

A-570-504
Scope Review
Public Document
IA/NME/IX: PW

April 12, 2007

By Electronic Mail Notification

To All Interested Parties:

On December 8, 2006, the Department of Commerce (“the Department”) received a request from Fashion Craft-Excello, Inc. (“Fashion Craft”) for a scope ruling to determine whether its Flip-flop Candles (pink- item # 8820, blue- item # 8820, orange- item # 8820 and yellow- item # 8820), Wedding Cake Candle (white- item #8205, ivory- item #8206, pink- item #8207 and silver- item #3875), Baby Bottle Candle (pink- item #3867 and blue- item #3868), Pear Candles (item #8201), Rubber Duckie Candle (item #8209), Coach Candle (silver- item #3854 and gold- item# 3855), Teddy Bear Candle (pink- item# 3863 and blue- item# 3864) and Baby Carriage Candle (blue- item# 3852 and pink- item# 3853) are excluded from 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), the Department has determined that Fashion Craft’s novelty candles are outside the scope of the antidumping duty order on petroleum wax candles from the PRC.

Enclosed is a memorandum containing the Department’s analysis. We will notify U.S. Customs and Border Protection of this decision. If you have any questions, please contact Paul Walker at (202) 482-0413.

Sincerely,

Alex Villanueva
Program Manager, Office IX
Import Administration

Enclosure

MEMORANDUM FOR: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

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

SUBJECT: Antidumping Duty Order on Petroleum Wax Candles From the
People's Republic of China: Final Scope Ruling, Fashion Craft-
Excello, Inc.

Summary

On December 8, 2006, the Department of Commerce (“the Department”) received a request from Fashion Craft-Excello, Inc. (“Fashion Craft”) for a scope ruling to determine whether its novelty candles are included within the scope of the antidumping duty order on petroleum wax candles from the People’s Republic of China (“PRC”). See 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 Fashion Craft’s novelty candles are outside the scope of the Order.¹

Background

On December 8, 2006, the Department received a letter from Fashion Craft requesting a scope ruling on its novelty candles. The National Candle Association (“NCA”) did not submit comments on Fashion Craft’s scope request.

Fashion Craft Scope Request

Fashion Craft’s scope request pertains to the following list of candles:

Flip-flop Candles

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 is updated periodically to include newly issued scope determinations.

Wedding Cake Candle
Baby Bottle Candle
Pear Candles
Rubber Duckie Candle
Coach Candle
Teddy Bear Candle
Baby Carriage Candle

As discussed more fully below, Fashion Craft argues that each of its candles should not be included in the scope of the order because each is an identifiable object.

A. Flip-Flops²

Fashion Craft argues that its “Flip-Flop” Candles consists of two candles (right and left shoe), packaged together, molded in the shape of a pair of flip-flops. Fashion Craft asserts that each candle is comprised of a brightly colored, backless shoe sole, a “U-shaped” strap forming the toe of each shoe, and a pair of ornamental sunglasses decorating the toe of each shoe. Fashion Craft notes that each candle measures approximately 2" in length and 3/4" in height. According to Fashion Craft, the flip-flop shape is clearly evident from all angles and from no angle do the “Flip-Flop” Candles resemble any of the candles that are subject to the Order. Fashion Craft provided samples of the candles for the Department’s review, and indicated that these candles are classified under Harmonized Tariff Schedule (“HTS”) number 3406.00.0000.

Fashion Craft argues that its “Flip-Flop” Candles should be outside the scope of the Order pursuant to 19 CFR 351.225(k)(1) and the novelty candle exception of the Customs Notice, because the candles are an identifiable object, *i.e.*, flip-flops.³ See CIE –212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987 (“Customs Notice”). Fashion Craft argues that these candles are easily recognizable and their shape make the candles identifiable only as flip-flops because the candles are proportioned and shaped as left and right flip-flops to represent shoes that could fit real feet. Thus, Fashion Craft argues that its “Flip-Flop” Candles are in the shape of identifiable objects and, therefore, are outside of the scope of the Order. In addition, Fashion Craft notes that the Department determined that a “Halloween Witch Shoe” Candle was identifiable as a shoe. See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Atico International USA, Inc. (July 6, 2006) (“Atico”) (“The

² Includes Flip-Flops - pink (item # 8820), Flip-Flops - blue (item # 8820), Flip-Flops - orange (item # 8820) and Flip-Flops - yellow (item # 8820).

³ In the Customs Notice, the Department narrowly limited the novelty candle exception to figurine candles, candles shaped in the form of identifiable objects, and candles specifically designed for and used only in connection with the holiday season.

Department agrees with Atico that when viewed from most angles the candle is identifiable as a shoe and is not within the scope of the order.”⁴

B. Wedding Cake⁵

Fashion Craft argues that its “Wedding Cake” Candle is a three-dimensional figure molded into the identifiable shape of a three-tiered wedding cake. Fashion Craft contends that each wedding cake candle has differing colors, is coated with icing, and has various decorative details such as beads. Fashion Craft notes that each candle measures approximately 2.5" in height and has a tapered width of 1" to 2". According to Fashion Craft, the wedding cake shape is clearly evident from all angles and it is not in the form of a candle that is explicitly listed as subject to the Order. Fashion Craft provided samples of the candle for the Department’s review, and indicated that these candles are classified under HTS number 3406.00.0000.

Fashion Craft argues that its “Wedding Cake” Candle should be outside the scope of the Order pursuant to 19 CFR 351.225(k)(1) and the novelty candle exception of the Customs Notice, because the candle is an identifiable object, *i.e.*, a wedding cake. See Customs Notice. Fashion Craft argues that this candle is easily recognizable and its shape makes the candle identifiable only as a three-tiered wedding cake with decorative icing. Thus, Fashion Craft argues that its “Wedding Cake” candle is in the shape of an identifiable object and is, therefore, outside of the scope of the Order. Fashion Craft notes that the Department determined that a “Cupcake” Candle was determined by the Department to be outside 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); Avon Products Inc. (October 2, 2006) (The cupcake was “characterized by the very realistic flowered toppings, frosting, cake and fluted cupcake shape of the base, all of which were readily apparent when viewed from most angles”).

C. Baby Bottle⁶

Fashion Craft argues that its “Baby Bottle” Candle is a three-dimensional figure molded into the identifiable shape of a baby bottle. Fashion Craft claims that each candle has a classic baby bottle shape with paneled sides, a realistic nipple, twist-on lid and comes in differing colors. Fashion Craft notes that each candle measures approximately 4.25" in height and has a tapered width of .25" to 1.25". According to Fashion Craft, the baby bottle shape is visible from all angles and from no angle does the “Baby Bottle” Candle resemble any of the shapes that are

⁴ Fashion Craft notes that in Atico the Department determined that a “Santa’s Boot Candle,” when viewed from most angles is identifiable as a red boot, with white wax presumably representing fur and having a black sole. *Id.*

⁵ Includes Wedding Cake - white (item #8205), Wedding Cake - ivory (item #8206), Wedding Cake - pink (item #8207) and Wedding Cake - silver (item #3875).

⁶ Includes Baby Bottle - pink (item #3867) and Baby Bottle - blue (item #3868).

enumerated in the Order. Fashion Craft provided samples of the candle for the Department's review, and indicated that these candles are classified under HTS number 3406.00.0000.

Fashion Craft argues that its "Baby Bottle" Candle should be outside the scope of the Order pursuant to 19 CFR 351.225(k)(1) and the novelty candle exception of the Customs Notice, because the candle is an identifiable object, *i.e.*, a baby bottle. See Customs Notice. Fashion Craft argues that this candle is easily recognizable and its shape makes the candle identifiable only as a baby bottle. Thus, Fashion Craft argues that its "Baby Bottle" Candle is in the shape of an identifiable object and is, therefore, outside of the scope of the Order. Fashion Craft notes that the Department has determined that frogs, ducks, dragons, snails and chickens were found by the Department to be outside the scope of the Order because they were identifiable objects. See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); New Spectrum Gift Gallery, Inc. (May 10, 2005); see also Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Kohl's Department Stores, Inc. (January 10, 2006).

D. Pears⁷

Fashion Craft notes that its "Pear" Candles consisting of two candles (a pair of pears), packaged together, are a three-dimensional figure molded into the identifiable shape of a pear. Fashion Craft also notes that each candle is primarily yellow, with shadings of green, red and brown speckles, with a bulbous "pear" shape and resemble the Yellow Bartlett pear. Fashion Craft notes that each candle measures approximately 2.5" in height and has a tapered width of .5" to 1.75". According to Fashion Craft, the pear shape is visible from all angles and from no angle do the "Pear" Candles resemble any of the shapes that are subject to the Order. Fashion Craft provided samples of the candles for the Department's review, and indicated that these candles are classified under HTS number 3406.00.0000.

Fashion Craft argues that its "Pear" Candles should be outside the scope of the Order pursuant to 19 CFR 351.225(k)(1) and the novelty candle exception of the Customs Notice, because the candles are an identifiable object, *i.e.*, a pair of pears. See Customs Notice. Fashion Craft argues that its "Pear" Candles contain realistic detail on the entirety of the candle; the irregular, bulbous shape and the yellow and green and speckled skin and the realistic bark stem all render the candles to be an identifiable object, that is easily recognizable and identifiable only as pears. Thus, Fashion Craft argues that its "Pear" Candles are in the shape of identifiable objects and, therefore, are outside of the scope of the Order. Fashion Craft notes that the Department determined that candles in the shape of vegetables and flowers are identifiable objects and, therefore, are outside the scope of the Order. For example, the Department found that an artichoke candle which contained "ridge-detailed leaves which go around the candle" and that, similar to a real artichoke, "the leaves point upwards with wide tips, comprising the entire candles just as real artichokes have leaves encasing the artichoke heart." See Final Scope Ruling:

⁷ Item #8201.

Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Freight Expeditors (July 21, 2006).

E. Rubber Duckie⁸

Fashion Craft argues that its “Rubber Duckie” Candle is a three-dimensional figure molded into the shape of a rubber duckie toy. According to Fashion Craft, each candle has a yellow body in the traditional shape and color of a rubber duck toy, yellow wings typically included in a rubber duck toy and traditional bright white eyes with black irises and black eyelashes. Fashion Craft notes that each candle measures approximately 2" in length and is approximately 1.75" in height. According to Fashion Craft, the rubber duckie shape is clearly evident from all angles and from no angle does the “Rubber Duckie” Candle resemble any of the candles that are in a shape subject to the Order. Fashion Craft provided samples of the candle for the Department’s review, and indicated that these candles are classified under HTS number 3406.00.0000.

Fashion Craft argues that its “Rubber Duckie” Candle should be outside the scope of the Order pursuant to 19 CFR 351.225(k)(1) and the novelty candle exception of the Customs Notice, because the candle is an identifiable object, a rubber duckie toy. See Customs Notice. Fashion Craft argues that this candle is easily recognizable and its shape makes the candle identifiable only as a rubber duckie, which Fashion Craft claims is an iconic object most commonly used as a floating bath tub toy. Thus, Fashion Craft argues that its “Rubber Duckie” Candle is in the shape of an identifiable object and, therefore, is outside of the scope of the Order. Fashion Craft notes that the Department determined that a “Halloween Bloody Skull” Candle was determined to be outside the Order. See Atico (the skull “features red wax to produce gory effects as advertized”).

F. Coach⁹

Fashion Craft argues that its “Coach” Candle is a three-dimensional figure molded into the shape of a stagecoach. Fashion Craft notes that each candle measures approximately 2.75" in height, 1.5" in width and 2.75" in length. According to Fashion Craft, the coach shape is clearly visible from all angles and from no angle does the “Coach” Candle resemble any of the candles that are in shapes subject to the Order. Fashion Craft provided samples of the candle for the Department’s review, and indicated that these candles are classified under HTS number 3406.00.0000.

Fashion Craft argues that its “Coach” Candle should be outside the scope of the Order pursuant to 19 CFR 351.225(k)(1) and the novelty candle exception of the Customs Notice, because the candle is an identifiable object, a stagecoach. See Customs Notice. Fashion Craft argues that this candle is easily recognizable and the shape makes the candle identifiable only as a stage coach because it has spokes, wheels, a protruding section which resembles an area for a driver to

⁸ Item #8209.

⁹ Includes Coach - silver (item #3854) and Coach - gold (item# 3855).

sit and various decorations adorning the coach. Thus, Fashion Craft argues that its “Coach” Candle is in the shape of an identifiable object and is, therefore, outside of the scope of the Order. Fashion Craft notes the Department has found that candles resembling toys are identifiable and fall outside the scope of the order. See Atico.

G. Teddy Bear¹⁰

Fashion Craft argues that its “Teddy Bear” Candle is a three-dimensional figure molded into the shape of a teddy bear riding a rocking horse. Fashion Craft notes that each candle measures approximately 3.25" in height, 3" in length and 1.25" in width. According to Fashion Craft, the teddy bear shape is clearly evident from all angles and from no angle does the “Teddy Bear” Candle resemble any of the candles that are subject to the Order. Fashion Craft provided samples of the candle for the Department’s review, and indicated that these candles are classified under HTS number 3406.00.0000.

Fashion Craft argues that its “Teddy Bear” Candle should be outside the scope of the Order pursuant to 19 CFR 351.225(k)(1) and the novelty candle exception of the Customs Notice, because the candle is an identifiable object, *i.e.*, a teddy bear on a rocking horse. See Customs Notice. Fashion Craft argues that this candle is easily recognizable and its shape makes the candle identifiable only as a teddy bear because the candle depicts a teddy bear with brown fur, wearing a shirt, sitting on a rocking horse with brown mane and saddle. Thus, Fashion Craft argues that its “Teddy Bear” Candle is in the shape of an identifiable object and, therefore, outside of the scope of the Order. As noted above, Fashion Craft notes that the Department has found that candles resembling toys are identifiable and are outside the scope of the order. See Atico.

H. Baby Carriage¹¹

Fashion Craft argues that its “Baby Carriage” Candle is a three-dimensional figure molded into the shape of a baby carriage. Fashion Craft notes that each candle measures approximately 2.75" in height, 2.75 in length and 1.75" in width. According to Fashion Craft, the baby carriage shape is visible from all angles and from no angle does the “Baby Carriage” Candle resemble any of the shapes that are subject to the Order. Fashion Craft provided samples of the candle for the Department’s review, and indicated that these candles are classified under HTS number 3406.00.0000.

Fashion Craft argues that its “Baby Carriage” Candle should be outside the scope of the Order pursuant to 19 CFR 351.225(k)(1) and the novelty candle exception of the Customs Notice, because the candle is an identifiable object, *i.e.*, a baby carriage. See Customs Notice. Fashion

¹⁰ Includes Teddy Bear on a Rocking Horse - pink (item# 3863) and Teddy Bear on a Rocking Horse - blue (item# 3864).

¹¹ Includes Baby Carriage - blue (item# 3852) and Baby Carriage - pink (item# 3853).

Craft argues that the candle is easily recognizable and its shape makes the candle identifiable only as a baby carriage because the candle is a white carriage with wheels, a hood, and decorations, such as bows, that would indicate that the carriage was meant for a baby. Thus, Fashion Craft argues that its “Baby Carriage” Candle is in the shape of an identifiable object and is, therefore, outside of the scope of the Order. Fashion Craft notes that the Department determined that identifiable objects such as a pumpkin and tombstone were outside the scope of the Order. See *Atico*.

Legal Framework

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, 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 the Fashion Craft 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 Fashion Craft’s novelty 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 neither the Department nor the parties placed 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 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); 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) at 4, note 5, and A-2.

Also of relevance to the present scope inquiry are the Department’s instructions to the U.S. Customs Service¹² 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 Customs Notice (emphasis added).

¹²Now the U.S. Customs and Border Protection Bureau (“CBP”).

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); JC Penney (November 9, 2001) (“JC Penney”). 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.”¹³ In JC Penney, the Department determined to revise this practice because it had the effect of narrowing the broad coverage of the first sentence of the Order scope. The list of shapes in the second sentence of the Order scope does not provide a textual basis for such a narrowing of the coverage of the first sentence of the Order 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 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 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 petitioner’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 (May 29, 2001) (“Duferco Steel”). Such an approach is a departure from past CIT precedent that required the Department to give ample deference to the petitioner’s intent when examining a petitioner’s description of the subject merchandise. See, e.g., Torrington Co. v. United States, 995 F. Supp. 117, 121 (CIT 1998).

Although the specific scope decision in Duferco Steel has been overturned by the United States Court of Appeals of the Federal Circuit (“CAFC”) in Duferco Steel, Inc. v. United States, 296 F.3d 1087 (Fed. Cir. 2002) (“Duferco Steel II”), we do not believe that the CAFC’s decision undermines the Department’s decision in JC Penney. 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

¹³ 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”) (where the Department found a “dragonfly” candle, in the shape of a rough-hewn stone with a dragonfly carved on top, not within scope because it is of a shape not listed by the scope), and Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); American Drug Stores, Inc. (March 16, 1998) (where the Department found a sphere or ball-shaped candle not within scope because it is a shape not listed by the scope).

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.”¹⁴ 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.”¹⁵ Thus, as applied to this Order, there is no requirement, nor is it possible, for all the shapes of candles to be listed.¹⁶ In fact, if the list were exhaustive, there would have been no need for the Department to determine whether 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 IC Penney; 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); 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 candle having fiber or paper-cored wick, the Department will determine that the candle is within the scope of the Order.

¹⁴ Novosteel SA v. United States, 284 F.3d 1261, 1264 (Fed. Cir. 2002).

¹⁵ *Id.*

¹⁶ See Petroleum Wax Candles from China, USITC Pub. No. 3226 Investigation No. 731-TA-282 (Review) (August 1999) 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.”).

Analysis

We find that Fashion Craft's candles are in the shape of identifiable objects from multiple angles, and, therefore, should not be included within the scope of the Order pursuant to the Customs Notice. See chart below.

Pursuant to the Department's change in practice, as described in JC Penney, if a candle is not in a shape specifically listed in the scope of the Order, 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.¹⁷ Fashion Crafts' candles are petroleum wax candles with what appears to be a fiber or paper-cored wick.¹⁸ Therefore, we must evaluate whether the characteristics of these candles would exclude them from the scope of the Order pursuant to the novelty candle exception detailed in the Customs Notice and our interpretation set forth in JC Penney.

In analyzing Fashion Craft's eight candles, we first examined whether they had a shape that was specifically enumerated in the scope of the Order (*i.e.*, tapers, spirals, straight-sided dinner candles, rounds columns, pillars, or votives). We find that these candles do not have a shape which was specifically enumerated in the scope of the Order. Moreover, each of these shapes is identifiable from multiple angles as objects, as per the Department's positions. See chart below.

Accordingly, these candles meet the definition of an identifiable object pursuant to the Customs Notice and, therefore, should not be included within the Order. See chart below.

¹⁷ On October 6, 2006, the Department published its final determination of circumvention of the antidumping duty order on petroleum wax candles from the PRC. The Department determined that mixed-wax candles composed of petroleum wax and more than 50 percent or more palm and/or other vegetable oil-based waxes ("mixed-wax candles") are later-developed products of petroleum wax candles. In addition, the Department determined that mixed-wax candles containing any amount of petroleum are covered by the scope of the antidumping duty order on petroleum wax candles from the PRC. See Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 71 FR 59075 (October 6, 2006).

¹⁸ Fashion Craft did not specify what type of wick is used in its candles. However, Fashion Craft does not argue exclusion on the basis of the composition of the wick.

| <u>Candle Name</u> | <u>Analysis</u> |
|---------------------------|---|
| Flip-flops | This product consists of two flip-flops with sunglasses attached to the strap, in a manner resembling a traditional pair of flip-flops. In addition, each candle set contains a candle which is shaped in the form of a flip-flop which would fit a left and right foot and has a sandal strap which would fit between the toes of a person wearing flip-flops. Because of these candles' shape - the fit for the right and left foot, the strap, the ridges imprinted on the top side of the flip-flop to hold the foot in place - these candles are easily recognizable as flip-flops from multiple angles. |
| Wedding Cake | This product consists of three different sized rounds stacked onto each other in concentric tiers in a manner resembling a traditional three-tiered cake. In addition, this candle is decorated with many elaborate frills both on the sides and the base of each of the concentric, three-tiered rounds. Because of this candle's shape - three concentric tiers, elaborate designs and decorations on the sides and base of the rounds - this candle is easily recognizable as a wedding cake from multiple angles. |
| Baby Bottle | This product consists of a paneled bottle with a nipple attached at the top in a manner resembling a traditional baby bottle. In addition, this candle is decorated with hearts and stars around the entire candle. Because of this candle's shape - a paneled bottle with nipple and decorations - this candle is easily recognizable as a baby bottle from multiple angles. |
| Pair of Pears | This product consists of two pears which resemble traditional pears. These candles have an irregular bulbous shape, are colored yellow and green with brown spots, and the wick is colored brown, like a pear's stem. Because of these candles' shape and coloration these candles are easily recognizable as a pair of pears from multiple angles. |
| Rubber Duckie | This product consists of a yellow colored, duck-shaped candle resembling a traditional rubber duckie toy. Because of this candle's shape - yellow wings, an orange beak, white eyes with black irises and lashes and its overall duck shape - this candle is easily recognizable as a "rubber duckie" from multiple angles. |
| Coach | This product consists of a stage coach-shaped candle resembling a traditional coach. In addition, this candle contains four spoked wheels, a protruding section in the front where a driver would sit and is decorated with many elaborate frills both on the sides and top of the coach. Because of this candle's shape - the coach shape, area for a driver to sit, wheels and decorations - this candle is easily recognizable as a coach from multiple angles. |
| Teddy Bear | This product consists of a brown colored (representing brown fur), bear-shaped candle riding a rocking horse, resembling a traditional teddy bear toy. Because of this candle's shape - the bear shaped head and body, paws, bear shaped ears, protruding snout and dark eyes, nose and mouth - this candle is easily recognizable as a teddy bear from multiple angles. In addition, the rocking horse shape is evident from the horse-shaped head and body, saddle, reins and rocking base. |
| Baby Carriage | This product consists of a carriage shaped candle resembling a traditional baby carriage. In addition, this candle contains four spoked wheels supporting a basket section with hood, and is decorated with bows and flowers on the sides and top of the carriage. Because of this candle's shape - the carriage shape and decorations - this candle is easily recognizable as a baby carriage from multiple angles. |

Recommendation

Based on the preceding analysis, we recommend that the Department find that the Fashion Craft novelty candles fall outside 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

Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

Date