

By Electronic Mail Notification

To All Interested Parties:

On December 16, 2004, the Department of Commerce (the Department) received a request from Home Interiors and Gifts, Inc. (Home Interiors) for a scope ruling on whether five models of candles (set of six “rose blossom” candles (item number 11538); set of three “sunflower” candles (item number 12116); set of three “American heart” candles (item number 12117); and two sets of 12 “baked apple pie” and “vanilla” tea light candles (item numbers 11611 and 11612)), are included within the scope of 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)(2004), the Department has determined that the set of six “rose blossom” candles (item number 11538) and the set of three “American heart” candles (item number 12117) are included within the scope of the order on petroleum wax candles from the PRC. The Department has determined that the three remaining candle sets, the set of three “sunflower” candles (item number 12116) and the two sets of 12 “baked apple pie” and “vanilla” tea light candles (item numbers 11611 and 11612) are not included within the scope of the order on petroleum wax candles from the PRC.

Enclosed is a memorandum containing the Department’s analysis. We will notify United States Customs and Border Protection (CBP) of this decision. If you have any questions, please contact Kimberley Hunt at (202) 482-1272 or Jacqueline Arrowsmith at (202) 482-5255.

Sincerely,

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

Enclosure

MEMORANDUM FOR: Barbara E. Tillman  
Acting Deputy Assistant Secretary  
for Import Administration

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

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

### **Summary**

On December 16, 2004, the Department of Commerce (the Department) received a request from Home Interiors and Gifts, Inc. (Home Interiors) for a scope ruling on five models of candles (set of three "sunflower" candles (item number 12116); set of six "rose blossom" candles (item number 11538); set of three "American heart" candles (item number 12117); and two sets of 12 tea light candles (item numbers 11611 and 11612)) to determine whether these candles are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). Petroleum Wax Candles from the PRC: Final Determination of Sales at Less Than Fair Value, 51 FR 25085 (July 10, 1986) (Final Determination); Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986) (Order). In accordance with 19 CFR 351.225(k)(1), the Department finds that two out of five of Home Interiors' candle sets are within the scope of the Order. The Department has further determined that the set of three "sunflower" candles (item number 12116) and two sets of 12 tea light candles (item numbers 11611 and 11612) are not included within the scope of the Order.

### **Background**

Home Interiors filed its request for a scope ruling in proper form on August 28, 2002, and again on December 29, 2004, after the Department requested a proper testing certificate and additional samples of the candles in November 2004. On June 28, 2002, the National Candle Association (NCA), petitioner and an interested party in this proceeding, filed comments opposing Home Interiors' request. No rebuttal briefs were filed.

#### **a. Product Descriptions**

Home Interiors' request concerns two sets of "flower" floater candles, one set of three "American heart" floater candles and two sets of 12 "baked apple pie" and "vanilla" tea light candles. Home Interiors provided samples of all five sets of candles included in its scope request: the "sunflower" floater candle set (item number 12116); "rose blossom" floater candle

set (item number 11538); “American heart” floater candle set (item number 12117); and two sets of 12 tea light candles which are described as “baked apple pie” tea light candles (item number 11611) and “vanilla” tea light candles (item number 11612).

The first candle set, the set of three “sunflower” floater candles (item number 12116), is described by Home Interiors as a set of three, three-dimensional sunflowers which resemble cut sunflower blooms when floating on water. Home Interiors states that on each candle, each bright yellow petal overlaps the next with clearly defined jagged tips and there are two green leaves extending out of both sides of the flower shape with clearly visible veins.

The second candle set, the set of six “rose blossom” floater candles (item number 11538), is described by Home Interiors as a set of six three-dimensional cut rose blossoms with molded petals which overlap with defined edges which undulate. Home Interiors states that the largest portion of the outside rim of the candle represents six curved petals, each separated from the next and the inside row of petals is another raised row of five petals also separated by defined, molded lines. Finally, Home Interiors claims that the center of the blossom contains overlapping petals and the very center of the candle contains the wick.

The third candle set, the set of three “American heart” floater candles (item number 12117), is described by Home Interiors as a set of three heart-shaped floating candles which are decorated on the top with vertical red and white stripes, and a solid blue area with approximately 10 white stars, made to resemble an American flag design.

The fourth and fifth candles, the two sets of 12 “baked apple pie” tea light candles and “vanilla” tea light candles (item numbers 11611 and 11612), are described by Home Interiors as scented tea lights made from palm oil and paraffin wax which are scented to smell like baked apple pie and vanilla, respectively.

#### **b. Home Interiors’ Request**

In its August 29, 2002, request, Home Interiors argues that the “sunflower” floater candle set (item number 12116), the “rose blossom” floater candle set (item number 11538), and the “American heart” floater candle set (item number 12117) should not be included within the scope of the Order because they are identifiable objects and thus, fall within the novelty candle exception. Home Interiors further argues that the two sets of 12 tea light candles which are described as “baked apple pie” tea light candles (item number 11611) and “vanilla” tea light candles (item number 11612) should not be included within the scope of the Order because these candle sets are composed primarily of palm oil wax and not petroleum wax.

Home Interiors argues that each “sunflower” candle in the set of three “sunflower” floating candles and each “rose blossom” in the set of six “rose blossom” floating candles is in a three-dimensional form which clearly identifies it as a sunflower or a rose blossom, respectively. Home Interiors states that in a bowl of water, the flat bottom of these candles give them the appearance of a cut flower bloom floating on water. Home Interiors further claims that the

candles are advertised and displayed as floating flower candles and the expectation of the ultimate purchaser and the intricacy of the design suggest that the candle is more than merely a votive. In support of Home Interiors' claims, Home Interiors cites several cases where the Department found certain candles to be in the shape of identifiable objects and thus, outside of the scope of the Order. See, e.g., Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Jo-Ann Stores (January 29, 2002) (Jo-Ann Stores Ruling) (the Department determined that a candle in the shape of an open flower blossom is an identifiable object and thus, not 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); Et Al Imports (July 2, 1998) (Et Al Imports Ruling) (the Department determined a candle in the shape of bamboo with circular knuckles and knots along several points of the stalk to be in the form of an identifiable object and thus not 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); Ender, Inc. (January 11, 2000) (Ender January Ruling) (the Department determined that a dragonfly candle with an engraved impression of a dragonfly on the front and roughly hewn edges was not 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); Sun-It Corporation (May 16, 1995) (Sun-It Ruling) (the Department determined that Sun-It's gigantic fruit, pumpkin, and porch torch candles molded in the shape of either a rose bloom or a lily were outside of the scope of the Order because they are identifiable objects); and Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Midwest of Cannon Falls (October 30, 1996) (Midwest Ruling) (the Department determined that a taper candle in the shape of an asparagus was not within the scope of the Order).

Additionally, Home Interiors points to Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Avon Products (July 11, 2001) (Avon July Ruling) (the Department determined that candles in the shape of a bunny, a duckling, a topiary, and a pinecone are all identifiable objects and 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); J.C. Penney Purchasing Corporation (May 21, 2001) (J.C. Penney May Ruling) (the Department determined a red house candle, a chocolate house candle, a church candle, a pinecone tea light candle, a Christmas ornament candle, a pinecone candle, an apple candle, a pumpkin candle, and a gourd candle to be outside the scope of the Order because they were found to be identifiable objects); Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Avon Products (May 4, 2001) (Avon May Ruling) (the Department determined that a three piece, heart-shaped puzzle candle was not within the scope of the Order because it falls within the identifiable object novelty exception); and Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); J.C. Penney Purchasing Corporation (November 9, 2001) (J.C. Penney November Ruling) (the Department determined two candles in the shape of open rose blossoms and a candle in the shape a leaf with clear delineation of the leaf edges and points, and with veins imprinted on the leaf surface, to be identifiable objects and not within the scope of the Order). Home Interiors states

that, based on the Department’s findings in these cases, both Home Interiors’ set of three “sunflower” candles and Home Interiors’ set of six “rose blossom” candles should not be included within the Order, because its candles, like the candles in the cases it cited, are identifiable objects.

Home Interiors further explains that each “rose blossom” candle in the set of six “rose blossom” candles was specifically designed in the shape of a rose blossom, which is the company logo; Home Interiors argues that the design of the candle shows it to be in the shape of an identifiable object. Home Interiors argues that the candle is three-dimensional and recognizable as a cut rose blossom from all sides, and that the bottom of the candle is slightly rounded and uncharacteristic for use as a votive and, thus, is not of a shape delineated within the specific language of the scope of the Order.

In its December 29, 2004, submission, Home Interiors quotes the Department’s ruling in Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Global Shop, Inc. (November 24, 2004) (Global Shop, Inc.) (the Department determined that the Global Shop snowman candle was in the shape of a snowman, which they found to be an identifiable object and therefore not included within the scope of the Order) and argues that the “sunflower” and “rose blossom” candles are distinctly recognizable as flowers from all angles. Home Interiors further argues that each candle is highly detailed and clearly shows all of the features of a flower bloom. Additionally, Home Interiors claims that the “sunflower” candle has yellow petals attached to a green stem, which Home Interiors argues unmistakably identifies it as a sunflower. Home Interiors argues that, to be consistent with the Department’s previous rulings on novelty candles with identifiable shapes, the Department should find that the set of three “sunflower” candles and the set of six “rose blossom” candles are outside the scope of the Order.

In Home Interiors’ August 29, 2002, submission, Home Interiors claims that the “American heart” floating candle is in the shape of an identifiable object. In support, Home Interiors cites the J.C. Penney May Ruling; the Jo-Ann Stores Ruling (the Department determined that a floating heart candle qualified for the identifiable object novelty exception and thus, was not within the scope of the Order); and the Avon May Ruling (the Department determined that a three piece, heart-shaped puzzle candle was not within the scope of the Order because it falls within the identifiable object novelty exception). Additionally, Home Interiors claims that the candles are marketed and advertised only for the 4<sup>th</sup> of July holiday and an early patriotic Christmas holiday. Home Interiors points to the Home Interiors catalog, which shows these candles as burning decorations with Uncle Sam and sparklers which Home Interiors claims are both symbols of the 4<sup>th</sup> of July. Home Interiors argues that the “American heart” floating candle is an example of one of its Christmas decorations with a patriotic motif. According to Home Interiors, the Christmas theme of the advertisement is evidenced by the patriotic snowman and the fact that the candles are floating in a bowl surrounded by evergreen foliage with silver Christmas balls. Home Interiors claims that the candle should be excluded from the Order on the basis of the holiday novelty exception because of the limited selling season for these candles.

In Home Interiors' December 29, 2004, submission, Home Interiors argues that the Department's statement in a previous scope decision that heart-shaped candles containing scenes or symbols specifically related to a holiday or other special event are outside the scope of the Order places Home Interiors set of three "American heart" candles outside of the scope of the Order, because Home Interiors argues that the candle clearly depict an American flag which Home Interiors claims is the symbol for the 4<sup>th</sup> of July, a national holiday and special event. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); San Francisco Candle Company (June 12, 2003) (San Francisco Ruling) (the Department determined that a "crackle heart" candle, a "concentric heart" candle and a "moonlight candy cane" floater candle were within the scope of the Order because these candles do not contain scenes or symbols which are specifically related to a particular holiday nor were these candles found to be identifiable objects because the Department found they were not identifiable from multiple angles). Home Interiors argues that the marketing materials for the set of three "American heart" candles support the specific holiday or event that these candles are related to, as these candles are surrounded by an image of Uncle Sam and sparklers. Home Interiors adds that the only other market for these candles is in conjunction with patriotic Christmas motifs which is evidenced by patriotically dressed Santas and what Home Interiors labels as other symbols of the Christmas holiday, many of which are specifically manufactured to hang on Christmas trees. Home Interiors requests that the set of three "American heart" candles be ruled outside the scope of the Order.

Home Interiors, in its August 29, 2002, submission claims that its set of 12 "baked apple pie" and "vanilla" tea light candles are made from palm oil and paraffin wax and should be excluded from the Order because their content does not fall specifically within the scope of the Order. Home Interiors cites three cases in which Home Interiors claims the Department found blended beeswax and paraffin to be outside of the scope of the Order. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Costco Wholesale (December 10, 1998) (Costco Ruling) (the Department determined that Costco's candles, which are composed of 81 percent beeswax and 19 percent petroleum wax, are 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); Et. Al Imports (December 11, 1998) (Et. Al Imports April Ruling) (the Department determined that Et. Al's candles, which are composed of 80 percent beeswax and 20 percent petroleum wax, are outside of the scope of the Order); and Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Ocean State Jobbers, Inc. (December 18, 1998) (Ocean State Jobbers Ruling) (the Department determined that Ocean State Jobbers' candles which are composed of 80 percent beeswax and 20 percent petroleum wax are outside of the scope of the Order). Specifically, Home Interiors states that the language in these rulings states that "the ITC determined that certain blended candles which are composed of less than 100% petroleum wax are not a like product and therefore, are outside the scope of the antidumping order on petroleum wax candles from the People's Republic of China." See Costco Ruling; Et. Al Imports; and Ocean State Jobbers Ruling. Home Interiors cites three other rulings, the J.C. Penney May Ruling; Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Cherrydale Farms (October 6, 2000) (Cherrydale Farms Ruling) (the Department determined that a "fruit

gel” candle fell within the scope of the Order because the Commission had found that the Order covers petroleum wax candles composed of over 50 percent petroleum wax and further found that this includes various wax filled containers, irrespective of the form the wax found in the containers may take); and Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Meijer, Inc. (June 11, 1998) (Meijer Ruling) (the Department determined that i) a candle made of vegetable wax is not included in the scope of the Order, and ii) it was unwilling to offer an advisory opinion regarding the hypothetical petroleum wax candle in Meijer’s submission, which requested that the Department clarify whether a submitted vegetable wax filled glass container would have been subject to the Order had it been filled with petroleum wax instead of vegetable wax). Home Interiors claims that, in the J.C. Penney May Ruling, the Department determined that a candle made up of 58 percent palm oil did not constitute a petroleum wax candle within the meaning of the Order. Further, Home Interiors argues that, in the Cherrydale Ruling, the Department stated: “{T}he Commission has found that petroleum wax candles are those composed of over 50 percent petroleum wax (candles from the People’s Republic of China, (USITC Pub. 1888, Aug. 1986 4-5))” and Home Interiors claims that Home Interiors’ tea lights contain considerably less than 50 percent petroleum wax. Third, Home Interiors argues that, in the Meijer Ruling, the Department clearly stated that “a candle made from vegetable wax is not included within the scope of the Order.” See Meijer Ruling. Therefore, Home Interiors requests the Department find the products in question, which Home Interiors claims contain less than 50 percent petroleum wax content, be determined to be outside the scope of the Order.

Home Interiors further points to U.S. Customs’ Website guidelines where they found 10 U.S. Customs and Border Protection (CBP) rulings, namely NY G85508 (December 29, 2000) (U.S. CBP tariff classification finding for a submitted “palm wax votive” candle, stating that a candle which is 51 percent palm oil wax is not subject to the Order); NY G82778 (October 11, 2000) (U.S. CBP tariff classification for a submitted “pink pillar” candle, stating that a candle which is made of a blend of 52 percent palm oil wax, 46 percent paraffin wax, and 2 percent oil fragrance is not subject to the Order); NY F89490 (July 14, 2000) (U.S. CBP tariff classification for a submitted “pillar” candle stating that a candle which is made of a blend of 51 percent palm oil and 49 percent petroleum wax is not subject to the Order); NY F84932 (March 28, 2000) (U.S. CBP tariff classification for a submitted “wax filled champagne glass” candle stating that a candle containing 55 percent palm oil is not subject to the Order); NY F81135 (January 4, 2000) (U.S. CBP tariff classification for two submitted candles stating that the “marble pillar” candle, containing 99 percent palm oil wax and the “corrugated pillar” candle containing 55 percent palm oil wax are not subject to the Order); NY E88636 (October 21, 1999) (U.S. CBP tariff classification for two submitted candles, the “flower pot” candle and the “ceramic container” candles stating that both candles containing 60 percent palm oil wax and 40 percent paraffin wax, are not subject to the Order); NY E84113 (July 8, 1999) (U.S. CBP tariff classification for three submitted candles stating that all three candles containing 55 percent palm oil wax and 45 percent paraffin wax are not subject to the Order); NY E81404 (May 14, 1999) (U.S. CBP tariff classification for a submitted pillar-shaped candle, stating that a candle which is 55 percent palm oil wax and 45 percent paraffin is not subject to the Order); and NY C87830 (June 2, 1998) (U.S. CBP tariff classification for a submitted “trinket box” candle, stating that a candle which is 100 percent palm oil wax is not subject to the Order), issued for candles with similar contents to that

of the Home Interiors palm oil tea lights. Home Interiors quotes language from these CBP rulings as stating "...candles made of more than 50% beeswax are not within the scope of the antidumping duty order. In our opinion, candles containing more than 50% palm oil wax are not within the scope of the antidumping duty order." Home Interiors argues that Home Interiors' tea lights are made from a blend of palm oil and paraffin wax and test results from both an overseas laboratory and a U.S. laboratory (Société Générale de Surveillance (SGS) U.S. Testing Company, Inc.) yielded results which showed that the percentage of palm oil is significantly greater than that of the paraffin wax.

Home Interiors states that palm oil wax, like beeswax, is a "natural" component of the tea light candles and is slightly more expensive than petroleum wax and an additional cost is incurred since the candles are imported from the factory to Home Interiors' door in refrigerated containers because that type of candle has a lower melting point than that of petroleum wax candles.

Home Interiors claims that the NCA's argument that Home Interiors selected a more expensive product with higher shipping costs is illogical and unsupported by fact. Additionally, Home Interiors feels that the NCA misrepresents Home Interiors channel of trade. Home Interiors explains that Home Interiors' channel of trade consists of selling its products through 70,000 displayers who hold in-home parties and advertise using monthly brochures and quarterly presentation brochures available exclusively to these displayers. Home Interiors further explains that it does not own any retail outlets or stores and sells only to these displayers. Home Interiors notes that it has been in business since 1957, and is a reputable direct selling company which sells its products and candles at competitive market rates, not at dumped prices. Home Interiors also claims that it is not in direct competition with U.S. candle producers.

With respect to the testing information submitted by Home Interiors as part of its August 28, 2002, submission, the testing certificate it provided from the SGS U.S. Testing Company, Inc. indicates that the tests completed to determine percentages of the lead in the wick, and the percentages of paraffin and palm oil content resulted in the following statistics:

|                 | <b>Candle 1</b>     | <b>Candle 2</b>       |
|-----------------|---------------------|-----------------------|
|                 | <b><u>Apple</u></b> | <b><u>Vanilla</u></b> |
| <b>Lead</b>     | <0.001%             | <0.001%               |
| <b>Paraffin</b> | 32.0%               | 32.9%                 |
| <b>Palm Oil</b> | 66.2%               | 66.0%                 |

(see Home Interiors' August 28, 2002, submission).

In its December 29, 2004, submission, Home Interiors provided a recent laboratory analysis of two samples of the "baked apple pie" and "vanilla" tea light candle sets, which it claims further supports Home Interiors' contention that the tea lights it imports fall outside of the scope of the Order. The analysis was performed by SEA, Ltd. (SEA) which is a U.S. independent testing laboratory that is accredited by CBP under Chapter 34 of the Harmonized Tariff Schedule of the



United States (HTSUS) to conduct analyses to determine the percentage of paraffin wax in candles using United States Customs Laboratory (USCL) methods 34-07 and 34-08. Home Interiors submitted two of the “baked apple pie” tea lights and two of the “vanilla” tea lights to SEA, requesting a determination as to the percentage of paraffin and palm oil wax concentrations in the candles, using the USCL method 34-07 and a modified version of AOCS method TI 1a-64. SEA noted that these tests were conducted to determine whether the candles submitted for analysis were subject to the Order. The SEA report explains the process and the results of the testing which are as follows:

**Table 1**  
Results of Analysis for the Determination of Paraffin Concentration  
and Palm Wax Concentration in Tea Light Candles by Weight

| <u>Sample</u>      | <u>Percent Paraffin</u> | <u>Percent Palm Wax</u> |
|--------------------|-------------------------|-------------------------|
| 1. Baked Apple Pie | 37.5%                   | 56%                     |
| 2. Baked Apple Pie | 42.3%                   | 54%                     |
| 3. Vanilla         | 33.7%                   | 67%                     |
| 4. Vanilla         | 32.9%                   | 67%                     |

**Table 2**  
Results of Individual Analysis of Each Candle for  
Percent Paraffin Weight

| <u>Sample</u>      | <u>Run 1</u> | <u>Run 2</u> | <u>Average</u> |
|--------------------|--------------|--------------|----------------|
| 1. Baked Apple Pie | 38.6%        | 36.3%        | 37.5%          |
| 2. Baked Apple Pie | 42.8%        | 41.7%        | 42.3%          |
| 3. Vanilla         | 34.1%        | 33.2%        | 33.7%          |
| 4. Vanilla         | 33.5%        | 32.2%        | 32.9%          |

SEA in its laboratory results states that Table 1 lists the results of the percentage of paraffin in each candle expressed as an average value of the duplicate analysis and the percentage of palm wax as determined by the method described in the analysis report. SEA provided submissions that state that the results of the palm wax determination are based on a single analysis per sample. SEA’s provided submission also concludes that the tea light candles Home Interiors submitted were found to contain, on average, less than 50 percent paraffin in all analyses. SEA points out that the results were similar in the duplicate sample analyses found in each analysis. SEA further explains that Table 2 lists the individual analysis for each tea light candle for the determination of paraffin using USCL Method 34-07. SEA claims that, based upon the results, the submitted tea light candles are not subject to the Order because the candles contain less than 50 percent petroleum paraffin by weight.

In explaining the process of how these results were achieved, SEA stated that all four of the candles were individually placed into containers and melted in an oven. While the samples were molten, SEA mixed the samples to ensure they were homogenized. SEA’s provided submission states that a portion of each sample was then analyzed in accordance with USCL Method 34-07

(Quantitation of Paraffin in Beeswax and Other Waxes by High Temperatures Capillary Gas Chromatography). SEA notes that this method utilizes the method of standard additions so that an accurate determination of the paraffin concentration can be made. SEA's laboratory results state that each of the two samples analyzed was analyzed twice to assure the accuracy of the results and then another homogenized sample was analyzed using AOCS test method IT 1a-64<sup>1</sup> to determine the saponification<sup>2</sup> value for each candle, which was then ratioed against the saponification value for pure palm wax to determine the percentage of palm wax in each sample.

Additionally, in its December 29, 2004 submission, Home Interiors claims that the Department, in Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Fleming International Ltd. (May 14, 2003) (Fleming Ruling) (in which the Department found that three candles which are composed of 100 percent vegetable oil wax are not included within the scope of the Order), found that candles with a petroleum wax composition of less than 50 percent fell outside the scope of the Order. Home Interiors argues that this and subsequent rulings by the Department determined that the Order only applied to those candles containing greater than 50 percent petroleum wax by composition. Home Interiors claims their two sets of 12 “baked apple pie” and “vanilla” tea light candles contain significantly less than 50 percent petroleum wax. Home Interiors requests the Department find that the products in question, which Home Interiors claims contain less than 50 percent petroleum wax content, are determined to be outside the scope of the Order.

Finally, Home Interiors mentioned that it owns Laredo Candle Company, a large domestic producer of similar tea light candles which realizes approximately \$200 million in U.S. retail sales revenues annually. Home Interiors claims that, as a consequence of this relationship, Home Interiors has a significant investment in and incentive to protect domestic candle producers, and that it supports the candle industry's goal of protection from foreign dumping.

### **c. The National Candle Association's Comments**

In its comments, the NCA retraces the history of the antidumping duty order, including the import surges and resultant injury suffered by domestic manufacturers which prompted the original September 1985 antidumping petition. The NCA contends that the antidumping statute and antidumping duty orders are remedial in nature and exceptions to them should be construed as narrowly as possible to preserve the efficacy of the Order. In support of its assertion, the NCA cites the holding of the Court of International Trade in Russ Berrie (“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 July, 1999) (Russ Berrie). The NCA argues that the Department has

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<sup>1</sup> The "saponification value" is a testing method used to determine the percentage of paraffin and palm wax concentrations in the candles. See Home Interiors December 29, 2004, submission.

<sup>2</sup> This is a measure of the alkali reactive groups in oil. The value is the measure of the amounts of triglycerides, diglycerides, and fatty acids found in vegetable wax. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Pier 1 Imports (May 10, 2005).

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 argues that all of Home Interiors' candles fall within the shapes delineated by the Order and are petroleum wax candles made in the PRC having fiber or paper-cored wicks. The NCA further argues that Home Interiors' candles are not in the shape of identifiable objects, and that Home Interiors candles are not designed for use only in connection with the holiday season. Therefore, it argues, these candles fall within the scope of the Order.

With regard to the set of six "rose blossom" floating candles, the NCA states that each of the candles in the set is a round candle, which falls specifically within the scope of the Order. The NCA next asserts that the flower designs are ubiquitous and are not specifically designed for use only in connection with Christmas. Moreover, the NCA argues that Home Interiors cannot change a round candle into an identifiable object by merely putting a textured surface on it with flowers. In addition, the NCA cites the American Greeting 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. See 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). Furthermore, the NCA states that the Department also determined 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 a taper to make it a candle in the shape of an identifiable object. "The candle is still in the form of a taper, with or without the decorative etched design, distinguishing this product from other identifiable object rulings in the past." See American Greetings Ruling. The NCA next argues that the addition of a textured surface and flowers to Home Interiors' round candle with a flat bottom does not sufficiently alter the fundamental shape of the candle as a round to make it a candle in the shape of an identifiable object. To support its argument, the NCA cites the Endar Ruling, where the Department concluded that "despite the additional molded decorative flower, the candle remains a votive, and an unidentifiable object." See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Endar May Ruling (May 21, 2002) (Endar May Ruling) (the Department found that the addition of a molded decorative flower does not put a votive outside of the scope of the Order). Furthermore, the NCA argues that the American Greetings Ruling and the Endar May Ruling are determinative with respect to this candle. Finally, the NCA states that, since they are not specifically designed for use only with respect to a special holiday or event, these candles fall within the scope of the Order. Therefore, the NCA asserts that this set of six candles is specifically covered by the Order and cannot be excluded.

Next, the NCA argues, with respect to the "sunflower" floating candle set, that the molded decorative flower on top of the candle does not change an in-scope round into an out-of-scope candle. To support its argument, the NCA again cites the Endar December Ruling, where the Department concluded that "despite the additional molded decorative flower, the candle remains a votive, and an unidentifiable object." The NCA asserts that for these reasons, and the reasons set forth in the discussion about the "rose blossom" floating candle set, the "sunflower" floating candle set is also specifically covered by the Order and cannot be excluded.

In reference to the set of three “American heart” floating candles, the NCA states that the Department has previously determined that a similar candle is “not recognizable as a heart when viewed from the top, bottom, front, back, and sides.” See 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) (Atico Ruling) (the Department found that a “valentine heart” candle with a flat bottom was not recognizable as a heart when viewed from the top, bottom, front, back and sides and thus did not qualify for the identifiable object exception to the Order). The NCA next asserts that both the heart design and the red, white, and blue flag motif are ubiquitous and can be used throughout the year. Specifically, the NCA argues that the red, white, and blue flag motif can be used as a demonstration of patriotic commitment. Moreover, the NCA argues that use of this candle is not limited to any specific holiday. Therefore, the NCA maintains that the “American heart” floating candle falls within the scope of the Order and cannot be excluded.

Finally, the NCA contends that the two sets of 12 “baked apple pie” and “vanilla” tea light candles are wax-filled containers and fall specifically within the scope of the Order. In addition, the NCA asserts that there is no design on these candles that would limit their use to a specific holiday or event. Moreover, the NCA argues that, even if Home Interiors’ candles were 100 percent palm oil wax, they would fall within the scope of the Order.

Also, the NCA points out that the test results submitted by Home Interiors were conducted by a Hong Kong company. The NCA asserts that these tests are not acceptable because the tests must be conducted by a laboratory in the United States using the appropriate U.S. Customs tests. The NCA adds that the lab tests submitted by Home Interiors indicate a variety of combinations of paraffin wax and palm oil wax which add up to 100 percent of the candle. The NCA claims that this is impossible, since the candles contain scents, color dye, a wick, and/or other additives which compose a significant part of the candle. The NCA maintains that the lab tests only refer to what percent of the total candle is palm wax. The NCA suggests that the Department should require Home Interiors to provide additional U.S. laboratory test results that determine the percentage of palm oil wax and petroleum wax in the candle.

The NCA further asserts that Home Interiors’ palm wax candles have similar chemical composition and the same range of essential physical characteristics of petroleum wax candles and must therefore be included within the scope of the Order. See NCA Comments in the Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Leader Light (Sept. 6, 2001); see also NCA Comments in the Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Fleming International Ltd. (Oct. 24, 2001). The NCA points out that palm oil alone cannot be used as a candle wax because palm oils are liquid at room temperature. The NCA asserts that, in order to make candles from palm oil, Home Interiors had to change the chemical structure of the oil so that it was no longer palm oil. The NCA explains that, through a process of hydrogenation, the palm oil is substantially transformed into a new product that has similar chemistry to, and the same physical characteristics of petroleum-derived waxes. Consequently, the NCA argues that the effect of the chemical conversion essentially turns the palm oil into the same product as petroleum wax. The NCA further asserts that the

term “petroleum wax” in the Order is not limited to the derivation of the wax, but rather the chemical composition and physical characteristics and uses of the wax. Therefore, the NCA argues that, by substantially changing the chemical composition of palm oil into a product with an essentially similar chemical composition and the same physical characteristics of petroleum wax, Home Interiors brought its candles within the scope of the Order.

In addition, the NCA argues that the International Trade Commission (the “Commission”) has consistently defined “like product” as a product which is like, or in the absence of like, most similar in characteristics and uses with the article subject to the investigation.” See Petroleum Wax Candles from the People’s Republic of China (Final), USITC Pub. 1888 (Aug. 1986) at 3-4 (USITC Final). The NCA states that like products have the “same intrinsic qualities and essential characteristics and uses as the subject imports.” See USITC Final at 4, n.4. Next, the NCA asserts that any minor differences in the chemical composition or physical characteristics of Home Interiors’ candles cannot lead to the conclusion that Home Interiors’ candles are not like the candles covered by the Order. See USITC Final; see Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes from the United Kingdom, 58 FR 3523, 3254 (1993). Furthermore, the NCA maintains that Home Interiors’ candles have the same intrinsic qualities and essential characteristics of petroleum wax candles and are therefore “like” petroleum wax candles. The NCA also argues that Home Interiors’ candles are of the same class or kind of merchandise as are the candles subject to the Order, and are covered by the same HTSUS tariff provision; consequently, all of Home Interiors’ candles fall within the scope of the Order.

The NCA attached, as an exhibit, a memorandum from Dr. Eric E. Wigg, a former Exxon Research and Engineering Petroleum Wax Technical Expert and Technical Advisor for a refined wax import company, Masterank, Inc., that the NCA argues establishes the scientific evidence of the similarity of chemical composition and physical characteristics of Home Interiors’ candles as compared to petroleum wax candles. See the NCA’s June 28, 2002, submission. The NCA claims that these candles have been engineered to have the same physical and burning properties as petroleum wax candles with the sole intent of circumventing the Order. In fact, the NCA points out, the goal of the development of vegetable wax candles was to “develop vegetable lipid-based candles which are comparable to traditional petroleum wax candles in appearance and performance.”<sup>3</sup> Thus, the NCA maintains that, in order for the vegetable wax candles to compete against petroleum wax candles, the candles must be the same or similar in terms of the important characteristics related to candle performance.

Next, the NCA argues that consumers will be totally confused and will have no knowledge of the chemistry of Home Interiors’ candles and petroleum wax candles, because palm wax and petroleum wax candles have the same physical appearance and functions. The NCA points out that the essential physical characteristics will be in the same range of melt point, color, odor and viscosity. Furthermore, the NCA argues that both types of candles are made of wax and have a

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<sup>3</sup> See Bernard Y. Tao, Development of Vegetable Lipid-Based Candles, attached as Exhibit 2 to the NCA’s June 28, 2002, Comments on Home Interiors’ Scope Request.

wick. The NCA adds that palm wax and petroleum wax candles can be engineered to have higher or lower melt points. Moreover, the NCA maintains, it is the alkane-like part of the palm wax molecule to which 90 percent of the carbon atoms are associated which makes these palm waxes have the same physical characteristics and function as candle waxes, *i.e.*, physical and combustion properties similar to those of petroleum waxes, which the NCA claims are the primary standard for candle wax. The NCA argues that it is through the hydrogenation process that the substantial transformation takes place to yield these alkane-like structures.

The NCA further argues that the consumer will compare the physical characteristics and performance of the palm wax candles to petroleum wax candles, which it claims are the standard in the marketplace. In addition, the NCA asserts, if the palm wax candles do not have the same intrinsic qualities and essential characteristics of petroleum wax candles, consumers will not buy them. Therefore, the NCA argues, Home Interiors has engineered its candles so that the candles are the same or similar to the candles which are subject of the Order.

The NCA argues that it has been alleged that palm oil is significantly more expensive than petroleum wax and that the process of producing palm oil candles involves substantially higher costs than the process of producing petroleum wax candles. The NCA claims that, once the palm oil is imported into the PRC, it is substantially transformed into a wax in The PRC. Furthermore, the NCA argues that, because The PRC is a non-market economy and has a history of dumping candles in the U.S. market, it is reasonable to expect that the palm wax candles will be sold in the United States market at dumped prices directly in competition with the U.S. produced candles. Therefore, the NCA claims that the cost of palm wax, compared to petroleum wax, is irrelevant.

The NCA points out that Home Interiors claims that the Department's past practice confirms that candles made of waxes other than petroleum wax should be excluded. However, the NCA maintains that the issue is not whether Home Interiors' candles are petroleum-derived, but whether they have the same or similar intrinsic qualities and essential characteristics when compared to petroleum wax candles. The NCA argues that the Department has never previously conducted an in-depth investigation of the chemical composition and physical characteristics of palm wax candles. For the same reasons, the NCA maintains that the physical and chemical attributes and the applications for which Home Interiors' candles are used are the same as the class or kind of merchandise subject to the Order. See Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty Investigation, 50 FR 39743 (September 30, 1985). Therefore, the NCA argues, in order to compete against petroleum wax candles, Home Interiors' candles must have the same physical appearance and the same or similar range of melt point, color, odor, and viscosity.

The NCA adds that the Commission concluded that, "based on different characteristics and uses for petroleum and beeswax candles, we determine that beeswax candles should not be included within the scope of the domestic like product." See USITC Final. The NCA maintains that the term "petroleum wax" in the Order is not limited to the derivation of the wax, but rather the chemical composition and physical characteristics and uses of the candles. As discussed above the NCA contends that Home Interiors' candles have the same intrinsic qualities and essential

characteristics and uses as the subject imports, which are the criteria used by the Commission to determine like product. Moreover, the NCA argues, in contrast to the beeswax candles, the palm wax candles have a similar chemical composition and the same physical characteristics and uses as petroleum wax candles. The NCA quotes Russ Berrie's expert, Mr. Roger J. Crain, from the memorandum attached to Russ Berrie's comments in the Leader Light scope investigation, who concedes that "vegetable wax and petroleum (paraffin) wax are similar."<sup>4</sup> Citing numerous Commission reports, the NCA argues the "like product" definition requires "similar" not "same." See the NCA's June 28, 2002 submission. Nevertheless, the NCA maintains the essential characteristic for which Home Interiors' candles are purchased and used, to provide light, heat, or scent, remains the same.

The NCA argues that the Department's reference to candles composed of 50 percent petroleum wax can only apply to candles that are over 50 percent beeswax, because the NCA believes that the 50 percent rule was based upon the Commission's beeswax exclusion. The NCA asserts that the 50 percent rule does not apply to other waxes that were not excluded and have the same intrinsic qualities and physical characteristics and uses as petroleum wax candles. The NCA argues that the Commission's conclusion was based on the following:

They are manufactured by U.S. producers principally for religious and specialty markets, and are priced considerably higher than petroleum wax candles. Ninety-five percent of beeswax candle shipments from 1983 to 1985 were to churches and religious dealers. The remaining 5 percent were beeswax dinner candles. Ninety-four percent of the domestic beeswax shipments were for wax-filled glass containers used in religious observances and "other" miscellaneous candles, such as straight-sided alter and sanctuary candles.... Based on different characteristics and uses for petroleum and beeswax candles, we determine that beeswax candles should not be included within the scope of the domestic like product.<sup>5</sup>

The NCA notes that, in contrast to beeswax candles, Home Interiors' palm wax candles have the same physical characteristics and uses as petroleum wax candles and, therefore, were not excluded from the scope of the domestic like product.

Next, the NCA quotes considerations for determining "like product" as discussed by the Commission:

The legislative history of title VII makes it clear that "the requirement that a product be 'like' the imported article should not be interpreted in such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to

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<sup>4</sup> See Mr. Crain's memorandum attached as Exhibit 1 to the NCA's June 28, 2002, submission, at 6.

<sup>5</sup> See USITC Final at 5-6.

the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under investigation.” S. Rep. No. 249, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. 90-91 (1979). The Commission has consistently defined “like product” as one having the same intrinsic qualities and essential characteristics and uses as the subject imports.<sup>6</sup>

Therefore, the NCA maintains that Home Interiors’ candles have the same intrinsic qualities and essential characteristics and uses as the subject imports. The NCA argues that what is of primary importance to the Commission in its exclusion is that beeswax candles were principally used in religious and speciality markets. Moreover, the NCA states that only 5 percent of the beeswax candles competed against the subject products, thus, sales of beeswax candles were limited to a very special niche in the candle market. See USITC Final at 5-6. The NCA claims that the Commission found that beeswax candles do not compete with petroleum wax candles. See USITC Final at 5-6. Furthermore, the NCA claims that the fact that beeswax and petroleum wax candles did not compete was the overriding factor that led to exclusion. In contrast, the NCA asserts that palm wax candles are aimed at the same mass market as the typical petroleum wax candle.

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. The NCA concludes by stating that Home Interiors 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 the legal authority to narrow the scope of the Order.

### **Legal Framework**

The Department examines scope requests in accordance with the Department’s scope regulations, which may be found at 19 CFR 351.225 (2004). 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 Commission. See 19 CFR 351.225(k)(1). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the product is covered by the Order. See 19 CFR 351.225(d).

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<sup>6</sup> See USITC Final at 4, n.4.



Conversely, where the descriptions of the merchandise are *not* dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: i) the physical characteristics of the merchandise; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; iv) the channels of trade in which the product is sold; and v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis, with or without formal inquiry, after consideration of all evidence before the Department.

Pursuant to 19 CFR 351.225(k)(1), the Department examined the description of the subject merchandise from the petition, the initial investigation, and the Commission's determinations. In its petition of September 4, 1985, the NCA requested that the investigation cover:

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

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

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

{c}ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers.

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

The Commission adopted a similar definition of the "like product" subject to its determinations, noting that the investigations did not include "birthday, birthday numeral and figurine type candles." See USITC Final, at 4, note 5, and A-2. The Commission stated that "we determine that the domestic like product shall consist only of petroleum wax candles." See USITC Final, 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 id., at 4-5.

The Department clarified the scope of the Order in relation to certain novelty candles. See Russ Berrie, 57 F. Supp. 2d at 1194. In 1987, the Department issued a notice to CBP in connection with a scope ruling which provides:

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

See Customs Notice.<sup>7</sup>

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 November 2001, the Department changed its interpretation of the scope of the Order. See J.C. Penney November 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.”<sup>8</sup> In the J.C. Penney November Ruling, the Department revised this practice because the former practice had the effect of narrowing the broad coverage of the first sentence of the Order’s scope. The list

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<sup>7</sup> The Customs Notice was a notice issued by the Department to the U.S. Customs Service (now known as Customs and Border Protection (CBP)) in connection with a July 1987 scope determination concerning an exception to the Order for novelty candles.

<sup>8</sup> See, e.g., Endar January Ruling (In the Endar January Ruling, the Department determined that a “dragonfly” candle, in the shape of a rough-hewn stone with a dragonfly carved on top, should not be included within the scope because it is of a shape not specifically listed by the language of the scope), and in Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); American Drug Stores, Inc. (March 16, 1998), the Department determined that a sphere or ball-shaped candle should not be included within scope because it is a shape not specifically listed by the language of the scope.

of shapes in the second sentence of the Order's scope does not provide a textual basis for such a narrowing of the coverage of the first sentence of the Order's scope.

This approach of evaluating candles in light of the entire text of the Order's scope is in keeping with Duferco Steel, in which the court held that a better approach in scope rulings is to avoid subjective issues of intent and, instead, look to the petition's language to determine whether the class or kind of merchandise at issue was expressly included. See Duferco Steel, Inc. v. United States, 146 F. Supp. 2d 913 (CIT 2001) (Duferco Steel).

Although the specific scope decision in Duferco Steel was overturned by the United States Court of Appeals of the Federal Circuit (CAFC) in Duferco Steel, Inc. v. United States, 296 F.3d 1087 (Fed. Cir. 2002) (Duferco Steel II), the ruling by the CAFC does not undermine the Department's scope determination in the J.C. Penney November 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.”<sup>9</sup> 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.”<sup>10</sup> Thus, as applied to this Order, there is no requirement, nor is it possible, for all the shapes of candles to be listed.<sup>11</sup> In fact, if the list were exhaustive, there would have been no need for the Department to render a decision on novelty candles or any other candle that was not explicitly listed as a shape in the scope of the Order. However, the Department did issue the novelty candle exception, which offered a narrowly construed exception and left all other petroleum wax candles from the PRC covered by the Order.

When determining whether a particular novelty candle is within the scope of the Order, the Department will first determine whether the candle is made of petroleum wax. If the candle is made of petroleum wax, the Department will look to see whether the shape of the candle falls within those shapes listed in the second sentence of the scope as defined in the Order, i.e., “tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled

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<sup>9</sup> Novosteel SA v. United States, 284 F.3d 1261, 1264 (Fed. Cir. 2002).

<sup>10</sup> Id.

<sup>11</sup> 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”).

containers.” If the Department determines that a candle is one of these shapes, it is within the scope of the Order.

If the Department finds that a candle’s shape is not among the shapes listed in the second sentence of the scope as defined in the Order, i.e., taper, spiral, straight-sided dinner candle, round, column, pillar, votive, and various wax-filled containers, then the candle will be evaluated to determine whether it is a novelty candle. For a candle to qualify for this exception, the characteristic which is claimed to render it a novelty candle (i.e., the shape of an identifiable object or a holiday-specific design), should be easily recognizable in order for the candle to merit not being included within the scope of the Order. Specifically, among other determining factors, the Department will examine whether the characteristic is identifiable from most angles and whether or not it is minimally decorative, e.g., small and/or singularly placed on the candle. If the identifiable object or holiday-specific design is not identifiable from most angles, or if the design or characteristic is minimally decorative, the Department may determine that the candle should be included within the scope of the Order. See J.C. Penney May 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 January Ruling. If the candle does not possess characteristics set out in the 1987 novelty candle exception, and it is a scented or unscented petroleum wax candle made from petroleum wax and having a fiber or paper-cored wick, the Department will determine that the candle is within the scope of the Order.

### **Analysis of Home Interiors’ Candles**

With respect to the involved scope request, the Department finds that, for the reasons outlined below, Home Interiors’ set of six “rose blossom” floater candles and Home Interiors’ set of three “American heart” floater candles are included within the scope of the Order. We find that these candles are included within the scope of the Order because these candles are not identifiable objects. The candles also do not qualify for the holiday novelty exception, because these candles do not have scenes and symbols visible from multiple angles that are exclusively associated with any particular holiday. The Department further finds that the other three Home Interiors’ candles, the set of three “sunflower” floater candles and Home Interiors’ two sets of 12 “baked apple pie” and “vanilla” tea light candles are outside the scope of the Order, because the candles in the “sunflower” floater candle set are identifiable as sunflowers from multiple angles, and the “baked apple pie” and “vanilla” tea light sets are comprised of less than 50 percent petroleum wax and thus fall outside of the scope of the Order. Our analysis of each of these candles is provided below.

### **“Sunflower” Floater Candle Set (Item Number 12116)**

The first set of candles is a set of three individual “sunflower” floater candles (item number 12116) and each candle is described by Home Interiors’ as a three-dimensional sunflower which resembles a cut flower bloom when floated on water. Home Interiors’ states that each bright yellow petal overlaps the next with clearly defined jagged tips and the candle has two green leaves extending out of both sides of the flower shape with clearly visible veins.

We agree with Home Interiors' arguments that the "sunflower" floater candle set (item number 12116) was in the shape of an identifiable object and, therefore, should not be included within the scope of the Order. Pursuant to the Department's change in practice stated in the J.C. Penney May 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. 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. In the instant case, the "sunflower" floater candle is a petroleum wax candle with a fiber-cored 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 and our interpretation set forth in the J.C. Penney May Ruling.

Based on Home Interiors' comments, we examined whether each of the candles in the "sunflower" floater candle set (item number 12116) is in the shape of an identifiable object, namely, a sunflower, which Home Interiors claims the candles resemble. We found that these candles contain a flower design which is easily recognizable and sufficiently detailed to be identifiable as a sunflower from multiple angles. The "sunflower" candles contain leaves which cover the bottom of the candles and extend up along the sides of the candles, and the leaves are green with visible veins and brown accents, making them highly detailed. Additionally, the yellow petals of the flower consist of layers of petals which are decorated with two tones of yellow, etched veins and petals that are not consistently one size, similar to a real sunflower. The petals extend down the side of the candles and are visible from both above the candle and when the candle is viewed from the side. The yellow and brown center of each candle is textured to represent the seeds and pollen of a sunflower. When viewed from multiple angles, the "sunflower" floater candle has an identifiable flower motif and, given that the flower design is identifiable when the candle is viewed from above and from the side, we find that the "sunflower" floater candle is identifiable as a sunflower from multiple angles. See San Francisco Candle Co. v. United States, 265 F. Supp. 2d 1274 (May 14, 2003) (San Francisco Candle Ruling). Therefore, because this candle is easily recognizable and identifiable as a sunflower, Home Interiors' "sunflower" floater candle set (item number 12116) falls under the identifiable object novelty exception, and is therefore outside of the scope of the Order.

#### **"Rose Blossom" Floater Candle Set (Item Number 11538)**

Home Interiors describes the "rose blossom" floater candle (item number 11538) as a set of six, three-dimensional cut rose blossom candles with molded petals which overlap with defined edges which undulate. Home Interiors states that the largest portion of the outside rim of the candle represents six curved petals, each separated by the next, and the inside row of petals is another raised row of five petals also separated by defined, molded lines. Finally, Home Interiors claims that the center of the blossom continues with overlapping petals where the very center contains the wick. The "rose blossom" set contains one purple, one light pink, and one dark pink candle. The "rose blossom" is visible only when viewing the candles from the top. The majority of side views do not reveal that this candle is a "rose blossom." When viewed from the sides, the petals are not detailed enough to represent a flower, and it is not apparent that the candle is a rose blossom. Only when viewing the candle from above, due to the layers of petals which get closer together at the center of the candle, can one discern that the candle resembles a rose blossom.

We disagree with Home Interiors' arguments that the set of six "rose blossom" floater candles (item number 11538) are in the shape of identifiable objects and, therefore, should not be included within the scope of the Order. Pursuant to the Department's change in practice stated in the J.C. Penney May 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. 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. In the instant case, the "rose blossom" floater candles are petroleum wax candles with fiber-cored wicks. Therefore, we must evaluate whether the characteristics of these candles bring them outside of the scope of the Order pursuant to the novelty candle exception detailed in the Customs Notice and our interpretation set forth in the J.C. Penney May Ruling.

Based on Home Interiors' comments, we examined whether the set of six "rose blossom" floater candles (item number 11538) are in the shape of an identifiable object, namely, a rose blossom, which Home Interiors claims the candles resembles. We found that these candles contain petals, which are only visible when the candle is viewed from above. However, when the candles are viewed from the sides, the petals and, thus, the shape of the flower is not discernible. Unlike the "sunflower" floater candle set, the "rose blossom" floater candles do not have sufficient detail to qualify as identifiable objects. The petals are not textured, they are one solid color and are not identifiable as petals from multiple angles. Additionally, the candle could easily be mistaken for any number of plants, flowers, or other objects. When viewed from multiple angles, these "rose blossom" floater candles do not exhibit any identifiable rose blossom motif. Given that the flower design is only identifiable when the candles are viewed from above, we find that the "rose blossom" floater candles from this set are not identifiable as rose blossoms from multiple angles. See San Francisco Candle Ruling. Therefore, because these candles are not easily recognizable and identifiable as rose blossoms, Home Interiors' "rose blossom" floater candle set (item number 11538) does not fall under any exception, and is therefore within the scope of the Order.

#### **"American Heart" Floater Candle Set (Item Number 12117)**

Home Interiors describes the "American heart" floater candle set (item number 12117) as a set of three heart-shaped floating candles, which are decorated on the top with vertical red and white stripes, and a solid blue area with approximately 10 white stars, which are made to resemble an American flag design.

Home Interiors argues that the candles in this set are specific to both the 4<sup>th</sup> of July holiday and the Christmas holiday. Specifically, Home Interiors claims the "American heart" floater candles clearly depict an American flag, which they claim is the symbol for the 4<sup>th</sup> of July, a national holiday and special event. They further argue that the holiday theme is apparent in that the candles are surrounded by Uncle Sam and sparklers for advertising and marketing purposes. They add that the only other market for these candles is in conjunction with a patriotic Christmas motif which is also evidenced in the candles' advertisements which show the candles displayed with a patriotically dressed Santa and what Home Interiors labels as other symbols of the Christmas holiday, many of which are specifically manufactured to hang on Christmas trees.

With respect to the novelty candle argument, we find that the involved candles do not qualify for the holiday exception. The Department has ruled in the past that candles not containing “scenes or symbols specifically related to a holiday or other special event” are within the scope of the Order, because their use is not attributable solely to that specific holiday. See, e.g., Russ Berrie Scope Ruling; see also Final Scope Ruling - Petroleum Wax Candles from the PRC; Star Merchandise Inc. (July 27, 1994) (Star Ruling) (the Department determined not to include a “snowman” candle within the scope of the Order where the candle was in the shape of a snowman with a red Santa hat, cradling a small gift in one arm, and a small Christmas tree in the other, finding that the snowman was not exclusively associated with Christmas.) Nothing about the candles provide any indication that the candle is a Christmas candle or unique to any other particular holiday, specifically the 4<sup>th</sup> of July. The use of the American flag as a patriotic symbol is not limited to the 4<sup>th</sup> of July. Indeed, the flag is a symbol which is flown year round to represent patriotism and thus cannot be held to be a symbol unique to the 4<sup>th</sup> of July. There are no scenes or symbols or motifs that are clearly limited to the Christmas holiday or the 4<sup>th</sup> of July.

We agree with the NCA’s argument that both the heart design and the red, white, and blue flag motif are ubiquitous and can be used throughout the year. Specifically, we agree with the NCA’s argument that the red, white, and blue flag motif can be used as a demonstration of patriotic commitment and that the use of this candle is not limited to any specific holiday.

We also disagree with Home Interiors’ claim that this candle also qualifies for the Christmas holiday novelty exception because the only other market for these candles is in conjunction with a patriotic Christmas motif, which is evidenced in the candles advertisements where they are displayed with a patriotically dressed Santas and other Christmas-type symbols. In other words, Home Interiors’ argument is stating that the “American heart” floater candle should qualify for the holiday novelty exception because the decorations included in some advertisements of these candles have a Christmas theme. We find this argument to be unpersuasive. Home Interiors is claiming that surrounding a candle that has no Christmas theme whatsoever with objects that may be related to Christmas is sufficient to qualify the candle for the holiday novelty exception. We disagree. There are no scenes or symbols or motifs that are remotely related to the Christmas holiday associated with Home Interiors’ “American heart” floater candle. In order to qualify for the holiday novelty exception, the scenes, symbols, or motifs incorporated into a candle need to be specific to a particular holiday. Thus, we find that the involved candles do not qualify for the 1987 novelty candle exception, and thus are included within the scope of the Order.

**“Baked Apple Pie” Tea Light Candle Set (Item Number 11611) and “Vanilla” Tea Light Candle Set (Item Number 11612)**

Home Interiors describes their set of 12 “baked apple pie” tea light candles and set of 12 “vanilla” tea light candles (item numbers 11611 and 11612) as scented tea lights made from palm oil and paraffin wax which are scented to smell like baked apple pie and vanilla, respectively. Home Interiors contends that the “baked apple pie” and “vanilla” palm oil and paraffin wax tea light candles in plastic cups are used in various decorative candle holders offered by Home Interiors.

The test results submitted by Home Interiors in their August 29, 2002, submission included laboratory test results issued by SGS U.S. Testing Company, Inc., which concluded that the “baked apple pie” tea light contained 32.0 percent paraffin<sup>12</sup> and 66.2 percent palm oil, while the “vanilla” tea light contained 32.9 percent paraffin and 66.0 percent palm oil. The laboratory results note that the paraffin content was determined according to the SGS Hong Kong method for paraffin wax content; however, the testing laboratory does not indicate in its results what testing method the testing laboratory used to analyze Home Interiors’ candles.<sup>13</sup> The NCA argues in its comments that the test results submitted by Home Interiors are not acceptable because there is no indication that the tests were conducted using appropriate Customs testing methods. In past rulings, the Customs testing methods, 34-07 and 34-08, were considered acceptable testing methods by the Department. See Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China (A-570-504), Leader Light, (December 12, 2002) (Leader Light December Ruling); see 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 November Ruling). According to the NCA, in these scope proceedings, only laboratory tests conducted in the United States and using Customs test methods that are acceptable for determining these candles’ components can be used to determine whether a candle is subject to the Order. Home Interiors has not rebutted this claim.

The test certificate submitted as part of Home Interiors’ August 29, 2002, scope request does not indicate the testing methodology employed. It has been the Department’s practice to require that parties filing a scope request submit test results from an independent testing facility in the United States in order to establish that an acceptable testing methodology was used. See Leader Light December Ruling. We agree with the NCA that the test results submitted by Home Interiors in its August 29, 2002, scope request do not fulfill this requirement because the testing facility used by Home Interiors was not an independent testing facility located in the United States. This requirement indicates to the Department the testing methods employed so that the Department is able to determine whether these testing methods are acceptable to determine the candles’ composition. Additionally, the SGS U.S. Testing Company, Inc. test certificate does not indicate the test methods employed, thus we are unable to determine from that certificate whether an acceptable test methodology (e.g., Customs Methods 34-07 or 34-08) was used to determine the candles’ composition. Thus, because the August 29, 2002, laboratory results are not conclusive, the Department is making its determination based solely on the December 16, 2004, laboratory test results.

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<sup>12</sup> While Home Interiors 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.”).

<sup>13</sup> See the testing certificate which is included as part of Home Interiors’ August 29, 2002, request.



In its December 16, 2004, submission, Home Interiors included laboratory test results issued by the SEA, which is accredited by CBP under Chapter 34 of the HTSUS. SEA was requested to conduct analyses of the “baked apple pie” and “vanilla” tea lights to determine the percentage of paraffin wax in the submitted tea light candles using United States Customs Laboratory (USCL) methods 34-07 and 34-08. SEA performed two separate tests on four candles, which were two samples of the “baked apple pie” tea light candles and two samples of the “vanilla” tea light candles, and found that the first sample of the “baked apple pie” tea light candles was comprised of 37.5 percent palm oil and 56 percent paraffin wax. SEA found that the second sample of the “baked apple pie” tea light candles was comprised of 42.3 percent paraffin wax and 54 percent palm wax. SEA’s first test of the “vanilla” tea light candles found that the candle consisted of 33.7 percent paraffin wax and 67 percent palm wax. The second test of the “vanilla” tea light showed the content of the candle to be 32.9 percent paraffin wax and 67 percent palm wax. These results are the average of two runs completed for each of the four candles.<sup>14</sup>

It has been the Department’s practice to require that parties filing a scope request submit test results from an independent testing facility in the United States in order to establish that an acceptable testing methodology was used. See Leader Light December Ruling. In past rulings, Customs testing methods, 34-07 and 34-08, were considered acceptable testing methods by the Department. See Leader Light December Ruling; see Atico November Ruling. We therefore find that the test results submitted by Home Interiors in its December 16, 2004, submission fulfill those requirements.

The Department has reviewed the information on the record, including the description of these products as well as the test certificates included in Home Interiors’ August 29, 2002, and December 16, 2004, submissions. We agree with Home Interiors that these products are not included within the Order based on the laboratory analysis from SEA because these candles contain less than 50 percent petroleum wax content.<sup>15</sup>

We note that the Home Interiors scope inquiry is separate from the anticircumvention inquiries initiated by the Department on the apparent petroleum content of mixed wax candles. Specifically, on March 7, 2005, the Department published in the Federal Register a notice of initiation of anticircumvention inquiries in the antidumping duty order on petroleum wax candles from the PRC. See Petroleum Wax Candles From the People's Republic of China: Initiation of Anticircumvention Inquiries of Antidumping Duty Order, 70 FR 10962 (March 7, 2005). The anticircumvention inquiries were initiated in order to determine whether mixed wax candles composed of petroleum wax and varying amounts of either palm or vegetable-based waxes can

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<sup>14</sup> Home Interiors submitted two samples of the “baked apple pie” tea light candles and two samples of the “vanilla” tea light candles. SEA ran two tests on each of the two samples of each tea light and the reported number is the average of the two tests performed.

<sup>15</sup> However, the Department notes that, while the aforementioned test results may assist the Department in making its scope ruling, such results may not be dispositive of the exact composition of candles of this item number when such candles are presented at a future time for entry at one of the several U.S. Customs ports of entry.

be considered subject to the Order under either the minor alterations provision or the later-developed merchandise provision of section 781(c) and (d) of the Tariff Act of 1930, as amended. Although the Home Interiors scope inquiry and the anticircumvention inquiries appear similar, they are separate proceedings and address separate issues. We note that in the course of these anticircumvention inquiries, the Department will examine whether candles with a similar petroleum wax or non-petroleum wax content as the candles involved in this scope inquiry may be subject to the Order.

**Recommendation**

We recommend finding that following candle set (#1) is not included within the scope of the Order because it is an identifiable object.

**1. “Sunflower” floater candle set (item number 12116)**

Additionally, we recommend finding that the following candle sets are included within the scope of the Order, because the candles in these candle sets (#2 and #3) are petroleum wax candles and not in the shape of identifiable objects because their shape cannot be ascertained when viewed from multiple angles. We further recommend finding that candle set (#3) is included within the scope of the Order because, in addition to not being an identifiable object, it lacks any scenes or symbols that are exclusively associated with a particular holiday.

**2. “Rose blossom” floater candle set (item number 11538)**

**3. “American heart” floater candle set (item number 12117)**

Finally, we recommend finding that the following candle sets are not included within the scope of the Order, because these candle sets (#4 and #5) are of a different class or kind of merchandise than that covered by the Order.

**4. “Baked apple pie” tea light candle set (item number 11611)**

**5. “Vanilla” tea light candle set (item number 11612)**

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

\_\_\_\_\_ Agree

\_\_\_\_\_ Disagree

\_\_\_\_\_  
Barbara E. Tillman  
Acting Deputy Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date