter egg. We disagree with Abrim that this candle is in the shape of an Easter Egg. This candle is in the shape of a round that gradually tapers to a point at the top (see Avon). Therefore, we disagree with Abrim that this candle qualifies as being in the shape of an identifiable object. In addition, there are no designs on the candle that would make it specific to the Easter holiday. Thus, the Department finds that this candle does not fall within the July 1987 novelty candle exception. Therefore, this candle is included within the scope of the Order.

“Strobile-M”

Abrim contends that the “Strobile-M” petroleum wax candle, with a fiber-cored wick, is shaped in the form of an identifiable object: a pinecone. We disagree with Abrim that this candle is in the shape of an identifiable object. This candle is in the shape of a round that gradually tapers to a point at the top (see Avon). We find that the outcroppings protruding from the center of the candle do not provide sufficient detail to make this candle appear to be in the shape of a pinecone, or any other identifiable object. Further, this candle lacks any of the coloring (i.e., brown or green) typical of most actual pinecones, and there is nothing else on the surface of the candle that would enable it to be identifiable as a pinecone. Instead, the candle appears only to be a colorless round that tapers at the top. Therefore, we disagree with Abrim that this candle is in the shape of an identifiable object. Thus, the Department finds that this candle does not fall within the July 1987 novelty candle exception (see CBP Notice). Therefore, this candle is included within the scope of the Order.

“Halloween Skull-A”

Abrim contends that the “Halloween Skull-A” petroleum wax candle, with a fiber-cored wick, is shaped in the form of an identifiable object: a human skull. In addition, Abrim argues that the candle is a symbol associated with the Halloween holiday. First, we disagree that a human skull is a symbol associated specifically with the Halloween holiday, as the human skull form is used for a number of purposes in addition to a Halloween decoration. Second, although we agree that this candle is in the shape of a human skull when viewed from the front of the candle, this candle is not recognizable as such when viewed from any angle other than the front. Therefore, this candle is not recognizable as a human skull when viewed from multiple angles (see SFCC). Thus, the Department finds that this candle does not fall within the July 1987 novelty candle exception (see CBP Notice). Therefore, we find that this candle is included within the scope of the Order.

“Tulip Bud-L”

Abrim contends that the “Tulip Bud-L” petroleum wax candle, with a fiber-cored wick, is shaped in the form of an identifiable object: an open tulip bud. Although we agree that this candle is identifiable as a flower bud when viewing it from the top (i.e., the detailing of the flower petals is clearly visible from this angle), the candle is not identifiable as a flower bud when viewed from the sides. Thus, since the candle cannot be identified as a flower bud when viewed from multiple angles (see SFCC), the Department finds that this candle does not fall within the July 1987 novelty candle exception (see CBP Notice). Therefore, we find that this candle is included within the scope of the Order.

“Birthday Cake-S”

Abrim contends that the “Birthday Cake-S” petroleum wax candle, with a fiber-cored wick, is a novelty candle that, due to its shape, is identifiable as a birthday cake. We disagree that this candle is shaped in the form of a cake; rather, it consists simply of a series of rounds stacked onto each other to form a pyramid. The lack of color and detail on the candle (i.e., the candle is completely white, and contains only a minimal amount of decoration) do not make it recognizable as a cake or any other

identifiable object. This candle is sufficiently different from Endar’s “Bond Cake” candle, which the Department determined to fall outside the scope of the Order, because it lacks the detail and color of this candle (see Final Scope Ruling: Endar Corp. (July 7, 2000) (“Endar Corp.”). In Endar Corp., the Department determined that the “Bond Cake” candle was shaped in the form of a bundt cake because it was both shaped in the form of this object and it contained significant color detailing (*i.e.*, the candle itself was brown and also contained white “icing” drizzled on its top and sides). The shape and coloring of the “Bond Cake” was also identifiable from multiple angles. The candle in the instant case does not contain the coloring and detail of Endar’s “Bond Cake” candle, and does not contain enough detail to be identifiable as a cake. Therefore, we find that the “Birthday Cake-S” candle is not shaped in the form of an identifiable object. Thus, the Department finds that this candle does not fall within the July 1987 novelty candle exception (see CBP Notice). Therefore, we find that this candle is included within the scope of the Order.

“Censer”

Abrim contends that the “Censer” petroleum wax candle, with a fiber-cored wick, is shaped in the form of an identifiable object: a censer or thurible. We disagree with Abrim that this candle is in the shape of a censer or any other identifiable object. The detailing on this candle is not sufficient to make it look like a censer; rather, the candle looks like a slightly rounded cylinder. Moreover, the candle also lacks any color details that would make it identifiable as a censer. Therefore, we disagree with Abrim that this candle is in the shape of an identifiable object. Thus, the Department finds that this candle does not fall within the July 1987 novelty candle exception (see CBP Notice). Therefore, this candle is included within the scope of the Order.

“X-Mas Tree-A”

Abrim contends that the “X-Mas Tree-A” petroleum wax candle, with a fiber-cored wick, is shaped in the form of an identifiable object: a Christmas tree. We disagree with Abrim that this candle is in the shape of a Christmas tree or any other identifiable object. The detailing on this candle is not sufficient to make it look like a Christmas tree or any other type of tree (*i.e.*, there are no discernible needles, leaves, branches or ornaments). Moreover, the candle also lacks any coloring that would make it identifiable as a Christmas tree. Therefore, we disagree with Abrim that this candle qualifies as being in the shape of an identifiable object. Thus, the Department finds that this candle does not fall within the July 1987 novelty candle exception (see CBP Notice). Therefore, this candle is included within the scope of the Order.

“Snowman (Wife)”/“Snowman (Husband)”

Abrim contends that the “Snowman (Wife)” and “Snowman (Husband)” petroleum wax candles, with fiber-cored wicks, are both shaped in the form of an identifiable object: a snowman. We agree with Abrim that these candles are each in the shape of a snowman. Abrim’s “Snowman (Wife)” and “Snowman (Husband)” candles are each composed of two white concentric spheres, one larger than the other. The larger spherical shape forms the bottom, which represents the body, while the top

sphere represents the head, which is adorned with a molded white hat and scarf. The entire body of the candle, including the hat and scarf, is white. However, although the shape of the candle is similar to the shape of most snowmen, the shape alone is not sufficient to qualify this candle under the identifiable object exception. In this case, each candle contains additional features common to most actual snowmen (*i.e.*, eyes, nose, and scarf) that, coupled with the characteristic snowman shape, allow both of these candles to be identifiable as a snowman. In addition, the detailing on both the “Snowman (Wife)” and “Snowman (Husband)” candles (*i.e.*, the eyes, nose, and scarf) is visible from multiple angles, including the front, sides, and top (*see SFCC*).

The Department has ruled in the past that snowman designs are not specific to any holiday or special event (*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)), and there has been no evidence placed on the record that would lead the Department to change its view on this matter. The Department is basing its decision in this case on the fact that Abrim’s “Snowman (Wife)” and “Snowman (Husband)” candles are each identifiable as a three-dimensional snowman, with snowman characteristics that are visible from multiple angles.

Thus, the Department finds that these candles fall within the July 1987 novelty candle exception (*see CBP Notice*). Therefore, these candles fall outside the scope of the Order.

Summary

Abrim argues that all twelve of its candles should fall outside the scope of the Order due to the novelty exception because they are either in the shape of identifiable objects or are associated with a specific holiday. For the reasons discussed above, we disagree with Abrim’s arguments on the “Easter Egg/Flower Basket,” “Square-M Angel,” “Garlic-L,” “Easter Egg-E,” “Strobile-M,” “Censer,” “Halloween Skull-A,” “Tulip Bud-L,” “Birthday Cake-S,” and “X-Mas Tree-A” candles but agree with its arguments on the “Snowman (Wife)” and “Snowman (Husband)” candles. Therefore, we find that the “Easter Egg/Flower Basket,” “Square-M Angel,” “Garlic-L,” “Easter Egg-E,” “Strobile-M,” “Halloween Skull-A,” “Tulip Bud-L,” “Birthday Cake-S,” “Censer,” and “X-Mas Tree-A” candles are included within the scope of the Order, but the “Snowman (Wife)” and “Snowman (Husband)” candles fall outside the scope of the Order. These conclusions are consistent with the scope of the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations), and the ITC.

Recommendation

Based on the preceding analysis, we recommend that the Department find that Abrim’s “Easter Egg/Flower Basket,” “Square-M Angel,” “Garlic-L,” “Easter Egg-E,” “Strobile-M,” “Halloween Skull-A,” “Tulip Bud-L,” “Birthday Cake-S,” “Censer,” and “X-Mas Tree-A” candles are included within the scope of the Order. In addition, we recommend that the Department find that Abrim’s “Snowman (Wife)” and “Snowman (Husband)” candles fall outside the scope of the 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

Attachment

Abrim Enterprises Inc - Product Samples

