

A-570-504
Scope Review
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By Electronic Mail Notification

To All Interested Parties:

On May 9, 2002, the Department of Commerce (the Department) received a request from O'Neill & Whitaker, Inc., agents for Hallmark Cards, Inc. (Hallmark), for a scope ruling on whether four candles Hallmark plans to import 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 the four candles are 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 Jacky Arrowsmith at (202) 482-5255.

Sincerely,

Barbara E. Tillman
Director
Office of AD/CVD Enforcement VII
Import Administration

Enclosure

MEMORANDUM FOR: Joseph A. Spetrini
Deputy Assistant Secretary
for Import Administration, Group III

FROM: Barbara E. Tillman
Director
Office of AD/CVD Enforcement VII

SUBJECT: Final Scope Ruling; Antidumping Duty Order on Petroleum Wax
Candles From the People's Republic of China (A-570-504); Hallmark
Cards, Inc.

Summary

On May 9, 2002, the Department of Commerce (the Department) received a request from O'Neill & Whitaker, Inc., agents for Hallmark Cards, Inc. (Hallmark), for a scope ruling on four of Hallmark's candles to determine whether they are covered by 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 four of the candles fall within the scope of the Order.

Background

On May 9, 2002, the Department received a letter from O'Neill & Whitaker, Inc., on behalf of Hallmark, requesting a scope ruling on four of Hallmark's candles. On June 28, 2002, the petitioner in this proceeding, the National Candle Association (NCA), submitted comments in response to Hallmark's request.

Hallmark's Scope Request

Hallmark states that the candles subject to this inquiry consist of four styles of floating candles intended for decorative use: a "dark green leaf with red berries," a "red maple leaf," a "blue 6 point star," and a

“white dome.” It notes that the candles are made from 100 percent petroleum-based wax and have fiber core wicks. Hallmark argues that both the “dark green leaf” and the “red maple leaf” candles are approximately twice as wide as they are tall, and that the sides on both slant outward from bottom to top. Thus, Hallmark states that these candles are not properly described as pillars or any of the other shapes listed in the Order and, therefore, are not included in the Order. According to Hallmark, the dark “blue 6 point star” candle is wider than it is tall and has sides which slant outward from bottom to top. Hallmark argues that this candle is in the shape of an identifiable object and, thus, is excluded from the Order. With regards to the “white dome” candle, Hallmark states that it is spherical in shape and is not one of the shapes specified in the scope of the Order. Hallmark submitted a sample of each candle with its request.

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. Petitioner 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 decision, with regard 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. 2d 1184, 1194 (CIT 1999) (Russ Berrie). Thus, petitioner 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.

With regard to the “green leaf” and “maple leaf” candles, the NCA first notes that the candles are flat on the bottom and are too thick to depict the shape of a leaf. The NCA next argues that Hallmark cannot change a short pillar candle into an identifiable object by merely putting a molded or textured surface on it. Furthermore, to support its assertion, the NCA cites the Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); American Greetings Corp. (May 21, 2001) (American Greetings Ruling), where the Department concluded that molded decoration depicting multicolored flowers on a taper does not change a taper into an out-of-scope candle. Moreover, the NCA claims that the Department has also held that the addition of a pattern resembling variegated kernels of corn etched into the sides of a taper does not sufficiently alter the fundamental shape of the candle as a taper to make it a candle in the shape of an identifiable object. The NCA again refers to the American Greetings Ruling, where the Department said that “[t]he candle is still in the form of a taper, with or without the decorative etched design, distinguishing this produced from other identifiable object rulings in the past.” Finally, the NCA argues that these candles are short, straight-sided pillars that fall within the scope of the Order and cannot be excluded.

In addition, the NCA claims that the “blue six-point star” candle is a short, straight-sided pillar which

cannot be discerned as a star when looking from all sides. The NCA cites Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Barthco Trade Consultants, Inc. (April 30, 2001) in support of its argument. Therefore, the NCA maintains, the straight-sided pillar is not in the shape of an identifiable object and comes specifically within the scope of the Order and cannot be excluded.

Next, the NCA claims that the "white dome" candle is not in the shape of a sphere because it has a flat bottom that can be viewed from all sides. The NCA cites Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Avon Products, Inc. (April 8, 2002) (Avon Products 2002 Ruling) in support of its argument. Therefore, the NCA contends, this candle is a short, round candle specifically covered by the Order and cannot be excluded.

The NCA notes that Hallmark'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." Petitioner 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. Petitioner concludes by stating that Hallmark is now asking the Department to narrow the scope of the Order so that it excludes everyday candles, claiming that they are novelty candles, and that the Department does not have such legal authority.

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 Hallmark'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 Hallmark's four candle types. Therefore, the Department finds it unnecessary to consider the additional factors in 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 National Candle Association 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 antidumping duty 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 Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); JCPenney (November 9, 2001) (JCPenney 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.”¹ In JCPenney Ruling, the Department determined to revise this practice because such 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. 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 (CIT 2001) (Duferco Steel). Such an approach is a departure from past CIT precedent that required Commerce 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 decision undermines the Department’s decision in JCPenney 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

¹ See, e.g., Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Eandar Corp. (January 11, 2000) (Eandar) (“dragonfly” candle, in the shape of a rough-hewn stone with a dragon fly 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).

countervailing duty order requires that level of specificity.”² 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.”³ Thus, as applied to this Order, there is no requirement, nor is it possible, for all the shapes of candles to be listed.⁴ 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.

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. 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 Ruling); San Francisco Candle Company, Inc. v. United States, 265 F. Supp. 2d 1374, 1379 (CIT 2003) (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 petroleum wax candle made from petroleum wax and having fiber or paper-cored wick, the Department will determine that the candle is within the scope of the Order.

Analysis

With respect to the instant request, we find that for the reasons outlined below, that these four candles are within the scope of the Order.

² Novosteel SA v. United States, 284 F.3d 1261, 1264 (CIT 2002).

³ Id.

⁴ 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”).

“Dark Green Leaf with Red Berries” (Candle 1)

Hallmark contends that the subject “dark green leaf with red berries” floating petroleum wax candle (2 inches in diameter and 1 inch in height), with a fiber core wick, is a novelty candle, for use as a decoration. Hallmark argues that the candle’s sides are slanted outward from the bottom to the top. According to Hallmark, since the candle is approximately twice as wide as it is tall, it is not properly described as a pillar or any of the other shapes listed in the Order’s scope. Thus, Hallmark, contends, this candle shape is not included in the Order.

We disagree with Hallmark’s arguments. Pursuant to the Department’s change in practice, stated in JCPenney Ruling, if a candle is not in a shape specifically listed in the Order’s scope, it will not be automatically excluded from the scope of the Order. See JCPenney Ruling. Instead, the Department now will normally evaluate whether the candle is a scented or unscented petroleum wax candle made from petroleum wax and having fiber or paper-cored wick. See, e.g., Avon Products 2002 Ruling and Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Atico International, Inc. (November 1, 2002) (Atico 2002 Ruling). In the instant case, the “dark green leaf with red berries” candle is a petroleum wax candle with a fiber core wick. Therefore, we must evaluate whether the characteristics of this candle bring it outside of the scope of the Order pursuant to the novelty candle exception detailed in the Customs Notice.

Based on Hallmark’s comments, we examined whether this candle is in the shape of an identifiable object. We find that this candle is not recognizable from a majority of angles as a “dark green leaf with red berries.” See JCPenney Corp. Ruling (where JC Penney’s “Autumn Leaf” candle was ruled to be outside of the scope because it was identifiable as a leaf from most angles, i.e., when viewed from above, the sides and the bottom); see also, SFCC, 265 F. Supp. 2d at 1379-1382. The supposed leaf characteristics consist of etched lines on the top of the candle only and jagged edging but do not render the candle easily recognizable as a leaf. Furthermore, when viewing the candle from multiple side views, it is not readily discernible as a leaf. In addition, the four small red balls clustered on the top surface of the candle, and purported to resemble berries, do not contribute to the overall claimed effect of a “dark green leaf with red berries” in any marked way. Therefore, because this candle is not easily recognizable as a “dark green leaf with red berries” from most angles, it is not an identifiable object pursuant to the novelty candle exception and falls within the scope of the Order.

“Red Maple Leaf” (Candle 2)

Hallmark contends that the subject “red maple leaf” floating petroleum wax candle (2 inches in diameter and .75 inch in height), with a fiber core wick, is a novelty candle, for use as a decoration. Hallmark argues that the candle’s sides are slanted outward from the bottom to the top. According to Hallmark, since the candle is approximately twice as wide as it is tall, it is not properly described as a pillar or any of the other shapes listed in the Order’s scope. Thus, Hallmark, contends, this candle shape is not included in the Order.

We disagree with Hallmark’s arguments. Pursuant to the Department’s change in practice, stated in JC

Penney Ruling, if a candle is not in a shape specifically listed in the Order's scope, it will not be automatically excluded from the Order. See JCPenney Ruling. Instead, the Department now will normally evaluate whether the candle is a scented or unscented petroleum wax candle made from petroleum wax and having fiber or paper-cored wick. See, e.g., Avon Products 2002 Ruling and Atico 2002 Ruling. In the instant case, the "red maple leaf" candle is a petroleum wax candle with a fiber core wick. Therefore, we must evaluate whether the characteristics of this candle bring it outside of the scope of the Order pursuant to the novelty candle exception detailed in the Customs Notice.

Based on Hallmark's comments, we examined whether this candle is in the shape of an identifiable object. We find that this candle is not recognizable from a majority of angles as a "red maple leaf." See JCPenney Corp. Ruling (where JC Penney's "Autumn Leaf" candle was ruled to be outside of the scope because it was identifiable as a leaf from most angles, i.e., when viewed from above, the sides and the bottom); see also SFCC, 265 F. Supp. 2d at 1379-1382. The supposed leaf characteristics consist of etched lines on the top of the candle only and wavy edges but do not render the candle easily recognizable as a leaf. Furthermore, when viewing the candle from multiple side views, it is not readily discernible as a leaf. Therefore, because this candle is not easily recognizable as a "red maple leaf" from most angles, it is not an identifiable object pursuant to the novelty candle exception and falls within the scope of the Order.

"Blue 6 Point Star" (Candle 3)

Hallmark contends that the subject "blue 6 point star" floating petroleum wax candle (1.75 inches in diameter and 1 inch in height), with a fiber core wick, is a novelty candle, for use as a decoration. Hallmark further contends that the subject candle is shaped like an identifiable object—a star. We disagree and do not believe this candle is recognizable from a majority of angles as a star. The star characteristic is recognizable only from the top of the candle, but not when viewing it from the multiple side views. See JCPenney Corp. Ruling; see also, SFCC, 265 F. Supp. 2d at 1379-1382. Therefore, because this candle is not recognizable as a star from most angles, it cannot be considered a novelty candle. See Final Scope Ruling—Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Jo-Ann Stores, Inc. (January 29, 2002). Thus, this candle is not an identifiable object pursuant to the novelty candle exception and falls within the scope of the Order.

"White Dome" (Candle 4)

Hallmark contends that the subject "white dome" floating petroleum wax candle (1.75 inches in diameter and 1.25 inches in height), with a fiber core wick, is a novelty candle, for use as a decoration. Hallmark further contends that the subject candle is spherical in shape and is not in one of the shapes listed in the Order's scope. We disagree with Hallmark's arguments. First of all, pursuant to the Department's change in practice, stated in JC Penney Ruling, 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. See, e.g., Avon Products 2002 Ruling; see also, Atico 2002 Ruling. In this case, the “white dome” candle is a petroleum wax candle with a fiber core wick.

Secondly, this candle is flat on the bottom and not perfectly rounded like a sphere. Nevertheless, the Department has stated in the past that geometric shapes do not constitute specific identifiable objects in the way that more specifically-shaped material things do pursuant to the novelty candle exception. See Avon Products 2002 Ruling (where Avon’s “Ball-Shaped Candle” was ruled to be within the scope); see also, Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Atico International, Inc. (April 8, 2002) (where Atico’s “Floating Candle with Valentine Heart and Lip Design” was ruled to be within the scope); see also JCPenney Ruling (where JC Penney’s “Floating Pink Rose Blossom” candle was ruled to be outside of the scope) 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) (where Avon’s “Pine Cone Candle” was ruled to be outside of the scope). Thus, even if the candle were fully rounded like a sphere, we still would not consider it to be in the shape of an identifiable object pursuant to the July 1987 novelty candle exception. Therefore, for these reasons, we find that this candle falls within the scope of the Order.

Summary

Hallmark argues that its “dark green leaf with red berries,” “red maple leaf,” “blue 6 point star,” and “white dome” candles should fall outside the scope of the Order either because they are not in shapes listed in the Order or are in the shape of an identifiable object. For the reasons discussed above, we disagree and find that these candles are within the scope of the Order. This conclusion is consistent with the scope of the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission.

Recommendation

Based on the preceding analysis, we recommend that the Department find that the floating “dark green leaf with red berries,” red maple leaf,” “blue 6 point star,” and the “white dome” candles are within the scope of the Order.

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

_____Agree

_____Disagree

Joseph A. Spetrini
Deputy Assistant Secretary
for Import Administration, Group III

Date

Attachment