

MEMORANDUM FOR: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

FROM: James C. Doyle
Director
AD/CVD Operations, Office 9
Import Administration

SUBJECT: Final Scope Ruling: Antidumping Duty Order on Petroleum Wax
Candles From the People's Republic of China (A-570-504);
Pei Eichel

Summary

On May 28, 2004, and June 3, 2004, the Department of Commerce ("Department") received requests from Pei Eichel, Inc. ("Pei Eichel") for a scope ruling on three different styles of its "Archipelago Bombay Sleeve" candles to determine if these candles 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 Pei Eichel's three styles of its "Archipelago Bombay Sleeve" candles are within the scope of the antidumping duty order on petroleum wax candles from the PRC.¹

Background

Pei Eichel filed its requests for a scope ruling in proper form on May 28, 2004, for two candle styles (model number 9904235 and 9904236), described as composed of palm and petroleum wax. In the original request, Pei Eichel refers to two U.S. laboratory tests from two independent laboratories; however, no test results were attached to the official filing. On June 3, 2004, Pei Eichel included a third style of candle in its scope request, model number 9904234. On October 20, 2004, the Department submitted a deficiency questionnaire to Pei Eichel and requested information linking the candles to the submitted test results, purported to have been conducted by SEA Ltd. Laboratory ("SEA"). On November 4, 2004, Pei Eichel submitted a response to the

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.

Department's requested information. On November 19, 2004, the National Candle Association ("NCA"), the petitioner and an interested party in this proceeding, filed comments on Pei Eichel's submissions and test results.

On December 1, 2004, the Department requested additional testing from Pei Eichel to determine the precise composition of the candle wax for each candle style. Pei Eichel submitted a response to the Department's request on December 8, 2004, along with previously conducted test results of the subject candles, by Associated Analytical Laboratories, Inc. ("Associated Laboratories"), an independent U.S. testing facility.

On January 5, 2005, the Department contacted Pei Eichel and requested copies of the original SGS US Testing Company Inc. ("SGS") laboratory results.² On January 7, 2005, the Department received copies of the SGS test results and placed them on the record of this proceeding.

Pei Eichel's May 28, 2004, Request

Pei Eichel argues that the product description and characteristics of its candles are markedly different from the description of the candles that fall within the scope of the antidumping order and thus should be excluded from the Order.

In its scope request, Pei Eichel includes three styles of its "Archipelago Bombay Sleeve" candles, described as containing an identical composition of wax in different style "glass sleeves." Pei Eichel's "Archipelago Bombay Sleeve" candles are described as cylindrical pillar shaped, containing a cotton wick in the center, and consisting primarily of palm oil wax and a minority amount of paraffin wax. Each glass "candle sleeve" is approximately 7.3 cm in diameter and 9.5 cm high.

Pei Eichel contends that because the original scope language states that only petroleum wax candles should be included within the Order, its "Archipelago Bombay Sleeve" candles should not be included in the Order because they are not comprised of a majority of petroleum wax. See Petroleum Wax Candles from the PRC: Initiation of Antidumping Duty Investigation, 50 FR 39743 (September 30, 1985); Petroleum Wax Candles from The PRC: Preliminary Determination of Sales At Less Than Fair Value, 51 FR 6016 (February 19, 1986); and Petroleum Wax Candles from The PRC: Final Determination of Sales At Less Than Fair Value, 51 FR 25085 (July 10, 1986). Further, Pei Eichel states that the International Trade Commission ("ITC") defined the like product "as consisting 'only of petroleum wax candles.'" See Determinations of the Commission, USITC Publication 1888 (August 1986) ("ITC Determination"), at 9. Pei Eichel notes that the ITC 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.

² The Department requested copies of Pei Eichel's test results because in its original May 28, 2004, Pei Eichel stated that the SGS and SEA laboratory results were attached to the submission; however, no test results were included.

See ITC Determination, at 4-5.

According to Pei Eichel the Department has consistently ruled that candles with petroleum wax composition of 50 percent or less are outside of the scope of the antidumping order. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China: Ocean State Jobbers (December 18, 1998); Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China: Et Al Imports (December 11, 1998); Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China: JC Penny Purchasing Corporation (May 21, 2001); and Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China: Avon Products Inc. (November 17, 2003).

Pei Eichel asserts, based on the laboratory results that it submitted to the Department from the independent U.S. testing facilities, which used previously approved U.S. Customs Laboratory (“USCL”) test method 34-07, its “Archipelago Bombay Sleeve” candles contain 34 percent paraffin. Thus, Pei Eichel contends that the involved candles are not within the scope of the Order because its candles are substantially less than 50 percent paraffin wax.

The National Candle Association’s Comments

In its comments, the NCA reminds the Department of the original intent of the Order and provides a brief history of the Order, including the import surges and the 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. The NCA further argues that exceptions to the order should be construed as narrowly as possible to preserve its efficacy. In support of its assertion, the NCA 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.” See 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 should narrowly limit 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 although the laboratory test results submitted by Pei Eichel show that the paraffin wax in the candles under review may be composed of less than 50 percent of the total candle composition, the results do not report the specific proportion of petroleum wax as compared to palm oil and other waxes in the candles. The NCA asserts that the candle cannot be classified as a “palm oil” candle if the percentage of palm oil is less than the percentage of paraffin wax. Furthermore, the NCA argues that Pei Eichel claimed that the candles under review were “predominantly composed of beeswax.” Thus, the NCA argues that the Department should require Pei Eichel to submit additional laboratory test results to reveal the exact composition of the beeswax and any other wax contained in these candles.

The NCA further argues that even if Pei Eichel's candles were comprised of 100 percent palm oil wax, Pei Eichel's candles would nevertheless fall within the scope of the Order. The NCA maintains that Pei Eichel's palm wax candles have similar chemical structures and the same range of essential physical characteristics as petroleum wax candles and thus 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 explains that, through hydrogenation and hydrolysis, palm oil can be transformed into stearic and related organic acids, new products with similar chemical structure and the same essential physical characteristics as petroleum-derived waxes. The NCA contends that by altering the chemical structure of palm oil, Pei Eichel has substantially transformed the chemical structure of the palm oil, through the process of hydrogenation, to form a new product that has a similar chemistry to petroleum-derived waxes. The NCA claims that the end result of the chemical conversion was to transform the palm oil into essentially the same product as petroleum wax. To support its claim, the NCA included as attachments to its November 19, 2004, submission, a memorandum from Dr. Eric Wigg, and published documentation from Bernard Y. Tao, project leader for the Development of Vegetable Lipid-Based Candles.³ The NCA further states that the term "petroleum wax" in the Order refers to the chemical composition and physical characteristics and uses of the wax. Thus, by chemically altering the qualities of palm oil to have similar characteristics to petroleum wax, the NCA argues that Pei Eichel brought its candle within the scope of the Order.

The NCA points out that the ITC has consistently defined "'like product' as a product which is like, or in the absence of like, most similar in characteristics and uses with the article subject to the investigation...." See ITC Determination at 3-4. Thus, the NCA contends that due to the same intrinsic qualities, essential characteristics, and minor difference between the chemical composition of palm and petroleum wax, Pei Eichel's candles are "like" petroleum based candles and are thus subject to the Order.

The NCA cites to Bohler-Uddeholm Corp. v. United States, where the Court of Appeals for the Federal Circuit held that products that were alike in physical and chemical characteristics were included in the 1979 antidumping finding against stainless steel plate from Sweden. See 1999 U.S. App. Lexis 34552 (Dec. 1999). In Bohler, the Court stated:

To require that antidumping determinations be limited to the products they name would be inconsistent with the statutory requirement, then in force, that antidumping duties be imposed upon a "class or kind" of merchandise found to be injurious to domestic industry. While the trade names of BU's products were not used in the 1973 finding, there is sufficient evidence to support Commerce's conclusion that Stavax and Ramax were nevertheless identified by, among other things, their physical and chemical attributes, and by the applications for which they are used.

See id., at 4.

³ See NCA's comments, November 19, 2004, exhibit 2.

The NCA argues that the Department's past practice of excluding candles composed of wax other than petroleum is not the issue, rather the question is whether the candles have the "same intrinsic qualities and essential characteristics of petroleum wax candles." The NCA notes that the only candles that are excluded, beside novelty candles, are beeswax candles due to their preponderance in religious contexts.

The NCA concludes by noting that Pei Eichel's candles directly compete with candles that are subject to the Order, and that a determination by the Department to not include these candles within the scope of the Order would severely injure candle producers in the United States. The NCA characterizes Pei Eichel's scope request as an effort by candle importers to "expand the 'novelty candle' loophole in the Order." 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 claims that Pei Eichel's request is merely "another attempt by an importer to evade or circumvent the Order." The NCA contends that Pei Eichel is requesting the Department to narrow the scope to not include everyday candles. The NCA claims that the Department does not have such legal authority.

Pei Eichel's December 8, 2004, Response

On December 8, 2004, in response to the NCA comments and the Department's request for additional testing information, Pei Eichel submitted rebuttal comments. In its response, Pei Eichel argues that the language in the antidumping order is precise and unambiguous in its inclusion of "only petroleum wax candles and obvious omission of non-petroleum wax candles." See Order. Pei Eichel argues that non-petroleum wax candles are not subject to the Order.

Pei Eichel rebuts the November 19, 2004, comments submitted by the NCA, arguing that the Department should not undertake an analysis determining whether the candles styles under review are "like products," as the "Department may not expand the antidumping order's scope by interpreting into its language merchandise clearly omitted by that language." Pei Eichel argues that the Department's December 1, 2004, request for more information regarding the candle composition is beyond the authority allowed to the Department given the language of the Order. According to Pei Eichel, the Department should only be concerned about the petroleum wax content of its candles and the Department should not be concerned with the content of other waxes in its candles. Thus, Pei Eichel contends that it is not appropriate for the Department to request such information.

Pei Eichel argues that the Department's ability to analyze requests for scope rulings is limited, citing a recent U.S. Federal Circuit Court of Appeals for the Federal Court, which addresses the Department's ability to expand an antidumping order. See Duferco Steel Inc., v. United States, 296 F.3d 1087 (Fed. Cir. 2001) ("Duferco"). In Duferco, the Court stated that the "{antidumping 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." See id., at 1088. Pei Eichel argues that, "Commerce cannot 'interpret' an antidumping order so as to change the scope of that order, nor can Commerce interpret an order in a manner contrary to its terms."

Pei Eichel asserts that the Department has no legal authority to interpret the Order based on an absence of language in the antidumping order, as supported by the Court's language in Duferco Steel. See id., at 1095 citing Eckstrom Indus., Inc. v. United States, 254 F.3d 1068, 1072 (Fed. Cir. 2002) ("Commerce cannot find authority in an order based on the theory that the order does not deny authority"). Thus, Pei Eichel argues that the antidumping duty order should be defined by the explicit language of the Order.

Pei Eichel argues that since the explicit language of the scope of Order only on whether the candles are composed of petroleum wax, and is silent regarding the existence of non-petroleum wax, the Order does not permit the Department to inquire about the non-petroleum content of the candles. Pei Eichel argues that no reasonable interpretation of the text of the Order would require that an inquiry be made into the totality of the composition of Pei Eichel's candles.

Pei Eichel asserts that "the Department already has two reports from two independent U.S. testing facilities" and states that the Department already possesses ample "product information on the record," referring to results from SGS US Testing Company Inc. of Fairfield, New Jersey, that Pei Eichel submitted on May 28, 2004, and results from SEA Ltd. of Columbus, Ohio, that Pei Eichel submitted on May 28, 2004. Additionally, Pei Eichel refers to the additional laboratory information from SEA laboratory that it submitted on November 4, 2004, in response to the Department's deficiency questionnaire requesting additional laboratory results.

Pei Eichel argues that the NCA offers no evidence to substantiate the claim that Pei Eichel's candles have similar chemical composition to the petroleum wax candles that are included within the Order. Therefore, Pei Eichel argues that the Department should not consider the NCA's arguments regarding the chemical composition of its candles.

With its December 8, 2004, submission, Pei Eichel submitted an additional laboratory test result regarding the composition of its candles' wax. This laboratory test used the approved USCL test Method 34-08, and was conducted by Associated Analytical Laboratories, Inc. of New York, New York on October 2, 2003. According to Pei Eichel, the October 2, 2003, test results conducted on the "Archipelago Bombay Sleeve" candles failed to detect any petroleum content within the composition of the candle wax. Rather Pei Eichel states that the newly submitted laboratory analysis explicitly reports that the candles have a majority composition of paraffin wax. Thus, Pei Eichel argues that the candles under review are not made of petroleum wax and thus fall outside the scope of the Order.

Legal Framework

The regulations governing the Department's antidumping scope determinations are found at 19 CFR 351.225 (2004). 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 ITC. This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. See 19 CFR 351.225(k)(1).

Conversely, where the descriptions of the merchandise are *not* dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: (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 Pei Eichel's request 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 ITC 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 NCA requested that the investigation cover:

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

See Antidumping Petition, 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 ITC 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 ITC Determination, at 4, note 5, and A-2). The ITC stated that “... we determine that the domestic like product shall consist only of petroleum wax candles.” See id., at 9. In its discussion of like product, the ITC 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 id., at 4-5.

Analysis

With respect to Pei Eichel’s request for a scope ruling on whether its three styles of “Archipelago Bombay Sleeve” candles, which Pei Eichel plans to import should be included within the Order, the Department finds that for the reasons outlined below, all three styles of Pei Eichel’s candles are within the scope of the Order.

The Department has determined in prior scope rulings, where the petroleum-based wax content of a candle model is less than 50 percent, the candle is outside of the scope of the Order. See e.g., Final Scope Ruling of Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504): Avon Products Inc. (November 17, 2003) (“Avon Products”). This is consistent with the ITC’s definition that petroleum wax candles are those composed of over 50 percent petroleum (see Petroleum Wax Candles from China, USITC Pub. No. 3226 Investigation No. 731-TA-282 (Review) (August 1999) at 4 and 5, wherein the ITC reaffirmed its long-standing definition of the domestic like product).

In the instant case, Pei Eichel submitted one set of unreliable test results and two contradictory laboratory test results regarding the petroleum wax content of its “Archipelago Bombay Sleeve” candles. The Department finds that the SEA laboratory results are unreliable, as is further discussed below. With respect to the other two laboratory test results, one set from SGS laboratory, which used USCL test method 34-07, and indicated that Pei Eichel’s candles’ paraffin wax content was 32.7 percent. The second, earlier, set of results from Associated Laboratories, used USCL test method 34-08,⁴ and indicated that the paraffin wax content—a

⁴ The Department’s practice is to require parties to submit test results from an independent U.S. testing facility and provide test results that provide the full composition of the candles, having previously accepted USCL test method 34-07 and 34-08. See Final Scope Ruling—Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China: Leader Light Inc. (December 12, 2002)(“Leader Light”). USCL test methods 34-07 and 34-08 use Gas Chromatography, which has the ability to break down a candles component mixture and identify the

petroleum derivative—was 98 percent.⁵ Because of the unreliability of the SEA test results and the contradictory test results from SGS and Associated Laboratories, the Department has determined that Pei Eichel’s three styles of its “Archipelago Bombay Sleeve” candles are within the scope of the Order.

For this scope request, there are three sets of laboratory results submitted by Pei Eichel on the record of this proceeding purporting to show the petroleum wax content of the three candle models for which Pei Eichel has requested a scope ruling. Two test results were referenced in the original filing and the results are on the record of this proceeding (SGS and SEA) and a third (Associated Laboratories) was submitted in response to the Department’s December 1, 2004, deficiency questionnaire and subsequently placed on the record. However, for the reasons discussed below, the Department finds that the test results taken as a whole are insufficient grounds to demonstrate these are not petroleum wax candles.

SEA Test Results

In its November 4, 2004, submission, Pei Eichel submitted laboratory results from SEA for two samples of its “Archipelago Bombay Sleeve” candles.⁶ The SEA laboratory results indicated a paraffin content of 34.8 percent in the first test sample and 32.6 percent paraffin content for the second test sample. However, Pei Eichel’s laboratory results did not provide any information identifying which candle styles were tested in each of the two samples and the Department is thus unable to determine whether the tests were of the candles subject to the instant scope inquiry. Moreover, there are a number of deficiencies with respect to these SEA laboratory results. We find that the test results are unreliable because the Department cannot confirm the veracity of these laboratory results due to the lack of institutional markings (such as the company name, testing facility, or laboratory name), nor can the Department ascertain what laboratory testing method was employed. Specifically, the November 4, 2004, test results that Pei Eichel submitted to the Department did not include any of the following information: the official laboratory or institutional markings, the technician name and signature, a name or description of the tested materials, a test report number, the laboratory test dates, or the method of testing. This is information that is found on laboratory test results accepted by the Department in prior such instances. See e.g. Avon Products. Thus, without this pertinent information regarding Pei Eichel’s November 4, 2004, test results, the Department finds that these test results are deficient and we find that the lack of this information renders the test results unreliable. Additionally,

specific amounts of palm-oil and other waxes, while other testing methods (including infrared spectrometry) does not. See Leader Light.

⁵ While the test results refer to the candles as “paraffin,” the Department’s practice has been to treat “paraffin” and “petroleum” as synonymous. See Final Scope Ruling—Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China; Burlington Toiletries International, Ltd. (March 25, 2003) (“Burlington”) at page 9 (“Both the ITC’s definition of the domestic ‘like product’ and the scope description adopted by the Department to cover this Order use language and references to ‘petroleum wax’ candles which included, but are not limited to ‘paraffin wax’ candles”).

⁶ Although Pei Eichel claimed that its May 28, 2004, request included two U.S. laboratory test results, from SEA and SGS, these results were not included in the official filing made to the Department. The Department subsequently requested the SEA laboratory test results on October 20, 2004, and received copies of the laboratory results in Pei Eichel’s November 4, 2004, submission. The Department requested the SGS laboratory results on Jan. 5, 2005, and received the laboratory results on January 7, 2005.

consistent with our practice, the Department has required that respondents submit test results from an independent U.S. testing facility to confirm the full wax composition of the candles, using USCL test method 34-07 or 34-08.⁷ However, because of the lack of identifying information on the results, we find that the SEA results do not demonstrate that these tests were conducted on Pei Eichel's candles. Without evidence linking the submitted laboratory test results directly to Pei Eichel's "Archipelago Bombay Sleeve" candles, the Department cannot rely on the results for this analysis. Thus, the Department has not relied on the SEA laboratory test results in the scope determination.

SGS Laboratory Test Results

To substantiate the results of the SEA laboratory results, a second set of laboratory results was referenced by Pei Eichel in its original May 28, 2004, request, and submitted to the Department on January 5, 2005. These test results were conducted by SGS, an independent U.S. laboratory. These results were dated April 21, 2004, and were conducted using the Department's accepted USCL test method 34-07 (Quantitative Analysis of Paraffin in Beeswax and Other Waxes by High-Temperature Capillary Gas Chromatography). The SGS results report that Pei Eichel's "Archipelago Bombay Sleeve" candles contain 32.7 percent paraffin wax. The Department notes that despite Pei Eichel's claim in its November 4, 2004, supplemental submission that its "Archipelago Bombay Sleeve" candles were beeswax candles, the SGS test results report no mention of the proportion of beeswax.⁸

Request for Additional Testing

On December 4, 2004, because of the conflicting statements made by Pei Eichel regarding the beeswax/palm oil wax composition of its candles, the Department requested additional laboratory testing from Pei Eichel to clarify the composition of its "Archipelago Bombay Sleeve" candles. However, Pei Eichel declined to submit new test results confirming the proportionate amount of petroleum and non-petroleum wax in its "Archipelago Bombay Sleeve" candles. Instead, in its December 8, 2004, submission, Pei Eichel submitted previously conducted test results for its "Archipelago Bombay Sleeve" candles, performed on October 2, 2003; these results were performed by Associated Laboratories. The results of this laboratory test, which used USCL test method 34-08 (Quantitative Analysis of Paraffin in Beeswax by Column Chromatography), reported the presence of paraffin wax—a petroleum derivative—with only a minority amount of palm oil. These results directly conflict with Pei Eichel's original assertion that its "Archipelago Bombay Sleeve" candles were primarily composed of palm oil wax and thus should not be included within the scope of the Order because these candles were non-petroleum wax candle. See Pei Eichel May 28, 2004, submission.

⁷ USCL test method 34-07 and 34-08 are the testing methods accepted by the Department. See Final Scope Ruling – Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China: Garden Ridge (April 22, 2003) ("Garden Ridge"), "In past rulings, test results determined to be acceptable by the Department were pursuant to certain USCL test methods (specifically methods 34-07 and 34-08)."

⁸ See November 4, 2004, Pei Eichel submission at 3.

The Associated Laboratories test results on candle models 9904235 and 9904236⁹ show a majority of paraffin wax. The following are results from the laboratory test results dated October 2, 2003, and submitted to the Department by Pei Eichel on December 8, 2004:

**Associated Analytical Laboratories, Inc. Test Results—October 2, 2003
USCL Test Method 34-08**

<u>Compounds Found</u>	<u>Amount Found, wt %</u>
Paraffin Wax, C18 to C43	98.20
Petroleum Content	None Detected
Diethyl Phthalate	1.43
Palm Oil	0.12
Miscellaneous (Fragrance)	0.25

The Associated Laboratories results indicate that the paraffin wax content of Pei Eichel’s “Archipelago Bombay Sleeve” candles is over 98 percent and that no petroleum content was detected. However, these results are somewhat misleading given that paraffin is a type of petroleum derivative. See Department’s January 10, 2005, memo to the file “Shell Wax Terms,” which defines various types of petroleum waxes. As discussed above, the Department’s practice has been to treat “paraffin,” a derivative of petroleum, and “petroleum” as synonymous.¹⁰ In recent petroleum content scope rulings, laboratory test results that used USCL test method 34-07 or 34-08 to identify the wax composition indicated only the paraffin content of candles, and not the petroleum content because “petroleum” is merely the classification of various hydrocarbons, of which paraffin is a member. See e.g., Final Scope Determination-Petroleum Wax Candles From the People’s Republic of China: Kathryn Beich (January 19, 2005); Avon Products; and Leader Light. Therefore, for these reasons we find that these laboratory results establish that the petroleum content of the “Archipelago Bombay Sleeve” candles is 98.2 percent. Although it is unclear what petroleum compound Associated Laboratories was testing for when its results revealed “None Detected,” we do not find that this apparent anomaly renders these test results unreliable, as Associated is an independent U.S. laboratory that used USCL test method 34-08, and has identified the specific wax composition of the candle; therefore, the test results appear to be reliable.¹¹

⁹ On June 3, 2004, Pei Eichel included a third style of candle in its scope request, model number 9904234, which was not included in the Associated test results; however, the Department notes that according to Pei Eichel’s original filing, all three styles of candle contain the same type of wax.

¹⁰ See footnote 4, *supra*; “Petroleum” is a classification of chains of hydrocarbon molecules—structures composed of carbon and hydrogen atoms, which also include straight chain hydrocarbons like propane, methane, and butane, and isomers like paraffin. Generally—depending on temperature and atmospheric pressure—with a carbon string of (up to) four carbon atoms, the petroleum material is gaseous; with a carbon string between four and twenty atoms, the petroleum material is liquid; with a carbon string greater than twenty, the petroleum material is solid (paraffin wax is C_nH_{2n+2} from n₁₇ to n₅₀). See Department memo to file entitled “Wax Chemistry,” dated January 27, 2005.

¹¹ On January 28, 2005, the Department contacted Associated Laboratories to clarify the laboratory’s distinction between petroleum and paraffin wax; however, Associated refused to answer the Department’s questions. See January 31, 2005 Memo to the File.

The Associated Laboratories results directly conflict with the SGS laboratory results submitted by Pei Eichel, which report that the paraffin content is 32.7 percent (using USCL test method 34-07). Both laboratory results were apparently conducted on the same candle models (as indicated by the model numbers referenced on the laboratory test results). However, Pei Eichel has not provided any explanation for the discrepancy between the two test results on the same candle models. Furthermore, as Pei Eichel has declined to submit to additional tests, the Department does not have sufficient evidence to determine the petroleum and non-petroleum content of its “Archipelago Bombay Sleeve” candles.

Due to Pei Eichel’s conflicting narrative and laboratory test results, the Department cannot determine that the candles under review are non-petroleum wax candles. Consequently, we find that Pei Eichel’s three styles of “Archipelago Bombay Sleeve” candles are within the scope of the Order.

Recommendation

Based on the preceding analysis, we recommend that the Department find that Pei Eichel’s three styles of “Archipelago Bombay Sleeve” candles (PO # 9904234, 9904235, and 9904236) are within the scope of the Order. This conclusion is consistent with the scope of the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations), and the ITC.

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

_____ Agree _____ Disagree

Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

Date

Attachment