

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

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On June 15, 2001, the Department of Commerce (the Department) received a request from Avon Products, Inc. (Avon) for a scope ruling on whether one type of candle it plans to import is covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

In accordance with 19 CFR 351.225(k)(1), the Department has determined that this candle is within the scope of the antidumping duty order on petroleum wax candles from the PRC.

Enclosed is a memorandum containing the Department's analysis. We will notify the U.S. Customs Service of this decision. If you have any questions, please contact Matthew Renkey at (202) 482-2312.

Sincerely,

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

Enclosure

MEMORANDUM FOR: Joseph A. Spetrini  
Deputy Assistant Secretary  
Enforcement Group III

FROM: Barbara E. Tillman  
Director  
Office of AD/CVD Enforcement VII

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

### **Summary**

On June 15, 2001, the Department of Commerce (the Department) received a request from Avon Products, Inc. (Avon) for a scope ruling on one candle, which it identifies as a "Floral Lamp Candle," to determine if it is covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) (Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 25085 (July 10, 1986)). In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that this candle is within the scope of the antidumping duty order on petroleum wax candles from the PRC.

### **Background**

Avon filed its request for a scope ruling in proper form on June 15, 2001. The National Candle Association (NCA), petitioner in this case, filed comments on July 20, 2001.

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 determinations of the Secretary and the International Trade Commission (the Commission), the initial investigation, and the antidumping duty order. This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. *See* 19 CFR 351.225(d).

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

In the instant case, the Department has evaluated Avon's request in accordance with 19 CFR 351.225(k)(1), and the Department finds that the descriptions of the product contained in the petition, the final determinations of the Secretary (including prior scope determinations) and the Commission, the initial investigation, and the antidumping duty order are, in fact, dispositive. Therefore, the Department finds it unnecessary to consider the additional factors set forth at 19 CFR 351.225(k)(2).

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

In its petition of September 4, 1985, the National Candle Association requested that the investigation cover:

[c]andles [which] are made from petroleum wax and contain fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars; votives; and various wax-filled containers. These candles may be scented or unscented ... and are generally used by retail consumers in the home or yard for decorative or lighting purposes (Antidumping Petition, September 4, 1985 at 7).

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

certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers (*Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 50 FR 39743 (September 30, 1985); *see also Preliminary Determination of Sales at Less Than Fair Value*, 51 FR 6016 (February 19, 1986), *Final Determination*, 51 FR 25085 (July 10, 1986), and *Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China* 51 FR 30686 (August 28, 1986)).

The Commission adopted a similar definition of the “like product” subject to its determinations, noting that the investigations did not include “birthday, birthday numeral and figurine type candles” (*Determinations of the Commission (Final)*, USITC Publication 1888, August 1986, at 4, note 5, and A-2 (Commission Determination)).

Also of relevance to the present scope inquiry is a notice issued to the United States Customs Service in connection with a July 1987 scope determination concerning an exception from the Order for novelty candles, which states:

The Department of Commerce has determined that certain novelty candles, such as Christmas novelty candles, are not within the scope of the antidumping duty order on petroleum-wax candles from the People's Republic of China (PRC). Christmas novelty candles are candles specially designed for use only in connection with the Christmas holiday season. This use is clearly indicated by Christmas scenes and symbols depicted in the candle design. Other novelty candles not within the scope of the order include candles having scenes or symbols of other occasions (*e.g.*, religious holidays or special events) depicted in their designs, figurine candles, and candles shaped in the form of identifiable objects (*e.g.*, animals or numerals), (CIE N-212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987).

### **Avon’s Scope Request**

Avon argues that the candle subject to this inquiry is a molded wax candle in the shape of a tapered household lampshade with embossed floral designs. Avon contends that this candle is thus an identifiable object, which is not outlined in the scope of the Order. Avon included a sample of the candle with its scope request, and also the stand upon which the candle would sit. Avon further argues that the instant candle possesses other physical characteristics which differentiate it from the types of candles named in the scope of the Order. Avon states that,

“Such candles burn from the top for the purpose of providing exterior illumination, and, unlike the instant candles, are not designed to ‘tunnel’ through the middle when lit for the purpose of causing interior illumination of the candle itself. Candles possessing such novel features are clearly distinguishable from the class or type of candles subject to the order which are primarily designed to provide illumination and/or are for use at formal occasions” (Avon’s Request at 4).

Avon concludes by stating that the physical characteristics of the subject item, as well as the expectations of the users and the ultimate use of the subject candle differ significantly from those candles subject to the Order.

## **The NCA's Comments**

In its comments, the NCA retraces the history of the antidumping duty order and highlights several past scope determinations. Turning specifically to Avon's request, the NCA contends that "Avon's candle is a wax candle in the shape of a column with tapered sides. Columns are included within the scope of the Order. The candle has a wick which burns and emits light and heat. It will be used by retail consumers in the home or yard for decorative or lighting purposes. All of these characteristics place this candle squarely within the scope of the Order" (NCA's comments at 5). The NCA adds that neither the shape nor decoration of the candle resemble a lamp shade, and the fact that the lighted wick will tunnel through the middle of the candle does not affect the candle's shape, which is that of a column, and that such a decorative effect cannot be the basis for excluding a candle from the Order's scope (NCA's comments at 5).

## **Analysis**

With respect to the instant request, we find that for the reasons outlined below, this candle falls within the scope of the Order.

Avon's argument that its candle is materially different from those outlined in the Order's scope because it casts interior, rather than exterior, illumination is not a valid basis for determining that it should be found outside the scope of the Order. There is no precedent in any determination for exempting a candle on that basis. Moreover, the Department has previously determined that so-called "Chinese Lantern Candles," which also cast their illumination interiorly and are composed entirely of wax, are within the scope of the Order (Final Scope Determination, Endar Corp., May 11, 2000).

Also, Avon's candle is not recognizable as a lamp shade, nor are the shapes depicted on the outside of the candle recognizable as flowers. Avon's candle comes with a wire stand which, when the candle is placed on top of it, purportedly would make it look like a lamp. However, such a stand would not be an integral part of the candle. Above all else, the Department must focus on the characteristics of the actual wax candle itself, regardless of any components with which it is marketed and sold. Since the candle itself does not include the stand, and with or without the stand, the candle is not recognizable as a floral lamp, the Department finds that it is not an identifiable object.

Essentially, this candle is a pillar. Neither the shape nor the decorative surface of the candle render it recognizable as a lamp shade; as such, it is not an identifiable object. Therefore, none of the candle's features represent grounds for determining this item to be a novelty candle, and thus outside the scope of the Order.

**Summary**

Avon’s “Floral Lamp Candle” is a pillar, a type of candle which is named in the scope of the Order. This conclusion is consistent with the scope of the investigation and the Order, as defined in the petition, as well as the Department’s and the Commission’s determinations.

**Recommendation**

Based on the preceding analysis, we recommend that the Department find that Avon’s “Floral Lamp Candle” is within the scope of the Order.

If you agree, we will send the attached letter to the interested parties, and will notify the U.S. Customs Service of our determination.

\_\_\_\_\_ Agree

\_\_\_\_\_ Disagree

\_\_\_\_\_  
Joseph A. Spetrini  
Deputy Assistant Secretary  
AD/CVD Enforcement Group III

\_\_\_\_\_  
Date

Attachment