

September 24, 2007

By Certified Mail Notification

To All Interested Parties:

On June 12, 2007, the Department of Commerce (the “Department”) received a request from Wedding Brand Investors LLC (“Wedding Brand”) for a scope ruling to determine whether its “Unity” candles are covered by 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 Wedding Brand’s novelty candles are inside 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 (“CBP”) of this decision. If you have any questions, please contact Irene Gorelik at (202) 482-6905.

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 9  
Import Administration

SUBJECT: Antidumping Duty Order on Petroleum Wax Candles From the  
People's Republic of China: Final Scope Ruling, Wedding Brand  
Investors LLC

### Summary

On June 12, 2007, the Department of Commerce (the "Department") received a request from Wedding Brand Investors LLC ("Wedding Brand") for a scope ruling to determine whether its "Unity" 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 Wedding Brand's novelty candles are within the scope of the Order.<sup>1</sup>

### Background

On June 12, 2007, the Department received a letter from Wedding Brand requesting a scope ruling on its "Unity" candles. The National Candle Association ("NCA") submitted comments on July 19, 2007. On July 27, 2007, Wedding Brand submitted rebuttal comments to the NCA's July 19, 2007 submission.

### Wedding Brand Scope Request

Wedding Brand argues that, pursuant to 19 CFR 351.225(k)(1) and the exception for novelty candles described in a September 21, 1987, Customs Information Exchange instruction sent to the U.S. Customs Service ("Customs Notice"),<sup>2</sup> its "Unity" candles are not included within the

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<sup>1</sup> 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.

<sup>2</sup> In the Customs Information Exchange referenced by Wedding Brand, the Department described a narrowly limited exception to the scope of the order for so-called "novelty candles," including figurine candles, candles shaped in the form of identifiable objects, and candles specifically designed for and used only in connection

scope of the Order because they are novelty candles associated with wedding ceremonies. Specifically, Wedding Brand argues that these “Unity” candles are specially designed for and limited to use in connection with a wedding ceremony; thus, they should be excluded from the scope of the Order under the Customs Notice novelty exclusion.

Additionally, Wedding Brand contends that the Department has previously excluded three styles of “Unity” candles, which included special moldings or attachments such as ribbon, bows or flowers, in its Hallmark Ruling<sup>3</sup> because they were wedding novelty candles. Wedding Brand notes that the Department determined that one style of “Unity” candles in the Hallmark Ruling was outside the scope of the Order based on its description, while the other two “Unity” candle styles’ descriptions were determined not to be dispositive, thus requiring consideration of the Diversified Products criteria.<sup>4</sup>

Wedding Brand provided eight samples out of the 39 style numbers provided in the request. See Wedding Brand’s request dated June 8, 2007 at Exhibit 1. Wedding Brand also provided a description of its “Unity” candles collection which differ in style number, color and accessories, such as flowers, crosses, raised carvings, ribbons, bows, rhinestones, and sashes. See id. Wedding Brand states that the “Unity” candles are ceremonial pillar and taper candles used in wedding ceremonies. The candles consist of two slender tapers, which measure nine inches in height and a larger center pillar candle measuring nine inches in height and three inches in diameter. Additionally, Wedding Brand notes that the larger candle is packaged separately from the two slender candles, but sold as an ensemble. Wedding Brand adds that the candles are smokeless and driplless and are composed of 40 percent petroleum wax and 60 percent palm oil wax. Wedding Brand categorizes its “Unity” candles by a style number followed by a “P” for pillar or “T” for taper following the style number.<sup>5</sup>

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with the holiday season. See Customs Information Exchange, CIE N212/85, dated September 21, 1987 (“CBP Notice”). We note the Customs Notice contains the same language concerning the novelty candle exception as an earlier communication between the Department and counsel for a candle importer. See Letter from the Director, Office of Compliance, to the law firm of Burditt, Bowles & Radzius, Ltd., July 13, 1987.

<sup>3</sup> See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504) ; Hallmark Cards, Inc., dated September 30, 1993 (“Hallmark Ruling”).

<sup>4</sup> See Diversified Products Corp. v. United States, 6 C.I.T. 155, 162, 572 F.Supp. 883, 889 (CIT 1983), which established the Department’s consideration of: the general physical characteristics of the merchandise, the expectation of the ultimate purchasers, the channels of trade in which the merchandise moves, the ultimate use of the merchandise, and cost, in determining whether the merchandise under review is of the “same class or kind” as the merchandise defined within the scope of an antidumping duty order.

<sup>5</sup> Wedding Brand also argued that, under the five Diversified Product factors set forth in 19 CFR 351.225(k)(2), its “Unity” candles are not covered by the scope of the Order. However, because we have determined that the physical descriptions of Wedding Brand’s “Unity” candles are dispositive of the issue, we have not applied the five factors in 19 CFR 351.225(k)(2) to this analysis.

## **NCA Rebuttal**

NCA contends that Wedding Brand's candles are petroleum wax candles made in China with fiber or paper-cored wicks in the shape of pillars or tapers, which are specifically included within the scope of the Order. Citing 19 CFR § 351.225(d) and (k)(1), NCA argues that the criteria described therein are dispositive with respect to Wedding Brand's "Unity" candles, thus eliminating the need for the Department to consider the Diversified Products criteria. Moreover, NCA argues that Wedding Brand's "Unity" candles fall within the scope of the Order because they are neither in the shape of identifiable objects, nor designed for specific use in weddings. NCA argues that the Department previously found Christmas tapers, whether or not adorned with decorative detail, included in the scope of the Order because tapers are specifically covered by 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); Endar Corp., July 7, 2000 ("Endar Christmas Tapers"). NCA argues that, similar to the Endar Christmas Tapers, Wedding Brand's "Unity" candles are merely decorated taper or pillar candles which can be used throughout the year. Moreover, NCA claims that, when viewed from all angles, nothing on Wedding Brand's "Unity" candles would limit their use to wedding ceremonies. NCA contends that Wedding Brand's request is another attempt to evade the Order, by claiming its tapers and pillars fall under the novelty exception pursuant to the Customs Notice.

In its rebuttal comments, Wedding Brand argues that NCA did not address Wedding Brand's arguments with respect to "Unity" candles being a special event candle used only in weddings. Wedding Brand also argues that NCA ignored its Diversified Products analysis that establishes that the "Unity" candles have distinct physical characteristics, an ultimate use, expectations from the ultimate customer, channels of trade, and manner of advertisement and display, all of which, Wedding Brand contends, render these candles specific to weddings. Wedding Brand also contends that NCA did not address the Department's final scope ruling with regard to the Hallmark Ruling, which excluded a substantially similar candle. Wedding Brand also argues that NCA's reference to the Department's determination for the Endar Christmas Tapers is inapposite to the "Unity" candles at issue here. Wedding Brand reiterated that an analysis of the "Unity" candles pursuant to 19 CFR 351.225(k)(2), would reveal that its "Unity" candles should be excluded from the scope of the Order.

## **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 this case, the Department has evaluated the Wedding Brand request in accordance with section 351.225(k)(1) of the Department's regulations 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 Wedding Brand's "Unity" candles. Therefore, for these "Unity" candles, the Department finds it unnecessary to consider the additional factors provided in section 351.225(k)(2) of the Department's regulations.

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 Antidumping Petition on Behalf of the National Candle Association, dated September 4, 1985 ("Antidumping Petition"), 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 “domestic 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 Service<sup>6</sup> 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

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 Purchasing Corporation, (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 Department stated in JC Penney that:

{t}he 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.’

See JC Penney at 4-5, footnote 1.<sup>7</sup>

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<sup>6</sup> Now the U.S. Customs and Border Protection Bureau (“CBP”).

<sup>7</sup> See also 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 Ruling”) (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).

Furthermore, in JC Penney, the Department stated that:

We now determine 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 in this and future cases 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 JC Penney at 5, footnote 1.

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, 922 (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 of the shapes of candles included within the Order, but, as the courts have recognized, there is no requirement that every single product covered must be identified in the scope. More specifically, the CAFC has stated that "the petitions that led to the issuance of the order did not need to specifically identify the {product} in order to cover {it}; our precedent, to say nothing of the regulations, makes clear that neither a petition nor an antidumping or countervailing duty order requires that level of specificity."<sup>8</sup> The CAFC further stated "{a}s a matter of law, a petition need not list the entire universe of products . . . in order {for the petition} to cover those products."<sup>9</sup> Thus, as applied to this Order, there is no requirement, nor is it possible, for all the

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<sup>8</sup> Novosteel SA v. United States, 284 F.3d 1261, 1264 (Fed. Cir. 2002).

<sup>9</sup> Id.

shapes of candles to be listed.<sup>10</sup> 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 is subject to 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 Customs 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 JC 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 Ruling. 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.

## **Analysis**

We find that Wedding Brand’s “Unity” candles are covered by the scope of the Order. The Department has evaluated Wedding Brand’s request in accordance with 19 CFR 351.225(k)(1), because the descriptions of the products contained in the petition, the final determinations of the Secretary and the ITC, the initial investigation, and the antidumping duty order are, in fact, dispositive. Consequently, an analysis of the five additional factors set forth at 19 CFR 351.225(k)(2), as requested by Wedding Brand, is unnecessary for this scope ruling determination.

Wedding Brand’s “Unity” candles are pillar and taper candles composed of 40 percent petroleum wax and 60 percent palm wax. See Wedding Brand’s request dated June 8, 2007, at 3 and Exhibit 1. Pillar and taper candles are shapes specifically delineated within the scope of the Order. The scope of the Order includes tapers, spirals, straight sided dinner candles, rounds, columns, pillars, and votives and various wax-filled containers. The “Unity” candles provided also contain fiber or paper-cored wicks, as described in the scope of the Order. See Wedding Brand’s request dated June 8, 2007, at Exhibit 1; see also Order. Finally, the “Unity” candles contain a mix of petroleum wax and palm wax. See Wedding Brand’s request dated June 8,

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<sup>10</sup> 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.”).



2007, at 3. 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 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.<sup>11</sup> Therefore, because Wedding Brand’s “Unity” candles are in a shape specifically delineated within the scope of the Order, contain fiber or paper-cored wicks, and are composed of a petroleum wax mix, the “Unity” candles appear to be covered by the scope of the Order.

However, we must also consider the issue of whether Wedding Brand’s “Unity” candles qualify for the novelty exception. Wedding Brand argues that its “Unity” candles are specifically and solely designed for use in wedding ceremonies, and thus excluded from the scope of the Order under the novelty exception, as defined in the Customs Notice. We find, however, that because the adornments on the “Unity” candles are easily removable or not specific to weddings, the novelty exception does not apply.

When determining whether or not a particular product claimed as a “holiday or novelty candle” is within the scope of the antidumping duty order, the Department must first examine whether the shape of the candle is of a shape delineated in the 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 the candle is in one of these shapes, the Department next considers whether the candle is, in fact, a “holiday novelty candle,” *i.e.*, whether the candle is “specifically designed for use only in connection with a religious holiday or special event.” See Russ Berrie v. United States, 57 F. Supp. 2d 1184 (CIT 1999). As explained in the Customs Notice and in previous scope rulings made by the Department, such candles with a design connoting religious holiday or special event are outside the scope of the Order.<sup>12</sup> If the candle(s) at issue qualifies as a “holiday novelty candle,” the Department may, if appropriate, determine if the designs affixed to the candle (*e.g.*, molded shapes) can be removed without damaging the candle. If the “holiday or special event” designs can be easily removed without damage or compromising the shape of the candle, the Department may find that the candle is still within the scope of the Order, notwithstanding the removable decoration. This same reasoning would apply to any candle in one of the shapes listed in the scope of the Order.<sup>13</sup>

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<sup>11</sup> 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).

<sup>12</sup> See, *e.g.*, 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).

<sup>13</sup> See, *e.g.*, Final Scope Ruling; Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); American Greetings Corporation (May 4, 2000) (“American Greetings Ruling”).

First, the Department notes that Wedding Brand’s “Unity” candles consist of many styles of pillar and taper candles designed with adornments such as flowers, crosses, raised carvings, ribbons, bows, rhinestones, and sashes. Among the eight sample “Unity” candles that Wedding Brand provided,<sup>14</sup> one is decorated with scripted writing printed on cardstock and bordered by pearls, satin cording, flowers and ribbon. The scripted writing on this candles states: “On this day, I will marry my friend the one I laugh with, live for, dream with, love.” The cardstock and border are pinned to the sides of the pillar with thin push-pins. There were no other samples that included any writing, referring to weddings or otherwise. The other samples provided by Wedding Brand were decorated with 1) ribbons with or without flowers that were tied around the candle, 2) a satin sash with a rhinestone buckle pinned to the candle, 3) satin bows pinned to the candle, or 4) a satin cuff pinned to the candle.

In its request, Wedding Brand argued that the Department previously excluded “Unity” candles in the Hallmark Ruling, and as such, that prior determination ought to be applied in this scope ruling request. However, with respect to the Department’s determination in the Hallmark Ruling, we note our analysis of Hallmark’s “Unity” candle’s physical description was as follows:

Candle WCD3093 has a poem entitled “Our Wedding” **imprinted onto the candle**. The poem is surrounded with flowers and ribbon. **The poem cannot be removed from the candle without destroying it and, as such, is an integral part of its design.** Therefore the design of candle WCD3093 limits it to one special occasion (e.g., a wedding). As such, candle WCD3093 is a wedding novelty candle and therefore outside of the scope of the order.

See Hallmark Ruling at 3 (*emphasis added*).

Unlike the inextricable adornment in the Hallmark “Unity” candle, Wedding Brand’s “Unity” candles’ adornment is merely pinned or tied to the pillar and can be easily removed without damaging the pillar or the shape of the pillar. As a result, the Department finds that the design incorporated into Wedding Brand’s “Unity” candles is not fundamental to the shape of the candle. The removal of the adornment renders the candle free of any references to weddings.

Moreover, the Department previously determined that “candles with stars, studs, or some other decoration **pinned into the sides**” were 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); Ender Corporation, (May 11, 2000) at 5 (“Ender Wedding Votive Ruling”)(*emphasis added*); see also Final Scone Ruling – Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China – Two’s Company, Inc., (January 13, 1995) at 4 (“Two’s Company”). Therefore, because the affixed design element of Wedding Brand’s “Unity” candles can be removed without damage to the candles, thus removing all reference to a

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<sup>14</sup> Although Wedding Brand did not provide samples of the taper candles that it alleges are an ensemble part of the “Unity” candle, Wedding Brand provided a detailed description of the tapers within the narrative of the scope request. See Wedding Brand’s request dated June 8, 2007, at 3-4 and Exhibit 1.

“holiday or special event,” the candles do not qualify for exclusion from the scope of the Order based on the novelty exception outlined in the Customs Notice.

Additionally, with respect to Wedding Brand’s “Unity” candle styles that are carved or molded with flowers, leaves, and/or seashells, the Department disagrees with Wedding Brand that flowers, leaves, and/or seashells specifically denote or represent weddings. In Two’s Company, the Department stated that “pillar candles decorated with affixed round jewels, square jewels, pearls, roses, stars, dots, diamonds, hearts, and bells ‘do not symbolize any specific event or holiday and the ornaments can be removed from the candle without damage to the pillars and are thus all within scope of the order.’” See id. Additionally, in the Endar Wedding Votive Ruling, the Department stated that “we do not agree with Endar’s argument that the candle is ‘to be used for weddings only,’ as the silver studs are suggestive of neither weddings nor any other specific event.” Additionally, in a similar scope request, the Department determined that “while a heart-shaped symbol made a candle appropriate for use on Valentine’s day, the design did not preclude use of the candle at some other time.” See American Greetings Ruling at 7-8. Specifically, the Department did not consider a heart-decorated taper to be a novelty candle because the heart symbol in no way limits that candle’s use solely to Valentine’s Day. Similarly, in this case, the Department does not consider flowers, leaves, or seashells specific only to weddings. Furthermore, the Department has stated in the American Greetings Ruling that “a candle in one of the shapes named in the order which includes an attached figurine is only outside the scope of the order if: i) the candle is a holiday novelty candle, and ii) the holiday figurine cannot be easily removed.” See American Greetings Ruling at 7.

Therefore, consistent with our practice, the Department finds that Wedding Brand’s “Unity” candles decorated with raised carvings of, or molded with, flowers, leaves, or seashells are not exclusively identified with weddings, and thus do not qualify for the novelty exception defined in the Customs Notice.

Lastly, Wedding Brand stated that the pillar candle is packaged separately from the two taper candles, but are sold as an ensemble “Unity” candle kit. However, we note that the Department has previously stated that “we also do not agree with Endar that the product packaging has any bearing on whether the physical attributes of the candle itself are within the scope of the order.” See Endar Wedding Votive at 5. Thus, the Department’s analysis of whether Wedding Brand’s “Unity” candles are excluded from the scope of the Order is irrespective of the “Unity” candles’ packaging.

Accordingly, Wedding Brand’s “Unity” candles do not meet the criteria of the novelty candle exclusion pursuant to the Customs Notice and, therefore, should be included within the Order.

**Recommendation**

Based on the preceding analysis, we recommend that the Department find that the Wedding Brand novelty candles fall inside the scope of the Order. If you agree, we will send the attached letter to the interested parties, and will notify Customs and Border Protection of our determination.

\_\_\_\_\_ Agree

\_\_\_\_\_ Disagree

\_\_\_\_\_  
Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

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Date