

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On April 22, 2003, the Department of Commerce (the Department) received a request from Maredy Candy Company (Maredy) for a scope ruling on whether three types of candles (item numbers 460DA, 148 DN, and 481 DQ) it imports are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

In accordance with 19 CFR 351.225(k)(1)(2002), the Department has determined that Maredy's three types of candles should be included within the scope of the antidumping duty order on petroleum wax candles from the PRC.

Enclosed is a memorandum containing the Department's analysis. We will notify United States Customs and Border Protection (CBP) of this decision. If you have any questions, please contact Jacqueline Arrowsmith at (202) 482-5255.

Sincerely,

Dana S. Mermelstein
Acting Director
AD/CVD Operations, Office 6
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 6

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

Summary

On April 22, 2003, the Department of Commerce (the Department) received a request from Marely Candy Company (Marely) for a scope ruling on three models of candles, one "layered heart" candle (item number 460 DA), one "layered star" candle (item number 481 DQ), and one "floating snowflake" candle set (item number 148 DN), to determine whether these candles should be included within the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) (Petroleum Wax Candles from the PRC: Final Determination of Sales at Less Than Fair Value, 51 FR 25085 (July 10, 1986) (Final Determination); Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986) (Order)). In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that Marely's three models of candles are included within the scope of the Order on petroleum wax candles from the PRC.¹

Background

Marely filed its request for a scope ruling in proper form on April 22, 2003. On June 17, 2003, the National Candle Association (NCA), petitioner and an interested party in this proceeding, filed comments on Marely's request. On July 17, 2003, Marely filed rebuttal comments in response to the NCA's comments.

Product Descriptions

Marely's request concerns two individual candles: the "layered heart" candle (item number 460 DA) and the "layered star" candle (item number 153 DQ), and one set of "floating snowflake"

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 determinations.

candles (item number 148 DN). In addition to the samples Maredey provided, Maredey submitted with its April 4, 2003, request the relevant pages from its product catalogues, which provide photographs along with the dimensions and some description of each candle.

The “layered heart” candle (item number 460 DA) consists of 18 “heart-shaped” segments stacked on top of one another --with six “heart-shaped” segments in each of the following colors: light pink, pink and red. These 18 segments are held together with a cotton wick. Each of these segments can rotate easily 360 degrees. According to Maredey’s submission, each of the candle’s individual segments measures approximately 1/8 inch in height and 3 inches in width at its widest point, with the entire candle measuring approximately 2 1/2 inches in height.

The “layered star” candle (item number 153 DQ) consists of “star-shaped” segments stacked on top of one another – with six “star-shaped” segments in the following colors: blue, red, and white. These 18 segments are held together with a cotton wick. Each of these segments can rotate easily 360 degrees. According to Maredey’s submission, each “wax star” segment measures approximately 1/4 inch in height and 3 inches across its widest point, with the total stack measuring approximately 3 1/2 inches in height.

The “floating snowflake” candle set (item number 148 DN) consists of three white star-shaped candles embossed with a snowflake design and decorated with silver glitter on top. The candles each include a single top wick and are designed to float on water. According to Maredey, the candles measure approximately 1 3/4 inches in height and 3 inches in length.

Maredey’s Request

Maredey argues that its “layered heart,” “layered star,” and “floating snowflake” candles are not covered by the Order’s scope because they are identifiable objects, and, therefore, should not be included within the Order pursuant to the novelty candle exception outlined in the 1987 Customs Information Exchange (Customs Notice).² Specifically, Maredey argues that the Department “does not have authority to alter, amend, or expand the scope of an antidumping duty order,” citing Russ Berrie Co., Inc. v. United States, 57 F. Supp. 2d 1184, 1188 (1999) (Russ Berrie) (citing Koyo Seiko Co. v. United States, 17 CIT 1076, 843 F. Supp. 1401 1403 (1993)). Further,

² The Customs Notice was a notice issued by the Department of Commerce to U.S. Customs and Border Protection (CBP) in connection with a July 1987 scope determination concerning an exception to the Order for novelty candles, which states:

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

Mareidy also argues that the language of the Order specifically states that “{c}ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber of paper-cored wicks. . . sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives.” See Mareidy’s April 22, 2003, submission. Additionally, Mareidy cites the Department’s recent change of practice, outlined in 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. (November 9, 2001) (JCPPC Ruling), where we determined that 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.” Mareidy argues the following about the Department’s change in practice as outlined in that ruling:

By stating that a petroleum wax candle having a fiber or paper-cored wick is subject to the scope’s order regardless of its shape if it does not fall within the subject novelty candle exception, Commerce is expanding the scope of what is included under the Order and disregarding the importance and existence of the exemplars identified in the scope’s Order. The specific shapes of candles listed in the language of the scope’s Order are not meant to be all inclusive. However, the listed exemplars are specifically included in the language of the scope’s Order to demonstrate the type, class or kind of merchandise intended by the Commission to be subject to the scope’s Order.

See Mareidy’s April 22, 2003, submission at page 7.

Further, Mareidy argues that in order for a candle to be included within the scope of the Order, it need not be identical to one of the identified shapes listed in the scope language of the Order, although the candle can be identical. See Mareidy’s April 22, 2003, submission at page 8. In this way, Mareidy argues, a candle must be identical to one of the “listed exemplars” identified in the scope of the Order, adding that the instant candles do not fall within the scope of the Order because they are not comparable to any of the “exemplars” identified by the language of the Order. Rather, Mareidy argues, its three candles are identifiable objects and are not the class or kind of candle shapes described in the language of the scope’s Order.

Additionally, Mareidy argues that the Department has previously determined heart-shaped candles are identifiable objects, citing Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Jo-Ann Stores, Inc. (January 29, 2002) (Jo-Ann Ruling). Mareidy adds that the heart shape of its “layered heart” candle satisfies the Department’s requirement for an “identifiable object.” With respect to its

“layered star” candle, Mareidy argues that the Department determined similar star-shaped candles to be identifiable objects, and points to Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Endar Corporation. (April 7, 1999) in support of this argument.

Turning to its “floating snowflake” candle, Maredy argues this candle is an identifiable object, e.g., a snowflake, and further argues that the candle’s design features clearly demonstrate that the candle is in the shape of an identifiable object.

The National Candle Association’s Comments

The NCA retraces the history of this antidumping duty order, including the import surges and resultant injury suffered by domestic manufacturers which prompted the original September 1985 antidumping petition. 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) conclusion, with regard to the novelty exception, in which the CIT 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,” citing Russ Berrie in support of its assertion. 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.

Turning to Maredy’s “layered heart” candle, the NCA argues this candle is not an identifiable object, but is, rather, in the shape of a pillar, and also argues that the candle’s alleged heart shape cannot be identified from most angles. Further, the NCA argues that this candle is similar to Atico International, Inc.’s (Atico) “tier disk” candle, as identified in Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Atico International, Inc. (February 25, 2003) (Atico 2003 Scope Ruling), wherein the Department determined that only when viewed from the top is the heart shape apparent; when viewed from multiple side angles, this candle’s shape appears to be that of a pillar. See the NCA’s June 17, 2003, comments at page 4, citing Atico 2003 Scope Ruling. Similar to Atico’s “tier disk” candle, the NCA argues, Maredy’s “heart” candle is only identifiable as a heart when viewed from the top. Further, the NCA argues that the Department has previously determined that hearts are not scenes or symbols specifically related to a holiday or other special event. See id.

With respect to Maredy’s “layered star” candle, the NCA argues this candle is in the shape of a pillar and is not an identifiable object (e.g., its alleged star shape). The NCA also argues that this alleged shape cannot be identified from most angles, and further argues that the Department has been consistent in requiring that the novelty design or shape of a candle must be capable of being seen from multiple angles. See id.

The NCA further argues that Maredy’s “snowflake floating” candle is in the shape of a pillar and is not an identifiable object. Specifically, the NCA argues this candle’s alleged “snowflake” shape” cannot be identified from most angles. In fact, the shape looks more like a six-pointed star than a snowflake. Further, the NCA also argues that a the snowflake design is not specifically designed for use during the holiday season. See Final Scope Ruling – Antidumping

Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); American Greeting Corp. (May 4, 2000) (American Greeting Scope Ruling) (where we stated that a taper with snowflakes is not specific to Christmas, but could be used generally throughout the winter season) in support of this assertion.

The NCA notes that Maredy's candles compete in the same channels of trade as the candles subject to the Order, and that their sale without the antidumping duty will severely injure the U.S. candle producers. The NCA further notes what it characterizes as the long-standing efforts of candle importers to expand the "novelty candle" loophole in the Order through a continuing stream of scope requests, causing the Order to be subjected to over 70 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. See the NCA's June 17, 2003, comments at page 6. The NCA concludes by stating that Maredy is now asking the Department to narrow the scope of the Order so that it excludes everyday candles, claiming that they are novelty candles, and that the Department does not have such legal authority.

Maredy Candy Company's Rebuttal Comments

In its July 17, 2003, rebuttal comments, Maredy argues that the NCA "seems to believe that those asking in good faith for a scope ruling under the statute are to be equated with persons seeking to circumvent the antidumping duty order," citing comments made by the NCA on page 6 of its June 17, 2003, comments. Maredy stresses that its request for a scope ruling is merely a demonstration of its statutory right, and is in no way an attempt at circumventing the Order. Further, Maredy argues that there are no outstanding scope determinations involving similar layered candles, such as Maredy's "layered heart" and "layered star" candles. See Maredy's July 17, 2003, rebuttal comments at page 3.

Additionally, Maredy also argues that the Department, in issuing its determination for the instant candles, must consider the common meaning in "American English" of the terms "pillar" and "column," arguing that the instant candles are neither pillars nor columns. In support of this assertion, Maredy points to the candles' design, that of individual segments which rotate 360 degrees, noting that such a design element is not typical of pillars or columns.

With respect to its "snowflake floating" candle, Maredy argues that this candle is in the shape of an identifiable object, *i.e.*, that of a snowflake. Maredy further argues that the Department's references to "animals and numerals" in the Customs Notice was done *exemplorum gratia* (for example) and not as strictly limiting the novelty exemption only to animals and numerals.

Legal Framework

The Department examines scope requests in accordance with the Department's scope regulations, which may be found at 19 CFR 351.225 (2003). On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary

(including prior scope determinations) and the International Trade Commission (the Commission). See 19 CFR 351.225(k)(1). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the product is covered by the order. See 19 CFR 351.225(d).

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

In the instant case, the Department has evaluated Maredy's request in accordance with 19 CFR 351.225(k)(1) and 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 Commission are, in fact, dispositive. Therefore, the Department finds it unnecessary to consider the additional factors set forth at 19 CFR 351.225(k)(2).

Documents, and parts thereof, from the underlying investigation deemed relevant by the Department to this scope ruling were made part of the record of this determination and are referenced herein. Documents that were not presented to the Department, or placed by it on the record, do not constitute part of the administrative record for this scope determination. In its petition of September 4, 1985, the NCA requested that the investigation cover:

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

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

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

{c}ertain scented or unscented petroleum wax candles made from petroleum wax

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

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

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

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

See Commission Determination, at 4-5.

The Department clarified the scope of the Order in relation to certain novelty candles. See Russ Berrie Ruling 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.

In November 2001, the Department changed its interpretation of the scope of the Order. See 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.”³ 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).

Although the specific scope decision in Duferco Steel has been overturned by the United States Court of Appeals of the Federal Circuit (CAFC) in Duferco Steel, Inc. v. United States, 296 F.3d 1087 (Fed. Cir. 2002) (Duferco Steel II), the CAFC’s ruling does not undermine the Department’s scope determination in the J.C. Penney Ruling. The plain language of the scope of the Order clearly states “{c}ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks . . . sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers” are included within the scope of the Order. Thus, the Order offers a descriptive list of the shapes of candles included within the Order, but, as the courts have recognized, there is no requirement that every single product covered must be identified in the scope. More specifically, the CAFC has stated that “the petitions that led to the issuance of the order did not need to specifically identify the {product} in order to cover {it}; our precedent, to say nothing of the regulations, makes clear that neither a petition nor an antidumping or countervailing duty order requires that level of specificity.”⁴ 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.”⁵ Thus, as applied to this Order, there is no requirement, nor is it possible, for all the

³ See, e.g., Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Endar Corp. (January 11, 2000) (Endar) (the Department determines that a “dragonfly” candle, in the shape of a rough-hewn stone with a dragonfly carved on top, should not be included within the scope because it is of a shape not specifically listed by the language of the scope), and Final Scope Ruling – Antidumping Duty 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).

⁴ Novosteel SA v. United States, 284 F.3d 1261, 1264 (Fed. Cir. 2002).

⁵ Id.

shapes of candles to be listed.⁶ 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 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. Specifically, among other determining factors, the Department will examine whether the characteristic is identifiable from multiple 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 multiple 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 Maredy’s Candles

With respect to the instant request, the Department finds that for the reasons outlined below, Maredy’s “layered heart” candle, “layered star” candle, and “snowflake” floating candle set are

⁶ 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”).

within the scope of the Order.

1. “Layered Heart” Candle (Item Number 460 DA)

Mareddy describes this candle as a heart-shaped candle consisting of 18 separate segments, each of which is molded “in the identifiable shape of a heart.” These 18 segments are stacked on top of one another, forming the candle’s shape, and are held together by a cotton wick inserted in the candle’s center. Each of the candle’s segments is mobile and can rotate 360 easily degrees. Each of the candle’s individual segments measures approximately 1/8 inch in height and 3 inches in width at its widest point, with the entire candle measuring approximately 2 and a 1/2 inches in height.

We disagree with Mareddy that its “layered heart” candle is a novelty candle eligible for exclusion under the novelty candle exception, as an identifiable object. In Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Peerless Umbrella Co., Inc. (August 29, 2002) (Peerless Scope Ruling), the Department ruled that Peerless Umbrella Co., Inc.’s “five-pointed” star-shaped candle fell within the scope of the Order because the star shape was not visible from multiple angles. In the Peerless Scope Ruling, the Department stated:

The Department disagrees with Peerless’ argument that its star-shaped candle is clearly an identifiable object. The star shape of this candle is unidentifiable when viewed from the candle’s top, bottom, and two of four sides, and is only identifiable as a star shape when viewed from either the candle’s front or back.⁷

Similarly, Mareddy’s “layered heart” candle is not identifiable as a heart unless all of its individual segments are aligned (not individually rotated in any direction) and the candle is viewed from the top. Given this fact, the heart shape is not visible when the candle is viewed from any of its multiple sides or when the individual segments are rotated. Therefore, this candle falls within the scope of the Order.

2. “Layered Star” Candle (Item Number 481 DF)

Mareddy states that this candle is a star-shaped candle consisting of 18 separate segments, each of which is molded in “the shape of a five-pointed star.” Mareddy states that it is similar in design to its “layered heart” candle. These 18 segments are stacked on top of one another to form the candle’s shape. According to Mareddy, each one of these segments measures approximately 1/4 an in height and 3 inches in width at its widest point, with the entire candle measuring approximately 3 and 1/2 inches. Further, these individual segments are held together by a cotton wick inserted in the candle’s center. Each of the candle’s segments is mobile and can easily rotate 360 degrees.

We disagree with Mareddy that its “layered star” candle is a novelty candle eligible for exclusion under the novelty candle exception, as an identifiable object. Similar to Mareddy’s “layered heart”

⁷ See Peerless Ruling at page 7.

candle, its “layered star” candle is only identifiable as a star shape when all of its 18 segments are aligned (not individually rotated in any direction) and the candle is viewed from the top. The alleged star shape is not identifiable when the candle is viewed from any of its multiple sides. Therefore, this candle falls within the scope of the Order.

3. “Floating Snowflake” Candle Set (Item Number 148 DN)

The “floating snowflake” candle set (item number 148 DN) consists of three white star-shaped candles embossed with a snowflake design and decorated with silver glitter on top. The candles each include a single top wick and are designed to float on water. According to Maredy, the candles measure approximately 1 3/4 inches in height and 3 inches in length.

Pursuant to the Department’s change in practice stated in the J.C. Penney Scope Ruling, if a candle is not a shape specifically listed in the Order, 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 involved case, the “floating snowflake” candle set (item number 148 DN) consists of unscented petroleum wax candles with a fiber wick.

Therefore, we must evaluate whether the characteristics of these candles bring them outside of the scope of the Order pursuant to the novelty candle exception detailed in the Customs Notice.

Based on the comments and the samples submitted by Maredy and the comments submitted by the NCA, we examined whether the “floating snowflake” candles (item number 148 DN) were in the shape of identifiable objects (*i.e.*, snowflakes). We found that these candles could resemble a snowflake when viewing the candle from the top. From the top, the snowflake shape of the candle is identifiable. However, when the candle is viewed from the sides, the shape of the snowflake, the embossed texture of the candle, and the glitter are not visible. When viewed from the sides, these “floating snowflake” candles appear to be merely a pointed shape.

Given this, we agree with the NCA that Maredy’s “floating snowflake” candle is not easily identifiable as the alleged shape, *i.e.*, a snowflake. Therefore, this candle should be included within the scope of the Order.

Recommendation

We recommend finding that Maredy’s three models of candles listed above fall within the scope of the Order because they are not novelty candles nor identifiable objects, and, thus, do not meet the novelty candle exception. See Customs Notice.

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

_____ Agree

_____ Disagree

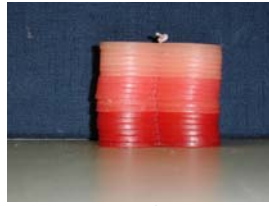
Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

Date

Maredy Candy Company Product Samples



Heart Top



Heart Side



Snowflake Top



Snowflake Side



Stacked Star Top



Stacked Star Side