

A-570-504  
Scope Inquiry  
**PROPRIETARY DOCUMENT**  
IA/NME/IX: BW  
**PUBLIC VERSION**

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On May 24, 2004, the Department of Commerce (“Department”) received a request from Pier 1 Imports, Inc. (“Pier 1”) for a scope ruling on whether certain models of candles it imports 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 12 of Pier 1’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 Bobby Wong at (202) 482-0409.

Sincerely,

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

Enclosure

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 of the Antidumping Duty Order on Petroleum  
Wax Candles From the People's Republic of China (A-570-504):  
Pier 1 Imports, Inc.

*Summary*

On May 24, 2004, the Department of Commerce ("Department") received a request for a scope ruling from Pier 1 Imports, Inc. ("Pier 1") to determine whether 13 models of candles that Pier 1 imports 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").

DESCRIPTION:	SKU #:
(1) 3x4 inch "Apple Crisp" pillar candle	2015871
(2) 4x6 inch "Apple Crisp" pillar candle	2015884
(3) 6x6 inch "Apple Crisp" pillar candle	2015897
(4) 3x4 inch "Spiced Pomegranate" pillar candle	2022700
(5) 3x6 inch "Spiced Pomegranate" pillar candle	2022713
(6) 3x4 inch "Ivory" jewel-encrusted pillar candle	2013255
(7) 3x6 inch "Ivory" jewel-encrusted pillar candle	2013268
(8) 3x3 inch "Red Candle Gift Set with bell" pillar candle	2013283
(9) 3x3 inch "Green Candle Gift Set with bell" pillar candle	2013270
(10) Set of four 1.75x2 inch "Apple Crisp" pillar candles	2016064
(11) Set of four 1.75x2 inch "Pecan Praline" pillar candles	2016049
(12) Set of three 3 inch "Red/Green" ball candles	2015856
(13) No description	2012486

In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that 12 of Pier 1's candles fall outside the scope of the Order.<sup>1</sup>

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<sup>1</sup> The Department has developed an internet website that allows interested parties to access prior scope determinations regarding the Order. 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*

Pier 1 filed its request for a scope ruling in proper form on May 24, 2004, for 13 candle models. On October 20, 2004, the Department requested that Pier 1 resubmit copies of the original test results to clarify the results of the laboratory tests conducted by Specialized Technology Resources (“STR”) in testing the paraffin content of the candles. On November 10, 2004, Pier 1 submitted its response to the Department’s questionnaire and removed a candle (SKU 2012486) from its scope request. See Pier 1’s November 10, 2004, submission. On November 19, 2004, the National Candle Association (“NCA”), the petitioner and an interested party in this proceeding, filed comments regarding Pier 1’s scope request.

On December 1, 2004, the Department requested additional test results from Pier 1. On February 4, 2005, Pier 1 submitted additional laboratory test results conducted by SEA laboratory. On February 15, 2005, the Department requested supplemental information from Pier 1 to clarify the results of the February 4, 2005, SEA laboratory results. On February 17, 2005, pursuant to 19 CFR 351.225(e), the Department initiated a formal scope inquiry covering Pier 1’s 12 models of candles. On February 28, 2005, Pier 1 amended its public version of its February 4, 2005, test results and submitted its response to the Department’s supplemental questions. On March 7, 2005, the NCA submitted comments on Pier 1’s February 28, 2005, submission. On March 11, 2005, Pier 1 submitted rebuttal comments.

### *Pier 1’s Scope Request*

Pier 1 argues that its candles are outside the scope of the Order because they are composed of less than 50 percent petroleum wax and more than 50 percent palm wax.

Pier 1 argues that the International Trade Commission (“ITC”) determined that only wax candles composed of over 50 percent petroleum wax comprised the domestic like product. See Candles from the People’s Republic of China, Investigation No. 731-TA-282 (Final), USITC Publication 1888, August 1986, (“ITC Determination”) at 4. Pier 1 notes that the Department has previously accepted test results that used U.S. Customs Laboratory (“USCL”) test method 34-07 when determining the petroleum content of a candle. See Final Scope Ruling of the Antidumping Duty Order on Petroleum Wax Candles from China: Garden Ridge, (April 22, 2003) at 13.

In its scope request, Pier 1 submitted laboratory results that indicate that its candles contain less than 50 percent paraffin content. The STR laboratory tests were conducted using USCL Test Method 34-07.

Based on the laboratory test results and the description of the scope provided in the investigation, Pier 1 maintains that its candles are outside of the scope of the Order in accordance with 19 CFR 351.225(k)(1).

Pier 1 notes that in ITC Determination, the ITC defined the “like product” as “only petroleum wax candles.” Pier 1 argues that the Department has consistently found that candles with less than 50 percent petroleum wax, and which are tested using USCL testing method 34-07, are outside the scope of the Order.

Pier 1 argues that the STR laboratory test results meet the Department's testing criteria because the STR test results were performed at an accredited laboratory. Pier 1 states that STR has been accredited since 1991 and holds several international standards titles, including ASTM, CFR, AS, AATCC, BS, JIS, ISO, and also meets the HOKLAS technical criteria and complies with ISO 9000 standards.<sup>2</sup>

*The National Candle Association's Comments*

In its comments, the NCA retraces the history of this Order, including the import surges and resultant injury suffered by domestic manufacturers, which prompted the original September 1995 antidumping petition. The NCA contends 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 decision with regard to the novelty exception that held 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 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 argues that the Department should not accept the STR test results submitted by Pier 1 because that test was not conducted by an independent U.S. laboratory, but rather at a facility in Hong Kong. The NCA argues that in previous cases the Department has consistently required that testing results must be from independent U.S. laboratories. See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Leader Light Inc. (December 12, 2002) ("Leader Light"); Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China (A-570-504); Avon Products, Inc. (November 17, 2003) ("Avon"); and Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Fleming International Ltd. (May 14, 2003). In all of these scope rulings the Department requested laboratory test results from independent testing facilities in the United States. The NCA also notes that the STR laboratory results did not indicate the percentage of palm oil in the candles. The NCA argues that if the proportion of palm oil is less than the proportion of paraffin wax in the candles, the candles could not be considered palm wax candles. Thus, the NCA argues that, consistent with past practice, the Department should require Pier 1 to provide additional independent U.S. laboratory test results that detail the complete wax-composition of the candles.

Additionally, the NCA argues that even if Pier 1's candles were 100 percent palm oil wax, Pier 1's candles would fall within the scope of the Order. The NCA argues that palm wax candles have "a similar chemical composition and the same range of essential physical characteristics as

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<sup>2</sup> ASTM-American Society for Testing Materials; CFR-Code of Federal Regulations; AS-Australian Standards; AATCC-American Association of Textile Chemists and Colorists; BS-British Standards; JIS-Japan Industrial Standards; ISO-International Organization for Standardization; HOKLAS-Hong Kong Laboratory Accreditation Scheme.

petroleum wax candles and 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 to produce a palm wax candle, the palm oil must first undergo a process of chemical alteration—the process of hydrogenation—and must then be mixed with other types of waxes. The NCA argues that through this process of altering the chemical structure of palm oil, Pier 1 has transformed the chemical structure of the palm oil into a new product that has a similar chemistry to petroleum-derived waxes. The NCA argues that the goal of this chemical alteration is to transform the palm oil into essentially the same product as petroleum wax. To substantiate its claim, the NCA submitted as Exhibits 1 and 2 to their submission, documents from Eric Wigg, PhD, and Bernard Y. Tao, detailing the chemical composition of hydrogenated palm wax and the function of the transformed wax.<sup>3</sup> The NCA further explains that the term “petroleum wax” in the Order is not limited to the derivation of the wax, but rather the chemical composition, 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 Pier 1 brought its candles within the scope of the Order.

The NCA points out that the ITC has consistently defined the “‘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, Pier 1’s candles are “like” petroleum based candles and are thus subject to the Order.

The NCA cites Bohler-Uddeholm Corp. v. United States, where the Court of Appeals for the Federal Circuit found 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.

The NCA argues that the Department’s past practice of excluding candles composed of waxes other than petroleum is not the issue, rather the issue is whether the candles have the “same intrinsic qualities and essential characteristics of petroleum wax candles.” The NCA notes that

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<sup>3</sup> See NCA’s November 19, 2004, comments submission.

the only candles that are specifically excluded from the scope of the Order, apart from novelty candles, are beeswax candles due to their preponderant use in religious contexts.

The NCA concludes by noting that Pier 1's candles compete directly 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 Pier 1'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 the PRC. The NCA claims that Pier 1's request is merely "another attempt by an importer to evade or circumvent the Order." The NCA contends that Pier 1 is requesting that the Department narrow the scope, an authority the NCA claims that the Department does not have.

#### *Additional Test Results*

On February 4, 2005, in response to the Department's December 1, 2004, request that Pier 1 provide the exact composition of palm oil, paraffin, and other waxes of its 12 candle models, Pier 1 submitted laboratory test results from SEA laboratory, an independent U.S. based laboratory. To identify the petroleum content of Pier 1's candles, SEA laboratory utilized USCL test method 34-07. These test results indicate that Pier 1's 12 candle models are comprised of less than 50 percent petroleum wax. The SEA laboratory test results indicate that USCL test method 34-07 identified the presence of total petroleum wax, including the percentage of paraffin wax<sup>4</sup>

[  
].<sup>5</sup> To test for the vegetable wax portion of the candles, SEA laboratory used the [  
] ("["  
]") test method [  
].

On February 28, 2005, Pier 1 filed its response to supplemental questions from the Department concerning the methodology used to test for the vegetable wax. In its submission, Pier 1 explains that the [  
] test method [  
] the vegetable wax content of the candles using a calculation of the vegetable wax "saponification value."<sup>6</sup> The percentage of vegetable wax in the candle equals the saponification value of the sample divided by the saponification value of reference vegetable wax. Pier 1 explains that

[  
], the laboratory used a [  
] of palm wax to determine the saponification value of the [  
] vegetable wax used in the calculation to determine the percent palm wax in the candles.

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<sup>4</sup> Paraffin is a type of petroleum derivative. See Department's January 11, 2005, memo to the file "Shell Wax Terms," which defines various types of petroleum waxes from the Final Scope Determination of the Antidumping Duty Order: Pei Eichel (February 8, 2005) ("Pei Eichel").

<sup>5</sup> In candle production, a mixture of 10 percent petrolatum/microcrystalline wax (petroleum derived waxes) is commonly used in the production of candles. <http://www.candles-online-us.usa.sa.com/candle-wax-wick.htm>.

<sup>6</sup> According to Pier 1, the "saponification value" is a measure of the alkali reactive groups in oil. The value is the measure of the amounts of triglycerides, diglycerides, and fatty acids found in vegetable wax.

### *National Candle Association Response*

On March 7, 2005, the NCA submitted comments on Pier 1's February 4 and February 28, 2005, submissions. The NCA argues that Pier 1's SEA laboratory test results conflict directly with Pier 1's STR laboratory test results and that these differences raise serious questions regarding the credibility of the two laboratory test results. The NCA states that the record is unclear whether the candles tested by SEA laboratory were representative of the candles tested by the STR laboratory. The NCA notes that in some instances, the February 4, 2005, laboratory test results reported a petroleum wax content [ ] than the original laboratory results. Furthermore, the NCA speculates that a third set of test results may possibly indicate petroleum wax content in excess of 50 percent of the candles' wax composition. The NCA argues that these erratic results have not established the petroleum content of Pier 1's candles, but instead contends that the inconsistent findings render the tests unreliable.

### *Pier 1's Response*

On March 11, 2005, Pier 1 submitted its response to the NCA's comments. Pier 1 argues that, as in many of the Department's previous candle scope rulings, results from different laboratories often vary. Pier 1 maintains that, regardless of the variation in the test results, the Department has consistently accepted test results from independent U.S. testing facilities that utilize USCL test method 34-07 citing Avon (where the requestor submitted two sets of test results that contained discrepant results—both of which concluded that the petroleum wax content was less than 50 percent—and the Department found the candles to be outside the scope). Pier 1 also notes that the record clearly establishes that the 12 candles tested by SEA and STR have the same SKU number and are identical in appearance (as evidenced by the photographs submitted by Pier 1 with its laboratory results). Moreover, Pier 1 argues that the February 4, 2005, laboratory test results utilized the appropriate test method, and confirmed that all 12 of Pier 1's candles contain less than 50 percent petroleum wax.

### *Legal Framework*

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 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 Pier 1'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"); and 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 the "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 Pier 1’s scope request, for the reasons outlined below, the Department finds that the 12 candle models<sup>7</sup> are outside the scope of the Order.

The Department has determined in prior scope rulings, where the petroleum-based wax content is less than 50 percent that the candle is outside of the scope of the Order. See, e.g., Avon. This determination is consistent with the ITC’s “like product” definition that petroleum wax candles are candles comprised of more than 50 percent petroleum wax (see Petroleum Wax Candles, USITC Publication 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, Pier 1 submitted two laboratory test results. On May 24, 2004, Pier 1 submitted test results from STR, and on February 4, 2005, Pier 1 submitted test results from SEA. The results are as follows:

**Laboratory Test Results<sup>8</sup>**

	May 24, 2004	May 24, 2004	February 4, 2005	February 4, 2005
SKU	STR – Paraffin USCL Method 34-07	STR – Estimated Palm Wax	SEA – Petroleum USCL Method 34-07	SEA – [            ] Vegetable [            ]
2015871	25.85%	74.15%	[   ]	[   ]
2015884	31.17%	68.83%	[   ]	[   ]
2015897	31.37%	68.63%	[   ]	[   ]
2022700	15.17%	84.83%	[   ]	[   ]
2022713	12.20%	87.80%	[   ]	[   ]
2013255	26.21%	73.79%	[   ]	[   ]
2013268	25.70%	74.30%	[   ]	[   ]
2013283	14.05%	85.95%	[   ]	[   ]
2013270	36.54%	63.46%	[   ]	[   ]
2016064	26.21%	73.79%	[   ]	[   ]
2016049	30.84%	69.16%	[   ]	[   ]
2015856	22.54%	77.46%	[   ]	[   ]

<sup>7</sup> Although Pier 1 initially requested its scope ruling on 13 candle models, it withdrew its request on one model. Thus, the Department has only analyzed 12 models.

<sup>8</sup> The Department notes that, while the SEA 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 SKU number when such candles are presented at a future time for entry at one of the several Customs ports of entry.

The May 24, 2004, STR test results utilized the Department accepted USCL test method 34-07 (quantitative analysis of paraffin in beeswax and other waxes by high capillary gas chromatography), and indicated that all 12 candle models were comprised of less than 37 percent paraffin wax.<sup>9</sup> In the STR test results, the laboratory calculated the estimated palm wax content by subtracting the total percentage of petroleum wax from 100 percent.

The February 4, 2005, laboratory test results, conducted by SEA—an independent U.S. based laboratory—also used USCL test method 34-07 and indicated that petroleum wax comprised less than 50 percent of Pier 1’s candles. In accordance with the Department’s February 4, 2005 request, Pier 1 had SEA laboratory conduct an independent analysis on the non-petroleum wax content of the subject candles. These test results, which are [ ], indicate that the amount of vegetable-derived wax in the candles is a majority component in the candles.

The Department disagrees with the NCA’s contention that the fluctuations between the STR and SEA laboratory tests discredit both test results or that the two laboratory test results may not be representative of the same candles. With respect to the candles tested, both test results clearly indicate the SKU number of the tested candle and include a picture. Thus, the Department finds that there is no question that the identical candle models were tested by STR and SEA.

With respect to the NCA’s other contention that further testing may result in a higher report of petroleum wax, the Department notes that while the STR laboratory test specifically reports the amount of *paraffin wax*,<sup>10</sup> the SEA laboratory test reports the amount of *petroleum wax*, [ ].<sup>11</sup> Consequently, we find that the difference in the test results is likely accounted for by the fact that the first laboratory test result apparently reported only the paraffin content (on its face, the test results report “paraffin content,” not petroleum content), while the second laboratory test result indicate the entire petroleum content. According to the SEA laboratory results “[

].” Thus, we find that the SEA laboratory test results, which measured the total amount of petroleum content, is reliable. In contrast, the STR laboratory tested only for paraffin, which is only a type of petroleum wax. Because only the SEA laboratory test reported the total petroleum content, the SEA laboratory results are the proper focus of our analysis.<sup>12</sup>

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<sup>9</sup> 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. The Department has previously accepted USCL test method 34-07 and 34-08. See Leader Light.

<sup>10</sup> As explained in footnote 4, *supra*, paraffin is a type of petroleum derivative.

<sup>11</sup> According to information obtained by the Department, in candle production, a mixture of 10 percent petrolatum/microcrystalline wax (two types of petroleum derived waxes) is commonly used in the production of candles (see Memorandum to the File, dated April 1, 2005). The ITC also explained that commercial production of candles generally use “natural” waxes such as paraffin, microcrystalline, stearic acid, and beeswax. See ITC Determination at 4.

<sup>12</sup> We note that in contrast to Kathryn Beich and Pei Eichel, where the test results on apparently the same candles showed petroleum content above and below 50 percent, both of Pier 1’s submitted laboratory results indicate that the paraffin content is less than 50 percent. See Final Scope Ruling for Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China: Kathryn Beich. (January 19, 2005) (“Kathryn Beich”).

As explained above, SEA used [ ] test method to determine the percentage of vegetable wax in Pier 1's candles as USCL method 34-07 cannot be used to determine the non-petroleum content of candles.<sup>13</sup> The two independent tests resulted in a wax content that summed to [ ] of each individual candle. The explanation for this anomalous result rests with the testing method used to report the vegetable wax content of the candle. The test method ([ ]) used by the SEA laboratory represents [ ] of the proportion of vegetable wax in the candle. The SEA laboratory test [ ] of vegetable wax was calculated using the empirically tested saponification value of the subject candles' wax and the [ ] palm-oil wax.<sup>14</sup> In contrast, USCL test method 34-07 tests for the exact content of the petroleum-based substances in the candle. In previous scope rulings concerning the petroleum content of the mixed wax candles, the Department has only requested test results concerning the petroleum content of the candle.<sup>15</sup> See e.g., Avon; see also Leader Light. Moreover, the Department has determined USCL test methods 34-07 and 34-08 to be acceptable methodologies for determining the petroleum wax content of a candle. See id. In this instance, Pier 1 presented laboratory results from an independent U.S. based laboratory utilizing USCL test method 34-07. These test results indicate that the petroleum content of the 12 candle models is less than 50 percent. Specifically, according to the SEA laboratory test results, the percentage of petroleum content ranges from [ ] to [ ] percent. See Pier 1's February 4, 2005, submission. Accordingly, the Department finds that Pier 1's 12 candle models are outside of the scope of the Order, and will send appropriate instructions to the U.S. Customs and Border Protection ("CBP") concerning these 12 candle models.

We note that the Pier 1 scope inquiry is separate from the anticircumvention inquiries initiated by the Department on the apparent petroleum content of mixed wax candles. Specifically, on March 7, 2005, the Department published in the Federal Register a notice of initiation of anticircumvention inquiries in the antidumping duty order on petroleum wax candles from the PRC. See Petroleum Wax Candles From the People's Republic of China: Initiation of Anticircumvention Inquiries of Antidumping Duty Order, 70 FR 10962 (March 7, 2005). The anticircumvention inquiries were initiated in order to determine whether mixed wax candles composed of petroleum wax and varying amounts of either palm or vegetable-based waxes can be considered subject to the Order under either the minor alterations provision or the later-

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<sup>13</sup> USCL test method 34-07 is a scientific methodology used to determine "the amount of paraffin added to beeswax and other waxes." See U.S. Customs and Border Protection, "USCL Method 34-07: Quantification of Paraffin Beeswax and Other Waxes by High Temperature Capillary Gas Chromatography," available at [http://www.cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/technical\\_documents/lab\\_methods/cha pter 34/](http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/technical_documents/lab_methods/cha pter 34/).

<sup>14</sup> Specifically, the [ ] testing method calculated the [ ] amount of vegetable wax in the subject candles by comparing the amount of triglyceride, diglyceride, and free fatty acids found in the subject candles with the amounts found in a known [ ] vegetable wax sample.

<sup>15</sup> See Final Scope Ruling for Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China: Fleming International, Ltd., at 8 (May 14, 2003) ("Fleming"), where the Department explains that it considers candles composed of petroleum (paraffin) or petroleum-based products, which do not compose the majority of the candles, to be outside of the scope of the Order.

developed merchandise provision of the statute, pursuant to sections 781(c) and (d) of the Tariff Act of 1930, as amended. Although the Pier 1 scope inquiry and the anticircumvention inquiries appear similar, they are separate proceedings and address separate issues. We note that in the course of these anticircumvention inquiries, the Department will examine whether candles with a similar petroleum wax or non-petroleum wax content as the candles involved in this scope inquiry may be subject to the Order.

*Recommendation*

Based on the preceding analysis, we recommend that the Department find that Pier 1's 12 candle models: SKUs 2015871, 2015884, 2015897, 2022700, 2022713, 2013255, 2013268, 2013283, 2013270, 2016064, 2016049, and 2015856 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 ITC.

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

\_\_\_\_\_ Agree

\_\_\_\_\_ Disagree

\_\_\_\_\_  
Barbara E. Tillman  
Acting Deputy Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date

Attachment