

Petroleum Wax Candles from the People's Republic of China  
Final Results of Redetermination  
Pursuant to Court Remand  
San Francisco Candle Company, Inc. v. United States  
Court No. 01-00088, slip op. 02-47 (CIT May 30, 2002)

**SUMMARY**

On May 30, 2002, the U.S. Court of International Trade ("CIT") remanded the above-referenced proceeding to the Department of Commerce ("the Department") for reconsideration of the following issues: 1) for certain candles (numbers 1, 4, 9, 11 and 12), whether the Department's decision that these candles, whose decorative patterns include holly leaf and berry designs, did not qualify for exclusion from the antidumping duty order on petroleum wax candles from the People's Republic of China ("the Order") as holiday novelty candles was supported by substantial evidence and in accordance with law; 2) for candle number 12, to consider both the pillar and square versions in its remand determination; and 3) for certain candles (numbers 2, 3, 5, 8, and 10), to: a) reconsider whether the requirement of visibility from multiple angles and the "minimally decorative" standard are properly applied to holiday novelty candles; b) absent some further explanation, to omit consideration of whether a design would easily burn or melt away, as this is not in accordance with law and c) to reconsider whether the combined effect of decorative characteristics, individually determined by the Department to disqualify the candles for the holiday novelty exclusion, removes these candles from the scope of the Order. San Francisco Candle Company, Inc. v. United States, slip op. 02-47 (CIT May 30, 2002) (SFCC v. U.S.).

For these final remand results, we have reconsidered our methodology in accordance with the Court's instructions and have determined that candles 2, 4, 5, 8, 9, 10, and 11 fall within the scope of the Order and candles 1, 3, and 12 (both pillar and square versions) fall outside the scope of the order.

## BACKGROUND

On August 28, 1986, the Department issued an antidumping duty order covering “[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.”

Antidumping Duty Order: Petroleum Wax Candles from the People’s Republic of China, 51 FR 30686 (August 28, 1986). Subsequently, the Department issued a notice indicating that certain novelty candles would be excluded from the Order’s scope:

The Department of Commerce has determined that certain novelty candles, such as Christmas novelty candles, are not within the scope of the antidumping order on petroleum wax candles from the People’s Republic of China (PRC). Christmas novelty candles are specially designed for use only in connection with the Christmas holiday season. This use is clearly indicated by Christmas scenes or 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 numbers).

Scope Clarification Notice: Petroleum Wax Candles from the People’s Republic of China, CIE N-212/85 (September 21, 1987) (Scope Clarification Notice). On November 17, 2000, the San Francisco Candle Company (SFCC) requested that the Department issue a scope ruling as to twelve candles:

1. Christmas Holly Leaf with Berries Candy Cane Pillar (Item No. 03433)
2. Santa Claus Motif Candy Cane Pillar (Item No. 13403)
3. Christmas Tree with Star Candy Cane Pillar (Item No. 73633)
4. Christmas Holly Leaf Pillar (Item No. 83136)
5. Christmas Sock Pillar (Item No. 83036)
6. Santa Claus Pillar (Item No. 82936)
7. Carved Christmas Tree with Star Pillar (Item No. 64904)
8. Santa Claus Candy Cane Column (Item No. 00016)
9. Christmas Holly Leaf with Berries Candy Cane Column (Item No. 00016)

10. Christmas Tree with Star Candy Cane Column (Item No. 00016)
11. Christmas Holly Leaf with Berries Pillar (Item No. 166406)
12. Christmas Patchwork Pillar and Christmas Patchwork Square (Item No. 15736)

See Letter from SFCC to Sean Carey, Dep't of Commerce, Int'l Trade Admin., Antidumping and Countervailing Enforcement Group III (November 17, 2000). The National Candle Association (NCA), petitioner in this case, submitted comments on SFCC's request on January 31, 2001. On February 12, 2001, the Department issued its final scope ruling for SFCC concerning petroleum wax candles from the People's Republic of China (PRC). See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candle From the People's Republic of China (A-570-504); SFCC (February 12, 2001) (SFCC Ruling).

Subsequently, the SFCC appealed the Department's decisions in SFCC Ruling, claiming that all of the candles submitted in its request were novelty candles falling outside the scope of the Order. The Department responded that candles 2, 3, 5, 6, 8, and 10 were correctly found to be within the scope of the Order, and requested that its ruling on candles 1, 4, 9, 11, and 12 be remanded for reconsideration. This remand from the CIT covers candles 1, 2, 3, 4, 5, 8, 9, 10, 11, and 12 (pillar version), all of which the Department ruled upon in SFCC Ruling. The remand also covers the square version of candle 12 which the Department did not specifically address in SFCC Ruling. The CIT agreed with the Department's decision in SFCC Ruling that candle 6 fell within the scope of the Order. The Department determined that candle 7 was excluded from the scope of the Order in SFCC Ruling and did not reconsider that candle in the context of this remand.

On July 17, 2002, the Department released its draft remand results of redetermination to the plaintiff and defendant-intervenor for comment. See "Petroleum Wax Candles From the

People’s Republic of China Draft Results of Redetermination Pursuant to Court Remand,” San Francisco Candle Company, Inc. v. United States, Court No. 01-00088, Slip Op. 02-47 (May 30, 2002 CIT) (Draft Remand Results). On July 22, 2002, plaintiff, San Francisco Candle Co., Inc. (hereinafter SFCC), provided a timely brief commenting on the draft remand results. Also on July 22, 2002, defendant-intervenor, National Candle Association (hereinafter NCA), provided a timely brief commenting on the draft remand results. On July 24, 2002, both the plaintiff and the defendant-intervenor in this case provided a timely rebuttal brief. After consideration of the comments by both the plaintiff, and the defendant-intervenor, we have reconsidered our scope decision on every candle and have made the following determinations. In addition, the Department’s response to parties comments is included in the “Comments” section, below.

## **DISCUSSION**

As the CIT has stated, the possibility of drawing two inconsistent conclusions from the same evidence does not mean that the agency’s finding is unsupported by substantial evidence, citing Consolo v. Fed. Mar. Comm’n, 383 U.S. 607, 620 (1966). In addition, the CIT has also held that the Department has the inherent authority to define and clarify the scope of an antidumping duty investigation. See Koyo Seiko Co., Ltd. v. United States, 834 F. Supp. 1401, 1403 (Ct. Int’l Trade 1993), aff’d, 31 F.3d 1177 (Fed. Cir. 1994). In general, in determining whether a product falls within the scope of an order, Commerce looks to “[t]he descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission.” 19 C.F.R. § 351.225

(1)(2000). Consequently, if the descriptions are dispositive, as the Department found in the scope inquiries at issue, then the Department must issue the scope ruling based on this information alone. See 19 C.F.R. § 351.225(g)(2); Nitta Indus. Corp. v. United States, 997 F.2d 1459, 1461 (Fed. Cir. 1993).

This approach of evaluating candles before the Department in light of the entire text of the scope of the Order is in keeping with a recent opinion of the CIT which noted that a better approach in scope rulings is to avoid subjective issues of intent and, instead, look to the petition's language to determine whether the class or kind of merchandise at issue was expressly included. See Duferco Steel, Inc. v. United States, 146 F. Supp. 2d 913 (Ct. Int'l Trade 2001) (Duferco Steel). In 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 2001 Ruling), the Department stated that, in accordance with Duferco Steel, “. . . in order to give full effect to the first sentence of the inclusive language of the scope, the Department normally will evaluate whether candles of a shape not listed by the inclusive language of the Order's scope are scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.” Although the specific scope decision in Duferco Steel has recently been overturned by the United States Court of Appeals of the Federal Circuit (CAFC) in Duferco Steel, Inc. v. United States, 01-1443 (July 12, 2002) (Duferco Steel II), we do not believe that the outcome of the Department's decisions in SFCC Ruling or JC Penney 2001 Ruling are affected. See the discussion below under Comment 2. Thus, the Department's practice of looking at the plain language of the scope of the Order in making its scope determinations remains in accordance with law.

With regard to the candles' scope determinations, the CIT states that the Department first determines whether the shape of the candle is one 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."<sup>1</sup> If so, the Department then considers whether the candle may be excluded from the Order as a novelty candle, *e.g.*, holiday candles, including Christmas candles. More specifically, the CIT notes, Christmas candles that fall within this exception must be "specially designed for use only in connection with the Christmas holiday season."<sup>2</sup> In addition, this use must be "clearly indicated by Christmas scenes or symbols depicted in the candle design." Furthermore, the CIT states that prior scope rulings indicate that, in order to qualify a candle for exclusion, a holiday design must be easily recognizable as a specific holiday image.<sup>3</sup>

The CIT continues by stating that, if the Department concludes that the candle's design is specific to a particular holiday, then the Department looks to see whether the decorations can be removed without damaging the candle. See Final Scope Ruling; Antidumping Duty Order on Petroleum Wax Candle From the People's Republic of China (A-570-504); Endar Corp. (July 7, 2000) (Endar July 2000 Ruling). If the candle's design is specific to a particular holiday or event, but the decorations alluding to that particular holiday or event are not easily recognizable or can be easily removed without damaging the candle, then the candle will be within the scope of the Order. Finally, in making scope determinations, the CIT states that the

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<sup>1</sup>*SFCC*, slip op. 02-47, at 2.

<sup>2</sup>*Id.*

<sup>3</sup>*See SFCC*, slip op. 02-47, at 7.

Department has always defined the “holiday novelty” exclusion narrowly, e.g., decorative images must be specific to the holiday, and generic and seasonal designs are not grounds for exclusion.

See Russ Berrie & Co. v. United States, 23 CIT 429, 440, 57 F. Supp.2d 1184, 1194 (1999)

(Russ Berrie); Endar July 2000 Ruling. The CIT also notes that, when the Department considers

all of a candle’s characteristics in combination, it may qualify for exclusion from the Order. See

Springwater Cookie & Confections, Inc. v. United States, 20 CIT 1195-96 (1996) (Springwater);

Final Scope Ruling; Antidumping Duty Order on Petroleum Wax Candle From the People’s

Republic of China (A-570-504); Endar Corp. (April 7, 1999) (Endar April 1999 Ruling).

The Department generally agrees with the CIT’s assessment of its application of the novelty candle exception. As noted in the novelty candle exception language detailed above, this exclusion covered the following: “Christmas novelty candles. . .specially designed for use only in connection with the Christmas holiday season;” “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).” Scope Clarification Notice. Thus, the novelty candle exception was quite specific in denoting the candles which would qualify for exclusion from the Order, i.e., candles with holiday- or event-specific designs and candles in figurine shapes or shapes of identifiable objects. In addition, the candles alleged identifiable shape must be easily recognizable from most angles, or the holiday- or event-specific design must be large enough or proportionately situated on the candle as to render it easily recognizable from most perspectives, in order for the candle to qualify for exclusion from the Order on the basis of the novelty candle exception. But, in clarification of the CIT’s assessment of our practice, the Department does not interpret the ruling on Endar’s alleged

bamboo candle to require *per se* that the candle meet both standards discussed in that ruling (whether the design is easily recognizable and visible from most angles) in order to qualify for the novelty candle exception. See Final Scope Ruling; Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-507-504); Endar Corp. (January 10, 2000) (Endar Jan. 2000 Ruling) (where the Department determined that an alleged bamboo candle was an in-scope pillar candle whose minimal decorative design did not make it easily identifiable as bamboo and whose defining characteristic was not visible from all sides). Because, as the CIT notes, the Department also takes into consideration the totality of the candle (the combination of the colors, patterns, and images), the Department realizes that there will be and have been exceptions to the normally applied standards. See Springwater, 20 CIT at 1195-96. In the end, these guidelines were designed to simply help the Department interpret the exclusion narrowly; they were not designed as a strict 2-element standard in considering holiday novelty candles. As a result, the Department's past rulings, since the Order's inception, have reflected adherence to a narrow definition of candles to be excluded by this novelty candle exception. See e.g., Russ Berrie, 23 CIT at 440, 57 F. Supp.2d at 1194; Endar July 2000 Ruling.

With respect to holiday candles in particular, the Department agrees with the CIT that, prior to the Department's SFCC Ruling, the Department had not applied the "identifiable from most angles" benchmark in determining whether the candle fell within the holiday novelty exception. However, as recognized by the CIT, the Department had previously applied this standard when issuing determinations regarding candles allegedly in the shapes of identifiable objects, which also fall under the novelty candle exception. See Meijer 1999 Ruling; Endar 1999 Ruling. Since the SFCC Ruling, the Department has consistently applied the "identifiable from

most angles” benchmark in determining whether a candle is associated with a recognized holiday and, thus, qualifies for the novelty candle exception. See JC Penney May 2001 Ruling (where the Department determined that the holly images on a Dark Green Holly Pillar and a Dark Green “Cracked” Holly Pillar “. . .represent significant decorations and are visible from multiple angles”). See also Final Scope Ruling; Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Avon (May 8, 2001) (Avon 2001 Ruling) (where the Department determined that the holly berry decorations were “clearly identifiable as holly” and “visible from multiple angles”); Atico 2002 Ruling (where the Department determined that an Easter floating candle did not resemble an egg when viewed from most angles, nor did the candle’s design limit its use to the Easter holiday, thus finding the candle within the scope of the Order). As stated by the CIT, “Commerce has the flexibility to change its position providing that it explain the basis for its change and providing that the explanation is in accordance with law and supported by substantial evidence.” Asociacion Colombiana de Exportadores de Flores v. United States, 22 CIT 173, 184-85, 6 F. Supp. 2d 865, 879-80 (1998) (Flores). Starting with the SFCC Ruling, the Department recognized that the “identifiable from most angles” benchmark was appropriately applied, along with the “minimally decorative” standard, to candles allegedly associated with a recognized holiday as well as to candles allegedly in the shapes of identifiable objects. Examining candles in light of either one or both of these standards ensures that the candles for which the novelty candle exception is requested truly meet the requirements of this narrowly-construed exception to the scope of the Order. As such, the Department believes that both of these standards are reasonably applied in determining whether candles are in the shapes of identifiable objects or merit holiday novelty status because these

characteristics both fall under one and the same exception to the scope of the Order: the novelty candle exception.

As the CIT notes, prior to this recent change in practice regarding holiday novelty candles, the Department issued rulings wherein, for instance, holiday designs on the lids of wax-filled containers qualified candles for the holiday novelty exception. See, e.g., Final Scope Ruling, Kohl's Dep't Stores, Inc., Def.-Int.'s Ex. 14 at 6 (August 24, 1998); Final Scope Ruling, Cherrydale Farms Confections at 3 (September 3, 1993). Because of the Department's reliance on the "minimally decorative" and "identifiable from most angles" standards, the Department would today be unlikely to exclude the candles in the rulings cited by CIT because the holiday motifs were placed only on the lids of the wax-filled containers and, thus, were only visible when viewing the tops of the candles. Given the Department's rulings in the past few years, we do not believe that such minimally decorative designs should render otherwise in-scope candles 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); American Greetings (May 11, 2000) (American Greetings Ruling) (where the Department determined that the addition of a pattern resembling variegated kernels of corn etched into the sides of a taper does not sufficiently alter the fundamental shape of the candle so as to make it outside the scope of the Order).

Finally, in accordance with the Court's instructions, the Department did not take into consideration whether the design would easily burn or melt away when making their determination whether the candles were within the scope of the Order. See the discussion below under Comment 3.

The Department now turns to the CIT's remand, pursuant to the Department's request, of

candles 1, 4, 9, 11, and 12 (pillar version), which all contain holly leaf and berry designs, for reconsideration and clarification of the Department's reasoning in SFCC Ruling; its request that the Department consider the square version of candle 12, which includes holly leaf and berry designs; and its remand of candles 2, 3, 5, 6, 8, and 10 for further proceedings by the Department consistent with the CIT's opinion. See SFCC v. U.S.

As an initial matter, the Department agrees with the CIT that holly sprigs are "symbols associated with Christmas." See Springwater, 20 CIT at 1195-96. Furthermore, the Department has also stated that the holly leaf and berry design is a symbol of Christmas, and candles bearing holly motifs should be excluded from the scope of the Order. See Final Scope Ruling;

Antidumping Duty Order on Petroleum Wax Candle From the People's Republic of China (A-570-504); JC Penney Purchasing Corp. (May 21, 2001) (JC Penney May 2001 Ruling).

Moreover, the Department has cited the Springwater decision in other scope requests involving candles decorated with holly leaves and berries to conclude that the candles should be excluded from the Order. See Final Scope Ruling; Antidumping Duty Order on Petroleum Wax Candle

From the People's Republic of China (A-570-504); Avon Products, Inc. (May 8, 2001);

Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Dollar Tree Stores, Inc. (April 9, 1997).

However, the Department also considers that, in order for holly leaf and berry design to qualify a candle for exclusion from the Order, it must be both explicit and easily identifiable when viewing the candle from most perspectives. In other words, the holly leaf and berry image must be readily recognizable as the *traditional* holly leaf and berry, i.e., with the holly leaves and berries grouped together, and it must be more than "minimally decorative" in order to qualify the

candle for the holiday novelty exclusion. See JC Penney May 2001 Ruling (where, for a Dark Green Holly Pillar, the Department determined that “[w]hile holly is a symbol of Christmas, the botanical design on this candle neither resembles actual holly leaves and berries nor the holly designs on JC Penney’s other candles which have been deemed outside the scope of the Order”). As further discussed below, the Department has consistently relied on both the “minimally decorative” and “identifiable from most angles” standards in recent rulings, *both* for candles alleged to be in identifiable shapes and for candles alleged to qualify as holiday novelty candles, because it believes that the identifiable shape or holiday-specific decoration should be easily recognizable when viewed from most angles in order for the candle to qualify for exclusion from the Order. See Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Meijer, Inc. (September 30, 1999) (Meijer 1999 Ruling) (where the Department determined that an alleged star-shaped candle was “. . . not clearly identifiable as a star or any other known object when viewed from all sides”); JC Penney May 2001 Ruling (where the Department determined that the holly images on a Dark Green Holly Pillar and a Dark Green “Cracked” Holly Pillar “. . . represent significant decorations and are visible from multiple angles”). See also Avon 2001 Ruling (where the Department determined that the holly berry decorations were “clearly identifiable as holly, and are visible from multiple angles.”). If the alleged identifiable shape is not easily recognizable from most perspectives, or the holiday- or event-specific design is so small or singularly placed on the candle as to render it not easily recognizable from most perspectives, we believe that the candle should not qualify for exclusion from the Order on the basis of the novelty candle exception. In other words, these standards are reasonably applied as benchmarks for determining whether

candles are in the shapes of identifiable objects or merit holiday novelty status because these characteristics both fall under one and the same exception to the scope of the Order: the novelty candle exception.

For these final remand results, we have reconsidered our methodology in accordance with the CIT's instructions and, for candles 2, 8, 9, and 10 we determine that, although these candles possess images related to the Christmas season (i.e., Santa Claus image, holly leaves and berries, and Christmas tree with a star), the designs are "minimally decorative" and are not easily recognizable as holiday images from most angles, thus, disqualifying these candles for the holiday novelty exception. As the CIT has previously stated, "Commerce has the flexibility to change its position providing that it explain the basis for its change and providing that the explanation is in accordance with law and supported by substantial evidence." Flores, 22 CIT at 184-85, 6 F. Supp. 2d at 879-80. Because of the multitude of scope requests<sup>4</sup> the Department has received since the inception of the Order, and the limited administrative resources available to the Department in considering these often complex scope requests, over time, the Department has developed guidelines to better address these scope determinations. Thus, as stated above, we believe that the standards applied to candles allegedly in the shape of identifiable objects are also reasonably applied to candles which allegedly qualify for holiday novelty status. Therefore, in accordance with Flores and for the reasons expressed below, the Department determines that candles 2, 8, 9 and 10 fall within the scope of the Order.

To begin with, the Department finds that the small images of the Santa Claus, holly

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<sup>4</sup> See attachment 1 for an illustration of the numerous scope requests under this Order that the Department processes.

leaves and berries, and Christmas tree with a star imprinted on the top surface of candle 2 and on one very small place on one side of candles 8, 9, and 10 are only “minimally decorative” and can only be viewed when looking down at the top surface of the candle or at one side of the candle, rather than when the candles are viewed from any side. In and of themselves, these singular images are not substantial enough to transform these pillar and column candles, shapes covered by the scope of the Order, into candles “specially designed for use only in connection with the Christmas holiday season.”

In a previous candle scope determination, the Department has found that “a minimally decorative design that does not make the product easily identifiable as a novelty candle is not grounds for excluding an item from the Order.” See Final Scope Ruling; Antidumping Duty Order on Petroleum Wax Candle From the People’s Republic of China (A-570-504); Atico Corp. (April 8, 2002) (Atico April 2002 Ruling) (where the Department concluded that minimal processing, through the addition of fluted or straight horizontal grooves, to a round does not change the fact that it is still a round, and within the scope of the Order). See Also Endar Jan. 2000 Ruling (where the Department determined that an alleged bamboo candle was an in-scope pillar candle whose minimal decorative design did not make it easily identifiable as bamboo and whose defining characteristic was not visible from all sides). Thus, the requestor cannot add a minimally-decorative element, such as the small image of Santa Claus, holly leaves and berries, or a Christmas tree with a star, to an otherwise in-scope candle, a pillar or column, to make it fall outside the scope of the Order.

Moreover, the small holiday images are very minor decorations on an otherwise in-scope candle, a pillar or column, and the Department has previously concluded that molded decorations

on an in-scope candle do not change it into an out-of-scope candle. See Final Scope Ruling; Antidumping Duty Order on Petroleum Wax Candle From the People’s Republic of China (A-570-504); American Greetings Corp. (May 4, 2000) (where the Department concluded that molded decorations depicting multicolored flowers on a taper did not change the fact that it was still a taper, and within the scope of the Order). See also Final Scope Ruling; Antidumping Duty Order on Petroleum Wax Candle From the People’s Republic of China (A-570-504); Endar Corp. (May 21, 2002) (where the Department concluded that a molded rose on top of a votive candle did not change the fact that it was still a votive, and within the scope of the Order); Atico 2002 Ruling (where the Department concluded that adding fluted or straight horizontal grooves to a round candle does not change the fact that it is still a round, and within the scope of the Order); Final Scope Ruling; Antidumping Duty Order on Petroleum Wax Candle From the People’s Republic of China (A-570-504); Cherrydale Farms (October 5, 2000) (Cherrydale 2000 Ruling) (where the Department concluded that the addition of an insect shape molded on top of a round candle does not change the fact that it is a round, and within the scope of the Order). Therefore, the addition of the small images of Santa Claus, holly leaves and berries, and a Christmas tree with a star to the candles does not change the fact that the candles are still pillars or columns, and within the scope of the Order.

As discussed above, since the determinations cited in the CIT’s decision, the issue of whether the design is readily identifiable from most angles has been revisited by the Department, and the Department has consistently applied the “identifiable from most angles” benchmark in determining whether the candle falls within the novelty candle exception. See JC Penney May 2001 Ruling (where the Department determined that the holly images on a Dark Green Holly

Pillar and a Dark Green “Cracked” Holly Pillar “. . .represent significant decorations and are visible from multiple angles”). See also Avon 2001 Ruling (where the Department determined that the holly berry decorations were “clearly identifiable as holly” and “visible from multiple angles”). If a candle’s shape or its holiday novelty decoration is identifiable from most angles, rather than from a minority of perspectives, the identifiable object or holiday novelty status of the candle will be easily identifiable to the viewer. In such cases, the Department will rule that the candle at issue falls within the novelty candle exception, whether as an identifiable object or a holiday novelty candle, and, thus, outside the scope of the Order.

Thus, when the Department applies its test regarding the viewability of the holiday images in regards to candle 2, 8, 9, and 10, we determine that the small images of Santa Claus, holly leaves and berries and the Christmas tree with a star are only discernable when viewed from above or from one side. Thus, they fail the standard of being “identifiable from most angles.” See Atico 2002 Ruling (where the Department determined that an Easter floating candle did not resemble an egg when viewed from most angles, nor did the candle’s design limit its use to the Easter holiday, thus finding the candle within the scope of the Order); Final Scope Ruling; Antidumping Duty Order on Petroleum Wax Candle From the People’s Republic of China (A-570-504); Premier Candle Corp. (February 25, 2002) (where the Department determined that a tulip lantern candle was not recognizable as a tulip from its top, bottom, or sides, thus finding the candle within the scope of the Order); Final Scope Ruling; Antidumping Duty Order on Petroleum Wax Candle From the People’s Republic of China (A-570504); Endar Corp. (February 13, 2002) (where the Department determined that a floating pumpkin lantern candle was not recognizable from most angles as a pumpkin, thus finding the candle within the scope of the

Order); Meijer 1999 Ruling (where the Department found that the alleged star candle was within the scope of the Order because it was not clearly identifiable as a star or other object when viewed from all sides). Therefore, because the small images of Santa Claus, holly leaves and berries, and Christmas tree with a star are only identifiable when viewed from the top (in the case of candle 2) or one side ( in the case of candles 8, 9, and 10), the candles fail the “identifiable from most angles” benchmark and, thus, fall within the scope of the Order.

Furthermore, the Department has ruled in past decisions that candles with a striped “peppermint candy” design, similar to the design on these candles, “. . .do not contain scenes or symbols of holidays or other special events, nor are these candles ‘shaped in the form of identifiable objects,’ such as animals or numerals.” See Final Affirmative Scope Ruling -- Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Institutional Financing Services and Hallmark Cards, Inc. (April 9, 1997).

The Department agrees with the CIT that it should evaluate whether the combination of colors, patterns, and designs, taken together, may be sufficient to find candles 2, 8, 9, and 10 within the holiday novelty exception. However, after reconsideration, the Department believes that, even when taking into consideration the combined effect of the colors, patterns, and images on these candles, the result is not sufficient to qualify these candles for the holiday novelty exception. As noted above, the small images on the top of candle 2 and on one small place on the side of candles 8, 9, and 10, are not easily seen when viewing the candles from most perspectives and, furthermore, the Department has ruled in the past that the “peppermint candy” striped design does not relate specifically to the Christmas holiday. Therefore, the combined effect of colors and designs does not reach a level that would qualify these candles for the

holiday novelty exception. See Springwater, 20 CIT at 1195-96 (where the Department stated that it was the combination of bows, bells, tree boughs, and coloring consistently associated with Christmas which clearly indicated a use only in connection with the Christmas season); Endar 1999 Ruling (where the Department stated that because of the design and color combination of the pinecones bunched in the center of green pine branches against a red background, they found the candle to be associated with Christmas, and thus outside the scope of the Order).

Because the respective holiday images on candles 2, 8, 9 and 10 are small, singular and imprinted on the top surface and either imprinted on, or added to one small place on the side of the candle only, they merely provide minimal decorative effect to the candles and are only discernable when viewing the top or one side of the candle. Accordingly, for these reasons, candles 2, 8, 9 and 10 are not easily recognizable as “specially designed for use only in connection with the Christmas holiday season” and, therefore, do not qualify for the holiday novelty exception. This conclusion is consistent with the Department’s past decisions regarding the “minimally decorative” and “identifiable from most angles” standards, where candles submitted for review in the shapes of easily identifiable objects, or containing holiday-specific designs, which are viewable from most perspectives have been ruled to fall outside the scope of the Order. See, e.g., Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candle From the People’s Republic of China (A-570-504); Atico Corp. (February 19, 2002); and JC Penney May 2001 Ruling. Thus, we determine that candles 2, 8, 9 and 10 fall within the scope of the Order.

With regard to candles 4 and 5, the Department applies similar reasoning as for candles 2, 8, 9 and 10. Although the alleged images of holly leaves and berries and a stocking, respectively,

relate to the Christmas season, the images are only sketches, are relatively small and are singularly imprinted on only one surface or side of each candle. Therefore, the respective images are “minimally decorative” and can only be viewed from one angle. Furthermore, we do not believe that these specific designs are easily recognizable as the holly leaves and berries and stocking, respectively, that they are alleged to be because they are only abstract outlines.

See JC Penney May 2001 Ruling. For all of these reasons, we find that candles 4 and 5 do not qualify for the holiday novelty exception, and, thus, fall within the Order’s scope.

Regarding candle 11, the Department determines that, upon reconsideration, we do not believe that the alleged “holly berry leaves and berries” on this candle resemble a holly sprig in the traditional sense. The leaves and berries are scattered around the surface of the candle, rather than grouped together, as a holly sprig is normally pictured, and could represent another type of leaf or berry. See JC Penney May 2001 Ruling. In this respect, this candle does not relate specifically to the Christmas holiday season; rather, it could be used generically throughout the fall or winter season. Therefore, the Department finds that this candle falls within the scope of the Order.

After taking into consideration the combined effect argument, the Department determines that candles 1 and 3 are outside the scope of the Order. Although the small images of the holly leaves and berries and the Christmas tree with a star, are, when viewed in isolation, minimally decorative and not easily recognizable as holiday images from most angles, the combination of these images with other designs characteristic of Christmas, such as the red, green and white color combination, indicate that these candles were “specially designed for use in connection with the Christmas holiday season.” Unlike candles 2, 8, 9, and 10, candles 1 and 3 have more

than a “peppermint candy” striped effect; candles 1 and 3 also have a green stripe, which taken in concert with the other colors and images, more closely identifies these candles as designed for the Christmas holiday season. Therefore, the Department finds that candles 1 and 3 fall outside the scope of the Order.

Regarding candle 12, upon reconsidering both the square and pillar versions of this candle, the Department determines that the designs contained on these candles, as well as the color combinations, favors a finding that these candles were “specially designed for use only in connection with the Christmas holiday season,” thus qualifying them for the holiday novelty exception. More specifically, both the square and pillar versions of candle 12 have images of the traditional holly leaves and berries on all sides. Moreover, unlike candles 2, 8, 9 and 10, because the holly leaves and berries are recognizable as such from all sides, they are more than minimally decorative. In addition, the red, white and green color combinations on all sides of the candles provide further identification with the Christmas holiday. For these reasons, upon reconsideration, we find that both the square and pillar versions of candle 12 qualify for the holiday novelty exception and that both versions of this candle fall outside the scope of the Order.

#### **FINAL RESULTS OF REDETERMINATION**

The Department has reconsidered the candle scopes based upon the reasoning set forth above and in accordance with the Court’s order. Accordingly, for these final results pursuant to the Court remand, we determine that candles 2, 4, 5, 8, 9, 10, and 11 fall within the scope of the order and 1, 3 and 12 (both square and pillar versions) fall outside the scope of the Order.

**COMMENT SECTION**Comment 1:

SFCC points out a technical error that it believes the Department has made with respect to the scope of the remand in that the Department states, on page 3 of the Draft Remand Results, that the remand covers the twelve candles originally submitted to the Department by the SFCC for a scope ruling. SFCC argues that candle number 7 (Carved Christmas Tree with Star Pillar) is not before the CIT or the Department because the Department ruled that it was excluded from the scope of the Order and the petitioner did not file an appeal with respect to this decision.

The NCA argues that the Department, upon remand, has the opportunity to re-evaluate its determination with regard to candle 7 (Carved Christmas Tree with Star Pillar), which was excluded in the Department's SFCC Ruling, and that the Department properly included candle 7 in its remand and its Draft Remand Results. According to the NCA, the Department made the appropriate decision upon reconsideration because this candle clearly was included within the scope of the Order.

Department's Position:

We disagree with petitioner and agree with respondent, in part, with respect to the technical error in the Department's statement on page 3 of the Draft Remand Results. The Department stated:

This remand from the CIT covers the twelve candles (listed above) originally submitted to the Department for a scope ruling by the SFCC, except for candle 6 on which the CIT agreed with the Department's decision that this candle fell within the scope of the Order.

Candle 7 (Carved Christmas Tree with Star Pillar) was excluded from the scope of the Order by the Department in SFCC Ruling, a decision which was not appealed by the petitioner. Candle 6 was ruled by the Department to be within the scope of the Order in SFCC Ruling. In its decision, the CIT upheld the Department's determination with respect to Candle 6. See SFCC v. U.S. Therefore, neither Candle 6 or Candle 7 is subject to the CIT's remand, and neither candle was reconsidered by the Department in the context of this remand. As noted in the "Background" section above, these final remand results, thus, cover candles 1, 2, 3, 4, 5, 8, 9, 10, 11, and 12 (both pillar and square versions).

Comment 2:

The SFCC argues that the Department's Draft Remand Results are legally flawed because the analysis is based upon a CIT decision, Duferco Steel, which was recently overturned by the Court of Appeals for the Federal Circuit (CAFC), citing Duferco Steel II. The SFCC contends that the CAFC's opinion holds that the Department may not stray from the "black letter language" in the scope of an antidumping duty (AD) order to expand its scope. Meanwhile, according to the SFCC, the Department interprets AD orders all the time, sometimes clarifying that certain categories of merchandise definitively are excluded from the order, as it did when it issued the memorandum on the novelty candle exception to the Order.

The SFCC argues that, pursuant to Duferco Steel II, the Department cannot now rule that the square version of candle 12 (Christmas Patchwork) is included in the scope of the Order because squares and/or cubes are not listed shapes in the "exclusive list" set forth in the scope of the Order. The SFCC contends that, as stated by the CAFC, "the absence of a statutory

prohibition could not be a source of Commerce’s authority in antidumping matters.”<sup>5</sup> According to the SFCC, Duferco Steel II invalidates the Department’s approach in this case and in 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).

The SFCC recommends that the Department “get back to the basics of the language” in the scope of the Order and subsequent novelty candle exception and that the fundamental question to ask is whether the producer specially designed the candles for use in connection with a recognized holiday--in this case, Christmas. The SFCC contends that, while the standards of “visibility “ or “identifiability” from multiple angles may apply to the question of whether a candle is shaped in the form of an identifiable object or figurine, the Department made no attempt in its Draft Remand Results to tie these standards to the question of whether the candle was “specially designed” for use in connection with a holiday or other special event. Moreover, according to the SFCC, should the Department now find that a candle with either “Noel” or a “Wedding” poem on only one angle is not “specially designed” for a holiday or special event, it would be thus enlarging the scope of the Order by adding criteria beyond “specially designed.”

The SFCC further argues that, if the Department has any doubt factually as to the specificity of the design or the application of its prior holdings, it is obligated under its regulations to consider secondary criteria, e.g., the method of advertising and display, expectations of the customer, etc. According to the SFCC, any objective analysis of these criteria would result in a finding that all of these candles were produced for use only in connection with

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<sup>5</sup>*Duferco Steel, Inc. v. U.S.*, 2002 WL1485349, \*7 (C.A. Fed. July 12, 2002) (*Duferco Steel II*).

Christmas.

The SFCC contends that the Department has not only not been faithful to the CIT's remand but has gone even further by adding still additional and unjustified standards without explanation. As an example, the SFCC takes issue with the Department's stipulation in its Draft Remand Results that holiday symbols be "traditional." According to the SFCC, the Department recognized in its initial determination and Draft Remand Results what these designs or symbols represented. The SFCC contends that the subjective view of the case handler is the only definition of "traditional" and that the Department's position is arbitrary and capricious in light of its exclusion from the scope of the Order of candle 7, which contained a carved abstract depiction of a Christmas tree. The SFCC further supports its contention that the Department's position is arbitrary and capricious by stating that ". . .the Department teaches that such 'traditional' symbols must be 'identifiable from most angles' yet not 'widely dispersed. . .'" According to the SFCC, no objective observer can doubt that these candles are specially designed for and purchased only in connection with Christmas and that, if it is not clear, the Department is obligated to evaluate the secondary criteria.

The SFCC argues, in addition, that the Department has not "taken to heart" other aspects of the CIT's remand instructions, including the request that the Department consider whether a combination of colors, patterns, symbols, etc. render a candle specifically-designed for use only in connection with Christmas. The SFCC believes that the Department has evaluated the features of these candles--especially the candy cane models--in isolation from each other, rather than in

combination, as instructed by the CIT.<sup>6</sup>

Finally, the SFCC contends that the Department cannot change its criteria for scope analysis post-importation and apply the new analysis to such entries--especially where there is an established practice of entry of such candles outside the scope of the Order. The SFCC argues that the Department's "new criteria" are so radically different from those in place when the SFCC made entry that the Department is obligated to publish a notice and comment for new ruling making and apply the new rules prospectively. The SFCC also refers the Department to its Reply Brief in Support of Its Rule 56.2 Motion for Judgement on the Agency Record<sup>7</sup>, for its further more detailed objections. In summary, the SFCC states that none of the candles subject to this appeal should be included within the scope of the Order, based upon the scope language and the clear guidance in the novelty candle exception, and that an analysis of the secondary criteria would only confirm its assessment.

The NCA takes issue with the SFCC's assessment that Duferco Steel II renders the Department's Draft Remand Results legally flawed. The NCA argues that the SFCC ignores the substance of the CAFC's ruling and its analysis which the NCA believes are consistent with the Department's analysis in this matter. The NCA points out that the CAFC reversed the CIT on

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<sup>6</sup> The SFCC further argues this issue, in its rebuttal brief inappropriately, stating that the Department's citations to prior erroneous rulings on candy cane candles do not, in and of themselves, meet the standard of evidence required to uphold this aspect of its *Draft Remand Results*. The SFCC maintains that, when the top surface markings and candy cane stripe pattern in Christmas colors are considered together, as required by the CIT, the Department's decision that the candles were not "specially designed for use only in connection with the Christmas holiday season" is not based on substantial evidence nor is it in accordance with law.

<sup>7</sup> See *Plaintiff's Reply Brief in Support of Its Rule 56.2 Motion For Judgment on the Agency Record, Novosteel SA v. United States*, No. 01-00088 (Ct. Int'l Trade filed Nov. 21, 2001).

the following basis:

Scope orders may be interpreted as including subject merchandise only if they contain language that specifically includes the subject merchandise or may be reasonably interpreted to include it. Because Commerce made no claim in the 1999 final scope ruling under review that the scope orders here contain such language, we reverse the decision of the Court of International Trade.

See Duferco Steel II at \*1. In contrast to Duferco Steel, the NCA notes, the 12 candles submitted by the SFCC in its scope request were described by the SFCC as pillars or columns, which were specifically included in the original language of the scope of the Order.

The NCA points out that Christmas candles were not excluded from the scope of the original investigation and Order and that the International Trade Commission (ITC) specifically determined that Christmas candles were included within the scope of the Order and within the scope of the ITC's investigation. Further, the NCA notes, the Department developed the limited novelty candle exception in a scope ruling issued over a year after the Order was issued. The NCA contends that Duferco Steel II supports its position that Christmas candles cannot be excluded from the Order because they were included within the specific language of the Order and the petition and in the Department's and the ITC's investigations.

Regarding the SFCC's claim that the square version of candle 12 is not among the shapes listed in the Order, the NCA cites to Mervyn's Ruling, wherein the Department ruled that the square- or cube-shaped candles of three different requesters were within the scope of the Order. The NCA states that the Department found in this ruling that the terms "columns" and "pillars" included straight-sided as well as cylindrical-like articles. According to the NCA, in this ruling, the Department referred to evidence in a certain catalog advertising variations of pillar candles, including a cube or square-shaped candle identified as a pillar, as well as evidence that the

respondent in the original investigation submitted a brochure indicating that respondent considered cube- or square-shaped candles to be pillars.

The NCA argues, in opposition to the SFCC, that the standards such as “visibility” or “identifiability” from multiple angles reasonably apply to all alleged novelty candles, both those shaped in the form of an identifiable object or figurine or those alleged to be specifically designed for use in connection with the Christmas holiday. The NCA believes that it is only logical that a candle would not be limited to use only during the Christmas holiday if the candle cannot be identified as being specifically designed for Christmas when viewing it from all angles. According to the NCA, a consumer could purchase an alleged Christmas candle at dumped prices and then use it throughout the year by merely turning the alleged Christmas design away from the view of its guests.

Regarding the SFCC’s challenge of the Department’s use of the word “traditional” when applied to the holly leaf and berry designs, the NCA states that it is clear from the Department’s definition and its citation to 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) that “traditional” means candle designs that resemble actual holly leaves and berries grouped together. The NCA maintains that the Department has been consistent with the CIT’s ruling in Springwater Cookie & Confections, Inc. v. United States, 20 CIT 1192 (Ct. Int’l Trade Sept. 1996) where the candle had holly leaves and berries grouped together; the groupings were molded into four places around the candle, they dominated the candle, and they were viewable from all sides of the candle.

The NCA argues that the Department has ruled consistently that a candy cane pattern is not specifically designed for use only in connection with Christmas and that, in fact, candy canes are found in candy stores throughout the year. Thus, contends the NCA, the candy cane design and its colors, when grouped with the SFCC's alleged Christmas designs, cannot add to the "specifically designed" analysis. According to the NCA, the candy cane design would in fact suggest that the candles were meant to be used throughout the year and were not specifically designed for Christmas.

In summary, the NCA states that the Department's SFCC Ruling was consistent with its established practice and with its practice since this ruling. The NCA incorporates therein by reference its Response and Memorandum in Opposition to Plaintiff's Motion for Judgment on the Agency Record, submitted to the CIT in this matter on October 2, 2001.<sup>8</sup>

Department's Position:

The Department agrees with petitioner that we should look at the plain language of the scope of the Order in making our scope determinations. See Draft Remand Results at 4-5. The scope of the candles Order clearly states "[c]ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks . . . sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers," fall within the scope of the Order. The 1986 Order offers a descriptive list of the shapes of candles falling within the Order, but as the Courts have

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<sup>8</sup>See *NCA's Response and Memorandum in Opposition to Plaintiff's Motion for Judgment on the Agency Record, SFCC v. U.S.*, slip op. 02-47 (Ct. Int'l Trade filed Oct. 2, 2001).

recognized, there is no requirement that every single product covered must be identified in the scope. More specifically, the CAFC has stated that “. . . the petitions that led to the issuance of the order did not need to specifically identify the [product] in order to cover [it]; our precedent, to say nothing of the regulations, makes clear that neither a petition nor an antidumping or countervailing duty order requires that level of specificity.”<sup>9</sup> It further stated “[a]s a matter of law, a petition need not list the entire universe of products . . . in order [for the petition] to cover those products.”<sup>10</sup> Thus, as applied in this case, there is no requirement nor is it possible for all the shapes of candles to be listed.<sup>11</sup> In fact, if the list were exhaustive, there would have been no need for the Department to render a decision on novelty candles or any other candle that was not explicitly listed as a shape in the scope of the Order. However, the Department did render a decision that provided an exclusion for novelty candles. The exclusion for novelty candles is very narrowly construed, as are all scope exclusions. As stated by the CIT in Russ Berrie:

The Court will interpret the novelty candle exception promulgated by Commerce after the issuance of the Order narrowly to preserve the efficacy of the Order. Consequently, a candle must be specially designed for use only in connection with a religious holiday or special event to fall within the novelty candle exception.

See Russ Berrie, 23 CIT at 440, 57 F. Supp.2d at 1194. Petitioners are correct that the novelty exception occurred in a scope review, conducted after the issuance of the Order, and that the

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<sup>9</sup>*Novosteel SA v. United States*, No. 01-1274, slip. op. at 2 (Fed. Cir., March 26, 2002) (*reh'g and rehr'g en banc denied*).

<sup>10</sup>*Id.*

<sup>11</sup>See *Petroleum Wax Candles from China*, USITC Pub. No. 3226, Investigation No. 731-TA-282 (Review), at 18 (August 1999) (“Candles come in a wide variety of shapes and sizes. Major U.S. candle manufacturers reportedly will offer 1,000 to 2,000 varieties of candles in their product lines.”).

candles in question are of a shape covered in the descriptive list of the original Order. Thus, such candles would clearly be included based on the plain language of the Order if the novelty exception, as determined by the Department, did not exist. Since the novelty candle exception does exist, we examined the candles in question to determine if the exception was applicable. To be excluded, the candles in question must be clearly associated with a specific, recognized holiday and must be recognizable as a holiday symbol; it is not enough for them to be associated with a season or be symbols of occasions (e.g., winter season or religious holidays).<sup>12</sup> Thus, we disagree with the SFCC's argument, and believe that the decision by the CAFC in the Duferco Steel II case supports the finding that the plain language of the scope of the Order establishes that candle 12, both the pillar and square versions, falls expressly within the scope of the Order.

Now, the only question that remains is whether candle 12 qualifies for the narrow exception that the Department issues with respect to novelty candles. However, the Department has already provided for that analysis, and the CAFC decision in the Duferco Steel II case does not speak to scope analyses made pursuant to exclusions decided after the initial order has been put in place. In other words, the Department does not view the precedent for exclusions as a new scope that replaces the old scope; we analyze the candle under the original scope and then see if any exclusion decision affects our analysis. As such, contrary to the SFCC's argument, the novelty candle exclusion does not replace or overcome the original scope language, it simply helps inform later scope decisions on candles that are covered by the plain language of the scope of the Order. After reexamining the candles in the context of the holiday novelty exception, in

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<sup>12</sup>See *Russ Berrie*, 57 F. Supp.2d at 1194-1195.

these final remand results, we determine that both the pillar and the square versions of candle 12 are outside the scope of the Order.

In regard to the SFCC's "combined effect" argument, we believe that we have addressed the Court's instructions. We examined at the candles' characteristics both individually, and in combination, to conclude that the combination effect, due to the reasons cited, did or did not meet the threshold of a holiday novelty candle.

With regard to respondent's statements concerning the Department's argument that holiday symbols must be traditional, we take issue with respondent's broad argument. It is important to note that the Department made this statement only in reference to the holly berry and leaf design, which it agrees is a symbol of the Christmas holiday. However, the Department also believes that such an image must fit the perception of a typical viewer, *i.e.*, it must be a reasonably accurate representation of the holly berry and leaf design typically associated with the Christmas holiday. It also must be easily recognizable from multiple angles on the candle in order for that candle to qualify for the holiday novelty exception. This is not the case with regard to candle 4 (abstract design) or candle 9 (small image, on only one side of the candle).

In addition, the Department believes that we did make clear that the standards of "minimally decorative" and "identifiable from most angles" apply as much to candles vying for holiday novelty status as to candles allegedly in the shape of identifiable objects. Both types of candles fall under the same novelty candle exception; for good reason, the same standards apply equally to the assessment of both types of candles under this sole exception. Indeed, the Department has applied these two standards in rulings subsequent to SFCC Ruling to candles which are requested to be excluded from the Order on the basis that they are used only in

connection with a specific holiday or event. See JC Penney 2001 Ruling.

Moreover, the Department believes that evaluation using the secondary criteria was and is unnecessary. On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (the Commission). See 19 CFR 351.225(k)(1). This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. See 19 CFR 351.225(d). On examination of the candles in this remand, we find that the descriptions of the candles are dispositive and thus, it is unnecessary to address secondary criteria.

Finally, in regard to the “specially designed” argument, we have evaluated all the candles to see if they meet this requirement but, for the reasons discussed in these final remand results, we do not believe that candles 2, 4, 5, 8, 9, 10 and 11 were indeed designed specially for the Christmas holiday. Rather, we believe that these candles could be used at other times of the year for the respective reasons elaborated on for each candle in these final remand results.

Comment 3:

The NCA states its support for the Department’s Draft Remand Results because the results are based on substantial evidence contained in the administrative record and are in accordance with law. The NCA maintains that, in addition to the facts and reasons set forth by the Department in its Draft Remand Results, candles should also be included within the scope of

the Order if the alleged holiday designs are imprinted on the top surfaces because those designs will quickly melt away when the candles are lit. The NCA argues that the burning or melting of a design is equivalent to the easy removal of a figurine or decoration and, by melting the design, a candle purchased at dumped prices could be used throughout the year and would compete directly against candles that fall within the scope of the Order. The NCA further contends that burning of the design does not damage the candle; rather, burning the candle for a short period enhances the usefulness of the candle for decoration in the home. According to the NCA, interior decorators recommend that consumers burn their candles before displaying them because it enhances their decorative effect.

In response, the SFCC argues that the NCA seeks to reinstate a “frivolous criterion,” i.e., considering the markings on the top of the candle “easily removable” without damaging the candle, that the CIT has stated is not in accordance with law. In its Draft Remand Results, the SFCC states, the Department has characterized such markings as not “identifiable from most angles.” The SFCC, however, believes that the markings are viewable from all angles if the candles are displayed below eye level, where it contends most flat surfaces in a home are located, and maintains that the Department, with no record evidence as support, is using the least likely method of display, i.e., above eye level, to test whether the candle is “specially designed for use only in connection with the Christmas holiday season.” The SFCC argues that adopting the NCA’s suggestion would constitute an unauthorized expansion of the scope of the Order and that the Department should find that candles 1-3 are outside the scope of the Order.

Department's Position:

In accordance with the Court's instructions, the Department did not take into consideration whether the design would easily burn or melt away when making its determination with respect to candles 1-3 in either the Draft Remand Results or these final remand results.

However, contrary to the SFCC's argument, we did examine whether the design that is associated with Christmas was identifiable from most angles, which we consider to be an appropriate guideline to help the Department determine whether a candle is "specially designed for use only in connection with the Christmas holiday season." Scope Clarification Notice.

This redetermination is in accordance with the order of the CIT in *San Francisco Candle Company v. United States* (Slip. op. 02-38, April 22, 2002).

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Faryar Shirzad  
Assistant Secretary  
for Import Administration

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Date