A-570-504
Scope Review
PUBLIC DOCUMENT
Operations (6):JGR

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To All Interested Parties:

On May 6, 2003, the Department of Commerce (the Department) received a request from Old Hickory Candle Company (Old Hickory) for a scope ruling on whether five types of "angel" candles 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 Old Hickory's five "angel" candles 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 of this decision. If you have any questions, please contact Joshua Reitze at (202) 482-0666 or Jacqueline Arrowsmith at (202) 482-5255.

Sincerely,

Barbara E. Tillman
Director
AD/CVD Operations, Office VI
Import Administration

Enclosure

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Scope Review
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MEMORANDUM FOR: Jeffrey A. May
Deputy Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Director
AD/CVD Operations, Office VI

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

Summary

On May 6, 2003, the Department of Commerce (the Department) received a request from Old Hickory Candle Company (Old Hickory) for a scope ruling on five "angel" candles to determine whether these candles are covered by 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 all five "angel" candles are included within the scope of the Order.[1]

Background

[1] The Department has developed an internet website that allows interested parties to access prior scope determinations regarding the Order on Petroleum Wax Candles from the People's Republic of China. 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/, and will be updated periodically, to include newly issued scope determinations.

On May 6, 2003, the Department received a request, filed in proper form, from Old Hickory requesting a scope ruling on the involved "angel" candles. On April 27, 2004, the National Candle Association (NCA), petitioner and the domestic producer in this proceeding, filed comments on Old Hickory's scope request.

a. Product Descriptions

The candles that Old Hickory submitted for review are rectangular petroleum wax candles with fiber or paper-cored wicks. All five candles feature rough edges and sides, with the front side containing a slightly raised, hand-painted relief of an angel or two angels. The top, bottom, back, and sides of each candle are painted and textured to resemble stone, with rough and uneven edges. Old Hickory describes its candles as "...paraffin wax candle{s} that have extensive sculpting on all sides and are hand painted to give the candle the appearance of a carved stone statue or carving fragment." Old Hickory describes the five candles as consisting of "...the same waxes and production techniques and vary only in the design and size of each candle." Old Hickory provided samples of each candle. The five candles are:

1. "JOYOUS ANGEL - SMALL" (Item Number C223S)

2. "ANGEL MUSICIANS" (Item Number C407)

3. "ANGEL PLAYING LUTE" (Item Number C415)

4. "FLYING ANGEL PAIR" (Item Number C439)

5. "SAN DIEGO ANGEL" (Item Number C440)

All of Old Hickory's candles are made of paraffin wax. Each of these candles features a similar rough-hewn and uneven surface texture, and the color varies in hue from light green to gray-green. The candles vary only in size and in the image depicted in relief on the front side. All of Old Hickory's candles are rectangular in shape, although the "Angel Musicians" candle features slightly rounded sides on an otherwise rectangular-shaped candle.

The "Joyous Angel - Small" candle (Item Number C223S) depicts a robed female angel with her arms outstretched. The angel's robe is light pink in color, and her wings are purple and pink.

The "Angel Musicians" candle (Item Number C407) depicts two female angels standing one on top of the other. They are both wearing pink robes and are holding stringed musical instruments.

The "Angel Playing Lute" candle (Item Number C415) shows a female angel with brown hair. She is

facing to her right, revealing the left side of her profile. She is wearing a pink robe, and her right hand is strumming a guitar-like instrument.

The "Flying Angel Pair" candle (Item Number C439) depicts two winged angels, both with blond hair. These angels are both wearing pink robes. One of the angels is facing away from the front of the candle, revealing her back. The other is facing the first angel, showing only her left side.

The "San Diego Angel" candle (Item Number C440) depicts a blond female angel wearing a light pink robe. Her elbows are bent and her hands are clasped together. Her wings are visible on either side of her.

b. Old Hickory's Scope Request

Old Hickory argues that the above-referenced five "angel" candles it imports should not be included within the scope of the Order. Old Hickory argues that the candles are figurine-type candles and in the shape of identifiable objects, as discussed further below. Old Hickory's argument to not include these candles within the scope of this Order is based on several points discussed below.

First, Old Hickory describes all five of these candles as figurines. Old Hickory notes that, in previous scope rulings, the Department has not included within the scope of the Order "figurine type candles and candles shaped in the form of identifiable objects." See Old Hickory's May 6, 2003 submission. Old Hickory cites numerous scope determinations in support of its argument. Old Hickory argues that in these cases, the Department maintained that figurine type candles and candles in the shape of identifiable objects should not 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) Enesco Corporation (October 30, 1996) (Enesco) (where the Department found that Enesco's holiday candles qualified for the novelty exception, and therefore were not included within the scope of the Order); Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504) Two's Company, Inc. (January 13, 1995) (Two's Company) (where the Department found a taper candle with a wax angel attached was outside of the scope of the Order); 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) (where the Department found a dragonfly candle to be outside of the scope of the Order because it was not a shape specifically listed in the Order); and Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504) Avon Products Inc. (July 11, 2001) (Avon) (where the Department found that the Easter candles were outside of the scope of the Order because they were shaped in the form of identifiable objects).

Old Hickory notes that the sculpting on these candles can be viewed from multiple angles and that the entire candle is sculpted and textured to resemble stone. Old Hickory claims that its candles are irregularly shaped, sculpted candles that are not in shapes listed in the scope of the Order. Old Hickory also claims that the angel candles are similar to Endar's dragonfly candle because they contain

sculpted relief on one face of a candle that is otherwise roughly hewn and textured to resemble a stone-like surface. Old Hickory describes its candles as having extensive sculpting on all sides. Thus, Old Hickory argues, their candles should likewise not be included within the scope of the Order. Further, Old Hickory cites numerous scope rulings (Enesco; Two's Company; and Avon) in which the Department determined that candles destroyed by the removal of the figurine were outside of the scope of the order. Old Hickory contends that its candles would be similarly destroyed if the figurines were removed, and thus qualify for exclusion.

To support its argument that its candles qualify for the novelty exception, Old Hickory quotes from a scope determination (Endar) concerning an exception from the Order for figurine-type candles and candles in the shapes of identifiable objects, which states:

> The Department has clarified that the scope of the order does not include figurine candles and candles shaped in the form of identifiable objects (e.g., animals or numerals), because such candles do not fall within the enumerated shapes in the order. This item resembles a stone with a flat backside, an engraved impression of a dragonfly on the front, and roughly hewn edges. We disagree with the NCA's characterization of this candle as a decorative pillar candle due to the candle's irregularly shaped edges. The impression of the dragonfly is only visible from the top, and is not a clearly identifiable object from other perspectives. However, this item is not one of the shapes covered by the scope of the order, and we therefore determine it to be outside of the scope of the order.

In addition, Old Hickory notes that the language of the scope of the Order specifies certain shapes of candles that should be included within the scope of the Order. The request indicates that the shapes that should be included within the scope of the Order include "tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers." Old Hickory asserts that its candles are not of a shape specifically mentioned in the language of the scope, as they are irregularly shaped and sculpted.

c. The National Candle Association's Comments

In its comments, the NCA retraces the history of this 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, petitioner cites a Court of International Trade (CIT) decision, with regards to the novelty exception, 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. 2 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 Old Hickory's candles are petroleum wax candles made in the PRC and have fiber- or paper-cored wicks. The NCA argues that these five candles should be included within the shapes delineated by the Order. The NCA argues that, despite the molded angels on the face of each candle, they are nevertheless pillars, a shape specifically listed in the language of the Order. In addition, the NCA contends that the candles are not in the shape of identifiable objects, nor are they designed for use only in connection with the holiday season and, therefore, these candles should be included within the scope of the Order.

The NCA maintains that these candles are not figurines, as Old Hickory claims, but rather rectangular-shaped pillars or column candles with angel images embossed on one face. The NCA differentiates between an identifiable object and a shape containing a representation of an object that is only viewable when looking at the candle from one angle. The NCA argues that Old Hickory's candles are not figurines because they can only be identified from one angle. "An angel figurine," the NCA observes, "would be a free-standing sculpted figurine that when viewed from all angles and sides would appear as the figure of an angel." In contrast, the NCA argues that Old Hickory's angels are only identifiable as such when viewed directly from the front. Instead, they are rectangular pillars or columns with embossed or molded images on one side. Thus, the NCA contends that these candles are specifically included within the scope of the Order and cannot be determined to be outside the scope of the Order.

The NCA claims that, although Old Hickory's request centers on the novelty candle exclusion, the angel candles are not in the shape of angels, but merely depict these images on one face of the object. Moreover, the NCA asserts that they are not in the shape of identifiable objects and thus fall 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); San Francisco Candle Co. (June 12, 2003) (SFCC Ruling) (where the Department determined that the heart-shaped candles were only identifiable as hearts when viewed from one angle, and should therefore be included within the scope of the Order). Therefore, the NCA maintains that Old Hickory's candles are columns or pillars, and are within the scope of the Order.

The NCA also notes that Old Hickory's request was filed after the J.C. Penney Purchasing Corporation ruling of November 9, 2001,[2] where, the NCA claims, the Department changed its practice on the issue of candle shape and exceptions for novelty candles. According to the NCA, in that ruling, the Department clarified that in order for candles to qualify for the novelty exception, the candles must be identifiable as the alleged object from a majority of angles. The NCA also observes that all six of the rulings cited in Old Hickory's request occurred before the J.C. Penney scope ruling. See J.C. Penney Ruling.

[2] See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504) JCPenney (Nov. 9, 2001) (J.C. Penney Ruling).

The NCA observes that Old Hickory'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 on PRC candles to be subjected to over seventy Final Scope Rulings and many more requests." The NCA maintains that the success of the scope requests in eroding the Order has resulted in geometric increases in the volume of PRC candles coming into the United States, and cites data showing the increasing number of candles imported from the PRC. The NCA concludes by stating that Old Hickory is now asking the Department to narrow the scope of the Order so that everyday candles are not included within the scope of the Order, claiming that they are novelty candles. Finally, the NCA argues that the Department does not have the legal authority to narrow the scope of the Order.

Legal Framework

The regulations governing the Department's antidumping scope determinations are found at 19 CFR 351.225(2002). 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). 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(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 Old Hickory's requests in accordance with 19 CFR 351.225(k)(1) and the Department finds that the descriptions of the products contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission are, in fact, dispositive with respect to Old Hickory's five candle types. 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 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 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.

Also of relevance to the present scope inquiry is a notice issued to the United States Customs Service (now renamed U.S. Customs and Border Protection) (Customs) 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 CIE -212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987 (Customs Notice) (emphasis added).

When determining whether or not a particular product claimed as a novelty candle is within the scope of the Order, the Department's first line of inquiry is whether the shape of the candle falls within those shapes listed by the inclusive language of the Order's scope, *i.e.*, "tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers." If a candle falls within one of the above delineated shapes, it will be determined to be within the Order's scope. Candles of a shape not listed by the inclusive language of the Order's scope will then be evaluated to determine whether they are "scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks."

In November 2001, the Department changed its practice on the issue of candle shapes. See 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 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.

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[3] See, e.g., Endar ("dragonfly" candle, in the shape of a rough-hewn stone with a dragonfly carved on top, not within scope because it is of a shape not listed by the scope), and Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); American Drug Stores, Inc. (March 16, 1998) (sphere or ball-shaped candle not within scope because it is a shape not listed by the 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 Duferco Steel decision of the CIT, noting that a better approach in scope rulings is to avoid subjective issues of intent and, instead, look to the petition's language to determine whether the class or kind of merchandise at issue was expressly included. See Duferco Steel, Inc. v. United States, 146 F. Supp. 2d 913 (May 29, 2001)(Duferco Steel). Such an approach is a departure from past CIT precedent that required the Department to give ample deference to the domestic industries' 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 Court's ruling undermines the Department's decision 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 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 render the novelty candle exception,

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

[5] Id.

[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.").

which offered a narrowly construed exception, and left 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 Customs Notice, it will fall outside the scope of the Order. For a candle to qualify for this exception, the characteristic which is claimed to render it a novelty candle (i.e., the shape of an identifiable object or a holiday-specific design) should be easily recognizable in order for the candle to merit not being included within the scope of the Order. Specifically, among other determining factors, the Department will examine 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 Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); JCPenney Purchasing Corp. (May 21, 2001) (JCPenney Corp); SFCC Ruling; San Francisco Candle Company, Inc. v. United States, 265 F. Supp. 2d 1374, 1379 (CIT 2003) (San Francisco Candle Company Ruling); and Endar. If a candle does not possess the characteristics set out in the July 1987 novelty candle exception, and it is a scented or unscented petroleum wax candle made from petroleum wax and having a fiber or paper-cored wick, the Department will determine that the candle is within the scope of the Order.

Analysis

With respect to the involved scope request, we find that for the reasons discussed below, the five "angel" candles are included within the scope of the Order. We find that these "angel" candles are not figurines and do not otherwise qualify to be included within the novelty candle exception. Therefore, we find that all of the involved "angel" candles are included within the scope of the Order.

All of Old Hickory's "angel" candles are paraffin wax candles.[7] The candles vary only in size and in the image depicted in relief on one side. All of Old Hickory's candles are rectangular in shape, although the "Angel Musicians" features wavy sides. In addition, each of these candles features a similar rough-hewn and uneven surface texture, and the color varies in hue from lighter green to gray-green.

The "Joyous Angel - Small"(Item Number C223S) candle depicts a robed female angel with her arms

[7] While Old Hickory refers to its candles as "paraffin," the Department's practice has been to treat "paraffin" and "petroleum" as synonymous. 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. (March 25, 2003) (Burlington) at page 9 ("Both the ITC's definition of the domestic 'like product' and the scope description adopted by the Department to cover this Order use language and references to 'petroleum wax' candles which include, but are not limited to, 'paraffin wax' candles.").

outstretched. The angel's robe is a light pink hue, and her wings are purple and pink.

The "Angel Musicians" (Item Number C407) candle features two female angels standing one on top of the other. They are both wearing pink robes and are holding stringed musical instruments.

The "Angel Playing Lute" (Item Number C415) candle shows a female angel with brown hair. She is facing her right, revealing the left side of her profile. She is wearing a pink robe, and her right hand is strumming a guitar-like instrument.

The "Flying Angel Pair" (Item Number C439) candle depicts two winged angels, both with blond hair. These angels are both wearing pink robes. One of the angels is facing away from the front of the candle, revealing her back. The other is facing to her left.

The "San Diego Angel" (Item Number C440) candle depicts a blond female angel wearing a light pink robe. She is facing to her right, and her elbows and bent and her hands are clasped together. Her large wings are visible on either side of her.

Old Hickory contends that each candle has "extensive sculpting on all sides" and depicts "art reproductions in three dimensions." However, we disagree with Old Hickory's argument that the candles are three-dimensional figurines because the candles are not identifiable from multiple angles as angels, as discussed further below.

Regarding Old Hickory's argument with respect to the dragonfly candle in Endar, the Department changed its practice on the issue of candle shapes in the November 9, 2001 J.C. Penney Ruling. Pursuant to the Department's change in practice, stated in J.C. Penney Ruling, if a candle is not in a shape specifically listed in the Order's scope, it will not automatically be excluded from the scope of the Order. See J.C. Penney Ruling. Therefore, we must evaluate whether the characteristics of these candles require that the candles not be included within the scope of the Order pursuant to the novelty candle exception detailed in the Customs Notice.

While the Department has previously ruled that figurine candles are not included within the scope of the Order, the candles in the involved case are not figurines. In this case, the Department agrees with the NCA's observation that the candles are not identifiable as angels from most angles, but are solely identifiable when viewed from only one side of the candle. From all other angles, the objects on the candles are simply unidentifiable. See SFCC Ruling. Instead, the Department finds that the candles are simply molded pillars, a shape listed by the inclusive language of the Order's scope. While there is molded relief on the face of each candle, this relief is slight enough that its designs are not distinguishable from any other angle apart from the one side. Therefore, the slight relief on each candle does not render the candle a figurine. Additionally, the Department has previously concluded that a molded decoration applied to an in-scope candle does not change it into an out-of-scope candle. 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). Therefore, the Department finds that the involved "angel" candles do not qualify to be excluded from the scope of the Order on the basis of the 1987 exception because we find that these candles are not figurines or identifiable objects.

Old Hickory contends that the subject angel candles are figurines or identifiable objects –angels depicted in relief. We disagree that Old Hickory's candles represent figurines or identifiable objects. The claimed "angel" characteristic is unidentifiable when the candles are viewed from the top, bottom, and every side but one. For each candle, the angel characteristic is only identifiable as an angel when viewed from a single side. The remaining sides of the candles are unevenly textured and are devoid of any identifiable object. Similarly, the top of each candle also has the textured and painted surface, and contains the wick. The bottom of the candle is similar in color to the other sides, but is cut to a smooth, flat surface. However, from none of these sides is the molded angel motif present or even identifiable. Thus, the Department finds that the "angel" candles are simply pillars, because the relief on each candle is so slight. Pillars are shapes listed in the inclusive language of the Order's scope. Therefore, we find that Old Hickory's five candles are included within the scope of the Order.

Recommendation

Based on the preceding analysis, we recommend that the Department find that the "Joyous Angel - Small" candle (Item Number C223S); "Angel Musicians" candle (Item Number C407); "Angel Playing Lute" candle (Item Number C415); "Flying Angel Pair" candle (Item Number C439) and "San Diego Angel" candle (Item Number C440) are included within the scope of the Order.

_____Agree _____Disagree

_____

Jeffrey A. May
Deputy Assistant Secretary
for Import Administration

_____

Date

Attachment