

A-570-504
Scope Review
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By Electronic Mail Notification

To All Interested Parties:

On May 11, 2004, the Department of Commerce (“the Department”) received a request from Atico International USA, Inc. (“Atico”), for a scope ruling on whether four types of candles it plans to import are covered by the antidumping duty order on petroleum wax candles from the People’s Republic of China (“PRC”) (“Order”).

In accordance with 19 CFR 351.225(k)(1)(2002), the Department has determined that Atico’s “Wax Icon” (Item Number W72L2153), “Santa Ornament” (Item Number C-74-Q-2073), “Candy Corn” (Item Number C79H-0517), and “Christmas Pillar” (Item Number W72L2060) candles are all included within the scope of the Order.

Enclosed is a memorandum containing the Department’s analysis. We will notify the U.S. Customs and Border Protection (“CBP”) of this decision. If you have any questions, please contact Steve Winkates at (202) 482-1904.

Sincerely,

Brian C. Smith
Program Manager
AD/CVD Enforcement NME, Office 9
Import Administration

Enclosure

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

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

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

Summary

On May 11, 2004, the Department of Commerce (“the Department”) received a request from Atico International USA, Inc. (“Atico”), for a scope ruling to determine whether four types of candles are included within the scope of the antidumping duty order on petroleum wax candles from the People’s Republic of China (“PRC”). Antidumping Duty Order: Petroleum Wax Candles from the People’s Republic of China, 51 FR 30686 (August 28, 1986) (“Order”). In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that Atico’s “Wax Icon,” “Santa Ornament,” “Candy Corn,” and “Christmas Pillar” candles are all included within the scope of the Order.¹

Background

On May 11, 2004, the Department received a letter from Atico, dated May 10, 2004, requesting a scope ruling on the four types of candles. On October 25, 2004, we provided counsel for the National Candle Association (“NCA”), petitioner and the domestic producer in this proceeding, with an

¹ The Department has developed an internet website that allows interested parties to access prior scope determinations regarding the Order. This website lists all scope determinations from 1991 to the present. It can be accessed at <http://ia.ita.doc.gov/download/candles-prc-scope/index>, and will be updated periodically, to include newly issued scope determinations.

opportunity to examine the samples Atico provided in its scope ruling request (see October 25, 2004, memorandum to the file entitled “Meeting with Petitioner’s Counsel and Viewing of Samples”). On November 5, 2004, NCA submitted comments on Atico’s scope ruling requests.

Atico’s Scope Request

Atico argues that all four of its candles should fall outside the scope of the Order because they are either (a) holiday candles or (b) in the shape of identifiable objects, thus making them eligible for the novelty exception.

a. Product Descriptions

The following are excerpts from Atico’s descriptions of its candles from its May 11, 2004, submission:

“Wax Icon” (Item Number W72L2153)

Atico’s Wax Icon candle...features an angel icon raised and inlaid into the candle. The angel is depicted together with other Christmas symbols including mistletoe and holly, as well as snowflakes which are dispersed around the circumference of the candle. This candle is liberally decorated with these molded and painted decorative holiday designs which are identifiable from all angles.

“Santa Ornament” (Item Number C-74-Q-2073)

The “Santa Ornament” candle...{is a} spherical candle {and} metallic gray in color. {It} is decorated with Santa Claus in a sleigh being pulled by reindeer through a wintry scene. The scene also includes pine trees, falling snow and a snowman. These holiday-specific designs cover the entire candle making them easily identifiable and their removal would cause significant damage to the candle. The spherical shape of this candle is intended to evoke a hanging Christmas tree ornament.

“Candy Corn” (Item Number C79H-0517)

The “Candy Corn” candle {includes} white, orange and yellow color schemes and the shape of the candle is unmistakably that of a candy corn. {It is} specifically designed for the Halloween holiday. The candy corn shape, as well as its colors and designs, are identifiable from all sides of the candle and could not be removed without completely damaging the candle.

“Christmas Pillar” (Item Number W72L2060)

The “Christmas Pillar” candle...is completely surrounded with raised holly images. The holly

decorations represent images that are visible from multiple angles. The holly green leaves and red berries are also easily recognizable as holly.

b. Scope Request

To support its argument that its candles qualify for the novelty exception, Atico quotes from the notice which the Department issued to the U.S. Customs Service (now renamed U.S. Customs and Border Protection (“CBP”)) in connection with a July 1987 scope determination concerning an exception from the Order for novelty candles, which states:

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

See Petroleum-Wax Candles from the People’s Republic of China - Antidumping - A-570-504; C.I.E. -212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987 (“CBP Notice”).

Atico included a sample of each candle with its scope request, and also included photographs with its May 11, 2004, submission.

NCA Comments

In its comments, the NCA retraces the history of this antidumping duty order, including the import surges and resultant injury suffered by domestic manufacturers which prompted the original September 1985 antidumping petition. 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 a Court of International Trade (“CIT”) decision, which states 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, Inc. v. United States, 57 F. Supp. 2d 1184, 1194 (CIT 1999). Thus, the NCA argues that the Department narrowly limited the novelty candle exception to figurine candles, candles shaped in the form of identifiable objects, and candles specifically designed for use only in connection with the holiday season.

The NCA argues that all of Atico's candles are petroleum wax candles made in the PRC having fiber or paper-cored wicks and thus fall specifically within the Order. The NCA contends that the candles are not in the shape of identifiable objects, nor are they designed for use only in connection with any specific holiday. Therefore, the NCA contends, these candles should be included within the scope of the Order.

The NCA argues that the "Wax Icon" candle contains the angel design only on one side of the candle (*i.e.*, the angel cannot be viewed from all sides of the candle). Further, the NCA contends that angel designs are not specific to the Christmas holiday. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504): JC Penney Purchasing Corp. (May 21, 2001) ("JC Penney Corp."). Thus, the NCA contends that there is nothing in the design of the candle that limits its use to a specific holiday, and it should therefore be included within the scope of the Order.

The NCA argues that the "Santa Ornament" candle is "simply a round candle" that contains nothing to indicate that it is identifiable as a Christmas tree ornament. Further, the NCA notes that although a Santa Claus design appears on the candle, the design cannot be viewed from multiple angles, and the rest of the winter scenes are not limited to the Christmas holiday. Therefore, because the holiday-specific design cannot be viewed from multiple angles, the candles should fall within the scope of the Order.

The NCA argues that the "Candy Corn" candle is not recognizable as candy corn, and that there is nothing in the design to limit its use to the Halloween holiday. Therefore, the NCA contends that this candle should fall within the scope of the Order.

The NCA argues that the "Christmas Pillar" candle's design is not easily recognizable as holly leaves, contending that "the design on the top of the candle appears to be green leaves with red spots that are not connected to the leaves or branches" whereas real holly contains berries that "are connected to the stem of a holly sprig." Therefore, the NCA contends that this candle should fall within the scope of the Order.

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. The NCA further notes the long-standing efforts by 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 significant increases in the volume of PRC candles coming into the United States. The NCA claims that Atico is now asking the Department to narrow the scope of the Order so that everyday candles are not included within the scope of the Order, claiming that they are novelty candles. Finally, the NCA argues that the Department does not have the legal authority to narrow the scope of the Order.

Legal Framework

The regulations governing the Department's antidumping scope determinations are found at 19 CFR 351.225 (2002). On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the U.S. International Trade Commission ("ITC"). This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. See 19 CFR 351.225(k)(1).

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

In the instant case, the Department has evaluated Atico's request in accordance with 19 CFR 351.225(k)(1) and finds that the descriptions of the products contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the ITC are dispositive with respect to Atico's "Wax Icon," "Santa Ornament," "Candy Corn," and "Christmas Pillar" candles. Therefore, for these candles, the Department finds it unnecessary to consider the additional factors set forth at 19 CFR 351.225(k)(2).

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

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

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

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

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

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

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

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

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

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

See CBP Notice (emphasis added).

When determining whether a particular product claimed as a novelty candle is within the scope of the Order, the Department’s first line of inquiry is whether the shape of the candle falls within those shapes listed by the inclusive language of the Order’s scope, *i.e.*, “tapers, spirals, and straight-sided dinner

candles; rounds, columns, pillars, votives; and various wax-filled containers.” If a candle falls within one of the above-delineated shapes, it will be determined to be within the Order’s scope. Candles of a shape not listed by the inclusive language of the Order’s scope will then be evaluated to determine whether they are “scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.”

In November 2001, the Department changed its practice on the issue of candle shapes. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); JCPenney (November 9, 2001) (“JCPenney Ruling”). In this ruling, the Department reviewed the text of the scope of the Order, beginning with the text of the first sentence of the scope which covers “{c}ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.” See Order. The text following this broad inclusive sentence provides a list of shapes; this list is not modified by any express words of exclusivity. The result of our prior practice of not including within the scope of the Order candles of a shape other than those specifically listed in the Order was inconsistent with the fact that the candles were “scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.”² In the JCPenney Ruling, the Department determined to revise this practice because it had the effect of narrowing the broad coverage of the first sentence of the Order’s scope. The list of shapes in the second sentence of the Order’s scope does not provide a textual basis for such a narrowing of the coverage of the first sentence of the Order’s scope. Accordingly, to give full effect to the first sentence of the inclusive language of the scope, the Department now will normally evaluate whether candles of a shape not listed by the inclusive language of the Order’s scope are scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.

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

Although the specific scope decision in Duferco Steel has been overturned by the United States Court

² See, e.g., Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Endar Corp. (January 11, 2000) (“Endar”) (“dragonfly” candle, in the shape of a rough-hewn stone with a dragon fly carved on top, not within scope because it is of a shape not listed by the scope), and Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); American Drug Stores, Inc. (March 16, 1998) (sphere or ball-shaped candle not within scope because it is a shape not listed by the scope).

of Appeals of the Federal Circuit (“CAFC”) in Duferco Steel, Inc. v. United States, 296 F.3d 1087 (Fed. Cir. July 12, 2002) (“Duferco Steel II”), we do not believe that the CAFC’s decision undermines the Department’s decision in the JCPenney Ruling. The plain language of the scope of the Order clearly states “{c}ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks . . . sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers” are included within the scope of the Order. Thus, the Order offers a descriptive list of the shapes of candles included within the Order, but, as the courts have recognized, there is no requirement that every single product covered must be identified in the scope. More specifically, the CAFC has stated that “the petitions that led to the issuance of the order did not need to specifically identify the {product} in order to cover {it}; our precedent, to say nothing of the regulations, makes clear that neither a petition nor an antidumping or countervailing duty order requires that level of specificity.”³ 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.”⁴ Thus, as applied to this Order, there is no requirement, nor is it possible, for all the shapes of candles to be listed.⁵ In fact, if the list were exhaustive, there would have been no need for the Department to render a decision on novelty candles or any other candle that was not explicitly listed as a shape in the scope of the Order. However, the Department did render the novelty candle exception that offered a narrowly construed exception, leaving all other petroleum wax candles from the PRC covered by the Order.

If the Department determines that the candle is made from petroleum wax and has a fiber or paper-cored wick, but the candle possesses characteristics set out in the CBP Notice, it will not fall within the scope of the Order. In order for a candle to qualify for this exception, the characteristic which is claimed to render it a novelty candle (i.e., the shape of an identifiable object or a holiday-specific design) should be easily recognizable in order for the candle to merit not being included within the scope of the Order. Specifically, among other determining factors, the Department will examine whether the characteristic is identifiable from most angles and whether or not it is minimally decorative, e.g., small and/or singularly placed on the candle. If the identifiable object or holiday-specific design is not identifiable from most angles, or if the design or characteristic is minimally decorative, the Department may determine that the candle is included within the scope of the Order. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); JCPenney Purchasing Corp. (May 21, 2001) (“JCPenney Corp. Ruling”); Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China

³ Novosteel SA v. United States, 284 F.3d 1261, 1264 (March 26, 2002).

⁴ Id.

⁵ 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.”).

(A-570-504); San Francisco Candle Co. (Feb. 12, 2001) (“SFCC”); and Endar. If a candle does not possess the characteristics set out in the July 1987 novelty candle exception, and it is a scented or unscented petroleum wax candle made from petroleum wax and having fiber or paper-cored wick, the Department will determine that the candle is within the scope of the Order.

Analysis

With respect to the instant request, we find that for the reasons outlined below, Atico’s “Wax Icon,” “Santa Ornament,” “Candy Corn,” and “Christmas Pillar” candles are all included within the scope of the Order. We find that the “Wax Icon” and “Santa Ornament” candles are included within the scope of the Order because they are not in the shape of identifiable objects and their holiday-specific designs (i.e., holly leaf and berry design and Santa Claus image, respectively) cannot be viewed from multiple angles. We find that the “Candy Corn” candle is included within the scope of the Order because it is not recognizable as candy corn, (and thus it is not in the form of an identifiable object). Finally, we find that the “Christmas Pillar” candle falls within the scope because its alleged holiday-specific design (i.e., holly leaf and berry design) does not accurately portray a true holly leaf and berry design, and therefore the candle does not qualify as a holiday candle.

“Wax Icon”

Atico contends that its “Wax Icon” petroleum wax candle is a novelty candle, arguing that because it incorporates an angel, holly leaves and berries, and snowflakes on the candle, it should be included within the novelty exception because it is a holiday candle. Although we note that Atico’s “Wax Icon” candle contains holly, which the CIT has determined to be associated with the Christmas holiday (see Springwater v. United States, 20 CIT 1292 (1996) (“Springwater”)), the holly leaf and berry symbol is only present on the front side of the candle. We note that angels (one of which is present on the front side of the candle) and snowflakes (which are present on all sides of the subject candle) are not specific to a certain holiday or special event. (See JC Penny Corp., in which the Department determined that angels are not associated with a specific holiday.) The Department has also determined that snowflakes are not identified with a specific holiday (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)). Because the holly leaf and berry design is the only characteristic on this candle that is specific to the Christmas holiday and is only visible on the front side of the candle, the fact that the snowflakes are dispersed throughout the candle on all sides does not render the candle a “holiday candle.” Rather, the characteristics that make a particular candle a “holiday candle” must be visible from multiple angles (see SFCC). Therefore, we disagree that Atico’s “Wax Icon” candle represents a holiday candle. Thus, the Department finds that this candle does not fall within the July 1987 novelty candle exception and, for the above reasons, we find that this candle is within the scope of the Order.

“Santa Ornament”

Atico contends that the subject “Santa Ornament” petroleum wax candle, with a fiber or paper-cored wick, should be excluded from the Order due to either its shape in the form of an identifiable object or its incorporation of a holiday-specific theme. Atico argues that the candle’s spherical shape, which it claims is in the shape of a Christmas tree ornament, would qualify it under the novelty exception as an identifiable object. In addition, Atico notes that the decorative scene of Santa Claus being pulled by reindeer through a wintry scene painted onto the candle qualifies it for the holiday novelty exception. We disagree with both Atico’s identifiable object and holiday novelty arguments. Atico claims that its candle is in the form of an identifiable object, and we note that the Department has ruled that Christmas tree ornaments do represent bona fide identifiable objects (see Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Endar Corp. (April 7, 1999), in which the Department determined that certain “tree ball ornaments” are not included within the scope of the Order). However, the fact that this candle is spherical in shape does not automatically qualify it as a being in the shape of a Christmas “tree ball ornament.” The “Santa Ornament” candle is not identifiable as a Christmas tree ornament, it is simply a round, a shape specifically included within the scope of the Order. On the holiday novelty argument, we note that although Santa Claus has been specifically identified with the Christmas holiday in the past (see JC Penney Corp.), in the “Santa Ornament” candle the Santa Claus image is a rudimentary representation of Santa Claus (e.g., the Santa Claus image portrayed does not include details, such as facial or wardrobe features, that would specifically identify the image as Santa Claus). Further, the Santa Claus image is only visible from one angle (i.e., the front) (see SFCC). The rest of the candle, which includes images of a snowman, snow and trees, does not contain any item that the Department has previously determined to be specific to the Christmas holiday. Thus, the Department finds that this candle does not fall within the July 1987 novelty candle exception. Therefore, for the aforementioned reasons, we find that this candle is within the scope of the Order.

“Candy Corn”

Atico contends that the subject “Candy Corn” petroleum wax candle, with a fiber-cored wick, is a novelty candle that, due to its shape and color scheme, is easily identifiable as a piece of candy corn. Atico also maintains that the subject candle is specifically designed for the Halloween holiday. We disagree with both of Atico’s assertions. First, we disagree that candy corn is associated specifically with the Halloween holiday, as there is nothing inherent about candy corn that limits its use to this particular holiday. Second, we disagree that the “Candy Corn” candle is shaped in the form of an identifiable object – it is simply a conical-shaped candle. The Department has previously ruled that candles in the form of geometric shapes are included within the scope of the Order (see Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Mervyn’s (December 9, 1996), in which the Department determined that certain cube-shaped candles are included within the scope of the Order). In this case, we find that the “Candy Corn” candle is simply shaped in the form of a geometric shape (i.e., a cone). The combination of the colors of the orange, yellow, and white band around the candle do not render this candle identifiable as a piece of candy corn. See e.g., 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 2002”), in which the Department determined that a decorated candle was not in the shape of an Easter Egg. Consistent with our practice, we find that the difference between a shape and an object is one of specificity. A shape is generally the characteristic surface or configuration of a thing, the outline or contour. See The American Heritage Dictionary of the English Language (Fourth Ed. 2000), reprinted at www.bartleby.com. An object is more specific, something perceptible by one or more senses, especially vision or touch, a material thing. See Atico 2002. Thus, we find that this candle is a multi-colored cone shape, not an identifiable object, and is thus not included within the July 1987 novelty candle exception. Therefore, for the aforementioned reasons, we find that this candle is included within the scope of the Order.

“Christmas Pillar”

Atico contends that the subject “Christmas Pillar” petroleum wax candle, with a fiber-cored wick, is a novelty candle that, due to its incorporation of a holly leaf and berry design on the candle, should be included within the holiday novelty exception. However, we disagree that this candle’s holly leaf and berry design represents an accurate portrayal of actual holly leaves and berries. Unlike actual holly plants, the design on this candle features leaves which fan out in all directions that are connected by long stems or sprigs, with clusters of berries that are not attached to these leaves or the sprigs. In addition, the leaves themselves do not resemble typical holly leaves. Instead, the leaves appear to be rudimentary depictions of holly which lack sufficient detail to be identified or easily recognized as holly. We therefore disagree with Atico that, due to its inclusion of a holiday-specific design (i.e., holly leaves and berries), this candle qualifies as a holiday novelty candle. We note that although the CIT has determined holly to be associated with the Christmas holiday (see Springwater), the holly leaf and berry design must resemble actual holly leaves and the holly leaves and berries must be grouped together (see SFCC v. U.S., 265 F. Supp. 2d 1374 (2003)). Therefore, we disagree with Atico’s assertion that its “Christmas Pillar” candle incorporates a holiday-specific design and therefore qualifies as a holiday novelty candle. Thus, the Department finds that this candle does not fall within the July 1987 novelty candle exception, and is therefore included within the scope of the Order.

Summary

Atico argues that the “Wax Icon,” “Santa Ornament,” “Candy Corn,” and “Christmas Pillar” candles should all be exempt from the Order due to either the holiday novelty or identifiable object exceptions. For the reasons discussed above, we disagree with Atico’s arguments on the “Wax Icon,” “Santa Ornament,” “Candy Corn,” and “Christmas Pillar” candles. Therefore, we find that the “Wax Icon,” “Santa Ornament,” “Candy Corn,” and “Christmas Pillar” candles are all included within the scope of the Order. These conclusions are consistent with the scope of the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations), and the ITC.

Recommendation

Based on the preceding analysis, we recommend that the Department find that Atico’s “Wax Icon,” “Santa Ornament,” “Candy Corn,” and “Christmas Pillar” candles are all included within the scope of the Order.

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

_____Agree

_____Disagree

Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

Date

Attachment