

May 10, 2007

By Electronic Mail Notification

To All Interested Parties:

On February 15, 2007, the Department of Commerce (“the Department”) received a request from H S Candle, Inc. (“HS”) for a scope ruling on whether the following items are covered by the antidumping duty order on petroleum wax candles from the People’s Republic of China (“PRC”):

Wedding Candles Series

Wedding Cake (WD008) – Three-tier Wedding Cake candle (item number WD008)
Wedding Carriage (WD011) – White Coach candles (item number WD011)
Bride & Groom Wedding Cake Topper (WD006) – Cake topper candle (item number WD006)
Wedding Bells (WD012) – Wedding Bell Candle (item number WD012)
Pillow with Rings (WD026) – Ring Pillow (item number WD026)

Holiday Series

Champagne Bottle in Ice Bucket (HS028) – Champagne in ice bucket (item number HS028)

In accordance with 19 CFR 351.225(k)(1), the Department has determined that HS’s “Wedding Candle” series and its “Holiday Candle” series, inclusive of the above-listed items, are not 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 Irene Gorelik at (202) 482-6905.

Sincerely,

Alex Villanueva
Program Manager, Office 9
Import Administration

Enclosure

MEMORANDUM FOR: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

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

SUBJECT: Final Scope Ruling: Antidumping Duty Order on Petroleum Wax
Candles From the People's Republic of China (A-570-504):
H S Candle, Inc. ("HS")

Summary

On February 15, 2007, the Department of Commerce ("the Department") received a request from HS for a scope ruling to determine whether five candles from its "Wedding Candle" series and one candle from its "Holiday" series are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China ("PRC"): Wedding Cake (item WD008); Wedding Carriage (item WD011); Bride & Groom Wedding Cake Topper (item WD006); Wedding Bells (item WD012); Champagne Bottle in Ice Bucket (item HS028); Pillow with Rings (item WD026). See 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 HS's "Wedding Candle" series and "Holiday Candle" series fall outside the scope of the Order.¹

Background

On February 15, 2007, the Department received a letter from HS requesting a scope ruling on five candles from its "Wedding Candle" series and one candles from its "Holiday Candle" series. The National Candle Association ("NCA") did not submit comments on HS's 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/index>, and will be updated periodically to include newly issued scope determinations.

HS's Scope Request

HS provided samples of all six candles for which it is requesting a scope ruling for the Department's review. HS explains that the candles are made from petroleum wax and feature a single top wick. HS states that each of the candles is a three-dimensional, fully figural candle molded in an identifiable and easily recognizable shape sold predominantly as "favors" for weddings and bridal showers. HS also states that all the wedding candles are colored "wedding white" while the "Holiday" series candle, which consists of an ice bucket with a bottle of champagne, is multi-colored. HS notes that all of its candles range in size from 2.5 inches to 4 inches in height, with the widest candle measures nearly four inches in diameter. HS states that all of its candles are classified under the HTSUS Number 3406.00.0000.

As discussed more fully below, HS argues that each of its candles is an identifiable object and therefore, should not be included in the scope of the Order.

A. Wedding Cake (WD008):

HS argues that its Wedding Cake candle should not be included within the scope of the Order because the candle is shaped in the form of an identifiable object: a recognizable three-tiered wedding cake with elaborate decorations, such as "icing" and "draping," that can be identified as a traditional white wedding cake from multiple angles. HS also argues that the Department has recently ruled that candles in the shape of wedding cakes are outside the scope of the Order.² HS provided photos of its wedding cake as compared to the wedding cake that the Department excluded from the Order. HS argues that the concentric shapes, graduated in size and stacked on top of one another clearly resemble wedding cake candles already excluded by the Department.

B. Wedding Carriage (WD011):

HS argues that its Wedding Carriage candle should not be included within the scope of the Order because the candle is shaped in the form of an identifiable object: an intricately designed carriage with wheels. HS argues that the vehicular design of the wedding carriage candle is apparent from the coach compartment set atop four rimmed wheels, that is identifiable from multiple angles. HS states that the carriage's features include front, side and back panels and a roof, ornately decorated to resemble carved wood. Additionally, HS notes that the wheels are designed to resemble hubs and spokes of traditional carriage wheels.

HS compares the intricate "carving" and detail of its wedding carriage, which include panels and a roof, to the Department's finding that "Chalets" or "Cottages," are outside the Order. Specifically, HS asserts that its candles, like the "Chalets" and "Cottages," contain detailed design within a single mold.³

² See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504): Lamrite West Inc. dba Darice Inc., dated February 2, 2007 ("Darice Ruling").

³ See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504): Avon Products Inc., dated September 26, 2005.

C. Bride & Groom Wedding Cake Topper (WD006):

HS argues that its Bride and Groom Wedding Cake Topper candle should not be included within the scope of the Order because the candle is shaped in the form of an identifiable object: a single layered cake with a bride and groom with distinguishable facial features on top. HS argues that this candle is also a wedding cake, albeit with one layer, featuring a bride and groom set atop the candle that is identifiable from multiple angles. HS notes that the single cake layer features the same intricate decor and “icing” as the three-tiered cake. The “bride” features a long, white gown with a veil, holding a bouquet of flowers, while the “groom” is wearing a tuxedo and bow tie. HS compares this candle to the previously excluded “Cherub” candle, which also featured a figure with discernible facial features holding flowers.⁴

D. Wedding Bells (WD012):

HS argues that its Wedding Bells candle should not be included within the scope of the Order because the candle is shaped in the form of an identifiable object: two white bells tied together with a bow. HS notes that the wedding bells also feature intricate detailing such as flowers, a beaded design, and the clappers, which can be viewed from the bottom and the sides. HS claims that, similar to its other wedding candles, the Wedding Bells are also identifiable as bells featuring intricate designs that are identifiable from multiple sides.

E. Pillow with rings (WD026):

HS argues that its Pillow with rings candle should not be included within the scope of the Order because the candle is shaped in the form of an identifiable object: a white pillow holding two wedding rings. HS argues that the Pillow with rings is recognizable as a pillow by the details of the textile “fibers,” “embroidery,” and “rosettes” that adorn it. Additionally, HS states that the “seams,” “ribbons,” and the wedding rings sitting atop the pillow are all indicative of an identifiable object: the pillow used to carry the rings in the wedding ceremony.

F. Champagne Bottle in Ice Bucket (HS028):

HS argues that its Champagne Bottle in Ice Bucket candle should not be included within the scope of the Order because the candle is shaped in the form of an identifiable object: a green bottle of champagne inside a bucket of ice. HS contends that the candle is an accurate representation of a bucket of ice containing a green champagne bottle, that is obvious from every angle. HS notes that the green color and “foiled” and crinkled seal of the bottle are indicative of a bottle of champagne as is the bucket featuring a rimmed edge, a distinct handle and clearly defined ice cubes.

⁴See Final Scope Ruling; Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China (A-570-504); New Spectrum Gift Gallery, Inc., dated May 10, 2005 (“New Spectrum Gift Gallery”) (where the Department found that a candle in the form of a “Cherub” was identifiable from all angles and, therefore, was not included within the Order).

Legal Framework

The regulations governing the Department's antidumping scope determinations are found at 19 CFR 351.225(2006). On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the U.S. International Trade Commission ("ITC"). This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. See 19 CFR 351.225(k)(1).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: (1) the physical characteristics of the merchandise; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of trade in which the product is sold; and (5) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

In the instant case, the Department has evaluated HS'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 ITC are dispositive with respect to HS's "Wedding Candle" series and "Holiday Candle" series. Therefore, for these candles, the Department finds it unnecessary to consider the additional factors set forth at 19 CFR 351.225(k)(2).

Documents and parts thereof from the underlying investigation that the Department deemed relevant to this scope ruling were made part of the record of this determination and are referenced herein. Documents that neither the Department nor the parties placed on the record do not constitute part of the administrative record for this scope determination.

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

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

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

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

{c}ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers,

spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers.

See Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty Investigation, 50 FR 39743 (September 30, 1985); Petroleum Wax Candles from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 51 FR 6016 (February 19, 1986); Petroleum Wax Candles from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 51 FR 25085 (July 10, 1986) ("Final Determination"); and Order.

The ITC adopted a similar definition of the "like product" subject to its determinations, noting that the investigations did not include "birthday, birthday numeral and figurine type candles." See Candles from the People's Republic of China: Determination of the Commission in Investigation No. 731-TA-282 (Final), Publication 1888 (August 1986) ("ITC Determination"), at 4, note 5, and A-2.

Also of relevance to the present scope inquiry are the Department's instructions to the U.S. Customs Service (now renamed U.S. Customs and Border Protection ("CBP")) (see Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987) ("CBP Notice") issued in connection with a July 1987 scope determination concerning an exception from the Order for novelty candles, which states:

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

See CBP Notice (emphasis added).

In November 2001, the Department changed its practice on the issue of candle shapes. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); 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 determined to revise this practice because it had the effect of narrowing the broad coverage of the first sentence of the Order’s scope. The list of shapes in the second sentence of the Order’s scope does not provide a textual basis for such a narrowing of the coverage of the first sentence of the Order’s scope. Accordingly, to give full effect to the first sentence of the inclusive language of the scope, the Department now will normally evaluate whether candles of a shape not listed by the inclusive language of the Order’s scope are scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.

This approach of evaluating such candles in light of the entire text of the Order’s scope is in keeping with the opinion of the Court of International Trade (“CIT”), noting that a better approach in scope rulings is to avoid subjective issues of intent and, instead, look to the petition’s language to determine whether the class or kind of merchandise at issue was expressly included. Duferco Steel, Inc. v. United States, 146 F. Supp. 2d 913 (May 29, 2001) (“Duferco Steel”). Such an approach is a departure from past CIT precedent that required the Department to give ample deference to the petitioner’s intent when examining a petition’s description of the subject merchandise. See, e.g., Torrington Co. v. United States, 995 F. Supp. 117, 121 (CIT 1998).

Although the specific scope decision in Duferco Steel has been overturned by the United States Court of Appeals of the Federal Circuit (“CAFC”) in Duferco Steel, Inc. v. United States, 296 F.3d 1087 (Fed. Cir. 2002) (“Duferco Steel II”), we do not believe that the CAFC’s decision undermines the Department’s decision in the J.C. Penney Ruling. The plain language 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

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

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

⁷ Id.

shapes of candles to be listed.⁸ In fact, if the list were exhaustive, there would have been no need for the Department to determine whether any other candle that was not explicitly listed as a shape in the scope of the Order. However, the Department did render the novelty candle exception that offered a narrowly construed exception, leaving all other petroleum wax candles from the PRC covered by the Order.

If the Department determines that the candle is made from petroleum wax and has a fiber or paper-cored wick, but the candle possesses characteristics set out in the CBP Notice, it will not fall within the scope of the Order. In order for a candle to qualify for the novelty candle exception, the characteristic which is claimed to render it a novelty candle (*i.e.*, the shape of an identifiable object or a holiday-specific design) should be easily recognizable in order for the candle to merit not being included within the scope of the Order. Specifically, among other determining factors, the Department will examine whether the characteristic is identifiable from most angles and whether or not it is minimally decorative, *e.g.*, small and/or singularly placed on the candle. If the identifiable object or holiday-specific design is not identifiable from most angles, or if the design or characteristic is minimally decorative, the Department may determine that the candle is included within the scope of the Order. See J.C. Penney Corp. Ruling; Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); San Francisco Candle Co. (Feb. 12, 2001) (“SFCC”); and Endar. If a candle does not possess the characteristics set out in the July 1987 novelty candle exception, and it is a scented or unscented candle having fiber or paper-cored wick, the Department will determine that the candle is within the scope of the Order.

Analysis

We find that HS’s six candles from its “Wedding Candle” series and “Holiday Candle” series are in the shape of identifiable objects from multiple angles, and, therefore, are not included within the Order pursuant to the CBP Notice. See chart below.

Pursuant to the Department’s change in practice, as described in J.C. Penney Ruling, if a candle is not in a shape specifically listed in the scope of the Order, it will not automatically be excluded from the scope of the Order. 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. HS’s candles are petroleum wax candles with what appears to be a fiber or paper-cored wick.⁹ Therefore, we must evaluate whether the characteristics of these

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.”).

⁹ On October 6, 2006, the Department published its final determination of circumvention of the antidumping duty order on petroleum wax candles from the PRC. The Department determined that mixed-wax candles composed of petroleum wax and more than 50 percent or more palm and/or other vegetable oil-based waxes (“mixed-wax candles”) are later-developed products of petroleum wax candles. In addition, the Department determined that mixed-wax candles containing any amount of petroleum are covered by the scope of the antidumping duty order on petroleum wax candles from the PRC. See Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 71 FR 59075 (October 6, 2006).

candles would exclude them from the scope of the Order pursuant to the novelty candle exception detailed in the Customs Notice and our interpretation set forth in J.C. Penney Ruling. In analyzing HS's six candles, we first examined whether they had a shape that was specifically enumerated in the scope of the Order (i.e., tapers, spirals, straight-sided dinner candles, rounds columns, pillars, or votives). We find that these candles do not have a shape which was specifically enumerated in the scope of the Order. Moreover, each of these shapes in all six candles is identifiable from multiple angles as objects, as per the Department's positions. See chart below. Additionally, the Department has recently excluded candles with similar shapes to two of HS's candles: Wedding Cake and Wedding Carriage.¹⁰ Accordingly, these candles meet the definition of an identifiable object pursuant to the CBP Notice and, therefore, should not be included within the Order. See chart below.

¹⁰See Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China: Final Scope Ruling, Fashion Craft-Excello, Inc., dated April 12, 2007; see also Darice Ruling.

<u>Candle Name</u>	<u>Analysis</u>
Wedding Cake	This product consists of three different sized rounds stacked onto each other in concentric tiers in a manner resembling a traditional three-tiered cake. In addition, this candle is decorated with many elaborate frills both on the sides and the base of each of the concentric, three-tiered rounds. Because of this candle's shape - three concentric tiers, elaborate designs and decorations on the sides and base of the rounds - this candle is easily recognizable as a wedding cake from multiple angles.
Bride and Groom Wedding Cake Topper	This product consists of one round with two human-like forms standing atop the round. In addition, this candle is decorated with many elaborate frills both on the sides and the base of the round. The two human-like forms appear to represent a bride and groom, apparent from the details of the clothing and accessories, such as a veil and a bouquet of flowers. Because of this candle's shape - an elaborately designed round with decorative "icing", human-like forms atop the candle resembling a bride and groom - this candle is recognizable as a cake with a bride and groom on top from multiple angles.
Wedding Carriage	This product consists of a stage coach-shaped candle resembling a traditional coach. In addition, this candle contains four spoked wheels, a protruding section in the front where a driver would sit and is decorated with many elaborate frills both on the sides and top of the coach. Because of this candle's shape - the coach shape, area for a driver to sit, wheels and decorations - this candle is easily recognizable as a coach from multiple angles.
Wedding Bells	This product consists of two connected bells with clappers visible from the bottom and embellished with a bow, rosettes, and a "pearl" around the bottom of the candle. Because of this candle's shape and design - bell-shaped forms with rounded "clappers" underneath both bells - this candle is easily recognizable as two connected bells with clappers from multiple angles.
Pillow with Rings	This product consists of a rectangular, pillow-shaped candle with two intertwined rings sitting atop the candle. Additionally, the candle is embellished with a textured design, frilled edging, crinkles, and folds on all sides of the candle. Because of this candle's shape - a rectangular pillow-like form with rings set on top and the textured design - this candle is easily recognizable from multiple angles.
Ice Bucket with Champagne	This product consists of a circular, bucket-shaped candle with a bottle and ice cubes contained within the bucket. Additionally, the candle features coloring and embellishment that render it recognizable in form and substance. Because of this candle's shape and design - a green bottle of champagne immersed in ice cubes inside a bucket - this candle is easily recognizable from multiple angles.

Recommendation

Based on the preceding analysis, we recommend that the Department find that HS's novelty candles fall outside the scope of the Order. If you agree, we will send the attached letter to the interested parties, and will notify CBP of our determination.

_____ Agree

_____ Disagree

Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

Date

HS Candle, Inc. Wedding Candle Sample Images
All Six Candles Determined to be Outside the Scope of the Order

Group



Bells



Bucket



Cake



Carriage



Pillow



Topper

