

A-570-504
Scope Review
PUBLIC DOCUMENT
DAS III (7):JAF/SCG

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On May 28, 2002 and June 13, 2002, the Department of Commerce (the Department) received four requests from Avon Products, Inc. (Avon) for scope rulings on whether five models of candles it plans to import are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

In accordance with 19 CFR 351.225(k)(1), the Department has determined that all five models of Avon's candles are outside the scope of the antidumping duty order on petroleum wax candles from the PRC.

Enclosed is a memorandum containing the Department's analysis. We will notify U.S. Customs and Border Protection of this decision. If you have any questions, please contact Sally Gannon at (202) 482-0162.

Sincerely,

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

Enclosure

A-570-504
Scope Review
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DAS III (7):JAF/SCG

MEMORANDUM FOR: Joseph A. Spetrini
Deputy Assistant Secretary
for Import Administration, 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 May 28, 2002 and June 13, 2002, the Department of Commerce (the Department) received four requests from Avon Products, Inc. (Avon) for scope rulings on five models of candles, one "Jeweled Fruit Pillar" candle (PP239209), one "Sweet Country Harvest" candle (PP239091), one "Halloween Pumpkin" candle (PP238336-PUMPKIN), one "Halloween Ghost" candle (PP238336-GHOST), and one "Jeweled Home Fragrance Poured" candle (PP239217), to determine if they are 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 30686 (August 28, 1986) (Order). In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that all five of Avon's candles fall outside the scope of the antidumping duty order on petroleum wax candles from the PRC.¹

¹ The Department has developed an internet website that allows interested parties to access prior scope determinations regarding the antidumping duty order on Petroleum Wax Candles from the People's Republic of China. 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/>, and will be updated periodically, to include newly-issued scope determinations.

Background

Avon filed its requests for scope rulings in proper form on May 28, 2002 and June 13, 2002. On August 8, 2002, the National Candle Association (NCA), petitioner and an interested party in this proceeding, filed comments on Avon's requests. On August 29, 2002, Russ Berrie & Company, Inc. (Russ Berrie), a United States importer and interested party in this proceeding, filed a rebuttal to the comments submitted by the NCA on August 8, 2002. Avon filed its rebuttal to the NCA's August 8, 2002 comments on October 22, 2002.

On July 14, 2003, the Department contacted Avon's counsel by telephone and requested that Avon provide further clarification regarding the testing facility used by Avon in testing these candles. In a July 16, 2003 letter to Avon, the Department reiterated its request for additional testing information regarding the candle's composition. See Memorandum to the File from Julio A. Fernandez through Sally C. Gannon Regarding Scope Inquiry: Petroleum Wax Candles from the People's Republic of China / Requests from Avon Products Inc. (July 14, 2003) and Memorandum to the File from Julio A. Fernandez through Sally C. Gannon Regarding Scope Inquiry: Petroleum Wax Candles from the People's Republic of China / Additional Test Results for Resin Topper Jar Candles: Avon Products, Inc. (July 21, 2003). On July 21, 2003, Avon formally submitted for the record the requested clarification regarding the testing facility used by Avon in testing these candles (and another candle before the Department). See Avon's July 21, 2003 submission (July 21st Submission).

Avon's Scope Request

Avon argues that its five models of candles, one "Jeweled Fruit Pillar" candle (PP239209), one "Sweet Country Harvest" candle (PP239091), one "Halloween Pumpkin" candle (PP238336-PUMPKIN), one "Halloween Ghost" candle (PP238336-GHOST), and one "Jeweled Home Fragrance Poured" candle (PP239217), are outside the scope of the Order because they are ". . . comprised of considerably less than 50 percent petroleum wax. . ." Avon included samples of each candle with its request.

(1) "Jeweled Fruit Pillar" Candle (PP239209)

Avon describes its "Jeweled Fruit Pillar" candle as a pillar candle in the form of a rectangular pedestal, measuring four inches in height by three inches in width and three inches in depth, and containing three-dimensional, realistically-colored, fruit-shaped forms covered with glass beads on two opposite sides.

(2) "Sweet Country Harvest" Candle (PP239091)

Avon argues this candle, its “Sweet Country Harvest” candle, is an eight-sided pillar, measuring four inches in height by three inches in width and three inches in depth, and containing three-dimensional, realistically-colored, fruit-shaped forms covered with glass beads on two opposite sides.

(3) “Halloween Pumpkin” Candle (PP238336-PUMPKIN)

(4) “Halloween Ghost” Candle (PP238336-GHOST)

Avon describes its “Halloween Pumpkin” and “Halloween Ghost” candles as molded disc-shaped candles, measuring two and one half inches in diameter by one and one half inches in height, and containing a wick which protrudes from the each candle’s top.

(5) “Jeweled Home Fragranced Poured” Candle (PP239217)

Avon claims that its “Jeweled Home Fragrance Poured” candle is a wax-filled, poured, scented candle, in a ceramic urn-shaped container, measuring approximately two and one half inches in diameter by four and one half inches in height.

According to Avon, the International Trade Commission (the Commission) determined that only wax candles composed of over 50 percent petroleum were subject to the Order, citing Determinations of the Commission (Final), USITC Publication 1888, August 1986, at 5 (Commission Determination). Thus, Avon notes that candles of less than 50 percent petroleum wax were categorically exempted from being within the scope of the Order. Avon points out that the Department has issued scope rulings confirming that candles which contain less than 50 percent petroleum wax are not within the scope of the order, citing Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504), Ocean State Jobbers (December 18, 1998) (1998 OSJ Ruling); Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504), Et Al Imports (December 11, 1998) (1998 Et Al Ruling); and Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504), JC Penney Purchasing Corporation (May 21, 2001) (JCPenney Corp.). As such, Avon states that stearic acid has a “carbon level of C18 (see <http://mpob.gov.my/faq05.html>), being a component of Palm Oil, and is readily distinguished from petroleum wax/paraffin wax by Customs Test Method 34-07.”² Further, Avon claims that petroleum/paraffin wax candles and non-paraffin candles are differentiated by the apparent attraction of being “petroleum free,” citing as examples Northern Wicks Natural Candles at <http://northernwicks.com/natural.htm>, Aloha Bay Candles at http://alohabay.com/bees_wax_candles, and Bright Lights http://www.axicaonworld.com/products/b/bl_bp2.htm.

² See Avon’s May 28, 2002 submissions at page 3.

Avon further argues that, in addition to being derived from totally different sources and chemically distinguishable, the cost and performance differences between petroleum wax and vegetable and non-petroleum wax are commonly recognized in the industry, citing as examples Lytha Studios at <http://lythastudios.com/misc/candles/blc/triplights.com>, TS Treasures at <http://tstreasures.com/candlemain.htm>, and the NCA's website at www.candles.org.

The National Candle Association's Comments

In its comments, the NCA retraces the history of this antidumping duty order, including the import surges and resultant injury suffered by domestic manufacturers which prompted the original September 1985 antidumping petition. The NCA argues that the antidumping statute and antidumping duty orders are remedial in nature and exceptions to them should be construed as narrowly as possible to preserve the efficacy of the Order. In support of its assertion, petitioner cites a Court of International Trade (CIT) decision, with regard to the novelty exception, where the Court noted that “. . . a candle must be specifically designed for use only in connection with a religious holiday or special event to fall within the novelty candle exception,” citing Russ Berrie & Co., Inc. v. United States, 57 F. Supp. 2d 1184, 1194 (CIT July 1999) (Russ Berrie). Thus, the NCA argues that the Department narrowly limited the novelty candle exception to figurine candles, candles shaped in the form of identifiable objects, and candles specifically designed for use only in connection with the holiday season.

The NCA further argues that Avon's five candles are a wax-filled container, two straight-sided pillars, and two rounds, and are, thus, candles that “. . . fall within the shapes delineated by the Order. . .” and are petroleum-like wax candles made in China, having fiber- or paper-cored wicks.³ The NCA further argues that the subject candles are not in the shape of identifiable objects or designed for use only in connection with the holiday season; therefore, they fall within the scope of the Order. In its August 8, 2002, submission, the NCA also notes that Avon does not claim that its candles fall within the novelty candle exception.⁴

The NCA further argues that the test results submitted by Avon are unacceptable and unreliable, as they were not conducted consistent with the appropriate Customs test methods. Specifically the NCA states that Avon's “. . . test data makes no reference to an internal standard peak area, a requirement of the Customs Method 34-07 and excludes two n-paraffin peaks on the front end, and five or six on the back end.”⁵ Thus, the NCA claims that it is not clear how the reported paraffin content in Avon's candles was obtained.

³ See the NCA's August 8, 2002 comments at 4.

⁴ Id.

⁵ Id., at page 5.

According to the NCA, the Fourier Transform Infrared Spectroscopy (FTIR) method may not be able to differentiate between stearic and palmitic acid or give quantitative data on component concentrations.⁶ Further, the NCA notes that a discussion of the outcome of the methylation test (e.g., to mix or combine with methyl alcohol), to determine the presence of palm oil wax was not provided. Due to the uncertainty of the type of acid being observed and the qualitative nature of the FTIR method, the NCA maintains that it does not seem possible to claim that the testing methods employed confirm that the remainder of the sample consists of stearic wax. The NCA asserts that there is not enough information provided in Avon's technical reports to confirm the reported composition percentages of Avon's candles.

With regard to Avon's laboratory tests indicating combinations of paraffin wax and stearic acid wax which amount to 100 percent of the candle, the NCA argues that this is impossible as candles contain scents, color dye, a wick, and/or other additives. Moreover, the NCA contends that the laboratory tests only refer to what percentage of the wax in the candle is paraffin but do not determine what percent of the total candle is stearic acid wax. The NCA states that the Department should require Avon to provide U.S. laboratory test results that determine the actual percentage of stearic acid wax and petroleum wax in the candle, that conform strictly to Customs test methods, and that fully explain the scientific basis for the laboratory's conclusions.⁷

Additionally, the NCA argues that "[e]ven if Avon's candles were 100 percent stearic acid wax, they would fall within the scope of the Order."⁸ The NCA maintains that Avon's stearic acid wax candles, which are claimed to be derived from palm oil, have similar chemical structures and the same range of essential physical characteristics as petroleum wax candles. Therefore, according to the NCA, stearic acid wax candles must be included within the scope of the Order.

According to the NCA, palm oil wax alone cannot be used as a candle wax, as palm oil is liquid at room temperature. The NCA contends that Avon, in order to make wax candles from palm oil, had to change the chemical structure of the material so that it was no longer palm oil. The NCA explains that, through hydrogenation and hydrolysis, palm oil can be transformed into stearic and related organic acids, new products with similar chemical structures and the same essential physical characteristics as petroleum-derived waxes. The NCA claims that the end results of the chemical conversion was to transform the palm oil into essentially the same product as petroleum wax. The NCA states that the

⁶ Infrared spectroscopy is a technique utilized in organic chemistry. It is a testing methodology that is employed, for among other reasons, to identify the presence of certain functional groups in a molecule.

⁷ See the NCA's August 8, 2002 submission, at page 5.

⁸ Id.

term “petroleum wax” in the Order is not limited to the derivation of the wax, but rather the chemical composition and physical characteristics and uses of the wax.

Further, the NCA argues that “[t]he Department’s reference to candles composed of 50% petroleum wax can only apply to candles that are over 50% beeswax. The 50% rule was based upon the Commission’s beeswax exclusion. It does not apply to other waxes that were not excluded and have the same intrinsic qualities and physical characteristics and uses as petroleum wax candles.” See the NCA’s August 8, 2002 submission at 8.

The NCA concludes its comments by noting that Avon’s candles compete in the same channels of trade as the candles subject to the Order, and that their sale without the antidumping duty will severely injure candle producers in the United States. The NCA further notes what it characterizes as the long-standing efforts of candle importers to “expand the ‘novelty candle’ loophole in the Order through a continuing stream of scope requests, causing the Order on PRC candles to be subjected to over seventy final scope rulings and many more requests.”⁹ Additionally, the NCA asserts that the success of the scope requests in eroding the Order has resulted in increases in the volume of candles coming into the United States from China. The NCA concludes by stating that Avon is now asking the Department to narrow the scope of the Order so that it excludes everyday candles, claiming that they are novelty candles, and that the Department does not have such legal authority.¹⁰

Russ Berrie’s Comments

In its August 9, 2002 comments, Russ Berrie argues that while the Department “. . . has inherent authority to define the scope of an antidumping duty order. . . ,” the Department “. . . does not have authority to alter, amend, or expand the scope of an antidumping duty order.”¹¹ Russ Berrie further argues that the Department’s regulations regarding scope inquiries direct the Department to look 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.”¹² Based on this, Russ Berrie asserts, sufficient information exists with respect to Avon’s candles for the Department to make a determination without initiating a formal scope inquiry in accordance with 19 CFR § 351.225(e).

⁹ See the NCA’s August 8, 2002 submission at page 11.

¹⁰ Id., at page 12.

¹¹ See Russ Berrie & Company, Inc. v. United States, 57 F. Supp. 2d 1192-93 (CIT 1993) (citing to Koyo Seiko Co., Ltd v. United States, 834 F. Supp. 1401, 1402 (CIT 1993) and UST, Inc. v. United States, 9 CIT 352 (1985)).

¹² See 19 C.F.R. § 351.225(d) and (k)(1).

As part of its arguments, Russ Berrie asserts that stearic acid is “[a] colorless, odorless, waxlike fatty acid, $\text{CH}_3(\text{CH}_2)_{16}\text{COOH}$, occurring in natural animal and vegetable fats used in making soaps, candles, lubricants, and other products.”¹³ Russ Berrie also argues that the NCA only included candles made from petroleum wax in its petition, adding that the Commission also considered Chinese candle producers’ ability to produce petroleum wax in issuing its determination of material injury. In addition, Russ Berrie asserts that the Commission’s definition of domestic like product, as well as prior scope determinations issued by the Department and the scope used in the original investigation, are clear, also noting that “. . . they are dispositive in this case and Commerce should ‘end the scope review without opening a formal inquiry and considering any additional criteria.’ ”

In its conclusion, Russ Berrie also argues that, in the original investigation, the Commission defined the domestic like product as petroleum wax candles, and that the domestic industry consisted of producers of petroleum wax candles.¹⁴

Additionally, Russ Berrie and Co. argues that the Commission, in the context of examining the domestic product in greater detail, recognized that “. . . specialty candle making operations do have requirements for the more ‘exotic’ types of wax, such as hydrogenated vegetable oil . . . ” and also recognized that “. . . the domestic like product shall consist only of petroleum wax candles . . . ” (Russ Berrie and Co.’s June 21, 2002 comments at 3). Lastly, Russ Berrie and Co. asserts that “Candles made from hydrogenated vegetable oil cannot be later-developed products because hydrogenated vegetable oil is not a new feature or technological development derived from petroleum wax candles as evidenced by the Commission’s findings in the initial investigation . . . ”

Avon’s Responses

As part of its October 22, 2002 rebuttal comments to the NCA’s August 8, 2002 submission, Avon asserts that it accommodated the NCA’s request for further testing of Avon’s candles, and solicited new tests from an independent testing facility in the United States. See the “Analysis” section below for a further discussion with respect to the additional testing results submitted by Avon as part of its October 22, 2002 rebuttal comments. Avon maintains that these test results “. . . confirm the original information that the majority of the wax ingredients for each of the candles consists of vegetable derived wax.” See Avon’s October 22, 2002 comments at 2.

Additionally, Avon argues that the NCA’s position “. . . that when it petitioned on September 4, 1985 for an investigation concerning ‘candles [which] are made from petroleum wax and contain fiber or paper-cored wicks,’ it did not mean only candles of petroleum wax, it meant all other

¹³ See Russ Berrie’s August 29, 2002 submission at page 6, citing to search results at www.dictionary.com for stearic acid.

¹⁴ See Russ Berrie’s August 29, 2002 comments at 8.

candles, too, regardless of composition, is patently absurd.¹⁵ Avon cites to Floral Trade Council v. United States, 13 CIT 638 (1989), wherein the Floral Trade Council (FTC) sought to include “marguerite daisies” within an antidumping duty order that resulted from a petition the FTC had submitted covering carnations, chrysanthemums, alstroemeria, gerberas and gysophila. See Floral Trade Council v. United States, 13 CIT 638 (1989). In this case, FTC later argued that daisies were also/always included because chrysanthemums and gerbers are also referred to as “daisies.” Id., at 639. The Court rejected this claim, stating that:

FTC appears to argue that because ‘chrysanthemums’ are discussed in its petition for relief as to the seven flowers, and because the word daisies is mentioned there, as well as in some questionnaire responses, that all chrysanthemums, including all daisies which fall within the botanical genus ‘chrysanthemum,’ are included within the scope of the resulting orders.

It seems odd to the court that the petition and investigation would speak of pompom chrysanthemums, standard chrysanthemums and gerbera daisies (which are in another genus), if all daisies were intended to be covered as part of the chrysanthemum genus.

Id., at 639-640. Similarly, Avon argues, “. . . the NCA identified only petroleum wax candles in its petition. If it had intended candles of other components to be included, it should have so stated.”¹⁶

Avon further argues that “[t]he NCA’s claim that Avon’s vegetable oil derived candles have the ‘same intrinsic qualities and essential characteristics’ as petroleum wax candles because ‘[t]he effect of the chemical conversion was to turn the palm oil into essentially the same product as petroleum wax’ is no more correct than the FTC’s claim that all daisy flowers have the ‘same intrinsic qualities and essential characteristics.’ ”¹⁷

The new test results included in Avon’s October 22, 2002 submission contain the following statement:

This testing was performed by an MTL-ACTS approved outside laboratory.

Id. Because the Department requests that scope requesters use an independent testing laboratory in the United States to conduct testing for these purposes, the Department requested further clarification from Avon on the meaning of this statement. In its July 21st Submission, Avon provided a letter from the testing laboratory with the following explanation:

¹⁵ See Avon’s October 22, 2002 comments at page 3.

¹⁶ See Avon’s October 22, 2002 rebuttal comments at page 3.

¹⁷ Id., at page 4.

MTL-ACTS now known as Bureau Veritas Consumer Products Services (BVCPS), is allowed to subcontract to other laboratories as provided by its quality manual. The laboratory used for testing the candles submitted by Avon is a domestic laboratory with no association to Avon (i.e. not an Avon in-house laboratory).

See July 21st Submission.

Legal Framework

The regulations governing the Department's antidumping scope determinations are found at 19 CFR 351.225(2002). On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission. 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: (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 requests in accordance with 19 CFR 351.225(k)(1) and the Department 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 Commission are 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.

See Antidumping Petition, September 4, 1985 at 7.

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

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

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

The Commission adopted a similar definition of the "like product" subject to its determinations, noting that the investigation did not include "birthday, birthday numeral and figurine type candles" (see Commission Determination, at 4, note 5, and A-2). The Commission stated that "... we determine that the domestic like product shall consist only of petroleum wax candles." See Commission Determination, at 9. In its discussion of like product, the Commission also stated:

Petroleum wax candles are those composed of over 50 percent petroleum wax, and may contain other waxes in varying amounts, depending on the size and shape of the candle, to enhance the melt-point, viscosity, and burning power.

See Commission Determination, at 4-5.

Also of relevance to the present scope inquiry is a notice issued to the U.S. Customs Service (now renamed U.S. Customs and Border Protection) (Customs) in connection with a July 1987 scope determination concerning an exception to 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 C.I.E. N-212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987 (Customs Notice).

Analysis

With respect to the instant requests, the Department finds that for the reasons outlined below, all five of Avon's candles are outside the scope of the Order.

Initial test results, performed by an independent U.S. testing facility and submitted as part of Avon's May 28, 2002 and June 13, 2002 submissions, indicated that the stearic acid content for all five models of candles exceeded 50 percent.¹⁸ According to the test results included in these submissions, the respective percentages of paraffin wax in these candles were analyzed according to U.S. Customs Laboratory (USCL) Method 34-07; the presence of palm oil wax ("no significant amount") was determined using gas chromatography; and the presence of stearic wax was confirmed using FTIR analysis.¹⁹ These test results indicated for the five models of candles that the percentage of paraffin wax in the respective samples ranged from 27.3 to 31.5 percent (see details below) and that the remaining percentage of each candle sample consisted of stearic wax.

As stated in the "Avon's Responses" section above, Avon accommodated the NCA's request for additional testing of its candles and solicited new test results for each of its five models of candles before the Department. These test results, submitted on October 22, 2002, were conducted using USCL Method 34-07, in conjunction with gas chromatography and ASTM test method D-1386.²⁰

¹⁸ See initial testing certificates included in Avon's May 28, 2002 and June 13, 2002 submissions.

¹⁹ Id.

²⁰ American Society for Testing Methods (ASTM) test method D-1386, Standard Test Method for Acid Number (Empirical) of Synthetic and Natural Waxes, is a testing methodology which covers the determination of the acid number of synthetic waxes and natural waxes. The number is obtained by direct titration (*e.g.*, the process, operation, or method of determining the concentration of a substance in solution by adding to it a standard reagent of known concentration in carefully measured amounts until a reaction of definite and known proportion is completed) of the material and indicates the amount of free acid present. See search results at www.astm.org for ASTM D-1386; see also search results at www.dictionary.com for titration.

Specifically, these additional test results provided the following information with respect to the percentages of petroleum wax in each of Avon’s candles:²¹

	<u>NEW TEST</u>	<u>ORIGINAL</u>
	<u>RESULTS</u> ²²	<u>TEST RESULTS</u> ²³
“Jeweled Fruit Pillar” Candle (PP239209)	27.6	28.9
“Sweet Country Harvest” Candle (PP239091) 34.9	31.5	
“Halloween Pumpkin” Candle (PP238336-PUMPKIN)	33.7	30.5
“Halloween Ghost” Candle (PP238336-GHOST)	31.0	29.3
“Jeweled Home Fragranced Poured” Candle (PP239217)	27.9	27.3

The new testing results further analyzed the composition of Avon’s candles, revealing the additional components, as follows:

“Jeweled Fruit Pillar” Candle (PP239209) (contains 27.6 percent paraffin wax)	Palmitic acid content	39.1 (percent)
	Stearic acid content	15.4
	Lauric acid content	0.9
	Myristic acid content	1.0
	Total	56.4 percent
“Sweet Country Harvest” Candle (PP239091) (contains 34.9 percent paraffin wax)	Palmitic acid content	42.7 (percent)
	Stearic acid content	11.8
	Lauric acid content	1.0
	Myristic acid content	1.3

²¹ The Department notes that, while the aforementioned test results may assist the Department in making its scope ruling, such results may not be dispositive of the exact composition of candles of this item number when such candles are presented at a future time for entry at one of the several Customs ports of entry.

²² Indicates the percentage of petroleum wax demonstrated as a result of additional testing conducted by an independent testing facility in the United States, and included as part of Avon’s October 22, 2002 submission.

²³ Indicates the percentage of petroleum wax demonstrated as a result of initial testing conducted by an independent testing facility in the United States, and included as part of Avon’s May 28, 2002 and June 13, 2002 submissions.

	Total 56.8 percent
“Halloween Pumpkin” Candle (PP238336-PUMPKIN) (contains 33.7 percent paraffin wax)	Palmitic acid content 39.2 (percent) Stearic acid content 13.4 Lauric acid content 1.2 Myristic acid content 0.9 Total 54.7 percent
“Halloween Ghost” Candle (PP238336-GHOST) (contains 31.0 percent paraffin wax)	Palmitic acid content 38.1 (percent) Stearic acid content 13.7 Lauric acid content 1.3 Myristic acid content 0.8 Total 53.9 percent
“Jeweled Home Fragranced Poured” Candle (PP239217) (contains 27.9 percent paraffin wax)	Palmitic acid content 39.4 (percent) Stearic acid content 14.0 Lauric acid content 0.9 Myristic acid content 0.8 Total 55.1 percent

Thus, the additional test results submitted by Avon confirm that the majority of the wax contained in Avon’s “Jeweled Fruit Pillar” candle (PP239209), “Sweet Country Harvest” candle (PP239091), “Halloween Pumpkin” candle (PP238336-PUMPKIN), “Halloween Ghost” candle (PP238336-GHOST), and “Jeweled Home Fragrance Poured” candle (PP239217) consists of fatty acids derived from vegetable or animal fats.²⁴

After reviewing the information submitted for the record of this scope request, the Department determines that these five candles submitted by Avon are outside the scope of the Order on petroleum wax candles from the PRC because the majority of the candles’ components (ranging from 53.9 to 56.8 percent) is derived from vegetable or animal fats, whereas the petroleum (paraffin) wax content in each is less than 50 percent. The record evidence indicates that the acids at issue in these candles—palmitic, stearic, lauric and myristic—are obtained from vegetable or animal fat sources, and there is no contradictory evidence on the record indicating that their origins are petroleum-based.

²⁴ Specifically, palmitic acid is defined as a fatty acid, $C_{15}H_{31}COOH$, occurring in many natural oils and fats and used in making soaps. Stearic acid is defined as a colorless, odorless, waxlike fatty acid, $CH_3(CH_2)_{16}COOH$, occurring in natural animal and vegetable fats used in making soaps, candles, lubricants, and other products. Myristic acid is defined as a fatty acid, $CH_3(CH_2)_{12}COOH$, occurring in animal and vegetable fats and used in the manufacture of cosmetics, soaps, perfumes, and flavorings. Lauric acid is defined as a fatty acid, $CH_3(CH_2)_{10}COOH$, obtained chiefly from coconut and laurel oils and used in making soaps, cosmetics, esters, and lauryl alcohol. See www.dictionary.com for search results for “palmitic acid,” “stearic acid,” “myristic acid,” and “lauric acid,” respectively.

Consistent with the Commission’s definition that petroleum wax candles are those composed of over 50 percent petroleum,²⁵ the Department agrees that these five candles should be found outside the scope of the Order, not only because their petroleum-based content is less than 50 percent, but also because their combined palmitic acid, stearic acid and other vegetable/animal fat-derived acid content is greater than 50 percent, according to additional test results submitted by Avon. See July 21st Submission and Commission Determination at 4-5. See also, e.g., Final Scope Ruling - Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); Ocean State Jobbers, Inc. (December 18, 1998); JCPenney Ruling; and Leader Light.

The Commission defined the domestic like product in this proceeding as “petroleum wax candles.”²⁶ In the Commission Determination, the Commission determined “. . . [t]hat the domestic like product shall consist only of petroleum wax candles. The domestic industry, therefore, consists of the producers of petroleum wax candles.” See Commission Determination, at 9.

Consequently, because Avon’s candles #1-5 have a majority composition of palmitic, stearic, lauric, and myristic acids, we find that candles #1-5 are outside the scope of the Order.

Recommendation

Based on the preceding analysis, we recommend that the Department find that Avon’s “Jeweled Fruit Pillar” candle (PP239209), “Sweet Country Harvest” candle (PP239091), “Halloween Pumpkin” candle (PP238336-PUMPKIN), “Halloween Ghost” candle (PP238336-GHOST), and “Jeweled Home Fragrance Poured” Candle (PP239217) are outside the scope of the Order. This conclusion is consistent with the scope of the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission.

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

_____ Agree

_____ Disagree

Joseph A. Spetrini
Assistant Secretary

Deputy

²⁵ See Commission Determination at 4.

²⁶ See Petroleum Wax Candles from China, USITC Pub. No. 3226 Investigation No. 731-TA-282 (Review) (August 1999), at 4-5, wherein the Commission reaffirmed its long-standing definition of domestic like product.

for Import Administration, Group III

Date

Attachment