

A-570-504  
Scope Review  
**PUBLIC DOCUMENT**  
Enforcement Group III: JF

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On March 21, 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 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 the U.S. Customs Service of this decision. If you have any questions, please contact Julio Fernandez at (202) 482-0190.

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

### **Summary**

On March 21, 2001, the Department of Commerce (the Department) received a request from Avon Products, Inc. (Avon) for a scope ruling on one candle to determine if it is covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) (Petroleum Wax Candles from the PRC, 51 FR 25085 (July 10, 1986)). The National Candle Association (NCA), petitioner in this case, submitted comments on Avon's request on April 24, 2001. In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that this candle is not covered by 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 March 21, 2001. The NCA's timely comments followed on April 24, 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 Department applies these criteria when it is unclear whether the product which is the subject of the scope ruling fits within the product descriptions contained in the petition, the determinations of the Secretary and the Commission, the investigation, and the order. 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 products 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 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 (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 model subject to this inquiry i) is a Valentine's Day novelty candle that falls under the novelty exemption; ii) is in the form of an identifiable object; and iii) will be sold only for Valentine's Day. Avon included a sample of the candle with its scope request (Avon's Request at 2-4). The subject candle is a heart-shaped “puzzle” candle consisting of three segments, as further described below under “Analysis.”

### **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. Turning specifically to Avon's request, petitioner points to the Russ Berrie Company, Inc. Final Scope Ruling noting that “Commerce determined that a heart-shaped terra cotta container filled with mauve-colored wax clearly fits within the ‘various wax-filled containers’ language of the Order.” (NCA's comments at 4). The NCA adds that “the three parts of the subject candle are not identifiable shapes, but rather are three small pillar candles, which when placed next to each other, look like a heart.” The NCA further asserts

that “[i]n the Springwater decision, it was held that a heart design would not limit the use of a candle to a specific occasion, and the year-round ubiquity of the heart renders it meaningless as a holiday scene or symbol.” (NCA’s comments at 4-5).

The NCA concludes by noting what it characterizes as the long standing efforts of candle importers to “. . . evade or circumvent the Order. The Order is vital to the survival of the U.S. candle industry. Avon is now asking Commerce to narrow the scope of the Order so that it excludes everyday candles claiming that they are novelty candles. Commerce does not have the legal authority to narrow the scope of the Order. Furthermore, if Commerce grants Avon’s requests, it will severely damage the efficacy of the Order.” (NCA’s comments at 7).

## **Analysis**

When determining whether or not a particular product claimed as a holiday novelty candle is within the scope of the antidumping duty order, the Department’s first line of inquiry is 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.” As explained in the September 1987 Customs Information Exchange notice CIE N-212/85 and in previous scope rulings by the Department, novelty candles which are in a shape otherwise within the scope of the Order fall outside the scope of the Order due to the characteristic that renders them novelty candles. Characteristics that can exclude a candle from the Order’s scope under the novelty exemption are limited to i) if a candle depicts scenes or symbols of a specific holiday; ii) if a candle is in the form of a figurine; and iii) if a candle is in the shape of an identifiable object.

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

We agree with the NCA that the heart design would not limit the use of the candle to a specific occasion, and that the year-round ubiquity of the heart renders it meaningless as a holiday scene or symbol. We therefore reject Avon’s argument that the candle is a Valentine’s Day novelty candle and will be sold only for Valentine’s Day. We agree with Avon, however, that since the candle is packaged and will be sold as one item, that it falls within the novelty candle exception as an identifiable object.

The subject candle is clearly identifiable as a heart and is viewable from most perspectives. The heart candle is packaged, and will be sold, as one candle. The subject candle is not a heart-shaped terra cotta wax-filled container, but a “puzzle” candle comprised of three segments. Further, the Department has previously ruled that a similar heart-shaped candle is outside the Order’s scope on the grounds that it is an identifiable object, and not on the basis that it is sold exclusively in connection with Valentine’s Day (Final Scope Ruling, Meijer, Inc., July 11, 1998). Since the subject candle is an identifiable object, this candle should be excluded from the scope

of the Order. This decision is consistent with Springwater Cookie & Confections v. The United States (Slip Op. 96-160, CIT, September 25, 1996).

**Summary**

Avon’s Puzzle Heart Candle is an identifiable object, and identifiable objects are outside 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 the Puzzle Heart Candle (Product Profile No. 220595) is excluded from 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  
Enforcement Group III

\_\_\_\_\_  
Date

Attachment