

By Electronic Mail Notification

To All Interested Parties:

On July 11, 2003, the Department of Commerce (the Department) received a request from Garden Ridge (Garden Ridge) for a scope ruling on whether 11 models of candles (“pansy” floater candle (item number GRI/SF113); “tiger lily” floater candle (item number GRI/SF75AI); “orchid” floater candle (item number GRI/SF148); “rose” floater candle (item number CLC1069); “daisy” floater candle (item number GRI/SF28); “amaryllis” floater candle (item number GRI/AMY); “orchid” floater candle (item number GRI/SF32D); “flower” floater candle (item number GRI/SF111); “glitter poinsettia” floater candle (item number GRI/CXF113); “poinsettia” floater candle (item number GRI/NF253B) and the “Christmas ornament” floater candle (item number GRI/CXF112)) are included within the scope of the antidumping duty order on petroleum wax candles from the People’s Republic of China (PRC).

In accordance with 19 CFR 351.225(k)(1)(2002), the Department has determined that 10 of Garden Ridge’s 11 candles are included within the scope of the order on petroleum wax candles from the PRC. The Department has determined that the “Christmas ornament” floater candle (item number GRI/CXF112) is not included within the scope of the order on petroleum wax candles from the PRC.

Enclosed is a memorandum containing the Department’s analysis. We will notify U.S. Customs and Border Protection (CBP) of this decision. If you have any questions, please contact Kimberley Hunt at (202) 482-1272 or Jacqueline Arrowsmith at (202) 482-5255.

Sincerely,

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

Enclosure

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

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

SUBJECT: Final Scope Ruling: Antidumping Duty Order on Petroleum Wax
Candles From the People’s Republic of China (A-570-504);
Garden Ridge

Summary

On July 11, 2003, the Department of Commerce (the Department) received a request from Garden Ridge (Garden Ridge) for a scope ruling on 11 models of candles (“pansy” floater candle (item number GRI/SF113); “tiger lily” floater candle (item number GRI/SF75AI); “orchid” floater candle (item number GRI/SF148); “rose” floater candle (item number CLC1069); “daisy” floater candle (item number GRI/SF28); “amaryllis” floater candle (item number GRI/AMY); “orchid” floater candle (item number GRI/SF32D); “flower” floater candle (item number GRI/SF111); “glitter poinsettia” floater candle (item number GRI/CXF113); “poinsettia” floater candle (item number GRI/NF253B); and the “Christmas ornament” floater candle (item number GRI/CXF112)) to determine whether these candles 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); Antidumping Duty Order: Petroleum Wax Candles from the People’s Republic of China, 51 FR 30686 (August 28, 1986) (Order). In accordance with 19 CFR 351.225(k)(1), the Department finds that 10 of the 11 models of Garden Ridge’s candles are within the scope of the Order.¹ The Department has further determined that the “Christmas ornament” floater candle (item number GRI/CXF112) is not included within the scope of the Order.

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

Background

Garden Ridge filed its request for a scope ruling in proper form on July 11, 2003. On October 28, 2004, the National Candle Association (NCA), an interested party in this proceeding, filed comments opposing Garden Ridge's request. No rebuttal briefs were filed.

a. Product Descriptions

Garden Ridge's request concerns one "Christmas ornament" floater candle and 10 models of "flower" floater candles, eight of which are packaged individually and two of which (item numbers CLC1069 and GRI/CXF113) are packaged in sets.² Garden Ridge provided samples of all 11 candles included in its scope request: the "Christmas ornament" floater candle, the eight "flower" floater candles and the two sets of "flower" floater candles.

The first candle (item number GRI/SF113) is described as a "pansy" floater candle, which is 1 inch tall and 2.5 inches wide. According to Garden Ridge, it consists of three petals joined in the middle and marked with vein-like lines in the dark purple center that fades into a lighter shade of purple which runs to the darkly colored rippled edge, creating the effect of a petal. The green wick is reminiscent of a pistil of a flower.

The second candle (item number GRI/SF75AI) is described as a "tiger lily" floater candle which is 1.5 inches tall and approximately 3.5 inches wide. The candle is a solid light purple with brown spots and seven stamens with white bases and brown tops. The description provided by Garden Ridge suggests that this color is black, but it appears to be brown on the candle. The light purple area consists of six petals which are joined at the center. The stamens are painted onto three of the six petals, these three petals overlap and sit higher than the other three petals.

The third candle (item number GRI/SF148) is described as an "orchid" floater candle. This candle is reported to be 1.5 inches tall and 4 inches wide. It is in the shape of an orchid and consists of six petals of which five are of similar shape and color. The sixth is a darker, wider petal which looks like the inside of an orchid.

The fourth style of candle (item number CLC1069) is described as a set of nine identical "rose" floater candles, which are 1 inch tall and 2.5 inches wide, packaged together in one box. These candles are all solid lavender in color. The outer-most part of the candle resembles four petals which are separated from one another. Inside the four petals, closer to the center of the candle, are four petals which are joined together to make a ring, but there are still peaks and valleys within that ring to delineate petals. Finally, there are three half circles, which are representative of petals of different sizes that are very

² Item number CLC1068 consists of nine identical "rose" floater candles that are packaged in one box and GRI/CXF113 consists of three identical "glitter poinsettia" floater candles that are packaged together in one box.

close to the center of the candle.

The fifth candle (item number GRI/SF28) is described as a “daisy flower candle,” which is 1.25 inches tall and 3 inches wide. The candle has 15 petals which are separated at the tips. The petals are joined from the center. The petals on this candle extend outward and upward and are ridged to show texture. The center of the candle is a circle of yellow, which is slightly raised and has detailed indents representing the pollen of the flower.

The sixth candle (item number GRI/AMY) is described as an “amaryllis” floater candle, which is 2 inches tall and 5 inches wide. It has six white petals which overlap one another and are textured and shaded to create a vein-like petal, with white tips fading into a gray middle, which abruptly changes to a dark red to resemble the center of the amaryllis. Climbing from the center, painted onto three of the six leaves, are 10 gold-painted stamens.

The seventh candle (item number GRI/SF32D) is described as an “orchid” floater candle, which is 1.5 inches tall and 3.5 inches wide. The candle consists of five large textured petals which overlap and are joined together except at the top where they protrude to give the effect of petals. In the center are three small dark purple petals and a small dark purple pillar which look like the center of an orchid. In the center of the four petals there is a yellow mound which is supposed to represent the pollen of the flower. The petals are dark purple on the edges and fade to a lighter purple as the petals near the yellow mound. The lighter purple area is marked with dots and lines in dark purple.

The eighth candle (item number GRI/SF111) is described as a “flower” floater candle, which is 1.5 inches tall and approximately 4 inches wide. It has five petals which overlap and extend upward and outward. The petals are rippled to give the effect of separate petals. The center of the candle has a small round blue-gray sphere which is decorated with yellow dots to resemble pollen.

The ninth style of candle (item number GRI/CXF113) is described as a set of three “glitter poinsettia” floater candles, which are each 1.5 inches tall and 4.5 inches wide. The three candles are identical in size, shape, color, and decoration. These candles have five large outer leaves/petals that overlap and three smaller inner leaves/petals that lay on top of the larger ones. All of the leaves/petals on these candles have an etched line down the center of each petal/leaf and four curved lines coming off of the main line, which give them a leaf-like appearance. Each petal/leaf is outlined in silver and two of the larger ones are almost half-covered in glitter. The center of the candle is green and has approximately 13 small mounds protruding from it, which are covered in silver.

The tenth candle (item number GRI/NF253B) is described as a “poinsettia” floater candle, which is 1 inch tall and 3 inches wide. This candle is red with seven leaves/petals which are atop 14 outer petals. The 14 petals consist of seven petals which are set atop seven others. All of the leaves/petals have an etched line down the center of each petal, and four curved lines coming off of the main line, which extends down the center of the candle and gives the candles a leaf-like look. In the center of the candle are five green berry-like balls stacked with a wick protruding from the center of the balls.

The eleventh candle (item number GRI/CXF112) is described as a “Christmas ornament” floater candle. The candle is approximately 2 inches tall and 2 inches wide. It is ball-shaped with a half inch square base on the bottom. According to Garden Ridge, the top of the “Christmas ornament” has a short nub that has been decorated with gold to look like the top of a Christmas tree ornament. The body of the “ornament” is decorated with four green stripes outlined in gold which extend from the top of the candle to the bottom. Between each of the stripes are cream-colored spaces which have been decorated with red holly berries and green holly leaves. There are four cream-colored spaces on each candle. The leaves are connected to each other by light green lines, like a branch. There are approximately seven holly leaves and 15 holly berries per cream-colored area.

b. Garden Ridge’s Request

In its request, Garden Ridge argues that the 11 candles (“pansy” floater candle (item number GRI/SF113); “tiger lily” floater candle (item number GRI/SF75AI); “orchid” floater candle (item number GRI/SF148); “rose” floater candle (item number CLC1069); “daisy” floater candle (item number GRI/SF28); “amaryllis” floater candle (item number GRI/AMY); “orchid” floater candle (item number GRI/SF32D); “flower” floater candle (item number GRI/SF111); “glitter poinsettia” floater candle (item number GRI/CXF113); “poinsettia” floater candle (item number GRI/NF253B); and the “Christmas ornament” floater candle (item number GRI/CXF112)) which are subject to this inquiry, should not be included within the scope of the Order based on CIE –212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987 (Customs Notice) issued by the Department which clarified that the scope of the original Order excludes candles shaped in the form of identifiable objects. Garden Ridge argues that the above clarification is dispositive and that all 11 of its candles should not be included within the scope of the Order.

Garden Ridge claims that candles #1 through #10 are clearly identifiable as flowers when viewed from multiple angles. Garden Ridge further claims that candles #1 through #10 have numerous characteristics of flowers with remarkable detail given to shape, color, and pattern. Garden Ridge states that the candles are unmistakably flowers from any perspective. Additionally, Garden Ridge states that the Department had previously ruled that a floating pink rose blossom candle was outside the scope of the Order. See Final Scope Ruling, J.C. Penney Purchasing Corporation (November 9, 2001).

Garden Ridge further states that item #11 is clearly identifiable as a Christmas ornament ball when viewed from multiple angles and the Department has previously ruled that a Christmas ornament candle was not within the scope of the Order. See Final Scope Ruling, J.C. Penney Purchasing Corporation (May 21, 2001)(J.C. Penney May 2001).

Garden Ridge argues that because candles #9, #10, and #11 are Christmas novelty candles specially designed for use only in connection with the Christmas holiday, these candles should not be included within the scope of the Order because they qualify for the novelty exception both as identifiable objects and as novelty candles under the holiday exception. In asserting the holiday exception, Garden Ridge

points to the Christmas symbols depicted in their designs. Garden Ridge claims that the “glitter poinsettia” floater candle and the “poinsettia” floater candle are representations of a poinsettia, which Garden Ridge claims is a classic Christmas holiday flower. Additionally Garden Ridge argues that the colors of both candles, white and green for the “glitter poinsettia” floater candle, and red and green for the “poinsettia” floater candle, are traditional Christmas holiday colors. Garden Ridge argues that the “Christmas ornament” floater candle is a Christmas ornament ball which would have no purpose except to be hung from a Christmas tree and displayed during the Christmas holiday. Additionally, Garden Ridge claims that the holly

leaves and the red berries are classic Christmas foliage designed only for use in connection with the Christmas holiday. Finally, Garden Ridge claims that all of these candles are marketed and sold only during the Christmas season for use by the ultimate consumer in Christmas decorating.

The National Candle Association’s Comments

The NCA argues that Garden Ridge’s “floater candles” #1 through #10 are not in the shape of flowers as Garden Ridge claims because they are not recognizable as a flower from a majority of angles. Because the candles are only recognizable as flowers from the top, NCA compares these candles to Premier’s “tulip lantern” candle, which the Department found “is not recognizable from a majority of angles as leaves and, therefore, it is not an identifiable object pursuant to the novelty candle exception.”³ Additionally, NCA argues that in Atico International, the candles had petals on the top and the sides of the candles and therefore, unlike in the instant case, the flower shape in that case could be identified as such from most angles.⁴ The NCA claims that Garden Ridge’s flower candles do not qualify as identifiable objects and must be included within the scope of the Order.

The NCA further argues that candles #9 and #10 are not identifiable as flowers, much less poinsettias and even if they were identifiable as poinsettias, their use is not limited to the Christmas holiday. Finally, the NCA argues that candle #11 has a flat base, which protrudes approximately an inch below the rounded part of the candle bottom, and can thus not be classified as a Christmas ornament because Christmas ornaments are round and do not have flat bottoms, nor do they have extended flat bottom bases. Further, the NCA argues that the candle is a round-shaped candle not in the shape of an identifiable object.

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

³ See Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China (A-570-504); Premier Candle Corp. (Feb. 25, 2002) at 5.

⁴ See Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China (A-570-504); Atico International, Inc. (Feb. 19, 2002) (Atico International) at 6-7.

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, regarding the novelty exception, in which 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, 1194-95 (CIT 1999) (Russ Berrie). 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 Christmas holiday.

The NCA notes that Garden Ridge’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.” (NCA’s comments at 6). The NCA 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 comments at 7). NCA argues that Garden Ridge’s 11 candles are not in the shape of identifiable objects, they are not designed for use only in connection with the Christmas holiday and, therefore, they fall within the scope of the Order.

Legal Framework

The Department examines scope requests in accordance with the Department’s scope regulations, which may be found at 19 CFR 351.225 (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, with or without formal inquiry, after consideration of all evidence before the Department.

Pursuant to 19 CFR 351.225(k)(1), the Department will examine the description of the subject merchandise from the petition, the initial investigation, and the Commission’s determinations. In its

petition of September 4, 1985, the NCA requested that the investigation cover:

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

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

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

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

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

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

Petroleum wax candles are those composed of over 50 percent petroleum wax, and may contain other waxes in varying amounts, depending on the size and shape of the candle, to enhance the melt-point, viscosity, and burning power.

See id., at 4-5.

The Department clarified the scope of the Order in relation to certain novelty candles. See Russ Berrie 57 F.Supp 2d at 1194. In 1987, the Department issued a notice to CBP in connection with a scope ruling which provides:

The Department of Commerce has determined that certain novelty candles, such as Christmas novelty candles, are not within the scope of the antidumping duty order on

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

See Customs Notice.

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

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

⁵ See, e.g., Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Endar Corp. (January 11, 2000) (Endar) (The Department determined that a “dragonfly” candle, in the shape of a rough-hewn stone with a dragonfly carved on top, should not be included within the scope because it is of a shape not specifically listed by the language of the scope), and Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); American Drug Stores, Inc. (March 16, 1998) (The Department determined that a sphere or ball-shaped candle should not be included within scope because it is a shape not specifically listed by the language of the scope).

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 Court's ruling does not undermine the Department's scope determination in the J.C. Penney Ruling. The plain language of the scope of the Order clearly states "{c}ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks . . . sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers" are included within the scope of the Order. Thus, the Order offers a descriptive list of the shapes of candles included within the Order, but, as the courts have recognized, there is no requirement that every single product covered must be identified in the scope. More specifically, the CAFC has stated that "the petitions that led to the issuance of the order did not need to specifically identify the {product} in order to cover {it}; our precedent, to say nothing of the regulations, makes clear that neither a petition nor an antidumping or countervailing duty order requires that level of specificity."⁶ The CAFC further stated "{a}s a matter of law, a petition need not list the entire universe of products . . . in order {for the petition} to cover those products."⁷ Thus, as applied to this Order, there is no requirement, nor is it possible, for all the shapes of candles to be listed.⁸ In fact, if the list were exhaustive, there would have been no need for the Department to render a decision on novelty candles or any other candle that was not explicitly listed as a shape in the scope of the Order. However, the Department did issue the novelty candle exception, which offered a narrowly construed exception and left all other petroleum wax candles from the PRC covered by the Order.

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

If the Department finds that a candle's shape is not among the shapes listed in the second sentence of the scope as defined in the Order, i.e., taper, spiral, straight-sided dinner candle, round, column, pillar, votive, and various wax-filled containers, then the candle will be evaluated to determine whether it is a novelty candle. For a candle to qualify for this exception, the characteristic which is claimed to render it a novelty candle (i.e., the shape of an identifiable object or a holiday-specific design), should be easily recognizable in order for the candle to merit not being included within the scope of the Order.

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

⁷ Id.

⁸ See Petroleum Wax Candles from China, USITC Pub. No. 3226 Investigation No. 731-TA-282 (Review) (August 1999) (USITC Pub. No. 3226), at 18 ("Candles come in a wide variety of shapes and sizes. Major U.S. candle manufacturers reportedly will offer 1,000 to 2,000 varieties of candles in their product lines").

Specifically, among other determining factors, the Department will examine whether the characteristic is identifiable from most angles and whether or not it is minimally decorative, e.g., small and/or singularly placed on the candle. If the identifiable object or holiday-specific design is not identifiable from most angles, or if the design or characteristic is minimally decorative, the Department may determine that the candle should be included within the scope of the Order. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); J.C. Penney Purchasing Corp. (May 21, 2001); Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); San Francisco Candle Co. (Feb. 12, 2001) (SFCC Ruling); San Francisco Candle Company, Inc. v. United States, 265 F. Supp. 2d 1374, 1379 (CIT 2003) (SFCC); and Endar. If the candle does not possess characteristics set out in the 1987 novelty candle exception, and it is a scented or unscented petroleum wax candle made from petroleum wax and having a fiber or paper-cored wick, the Department will determine that the candle is within the scope of the Order.

Analysis of Garden Ridge’s Candles

With respect to the involved scope request, the Department finds that, for the reasons outlined below, 10 of Garden Ridge’s 11 “floater candles” (“pansy” floater candle (item number GRI/SF113); “tiger lily” floater candle (item number GRI/SF75AI); “orchid” floater candle (item number GRI/SF148); “rose” floater candle (item number CLC1069); “daisy” floater candle (item number GRI/SF28); “amaryllis” floater candle (item number GRI/AMY); “orchid” floater candle (item number GRI/SF32D); “flower” floater candle (item number GRI/SF111); “glitter poinsettia” floater candle (item number GRI/CXF113); and “poinsettia” floater candle (item number GRI/NF253B)) are included within the scope of the Order. Candles #1 through #10 are not recognizable objects; neither do candles #9 and #10 have any scenes or symbols that are exclusively associated with the Christmas holiday. Therefore, these candles do not qualify to not be included in the scope of the Order pursuant to the novelty candle exceptions.

The Department finds that, for the reasons outlined below, candle #11 (“Christmas ornament” floater candle (item number GRI/CXF112)) is not an identifiable object. However, this candle is not included within the scope of the Order because it has green holly sprigs with red berry decorations; holly sprigs are considered symbols exclusively associated with the Christmas holiday and thus qualifies the “Christmas ornament” floater candle for the novelty exception to the Order. Our analysis of each of these candles is provided below.

- 1. “Pansy” Floater Candle - (item number GRI/SF113)**
- 2. “Tiger Lily” Floater Candle - (item number GRI/SF75AI)**
- 3. “Orchid” Floater Candle - (item number GRI/SF148)**
- 4. “Rose” Floater Candle- (item number CLC1069)**
- 5. “Daisy” Floater Candle- (item number GRI/SF28)**

6. **“Amaryllis” Floater Candle - (item number GRI/AMY)**
7. **“Orchid” Floater Candle - (item number GRI/SF32D)**
8. **“Flower” Floater Candle - (item number GRI/SF111)**

Garden Ridge describes its “pansy” floater candle as a 1 inch tall and 2.5 inch wide dark purple pansy floater candle. This “pansy” is visible when viewing the candle from top. When the candle is viewed from the side, the rippled edges of the petals are visible but it is not apparent that the candle is in the shape of a “pansy” or that the candle is even a flower. When the flower is viewed from the side, there are no distinguishing flower-like characteristics to show that it is a flower. From the side, there are no discernible leaves or petals. Only when viewed from above can one state that the candle is a flower, specifically a “pansy.”

Garden Ridge’s “tiger lily” floater candle is described as a 1.5 inches tall and approximately 3.5 inches wide light purple tiger lily with black and white detail markings. The “tiger lily” is visible when viewing the candle from top. But the petals are minimally textured and are not well defined so that when the flower is viewed from the side, there are no distinguishing flower-like characteristics. From the sides, there are no stamens, pistils or petals that are visible. Only when viewed from above can one discern that the candle is a flower, specifically a “tiger lily.”

The “orchid” floater candle is described as 1.5 inches tall and 4 inches wide. The “orchid-shaped” candle is pink with a dark pink center. The “orchid” is visible only when viewing the candle from the top. The majority of the side views do not reveal that the candle is a flower. When the “orchid” is viewed from the side, there are no distinguishing flower-like characteristics to show that it is a flower. From the side, there are no readily discernible leaves or petals or characteristics that would indicate that this candle is an orchid. Only when viewed from above can one discern that the candle is in the shape of flower, specifically an “orchid.”

The “rose” floater candle is a set of nine identical lavender roses which are 1 inch tall and 2.5 inches wide, packaged together in a single box. The “rose” is visible only when viewing the candle from the top. The majority of side views do not reveal that these candles are “roses.” When viewed from the sides, the petals are not detailed enough to represent flowers, and it is not apparent that these candles are roses. Only when viewing the candle from above, due to the layers of petals which get closer together at the center of the candle, can one discern that the candles resemble roses.

According to Garden Ridge, the “daisy” floater is dark pink with a yellow center, and is in the shape of a daisy which is 1.25 inches tall and 3 inches wide. When viewed from above, the candle appears to be a daisy flower. However, when viewed from the side, the yellow center is not visible and the shape could be something other than a flower. When the “daisy” is viewed from the side, there are no distinguishing flower-like characteristics to show that it is a flower. Only when viewed from above can one discern that the candle is in the shape of a flower, specifically a “daisy.”

According to Garden Ridge, the “amaryllis” floater candle is 2 inches tall and 3 inches wide, in the shape of an amaryllis with white petals and a dark red center and bottom with gold details and

markings. When viewed from above, the candle appears to be an amaryllis flower. However, when viewed from the side and the majority of angles, the candle is not discernible as a flower, specifically an “amaryllis.” When the “amaryllis” is viewed from the side, there are no distinguishing flower-like characteristics to show that it resembles an “amaryllis.” There are no petals, stamens or pistils that are visible. Only when viewed from above can one discern that the candle is in the shape of flower, specifically an “amaryllis.”

According to Garden Ridge, the “orchid” floater candle is a candle in the shape of an orchid that is lavender with a dark purple and yellow center which is 1.5 inches tall and 3.5 inches wide. The “orchid” is visible when viewed from above the candle, but when viewing the candle from the side, the textured petals do not render the candle as resembling a flower. Only when viewed from above can one discern that the candle is a flower, specifically an “orchid.”

The “flower” floater candle is described as 1.5 inches tall and approximately 4 inches wide lavender flower-shaped candle with a gray and orange center. The candle looks like a flower from above, but is not distinguishable from the sides or other angles as a flower. Only when viewed from above can one discern that the candle is a flower.

We disagree with Garden Ridge’s arguments that candles #1 through #8 are in the shape of identifiable objects and, therefore, should not be included within the scope of the Order. Pursuant to the Department’s change in practice stated in J.C. Penney Scope Ruling, if a candle is not in a shape specifically listed in the Order’s scope, it will not automatically be excluded from the scope of the Order. See J.C. Penney Scope Ruling. Instead, the Department will normally evaluate whether the candle is a scented or unscented petroleum wax candle made from petroleum wax and having a fiber or paper-cored wick. In the instant case, the “flower” floater candles (“pansy” floater candle (item number GRI/SF113); “tiger lily” floater candle (item number GRI/SF75AI); “orchid” floater candle (item number GRI/SF148); “rose” floater candle (item number CLC1069); “daisy” floater candle (item number GRI/SF28); “amaryllis” floater candle (item number GRI/AMY); “orchid” floater candle (item number GRI/SF32D); and “flower” floater candle (item number GRI/SF111)) are petroleum wax candles with fiber-cored wicks. Therefore, we must evaluate whether the characteristics of these candles bring it outside of the scope of the Order pursuant to the novelty candle exception detailed in the Customs Notice and our interpretation set forth in the J.C. Penney Scope Ruling.

Based on Garden Ridge’s comments, we examined whether candles #1 through #8 are in the shape of identifiable objects, namely, the particular flower which Garden Ridge states that each resembles. We found that these candles contain petals, which are visible from above the candles. However, when these candles are viewed from the sides, the petals and, thus, the shape of the flower are not discernible. When viewed from multiple angles, these “flower” floater candles do not show any identifiable flower motif. Given that the flower design is only identifiable when the candle is viewed from above, we find that the eight “flower” floater candles (“pansy” floater candle (item number GRI/SF113), “tiger lily” floater candle (item number GRI/SF75AI), “orchid” floater candle (item number GRI/SF148), “rose” floater candle (item number CLC1069), “daisy” floater candle (item number GRI/SF28), “amaryllis” floater candle (item number GRI/AMY), “orchid” floater candle (item

number GRI/SF32D), and “flower” floater candle (item number GRI/SF111)) are not identifiable as flowers from multiple angles. See San Francisco Candle Co. v. United States, 265 F.Supp. 2d 1274 (May 14, 2003) (San Francisco Candle). Therefore, because these candles are not easily recognizable and identifiable as a “pansy,” a “tiger lily,” an “orchid,” a “rose,” a “daisy,” an “amaryllis” or a “flower” from multiple angles, we find that they are not identifiable objects and that these candles do not qualify for the novelty exception. Thus, the Department finds that these candles, candles #1 through #8, (“pansy” floater candle (item number GRI/SF113), “tiger lily” floater candle (item number GRI/SF75AI), “orchid” floater candle (item number GRI/SF148), “rose” floater candle (item number CLC1069), “daisy” floater candle (item number GRI/SF28), “amaryllis” floater candle (item number GRI/AMY), “orchid” floater candle (item number GRI/SF32D), “flower” floater candle (item number GRI/SF111)) do not fall under any exception, and therefore, are within the scope of the Order.

- 9. “Glitter Poinsettia” floater candle - (item number GRI/CXF113)**
- 10. “Poinsettia” floater candle - (item number GRI/NF253B)**

Garden Ridge describes the “glitter poinsettia” floater candle (item number GRI/CXF113) as three identical candles, packaged together, which are 1.5 inches tall and 4.5 inches wide. From above one could tell it is a flower, but from the sides and other angles, it is not distinguishable as a flower.

Each of the three candles is white with a green center in the shape of a poinsettia, and the petals are outlined with silver glitter. Garden Ridge states that the candle is intended for use only in connection with the Christmas holiday. Garden Ridge claims that the use of the candle is clearly indicated by the Christmas symbols depicted in its design, namely that a poinsettia is a classic representative flower of the Christmas holiday. Additionally, Garden Ridge claims that the candles’ white and green colors are the traditional Christmas holiday colors. Finally, Garden Ridge argues that the “glitter poinsettia” floater candle is only marketed and sold during the Christmas season.

The Department disagrees with Garden Ridge’s argument that its “glitter poinsettia” floater candle (item number GRI/CXF113) is exclusively associated with the Christmas holiday and the Department has determined that this candle is included within the scope of the Order, because the candles’ use and design are not attributable solely to the Christmas season.

The “glitter poinsettia” floater candle (item number GRI/CXF113) is shaped like a flower, but the flower is not identifiable as a poinsettia. The colors of the flower are green and white with silver glitter accents. The Department has recognized that certain colors, when combined with other Christmas symbols, are exclusively associated with the Christmas holiday. See San Francisco Candle. This cannot be interpreted to mean that, like this candle, a completely white flower that happens to have green and silver accents would qualify as solely associated with the Christmas holiday. The Department has not found that candles with the colors white, green, and silver are emblematic of the Christmas holiday. In the instant case, the colors and the minimal resemblance to a poinsettia, combined with the absence of any other decorations depicting a specific Christmas holiday theme, indicate that this candle is not exclusively associated with the Christmas holiday.

More specifically, this candle is not a novelty candle “{h}aving scenes or symbols of other occasions (e.g., religious holiday or special events) depicted in their designs.” See e.g., Russ Berrie. There are no scenes or symbols of the Christmas holiday other than the claim by Garden Ridge that the candle is a poinsettia which it further claims is classically a Christmas flower. In addition, we find that poinsettias are not solely associated with Christmas, but are instead associated with the winter season. There is nothing intrinsic to poinsettias that make them exclusively associated with Christmas or any other holiday. The Department has never ruled that a poinsettia is exclusively associated with the Christmas holiday and, thus, we have determined that this candle does not fall within the holiday novelty exception. This is consistent with the Department’s practice of ruling in the past that candles, which do not contain “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. Thus, we find that this candle is within the scope of the Order.

Garden Ridge describes the “poinsettia” floater candle (item number GRI/NF253B) as a 1 inch tall and 3 inches wide candle which is red with a green center and is in the shape of a poinsettia.

Garden Ridge states that the candle is intended for use only in connection with the Christmas holiday. Garden Ridge claims that the use of the candle is clearly indicated by the Christmas symbols depicted in its design, namely that a poinsettia is a classic representative flower of the Christmas holiday. Additionally, Garden Ridge claims that the candle’s red and green colors are traditional Christmas colors. Finally, Garden Ridge argues that the “poinsettia” floater candle is only marketed and sold during the Christmas season.

The Department disagrees with Garden Ridge’s argument that its “poinsettia” floater candle (item number GRI/NF253B) is exclusively associated with the Christmas holiday. The Department has determined that this candle is included within the scope of the Order, because the candles’ use is not attributable solely to the Christmas season.

The “poinsettia” floater candle (item number GRI/NF253B) is shaped like a flower, but the flower is not identifiable as a poinsettia. The colors of the flower are red and green. The Department has recognized that certain colors, when combined with other Christmas symbols, are exclusively associated with the Christmas holiday. See San Francisco Candle. However, this cannot be interpreted to mean that, like this candle, any flower that occurs in nature in colors that are associated with the Christmas holiday would thus qualify for the Christmas holiday novelty exception. The colors alone are not determinative, otherwise every candle with green and red would be brought before the Department for a scope ruling. In the instant case, the colors and the minimal resemblance to a poinsettia, combined with the absence of any other decorations depicting a specific Christmas holiday theme, indicate that this candle is not exclusively associated with the Christmas holiday.

More specifically, this candle is not a novelty candle “{h}aving scenes or symbols of other occasions (e.g., religious holiday or special events) depicted in their designs.” See e.g., Russ Berrie. There are no scenes or symbols of the Christmas holiday other than the claim by Garden Ridge that the candle is a poinsettia, which Garden Ridge further claims is classically a Christmas flower. In addition, we find that

poinsettias are not solely associated with Christmas, but are instead associated with the winter season. There is nothing intrinsic to poinsettias that make them exclusively associated with Christmas or any other holiday. The Department has never ruled that a poinsettia is exclusively associated with the Christmas holiday and, thus, we have determined that this candle does not fall within the holiday novelty exception. This is consistent with the Department's practice of ruling in the past that candles, which do not contain "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. Thus, we find that this candle is within the scope of the Order.

11. "Christmas Ornament" floater candle - (item number GRI/CXF112)

Garden Ridge describes the "Christmas ornament" floater candle (item number GRI/CXF112) as being two inches tall and two inches wide, in the shape of a Christmas ornament ball with green and gold accent colors, with markings of green holly leaves and red berries. Garden Ridge states that the candle is intended for use only in connection with the Christmas holiday. Garden Ridge claims that the use of the candle is clearly indicated by the Christmas symbols depicted in its design, namely that a Christmas ornament ball has no purpose except to be hung from a Christmas tree and displayed during the Christmas holiday. Additionally, Garden Ridge claims that the candle's decorations, with the classic Christmas foliage of green holly leaves and red berries, are clearly designed for use only in connection with the Christmas holiday. Garden Ridge also argues that the "Christmas ornament" floater candle is only marketed and sold during the Christmas season. Finally, Garden Ridge argues that the Department has previously ruled that a Christmas ornament candle was not within the scope of the Order. See J.C. Penney May 2001.

While we disagree with Garden Ridge that this candle qualifies for the identifiable object exception, we do find that it contains scenes or symbols that are exclusively associated with the Christmas holiday and is thus not included within the scope of the Order.

Regarding Garden Ridge's claim that this candle is an identifiable object, we find that the "Christmas ornament" floater candle (item number GRI/CXF112) is not an identifiable object, but is a round candle with a base which Garden Ridge claims is in the shape of an ornament. This candle differs from the Christmas ornament candle in J.C. Penney May 2001 (the Department found a round candle which was decorated and designed to resemble a Christmas ornament outside of the scope of the Order, however the candle ornament did not have a base) whereas in the instant case, the bottom of the candle is flat and the flat base protrudes approximately half an inch below the round portion of the candle. Additionally, this is consistent with the Department finding in Final Scope Ruling for Avon Products, Inc. (April 8, 2000) at 7 (the Department found that a ball-shaped candle with a flat bottom base was not a ball because it had a flat bottom and was thus not an identifiable object) because this "ornament" candle has a flat bottom and is not easily identifiable and readily recognizable as a Christmas ornament. The candle does not qualify for the novelty exception because it is not easily recognizable and identifiable as a Christmas ornament.

However, regarding the holiday novelty exception, the Department agrees with Garden Ridge’s argument that the holly design on the “ornament” floater candle qualifies the candle for the holiday novelty exception. The “ornament” floater candle is decorated with four green stripes outlined in gold which protract north, south, east, and west from the top of the ball and encircle the “ornament.” Between each of the stripes are cream-colored spaces which have been decorated with red holly berries and green holly leaves which are connected by light green branch-like lines. There are approximately seven holly leaves per cream-colored area and 15 holly berries. The CIT previously held in Springwater Cookie & Confections v. United States, 20 CIT 1192 (1996) (Springwater) that holly sprigs are a symbol associated with Christmas. Specifically, the Court held that “in order for a candle to qualify for this exception, the characteristic which is claimed to render it a novelty candle should be easily recognizable in order for the candle to merit exclusion from the Order.” See id. at 1196; see Atico Scope Ruling (the Department determined that the holly must be explicit and easily identifiable when viewing the candle from most perspectives and the holly leaf and berry image must be readily recognizable as the *traditional* holly leaf and berry, i.e., with the holly leaves and berries grouped together, and the candle must be more than “minimally decorative” to qualify for the holiday novelty exclusion); see J.C. Penney (May 2001)(the Department found a candle outside of the scope of the Order because the holly decorations on the candle had green leaves and red berries and represented significant decorations which were visible from multiple angles and were clearly recognizable as holly). The Garden Ridge “ornament” candle has holly leaves which are green and holly berries which are red. The berries are grouped together at the base of the holly leaves. The holly leaves are defined with veins in a darker green color which run down the center of each leaf and extend to the pointed sides of each leaf. Additionally there are light green lines connecting the holly leaves together, like a branch. Furthermore, the holly sprigs and berries are viewable from all angles. Given that the Department finds that the holly decoration is easily identifiable as traditionally recognized holly from all angles and the candle is more than minimally decorated with the holly design, Garden Ridge’s “ornament” candle qualifies for the holiday novelty exception and does not fall within the scope of the Order.

More specifically, this candle is a novelty candle “[h]aving scenes or symbols of other occasions (e.g., religious holiday or special events) depicted in [its] designs.” See, e.g., Russ Berrie. The CIT in Springwater determined that easily recognizable holly sprig decorations on a candle qualify as a symbol of Christmas, with regard to the holiday novelty exception. Because of the explicit holly sprig design on the candle, the Department cannot include this candle within the scope of the Order. See Springwater; Atico; J.C. Penney May 2001. Additionally, this is consistent with the Department’s practice of ruling in the past that candles decorated with definitive, recognizable holly which are not minimally decorative are not within the scope of the Order, because their use is attributable solely to the Christmas holiday. See e.g., J.C. Penney May 2001; see Atico Scope Ruling (2002).

Recommendation

We recommend finding that the following candles are included within the scope of the Order, because these candles (#1 through #10) are not identifiable objects because their shape cannot be viewed from

multiple angles. Additionally, we recommend finding that candles (#9 and #10) are included within the scope of the Order because in addition to not being identifiable objects, they lack any scenes or symbols that are exclusively associated with a particular holiday.

1. **“Pansy” floater candle - (Item Number GRI/SF113)**
2. **“Tiger Lily” floater candle - (Item Number GRI/SF75AI)**
3. **“Orchid” floater candle - (Item Number GRI/SF148)**
4. **“Rose” floater candle - (Item Number CLC1069)**
5. **“Daisy” floater candle - (Item Number GRI/SF28)**
6. **“Amaryllis” floater candle - (Item Number GRI/AMY)**
7. **“Orchid” floater candle - (Item Number GRI/SF32D)**
8. **“Flower” floater candle - (Item Number GRI/SF111)**
9. **“Glitter Poinsettia” floater candle - (Item Number GRI/CXF113)**
10. **“Poinsettia” floater candle - (Item Number GRI/NF253B)**

Finally, we recommend finding that following candle (#11) is not included within the scope of the Order because although it is not an identifiable object, it does qualify for the holiday novelty exception as it is solely and exclusively associated with the Christmas holiday.

11. **“Christmas Ornament” floater candle - (Item Number GRI/CXF112)**

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

Garden Ridge - Product Samples



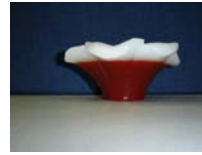
CLC1069 top



CLC1069 side



GRI/AMY top



GRI/AMY side



GRI/CFX113 top



GRI/CFX113 side



GRI/CXF112 top



GRI/CXF112 side



GRI/NF253B top



GRI/NF253B top2



GRI/NF253B side



GRI/SF111 top



GRI/SF111 side



GRI/SF113 top



GRI/SF113 top2



GRI/SF113 side



GRI/SF148 top



GRI/SF148 side



GRI-SF28 top



GRI/SF28 side



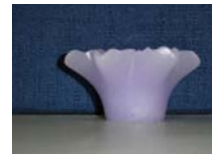
GRI/SF32d top



GRI/SF32d side



GRI/SF75AI top



GRI/SF75AI side