

A-570-504
Scope Review
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To All Interested Parties:

On March 25, 2003, the Department of Commerce (the Department) received a request from Access Business Group (Access) for a scope ruling on whether one candle and five candle sets that it currently imports are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

In accordance with 19 CFR 351.225(k)(1), the Department has determined that Access Business Group's candle and candle sets are included within the scope of the antidumping duty order on petroleum wax candles from the PRC.

Enclosed is a memorandum containing the Department's analysis. We will notify U.S. Customs and Border Protection (CBP) of this decision. If you have any questions, please contact Joshua Reitze at (202) 482-0666 or Jacqueline Arrowsmith at (202) 482-5255.

Sincerely,

Dana 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 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);
Access Business Group

Summary

On March 25, 2003, the Department of Commerce (the Department) received a request from Access Business Group (Access) for a scope ruling on one candle and five candle sets 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). 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 Access' one candle and five candle sets should be included within the scope of the Order.¹

Background

On February 7, 2003, the Department received a request, filed in proper form, from Access requesting a scope ruling on various candles. This initial request was for a scope ruling on four candle sets. On March 25, 2003, the Department received a second request from Access, filed in proper form, again requesting a scope ruling on the four candle sets contained in the February 7, 2003 filing, as well as on one additional candle set and one additional gel candle. On June 5, 2003, the National Candle Association (NCA), petitioner and the domestic producer in this proceeding, filed comments on Access' scope request.

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.

a. Product Descriptions

Access did not supply specific product names or item numbers for its candle or candle sets in its March 25, 2003, scope request. The candle that Access submitted for review is a petroleum wax candle with a fiber or paper-cored wick, and all of the five candle sets Access submitted include at least one petroleum wax candle with a fiber or paper-cored wick. Each of the five candle sets contain both candle and non-candle items, including trays, boxes, incense sticks, small decorative stones, and various wax and non-wax containers. Access provided samples of its candle and its five candle sets. Access described each candle as Sample #1 - #6. The description of the single candle and the five candle sets follows.

“Sample #1” is a candle set consisting of a clear glass bowl filled with purple gel wax. The gel wax is decorated with dried flowers on the top of the gel and small dried leaves are around the perimeter of the top surface of the gel. There is an opaque purple paraffin wax flower in the center of the top of the bowl, resting in the middle of the purple gel wax. The candle’s wick protrudes from the top of this gel flower candle. Also included in this set are five packages of incense sticks, a ceramic incense holder, and a cloth bag filled with potpourri.

“Sample #2” is a candle set consisting of a rectangular plastic dish and two rectangular petroleum wax candles. The set also includes a small bag of translucent, decorative stones. The plastic dish contains pink floral decorations, and is designed to hold the candles and the stones. The rectangular candles are identical in size, shape, and appearance. The two rectangular candles are made of green and pink paraffin wax.

“Sample #3” is a candle set consisting of one spherical candle and two cylindrical petroleum wax candles. Each light-blue candle is decorated with molded green, pink, purple and yellow floral designs. These designs are embossed on the surface and sides of the candles, giving a slight raised relief to the decorations. The set includes a plastic plate on which to set the candles. This plate is white and features a floral pattern around its perimeter.

“Sample #4” is a candle set consisting of five petroleum wax candles. The first is a large cylindrical column candle that is purple, green, and yellow. The other four candles are smaller candles, each shaped like a leaf or flower. A different wax insect rests in the center of each of these four candles. One of these candles has a dark green leaf with a green and brown insect. Another candle has a brown leaf with a red and black ladybug. Another candle has a yellow flower with a yellow and black bee. Finally, another candle has a pink flower with a green and yellow butterfly. Each of these candles has a flat base. The sides of these four smaller candles arc upward and outward from the base of the candle to the top.

“Sample #5” is a candle set consisting of a bowl-like petroleum wax container with ridges along the sides. Multi-colored floral decorations that resemble dried flowers are affixed to the container between the ridges. This container is made entirely of light green wax, but does not have a wick of any sort. This set also includes a small clear glass container and a white, cylindrically shaped petroleum wax tea light candle with a wick. The tea light fits into the glass container. The glass container, in turn, fits inside the larger wax container.

“Sample #6” is a small glass jar filled with translucent blue gel wax. Sand and small sea shells of various shapes and sizes are submerged in the gel wax at the bottom of the jar. There is a wick in the center of the candle and the jar has a clear glass lid.

b. Access Business Group’s Scope Request

Access argues that three out of the five candle sets, as well as the one individual candle for which it requested this scope ruling, should not be included within the scope of the Order. Access acknowledges that candle Samples #2 and #3 are likely within the scope of the Order. Access also recognizes that candle Samples #4 and #5 might be partially within the scope of the Order. Access argues that candle Sample #4 should not be included within the scope, because Access contends that this candle set represents identifiable objects, *i.e.*, leaves with insect shapes. Access argues that candle Sample #5 is partially outside the Order because certain elements of the candle set, such as the wax bowl are not candles and therefore these non-candle components should not be within the Order. Finally, Access argues that candle Samples #1 and #6 are outside of the scope of the Order because these sets are in the shape of identifiable objects, and therefore these candles fall under the July 1997 exception for novelty candles.

Access claims that because Sample #2 contains pillar candles, and because pillar candles are a shape specifically listed in the language of the Order, that its pillar candles are likely included within the Order. Similarly, Access claims that the pillar candles and the spherical candles in Sample #3 are also specifically listed in the language of the Order, and would likely be included within the scope of the Order.

Access argues that two of its candle sets are partially included within and partially excluded from the Order. Access concedes that the pillar in Sample #4 should be included within the scope of the Order, because it is a shape specifically listed in the Order’s language. However, Access argues that the four small floater candles should not be included within the scope of the Order, because these floater candles are shaped like leaves and feature petroleum wax insect shapes in the middle of each candle. Thus, Access claims that these four candles are identifiable objects. As a result, Access argues that these candles should not be included within the Order based on the July 1997 novelty candle exception.

Access also argues that Sample #5 should be partially included within and partially excluded from the scope of the Order. Access states that the small tealight candle that sits in the glass container is a wax-filled container, which is specifically mentioned in the language of the Order, and should thus be included within the scope of the Order. The petroleum wax bowl, Access argues, is not a candle because it does not have a wick. Rather, it is merely a wax container in which the glass container and tealight are to be placed. Because it is not a candle, Access argues, the wax container portion of Sample #5 should not be included within the scope of the Order.

Access argues that Sample # 1 and Sample #6 should not be included in the scope of the Order. Access claims that Sample #1 should be not be included within the scope of the Order because it is made of gel wax, and because the shape and design of the candle are of an identifiable flower design. Access claims that, because Sample #6 contains a beach scene with sand and shells, it

qualifies for the July 1997 novelty candle exception because it is an identifiable object and should therefore not be included within the scope of the Order.

c. The National Candle Association's Comments

In its comments, the NCA retraces the history of this antidumping duty order, including the import surges and resultant injury suffered by domestic manufacturers which prompted the original September 1985 antidumping petition. 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 decision, with regard to the novelty exception, where the court held 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) (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 holiday season.

The NCA notes that all of Access' candles are petroleum wax candles made in the PRC and have fiber or paper-cored wicks. The NCA provides the following comments regarding the single candle and the five candle sets.

The NCA claims that Sample #1 does not qualify to not be included within the Order because it is composed of gel wax, and the Department has previously determined that gel wax falls within the scope of the Order. Further, the NCA notes that this candle is a wax-filled container, and that it is not designed to be used exclusively during any particular holiday.

The NCA describes the leaf/insect candles in Sample #4 as being similar to those in Cherrydale Farms, where, according to the NCA, the Department found that bug designs affixed to one surface of the candle did not alter the candle's fundamental shape, and where the designs were only identifiable from one angle.² The NCA argues that the insect/leaf candles in Access' Sample #4 do not qualify for the novelty candle exception because “the majority of surfaces are not shaped in the form of an identifiable object.”

The NCA claims that the candle set in Sample #5 falls within the scope of the Order because it is a wax-filled container, and the Department has found similar containers to be included within the scope of the Order. See, e.g., Atico; see also Endar.³

² See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504) Cherrydale Farms (October 5, 2000) (Cherrydale Farms).

³ See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504) Atico International (April 8, 2002) (Atico); 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 NCA argues that Sample #6 should also be included within the scope of the Order because it is a gel wax candle with a wick. In addition, the NCA notes that this sample is a wax-filled container that falls within the scope of the Order. Finally, the NCA argues that the sand and seashells do not render this candle usable for any particular holiday.

The NCA offers no comments on Sample #2 or Sample #3, the two candle sets that Access concedes are within the scope of the Order.

The NCA argues that the candle and the five candle sets should all be included within the Order. The NCA contends that the candles are not in the shape of identifiable objects, nor are they designed for use only in connection with any specific holiday and, therefore, these candles should be included within the scope of the Order.

Finally, the NCA observes that Access' candles compete in the same channels of trade as the candles subject to the Order, and that the sale of these candles without the antidumping duty will severely injure the U.S. candle producers. The NCA further notes what it characterizes as the long-standing efforts of candle importers to "expand the 'novelty candle' loophole in the Order through a continuing stream of scope requests, causing the Order on PRC candles to be subjected to over 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, and cites data showing the increasing amounts of candles imported from the PRC. The NCA claims that Access is requesting that the Department narrow the scope of the Order so that the Order excludes everyday candles based on the novelty exception. Finally, the NCA argues that the Department does not have the legal authority to narrow 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. 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 has examined the description of the subject merchandise from the petition, the initial investigation, and the Commission's determinations, and the Department has determined that these descriptions are dispositive.

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 the United States Customs Service (since renamed U.S. Customs and Border Protection) (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 CIE - 212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987 (Customs Notice).

In November 2001, the Department changed its interpretation of the scope of the Order. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); J.C. Penney (November 9, 2001) (J.C. Penney Ruling). In this ruling, the Department reviewed the text of the scope of the Order, beginning with the text of the first sentence of the scope which covers “{c}ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.” See Order. The text following this broad, inclusive sentence provides a list of shapes; this list is not modified by any express words of exclusivity. The result of our prior practice of not including within the scope of the Order candles of a shape other than those specifically listed in the Order was inconsistent with the fact that the candles were “scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.”⁴ 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, in which the Court observed 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).

⁴ 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) (In 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 Order’s scope because it is of a shape not specifically listed by the language of the scope); see also Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); (March 16, 1998) (American Drug Stores, Inc.) (In American Drug Stores, Inc., the Department determined that a sphere or ball-shaped candle should not be included within the Order’s 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 ruling of the CAFC 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 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.”⁵ 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.”⁶ Thus, as applied to this Order, there is no requirement, nor is it possible, for all the shapes of candles to be listed.⁷ 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. Specifically, among other determining factors,

⁵ Novosteel SA v. United States, 284 F.3d 1261, 1264 (Fed. Cir. 2002).

⁶ Id.

⁷ 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”).

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

Analysis of Access’ Candles

With respect to the involved scope request, we find that for the reasons discussed below, Access’ one candle and five candle sets are included within the scope of the Order. Access’ one candle and all five candle sets contain either solid or gel petroleum wax candles. The Department has found that there is no distinction between the chemical composition of gel candles and traditional wax candles. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Burlington Toiletries International, Ltd. (March 25, 2003) (Burlington Scope Ruling). We find that all of the candles in the involved scope request are either in shapes specifically mentioned in the language of the Order or do not otherwise qualify for the novelty exception because the candles are neither identifiable objects nor specifically used in connection with a particular holiday. Our analysis of these candles is provided below.

Analysis of Sample #1

“Sample #1” is a set containing a clear glass bowl filled with purple gel wax. The gel wax is decorated with dried flowers and small leaves around the perimeter of the top surface. There is an opaque purple paraffin wax flower in the center of the top of the bowl, resting in the purple gel wax. The candle’s wick protrudes from the top of this paraffin flower candle. Also included with this set are five packages of incense sticks, a ceramic incense holder, and a cloth bag filled with potpourri.

Access argues that the wax bowl candle in Sample #1 is an identifiable object, and should therefore not be included within the scope of the Order. As discussed further below, the Department disagrees with Access’ argument that this candle is in the shape of an identifiable object and qualifies for the July 1987 novelty candle exception.

The Department finds that the candle in Sample #1 is a wax-filled container, and that it is a gel petroleum wax candle. Wax-filled containers are specifically listed in the language of the Order’s scope. The Department finds that the flower decoration on the top of the gel wax does

not qualify the candle set to be excluded from the Order because it does not render the candle an identifiable object. See, e.g., Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); American Greetings Corp. (May 4, 2000) (American Greetings Ruling). The presence of the flower design does not qualify Sample #1 for the novelty candle exception, and we find that the candle in Sample #1 should be included within the scope of the Order. While the Department has previously ruled that figurine candles and candles shaped like identifiable objects are not included within the scope of the Order, the candle in the involved scope request is neither a figurine candle nor an identifiable object. The Department has previously concluded that a molded decoration applied to an in-scope candle does not change the candle into an out-of-scope candle. See American Greetings Ruling. Therefore, the Department finds that the candle in Sample #1 does not qualify for exclusion from the Order on the basis of the July 1987 exception because the candle is a wax-filled container and is not an identifiable object.

Analysis of Sample #2

“Sample #2” is a candle set consisting of a rectangular plastic dish and two rectangular petroleum wax candles. The rectangular candles are identical in size, shape, and appearance, and are made of green and pink paraffin wax. The plastic dish contains pink floral decorations, and is designed to hold the candles. The set also includes a small bag of translucent, decorative stones.

Access concedes that Sample #2 will be included within the scope of the Order. The Department finds that Sample #2 does contain candles in shapes specifically mentioned in the language of the Order. In particular, Sample #2 contains candles which Access’ scope request describes as pillars. Pillars are specifically included in the language of the Order, which lists specific shapes: “tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers.” See Order. Therefore, the Department agrees with Access and finds that the candles in Sample #2 are within the scope of the Order.

Analysis of Sample #3

“Sample #3” consists of one spherical candle and two cylindrical candles. Each light blue candle is decorated with green, pink, purple and yellow floral designs. These designs are embossed on the surface of the candles, giving a slight raised relief to the decorations. The set includes a plastic plate on which to set the candles. This plate is white, and features a floral pattern around its perimeter.

Access concedes that Sample #3 should be included within the scope of the Order. The Department finds that Sample #3 does contain candles in shapes specifically mentioned in the language of the Order. In particular, Access describes Sample #3 as consisting of pillar and round candles. Both of these shapes are included in the language of the Order, which lists specific shapes: “tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers.” See Order. Therefore, the Department agrees with Access and finds that the petroleum wax candles that comprise Sample #3 are included within the scope of the Order.

Analysis of Sample #4

“Sample #4” consists of five petroleum wax candles. The first is a large cylindrical column candle that is purple, green, and yellow. The other four candles are smaller candles, each shaped like a leaf or flower. In the center of each of these candles is a different insect in various colors of wax: a dark green leaf with a green and brown insect; a brown leaf with a red and black ladybug; a yellow flower with a yellow and black bee; and a pink flower with green and yellow butterfly. Each of these candles rests on a flat base. The sides of the candles arc outward from the base to the top of the candles. The leaf and flower petals are not clearly identifiable when the candles are viewed from the side, rather the “petal” appear as uneven ridges around the tops of the candles. In each of these candles, the insect is not visible when viewed from the sides; the insect is only identifiable as such when the candle is viewed from the top.

The Department finds that Sample #4 contains candles that, due to their composition and shape, are specifically included within the scope of the Order. Specifically, Sample #4 contains a pillar candle, a shape explicitly listed in the language of the scope of the Order: “{c}ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. These candles 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.

In addition to the pillar candle, Sample #4 also contains four candles shaped to resemble either a leaf or a flower with an insect in the center. Access claims that the four leaf and insect candles in Sample #4 should be excluded from the scope of the Order. The Department finds that these floater candles are also within the scope of the Order because they are not identifiable from multiple angles as a leaf with an insect in the center. The leaf and insect shapes are only clearly identifiable when the candle is viewed from the top. These molded designs are not visible from the sides. In keeping with past practice, only candles that are clearly identifiable when viewed from multiple angles qualify to be excluded from the Order under the novelty candles exception.⁸ Because the candles in this set do not meet this criterion, the Department finds that the candles in Sample #4 are within the scope of the Order.

Analysis of Sample #5

“Sample #5” consists of a bowl-like petroleum wax container with ridges along the sides. Multi-colored floral decorations that resemble dried flowers are affixed to the container between the ridges. This container is made entirely of light green petroleum wax, but does not have a wick of any sort. This set also includes a small clear glass container and a white, cylindrically shaped petroleum wax tea light candle with a wick. The tea light fits into the glass container, which is supposed to sit inside the larger wax container.

⁸ See, e.g., Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504): Garden Ridge (February 2, 2005) (Garden Ridge Ruling).

The Department agrees with the NCA that the bowl in Sample #5 is a wax-filled container, and the Department agrees that similar containers have been included in previous scope rulings the NCA cites. See, e.g., Atico; see also Endar. In addition, the Department agrees with Access that the small, white tea light candle in this set is a wax-filled container, which is specifically included in the language of 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. For these reasons, the Department finds that Access’ candle set Sample #5 is within the scope of the Order.

Analysis of Sample #6

“Sample #6” is a gel candle. It consists of a small glass jar filled with translucent blue gel wax. Sand and small sea shells of various shapes and sizes are submerged in the gel wax at the bottom of the jar. There is a wick in the center of the candle, and the jar has a clear glass lid.

We find that the involved gel candle in Sample #6 is a wax-filled container, which is a shape described within the scope of the Order.⁹ Thus, this type of candle is included in the Order. The language of the Order includes tapers, spirals, straight-sided dinner candles, rounds, columns, pillars, and votives and various wax-filled containers. Because a wax-filled container is a shape listed by the inclusive language of the Order’s scope, we find Access’ candle in Sample #6 is included within the explicit language of the scope.

The Department disagrees with Access’ argument that this candle qualifies for the novelty candle exception because it represents an identifiable object, *i.e.*, a “beach scene.” In order for a candle to be considered an identifiable object, it must be an actual object. In contrast, Access’ candle Sample #6 is not an object, but rather a beach scene, which is evocative of a theme or an idea and cannot be said to be represented in the same way as, for example, a flower or figurine. A beach scene is not an “object” in any sense of the word used by the Department in evaluating whether candles qualify for the novelty candle exception. Thus, the Department finds that this candle is not in the form of an identifiable object and does not otherwise qualify for the July 1987 novelty exception. Therefore, the Department determines that this candle is within the scope of the Order.

⁹ In past scope rulings, the Department’s practice has been to treat gel wax as regular petroleum wax candles. See, e.g., Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Burlington Toiletries International, Ltd. (August 8, 2000) (Burlington) at page 2 (where the Department found that gel candles contain a petroleum-based substance that is wax-like and solid in nature). In addition, the Department has consistently determined in prior rulings that gel candles fall within the scope of the Order. See, e.g., Endar.

Thus, for the reasons discussed above, we find that Access' single candle and all five of its candle sets are included within the scope of the Order.

Recommendation

Based on the preceding analysis, we recommend that the Department find that Access' one candle and five candle sets are included within the scope of the Order. All of Access' candles are petroleum wax candles, and these candles are in shapes specifically mentioned in the language of the Order. Because these candles are neither identifiable objects nor specifically used in connection with a particular recognized holiday, these candles do not qualify for the novelty exception and fall within the scope of the Order.

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

_____ Agree

_____ Disagree

Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

Date

Attachment

Access Business Group Product Samples



Sample #1



Sample #1



Sample #2



Sample #3



Sample #4



Sample #4



Sample #5



Sample #5



Sample #6