A-570-504
Scope Review
**PUBLIC DOCUMENT**
DAS III (7): JAF

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On August 24, 2001, the Department of Commerce (the Department) received a request from Atico International, Inc. (Atico) for a scope ruling on whether seven types of candles it imports are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

In accordance with 19 CFR 351.225(k)(1), the Department has determined that certain of these seven types of candles fall 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 the U.S. Customs Service of this decision. If you have any questions, please contact Sally C. Gannon at (202) 482-0162 or Julio Fernandez at (202) 482-0961.

Sincerely,

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

Enclosure

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MEMORANDUM FOR: Joseph A. Spetrini
Deputy Assistant Secretary
Enforcement 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); Atico International, Inc.

**Summary**

On August 24, 2001 the Department of Commerce (the Department) received a request from Atico International, Inc. (Atico) for a scope ruling on seven types of candles (one "snowball" candle, one "Christmas cake" candle, one "angel" candle, two "glowing" candles, three "embossed" candles, three "angel bear" candles, and three "beeswax" candles) to determine if they 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). In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that certain of these seven types of candles are covered by the scope of the antidumping duty order on petroleum wax candles from the PRC.

**Background**

Atico filed its request for a scope ruling in proper form on August 24, 2001 and submitted two different sets of tests results on November 21, 2001 and February 15, 2002. On October 5, 2001, January 23, 2002, January 29, 2002, and March 26, 2002, the National Candle Association (NCA), an interested party in this proceeding, filed comments regarding Atico's request and its testing results. Memorandums regarding the Department's decisions to extend the 45-day deadline for this scope inquiry have been placed on the record. See Memorandum to the File through Sally C. Gannon from Julio A. Fernandez, Petroleum Wax Candles from the People's

Republic of China: Scope Inquiry from Atico International, Inc., (October 11, 2001); see also Memo to the File through Sally C. Gannon from Brett L. Royce, Petroleum Wax Candles from the People's Republic of China: Change in Practice Regarding Scope Reviews as a Result of the JCPenney Purchasing Corporation Ruling, (November 28, 2001).

In its comments regarding Atico's candles, the NCA requested that Atico submit empirical evidence regarding the composition of the beeswax candles. In a letter dated October 11, 2001, the Department requested that Atico provide test results regarding the composition of beeswax for three candles under Item No. H74Q-8230, no later than October 25, 2001. On October 17, 2001, Atico requested an extension of the deadline to submit these test results, and the Department subsequently extended the deadline to November 23, 2001. Atico submitted test results for its beeswax candles on November 21, 2001. In its January 23, 2002 and January 29, 2002 submissions, the NCA contested the method of testing used for Atico's November 21, 2001 test results.

On February 1, 2002, the Department contacted Atico, in writing, providing Atico an opportunity to submit rebuttal comments to the NCA's October 5, 2001, January 23, 2002, and January 29, 2002 submissions, no later than February 8, 2002. Due to certain difficulties faced in obtaining additional testing for its beeswax candles, Atico addressed the NCA's concerns with regard to the laboratory analysis in a submission dated February 15, 2002. Along with its submission, Atico provided revised test results pursuant to the NCA's recommendations of appropriate testing methods. In its March 26, 2002 comments, the NCA contested the testing results submitted by Atico on February 15, 2002.

The regulations governing the Department's antidumping scope determinations are found at 19 CFR 351.225. On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (the Commission). See 19 CFR 351.225(k)(1). 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 Atico's request in accordance with 19 CFR 351.225(k)(1) and the Department finds that the descriptions of the products contained in the

petition, the final determinations of the Secretary (including prior scope determinations) and the Commission, the initial investigation and the antidumping duty order are, in fact, dispositive. Therefore, the Department finds it unnecessary to consider the additional factors set forth at 19 CFR 351.225(k)(2).

Documents and parts thereof from the underlying investigation deemed relevant by the Department to this scope ruling were made part of the record of this determination and are referenced herein. Documents that were not presented to the Department, or placed by it on the record, do not constitute part of the administrative record for this scope determination.

In its petition of September 4, 1985 the 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 (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. Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty Investigation, 50 FR 39743 (September 30, 1985); Preliminary Determination of Sales at Less Than Fair Value, 51 FR 6016 (February 19, 1986); Final Determination; and Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986).

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" (Determinations of the Commission (Final), USITC Publication 1888, August 1986, at 4, note 5, and A-2 (Commission Determination)).

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

**Atico's Scope Request**

Atico argues that three of its products, under item no. H74Q8230 and described as a three-inch by three-inch pillar candle, twin 10-inch tapered candles, and a small, votive candle, are made of beeswax and not covered by the Order's scope because their majority component is not petroleum wax.

Atico indicates that the remaining candles subject to its request are petroleum wax candles which qualify for the novelty candle exception. It argues that its "snowball" candle, item no. H74Q8215, is a Christmas snowball with pearlized glitter and a five-inch diameter. Atico claims that the snowball shape and color are reminders of the winter holiday season. Atico describes its "Christmas cake" candle as a five-inch by four-inch candle which comes in three colors–red, white, or green. Atico describes its "angel" candle as six-inches by six-inches, with the following: gold trim with holly leaves and cherubs encircling near both the top and bottom, a gold cupid angel encircling the middle, and a gold ribbon bow on top of the shrink wrap. Atico argues that the holly leaves and berries indicate the festivities of the Christmas holiday.

Atico describes its "glowing" candle as a two and a half-inch diagonal glowing candle in six styles. It argues that this candle is in the shape of a ball or sphere, not a "round," which would otherwise be included within the scope of the Order. Atico indicates that its "embossed" candles are seven-inch Christmas candles in three styles, containing the names of "JOY," "NOEL," and "PEACE," and with a white base with gold-painted color. Atico states that all three candles are only sold for, and intended to be used during, the Christmas season. Lastly, Atico describes its "angel bear" candles as three and a quarter-inch candles in different styles, including a bear with a flute, a bear with a banjo, and a bear with a trumpet. Atico included a sample of each candle with its request.

In response to the Department's request, Atico first submitted test results on its beeswax candles on November 21, 2001. These test results were performed by a U.S. laboratory utilizing a Fourier Transform Infrared Spectroscopy (FTIR) scan. The test results indicated that each

sample--of tapers, votives, and pillars--was determined to contain "approximately 95% beeswax." Pursuant to the NCA's complaints that the FTIR scan was inadequate (see the section on the NCA's comments below), Atico submitted new test results on February 15, 2002. In its letter, Atico indicated its agreement with the NCA's test method recommendations. The new test results submitted indicated that the pillar and votive samples contained beeswax, pursuant to an FTIR scan; they further indicated, pursuant to Customs method 34-07, the presence of 41.7 percent paraffin in the pillars and 19.8 percent paraffin in the votives (presumably the tapers were not tested for this report).

**The National Candle Association's Comments**

In its October 5, 2001 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 U.S. Court of International Trade conclusion, with regards to the novelty exception, that ". . . a candle must be specifically designed for use only in connection with a religious holiday or special event to fall within the novelty candle exception." See Russ Berrie & Co., Inc. v. United States, 57 F. Supp. 2d 1184, 1194 (CIT July, 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. The NCA commented on all of Atico's subject candles.

With respect to Atico's "snowball" candle, the NCA asserts that nothing inherent in the candle's design limits its use to the holiday season, and, thus, it does not qualify for an exclusion as a holiday novelty candle. In support of its argument, the NCA notes that the Department has found that a raised-relief winter scene with Santa Claus and elves is limited to use during the Christmas season, but that a candle with "Jingle Bells" alone is not specifically limited to Christmas, citing Final Scope Ruling–Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China; Watkins, Incorporated (February 14, 1995) and Final Scope Ruling–Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China-Two's Company (January 13, 1995). The NCA argues that the Department has denied exclusion to candles that depict scenes, symbols or items related to late fall and winter months, or mere generic decoration, such as flowers, leaves, berries, jingle bells, snow, or winter scenes. The NCA cites Final Affirmative Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China; Meijer, Inc. (September 8, 1997) (September 1997 Meijer Ruling), where the Department concluded "...that Meijer's bell, tree, reindeer and star candles do not contain scenes or symbols specifically related to a holiday or other special event, and their use is not attributed solely to the Christmas season." The NCA further maintains

that a snowball design is not limited to use only during the Christmas holiday and that scenes or symbols of the winter season alone are not included within the holiday exception.

Regarding Atico's "Christmas cake" candle, the NCA argues this candle is considered to be a pillar in the U.S. market, and should, therefore, not be excluded from the Order's scope. The NCA contends that the decorative effect on Atico's pillar and its red, white, or green colors will not limit its use to the Christmas holiday, as alleged by Atico. According to the NCA, the year-round ubiquity of the design and shape renders this candle meaningless as a holiday scene or symbol, and also the candle is in the shape of a pillar--not an identifiable object. The NCA states that the Department has been consistent in denying exclusion to pillars and tapers that have decorative designs that do not limit the use of the candle only to a specific holiday, citing Final Scope Ruling; Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); American Greetings (May 4, 2000) and Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Endar Corp. (January 11, 2000) (January 2000 Endar).

Turning to Atico's "angel" candle, the NCA notes that this candle is a round candle, which is specifically included within the scope of the Order. The NCA argues that the smaller trim designs of gold leaves and cherubs at the top and bottom of the candle are not holly leaves because holly leaves are green and have red berries. Regarding the large angel and smaller cherub designs, the NCA contends that Atico has purposely chosen generic angel designs that do not involve Christmas events and can be used at anytime. Furthermore, according to the NCA, angel designs are not per se Christmas designs and are popular and used in many ways all year round. The NCA states that the Department has consistently held that the year-round ubiquity of the angel design renders it meaningless as a holiday scene or symbol, citing Final Scope Ruling; Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); JCPenney Purchasing Corporation (JCPPC) (May 21, 2001).

The NCA argues that Atico's "glowing" candle is similar to Endar Corporation's "round Chinese lantern" candles, which the Department has determined to be within the scope of the Order because they are rounds. In support of its assertion, the NCA cites to January 2000 Endar and Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Endar Corporation (May 11, 2000) (May 2000 Endar). The NCA further notes that there is nothing inherent in the design of the candle that would qualify it for use only in connection with a holiday.

The NCA also argues that two of Atico's three "embossed" candles, with the words "JOY," "NOEL," and "PEACE," are within the scope of the Order. Specifically, the NCA cites the Final Affirmative Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China (A-570-504); Meijer Inc. (December 15, 1997) (December 1997 Meijer Ruling), where, according to the NCA, the Department determined that "JOY" and "PEACE" candles do not contain scenes or symbols specifically related to a holiday or other special event and that their use is not attributed solely to the Christmas season. The NCA notes that the "JOY" and "PEACE" candles are straight-sided columns or pillars, specifically included

within the Order's scope, and that candles bearing these ubiquitous words will be used year-round. Citing December 1997 Meijer Ruling, the NCA states that it does not oppose the exclusion of the "NOEL" candle as the Department has concluded that this word qualifies a candle as a novelty candle, using designs specifically for use only in connection with Christmas.

With respect to Atico's "angel bear" candles, the NCA notes that Atico has not overtly stated the basis on which it seeks to exclude these candles. However, the NCA argues that a bear design is not limited to any specific holiday or event and that, therefore, such a candle cannot qualify as a holiday candle.

The NCA notes that Atico'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. It 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 Atico 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.

In its comments filed on January 23, 2002 and January 29, 2002, the NCA argues that the test results conducted by Atico regarding the beeswax composition of certain candles are insufficient, noting that the testing methods used are not capable of properly examining individual components of Atico's candles. Specifically, the NCA asserts that the information provided by Atico to the Department is the result of FTIR, a method that cannot accurately measure beeswax composition in candles because it does not measure the components that are present in paraffin or beeswax candles. The NCA also argues that Atico should have conducted a gas chromatograph/mass spectrometry test prior to the FTIR which, unlike FTIR, has the ability to break down very complex mixtures into their component parts and would differentiate between paraffin and beeswax contents. As a result, the NCA, in its comments, contends that valid testing should be conducted on Atico's beeswax candles using methods in use by Customs for testing the quantity of paraffin in beeswax and other waxes, namely methods 34-07 or 34-08. These methods identify whether components other than petroleum wax are present in the sample candle, by separating the sample into its various components. According to the NCA, test method 34-07 does not use the FTIR at all; test method 34-08 uses a gas chromatography or gas chromatography/mass spectrometry test, then column chromatography, followed by FTIR as the third step.

In its March 26, 2002 comments, pursuant to Atico's submission of its February 15, 2002 test results, the NCA argues that Atico's test results do not support its claim that its candles are beeswax candles because it does not report the percentage amount of beeswax in the candles. According to the NCA, although the report indicates that the two tested candles contained beeswax, it does not indicate whether the candles are comprised of 50 percent or more of

beeswax which was the benchmark for beeswax candles found by the Commission in its final determination (see the NCA's March 26, 2002 submission). Regarding the candle for which testing determined a 41.7 percent paraffin content, the NCA argues that this candle would have to be considered a paraffin/petroleum wax candle if the percentage of beeswax was less than the paraffin percentage. Regarding the candle for which testing indicated a 19.8 percent paraffin content, the NCA contends that, if the candle was made of other components that are the same or similar to paraffin/petroleum wax, the candle would be covered by the Order. Furthermore, the NCA argues that, if these candles contained less than 50 percent beeswax, they could not be considered beeswax candles. The NCA reiterates that the shapes of Atico's beeswax candles--tapers, pillars and votives–are specifically included within the scope of the Order.

**Analysis**

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."

The Department has changed its practice on this issue. In past scope rulings, the Department has determined that candles not of a shape listed by the language of the Order's scope were outside the scope. See, e.g., January 2000 Endar ("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); American Drug Stores, Inc. (Mar. 16, 1998) (sphere or ball shaped candle not within scope because it is 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); San Francisco Candle Co. (June 10, 1993) (ball shaped candle not within scope because it is of a shape not listed by the scope). The reason for the change is that, upon review of the text of the scope of the Order, the text of the first sentence of the scope covers "scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks." The text following this broad inclusive sentence provides a list of shapes, which list is not modified by any express words of exclusivity. The result of our prior practice of excluding candles of a shape other than those listed was inconsistent with the fact that such candles were "scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks." We have now determined that this practice was incorrect because it had the effect of narrowing the broad coverage of the first sentence of the Order's scope. The list of shapes in the second sentence of the Order's scope does not provide a textual basis for such a narrowing of the coverage of the first sentence of the Order's scope. Accordingly, in order to give full effect to the first sentence of the inclusive language of the scope, the Department normally will 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 Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); J.C. Penney (November 9, 2001) (JC Penney Ruling).

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

Although the specific scope decision in Duferco Steel has recently been overturned by the United States Court of Appeals of the Federal Circuit (CAFC) in Duferco Steel, Inc. v. United States, 01-1443 (July 12, 2002) (Duferco Steel II), we do not believe that the Court's decision undermines the Department's decision in JC Penney Ruling. The plain language of the scope of the Order clearly states "[c]ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks . . . sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers" fall within the scope of the Order. Thus, the Order offers a descriptive list of the shapes of candles falling 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."[1] It 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."[2] Thus, as applied to this Order, there is no requirement, nor is it possible, for all the shapes of candles to be listed.[3] In fact, if the list was exhaustive, there would have been no need for the Department to render a decision on novelty candles or any other candle that was not explicitly listed as a shape in the scope of the Order. However, the Department did render the novelty candle exception that

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[1]Novosteel SA v. United States, No. 01-1274, slip. op. at 2 (Fed. Cir., March 26, 2002) (reh'g and rehr'g en banc denied).

[2]Id.

[3]See Petroleum Wax Candles from China, USITC Pub. No. 3226, Investigation No. 731-TA-282 (Review), at 18 (August 1999) ("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.").

offered a narrowly-construed exclusion, leaving all other petroleum wax candles from the PRC covered by the Order.

If the Department determines that the candle is made from petroleum wax and has a fiber or paper-cored wick, but the candle possesses characteristics set out in the July 1987 novelty candle exception, it will fall outside the scope of the Order. In 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 exclusion from 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 does not qualify for exclusion from the Order under the novelty candle exception. 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); San Francisco Candle Co. (Feb. 12, 2001); Endar Corp. (Jan. 11, 2000). If a candle does not possess characteristics set out in the July 1987 novelty candle exception, and it is a scented or unscented petroleum wax candle made from petroleum wax and having fiber or paper-cored wick, the Department will determine that the candle is within the scope of the Order.

With regard to certain of Atico's candles, the Department cannot subscribe to Atico's interpretation of the Order. Some of Atico's candles are, however, eligible for the July 1987 novelty exception as either holiday novelty candles or novelty candles in the form of identifiable objects. With respect to the instant request, we find that, for the reasons outlined below, certain of the seven types of candles fall within the scope of the Order. Atico's candles are numbered in the order they appear in its August 24, 2001 request. Each candle's item number is also designated.

**1. Snowball Candle (Item No. H74Q-8215)**

This item is approximately five inches in diameter, and has "pearlized" glitter on all surfaces. Atico argues that the candle's shape and color are representative of the winter holiday season. However, we agree with petitioner that the snowball design in and of itself does not render this candle subject to the holiday novelty exclusion. A snowball is representative of the winter season but is not specific to a certain holiday or event as required by the July 1987 novelty candle exception. See September 1997 Meijer Ruling (where the Department concluded "...that Meijer's bell, tree, reindeer and star candles do not contain scenes or symbols specifically related to a holiday or other special event and their use is not attributed solely to the Christmas season"). As stated above, the language of the Order's scope indicates that the items to be included are "[c]ertain scented or unscented petroleum was candles made from petroleum wax and having fiber or paper-cored wicks." See Final Determination. Atico's snowball candle is an unscented petroleum wax candle with a fiber or paper-cored wick. Therefore, this candle should be included within the scope of the Order.

**2. Christmas Cake Candle (Item No. H74Q-8470)**

This candle is approximately five inches high and four inches wide, with stucco-like sides. The shape of this item falls within one of the delineated shapes outlined in the Order, a pillar. Furthermore, this candle does not contain designs specifically associated with the Christmas holiday and, thus, cannot be considered for exclusion under the novelty candle exception. This candle should, therefore, be included within the Order's scope.

**3. Angel Candle (Item No. H74Q-8261)**

This candle, which measures approximately six inches high and six inches wide, is decorated with a gold trim of raised holly leaves and berries. This trim encircles the top and bottom of the candle, and also includes cherubs. The subject candle is also decorated with a gold cupid angel encircling the middle of the candle. Atico maintains that this candle is indicative of the Christmas holiday season, and, thus, should be excluded from the Order under the holiday novelty exclusion.

With respect to the holly leaf and berry design, the Department considers that it must be both explicit and easily identifiable when viewing the candle from most perspectives. In other words, the holly leaf and berry image must be readily recognizable as the *traditional* holly leaf and berry, i.e., with the holly leaves and berries grouped together, and it must be more than "minimally decorative" in order to qualify the candle for the holiday novelty exclusion. In the instant case, the Department agrees that the holly leaves and berries, which are part of the gold trim that encircles the top and bottom of the candle, are clearly identifiable as holly leaves and berries, and are visible from most angles. Since the Court of International Trade has previously held that the holly sprig is a symbol associated with Christmas, and since removing the holly leaves and berries trim would cause significant damage to the candle, this candle should be excluded from the scope of the Order. This decision is consistent with Springwater Cookie & Confections v. The United States, 20 CIT 1192 (1996).

**4. Glowing Candles (Item No. H74Q-8312)**

Atico maintains that this item, a two and a half inch "glowing" candle, is in the shape of a ball or a sphere, not a "round," and should, therefore, be excluded from the Order's scope. The candle actually is a *wax-filled container* in the shape of a *round*, both specifically listed as included in the scope of the Order. Furthermore, we agree with the NCA that Atico's "glowing" candles are similar in shape to Endar Corporation's "round Chinese lanterns," candles that the Department previously determined to fall within the scope of the Order. See May 2000 Endar. Therefore, for these reasons, this candle should be included in the Order's scope.

**5. Embossed Candles (Item No. H74Q-9465)**

This candle, approximately seven inches high, comes in three styles with the words "JOY," "NOEL," and "PEACE," embossed in gold on all sides. Although Atico maintains that all three candles will be sold during the Christmas season, and are intended for use during this season, the Department has previously held that candles containing the words "JOY" and "PEACE" are

within the scope of the Order because the words "JOY" and "PEACE" are not indicative of a particular holiday and are not exclusively representative of Christmas. See December 1997 Meijer Ruling. In Final Scope Ruling, JCPenney Purchasing Corporation, (May 21, 2001), the Department held that candles with the word "NOEL" are outside the Order's scope, because the word "NOEL" is a direct reference to the Christmas holiday. Thus, for the same reasons Atico's candles embossed with the words "JOY" and "PEACE" should be included in the scope of the Order, and the "NOEL" candle should be excluded from the Order's scope.

**6. Angel Bear Candles (Item No. H74Q-8269)**

This item, approximately three inches high, is shaped as a bear, and comes in varying styles. Atico included three samples with its request: a bear with a flute, a bear with a banjo, and a bear with a trumpet. We agree with petitioners that the bear design in and of itself does not render this candle subject to the holiday novelty exemption. A bear is not limited to any specific holiday event. However, these items are in the shape of identifiable objects, viz., bears, and can be identified as such from most perspectives. Therefore, Atico's angel bear candles should not be included in the scope of the Order.

**7. "Beeswax" Candles (Item No. H74Q-8230)**

As part of its scope request, Atico submitted three types of candles it claims are made of beeswax. The samples included are a three-inch by three-inch pillar candle, two twin ten-inch tapered candles, and one small votive candle. As stated above, the language of the Order indicates those items to be included within the scope as being "[c]ertain scented or unscented petroleum wax candles made from petroleum wax. . ." See Final Determination. As outlined in the "Background" section above, the Department requested that Atico submit empirical evidence regarding the composition of these candles.

On November 21, 2001, Atico submitted test results obtained from an independent testing facility covering samples of its taper, votive and pillar "beeswax" candles. The results were obtained using the FTIR testing method, and indicated that Atico's sample candles contained 95 percent beeswax. Subsequently, the NCA argued that the test results Atico submitted were insufficient as the FTIR method used cannot accurately measure beeswax composition in candles because it does not measure the components that are present in paraffin or beeswax candles. The NCA also argued that Atico should have conducted a gas chromatograph/mass spectrometry test prior to the FTIR which, unlike FTIR, has the ability to break down very complex mixtures into their component parts and would differentiate between paraffin and beeswax contents. The NCA further contended that valid testing should be conducted on Atico's beeswax candles using methods in use by Customs for testing the quantity of paraffin in beeswax and other waxes, namely methods 34-07 or 34-08.

Atico then submitted a new set of test results on February 15, 2002, expressing its agreement with the NCA's test method recommendations. These test results indicated that Atico's pillar and votive samples contained beeswax, pursuant to an FTIR scan. They further indicated, pursuant to Customs method 34-07, the presence of 41.7 percent paraffin in the pillars and 19.8 percent paraffin in the votives. In its March 26, 2002 comments, the NCA argued that Atico's

latest test results did not support its claim that its candles were beeswax candles because they did not report the percentage amount of beeswax in the candles. The NCA contended that, according to the Commission's final determination in the original investigation, the candles must be comprised of 50 percent or more of beeswax in order to qualify as beeswax candles for purposes of exclusion from the scope of this Order. The NCA further argued that the respective percentages of paraffin content could lead to differing conclusions on whether these candles should be included in the scope of the Order, depending on the composition of the remaining portion of each candle. Atico did not respond to the NCA's March 26, 2002 arguments.

We agree with petitioners that Atico's February 15, 2002 test results, submitted voluntarily in response to the NCA's recommendations, on samples of its "beeswax" candles do not illustrate with certainty the percent composition of beeswax in the subject candles. These results indicate only that the candles do contain beeswax. Furthermore, we agree that the respective paraffin contents of the tested candles raise more questions than are answered. Indeed, without knowing the composition of the remainder of the respective candles, no judgement can be made on whether these candles qualify for exclusion from the scope of this Order as beeswax candles. Therefore, because the shapes of the candles at issue–pillars, tapers and votives–are specifically listed in the scope of the Order, we determine that these candles should be included in the scope of this Order.

**Summary**

Atico's "NOEL" embossed candle, "angel" candle and "angel bear" candles fall outside of the Order's scope as identifiable objects. Atico's remaining candles–its "Christmas cake," "glowing," "JOY" and "PEACE" embossed, and "beeswax" candles--are within the Order's scope. This conclusion is consistent with the scope of the investigation and the Order, as defined in the petition, as well as the Department's and the Commission's prior determinations.

**Recommendation**

Based on the preceding analysis, we recommend the Department find that Atico's "NOEL" embossed candle (Item No. H74Q-9465), "angel" candle (Item No. H74Q-8261), and "angel bear" candles (Item No. H74Q-8269) are outside the scope of the Order. Further, we recommend finding that the remaining candles, as described above, 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