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BY HAND

September 30, 2010

The Honorable Gary Locke  
Secretary of Commerce  
**Attn: Mr. Alex Villanueva**  
**Mr. Tim Lord**  
Import Administration  
APO/Dockets Unit, Room 1870  
U.S. Department of Commerce  
14th Street and Constitution Ave., N.W.  
Washington, D.C. 20230

Re: Rebuttal Comments on  
*Preliminary Results of Request for Comments on the Scope of the Petroleum Wax  
Candles From the People's Republic of China Antidumping Duty Order*  
Petroleum Wax Candles from the People's Republic of China (A-570-504)

Dear Secretary Locke:

On behalf of the National Candle Association ("NCA" or "Petitioner"), we respectfully submit this rebuttal to the public comments filed pursuant to the Department of Commerce's ("the Department") notice: *Petroleum Wax Candles from the People's Republic of China: Preliminary Results of Request for Comments on the Scope of the Petroleum Wax Candles From the People's Republic of China Antidumping Duty Order*, 75 Fed. Reg. 49475 (Aug. 13, 2010) (hereinafter "*Preliminary Results*"). In addition to the comments submitted by the NCA, importers, Trade Associates Group, Ltd. ("TAG"), Universal Candle Company Ltd.

("Universal"), and Candym Enterprises, Ltd. ("Candym")<sup>1</sup> submitted comments on the Department's preliminary proposed interpretation of the scope of the Antidumping Duty Order on candles from China ("Order").<sup>2</sup> The NCA's rebuttal comments are timely submitted on this day, September 30, 2010.

**1. All Interested Parties Agree That There Is No Legal Basis For The "Novelty Exception"**

Significantly, all interested parties agree with the Department's proposed preliminary interpretation that there was no basis for excluding candles based on holiday characteristics.<sup>3</sup> TAG, in particular, states: "...we believe that doing away with the novelty exceptions of the identifiable object and holiday specific design is proper as the novelty exceptions were simply artificial distinctions applied to the scope throughout the years causing confusion and unpredictability in interpreting the scope ..."<sup>4</sup>

There is no serious dispute on this point. The Department correctly found that "there is no basis in the record of the LTFV investigation for excluding candles based upon holiday characteristics."<sup>5</sup> In the *Preliminary Results*, the Department determined that during the original

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<sup>1</sup> Comments submitted by Candym merely request that the Department issued a determination for one candle, which was omitted from the *Preliminary Results*. Candym's comments were only a single page and did not include any substantive comments on the proposed interpretation.

<sup>2</sup> See, *Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China*, 51 Fed. Reg. 30686 (Aug. 28, 1986).

<sup>3</sup> 75 Fed. Reg. 49,479.

<sup>4</sup> TAG September 10, 2010 Comments at 3

<sup>5</sup> 75 Fed. Reg. 49,479.

investigation, the International Trade Commission's findings "are not dispositive with regard to novelty candles based on shape or seasonal nature."<sup>6</sup> Additionally, after a review of the record, the Department found that novelty candles were "not mentioned" during the LTFV investigation.<sup>7</sup> Indeed, the Department correctly found that the issue of novelty candles was only mentioned in subsequent scope rulings issued *after* the LTFV investigation.<sup>8</sup> The Department properly noted that it "must reasonably determine the products originally covered by the scope of the LTFV investigation as well as original intent of the injured domestic industry *before* the issuance of the Order."<sup>9</sup>

Petitioner has provided clear and irrefutable proof of its original intent that the only candles it intended to be excluded from the language of the scope of the Order were utility candles, birthday candles, and figurine candles.<sup>10</sup> Petitioner provided a sworn affidavit from Mr. Robert A. Staab, former President of the NCA and Chairperson of the NCA Trade Committee.<sup>11</sup> On behalf of the NCA, Mr. Staab, was extensively involved in the preparation of the petition and original antidumping investigation, and thus, is in the best position to attest to the original intent of the injured domestic industry and the scope of the LTFV investigation.<sup>12</sup>

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<sup>6</sup> 75 Fed. Reg. 49,477.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 49,479.

<sup>9</sup> *Id.*

<sup>10</sup> The NCA respectfully notes that the proper definition of a figurine is a small carved or molded figure of a human, animal or deity. *See*, Section III or NCA September 20, 2010 Comments at 22-23.

<sup>11</sup> *Id.* at Exhibit A.

<sup>12</sup> *Id.*

Petitioner did not intend or agree to exclude novelty candles based on holiday characteristics during the original LTFV investigation.

Given that all interested parties agree, Petitioner urges the Department to continue its determination that there is no basis in the record for excluding candles based upon holiday characteristics in the Final Results. However, as set forth below, the NCA disagrees with the remainder of the unsupported conclusions contained in TAG's comments.

**2. The Language in the Scope of the Order Is Inclusive, Not Exclusive, and the Department's Proposed Preliminary Interpretation Is Still Ambiguous**

Not surprisingly, TAG merely offers general and unsupported conclusions that the Department's proposed preliminary interpretation "is in keeping with the scope of the case as originally set forth by the Petitioner."<sup>13</sup> TAG, however, was not part of the original LTFV investigation and cannot provide any insight on the Petitioner's original intent at the time of the LTFV investigation. The NCA has provided incontrovertible evidence that the language of the scope of the Order was always intended to be inclusive, and that the shapes listed in the Order were only intended to be illustrative, and that the NCA agreed, at the request of the Department, to only exclude utility candles, birthday candles, and figurine candles from the scope of the Order.

It is absurd for TAG to suggest that the NCA brought an antidumping case limited to only certain candle shapes.<sup>14</sup> The NCA knew it could not compete with the Chinese producers at the

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<sup>13</sup> TAG September 10, 2010 Comments at 3.

<sup>14</sup> Staab Affidavit ¶ 4-5.

time of the LTFV investigation. The NCA would not bring an antidumping case while at the same time hand a substantial portion of the industry to the Chinese. TAG is well aware that the preliminary definitions as proposed and applied by the Department eviscerate the intended remedial effect of the Order, stifle creativity and innovation by the domestic industry, and are directly contrary to the original intent of the NCA. Moreover, TAG, as an importer of Chinese candles, directly benefits from the Department adopting such a narrow and exclusive interpretation of the scope language. This is demonstrated by the fact that of the 269 candles for which the Department applied its preliminary interpretation, only 19 were preliminarily considered inside the scope.<sup>15</sup>

TAG also alleges in its comments that the Department's proposed preliminary scope interpretation provides an "easy and measurable test" for determining whether a candle shape falls within the Order.<sup>16</sup> To the contrary, the Department's proposed preliminary interpretation injects greater ambiguity in scope decisions. For instance, Universal, an importer, appropriately questions how a Customs Port Inspector will treat a "waisted pillar candle."<sup>17</sup> This candle is a pillar (or column), but does not maintain a constant circumference. Similarly, the Department's proposed definitions beg the question how will a tapered pillar decorated to resemble a tree be

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<sup>15</sup> The 250 candles found to be outside the scope of the Order include many shapes and candles types that have previously been found by the Department to be within the scope of the Order. *See*, NCA September 20, 2010 Comments at 19, note 40.

<sup>16</sup> TAG September 10, 2010 Comments at 3.

<sup>17</sup> Universal Candle September 20, 2010 Comments at 2.

treated by a Customs Inspector? And, how will a round that is decorated to look like an apple be treated by a Customs Inspector?<sup>18</sup>

Additionally, just as the NCA has, Universal strongly cautions the Department against including candle sizes and dimensions in the scope language (where none currently exist), as Chinese producers can easily circumvent the Order, by slightly altering the size.<sup>19</sup> Indeed, Universal requests that the Department include all candle shapes, except birthday candles, within the scope of the Order. Universal's comments for the most part are consistent with the position of the NCA that it originally intended for the scope of the Order to be inclusive and agreed, at the request of the Department, that only utility candles, birthday candles, and figurine candles were to be excluded from the Order.<sup>20</sup>

### **3. Conclusion**

In view of the above, and as set forth in the comments submitted by the NCA on September 20, 2010, the Department's preliminary finding that there is no basis in the record of the LTFV investigation for excluding candles based upon holiday characteristics is proper, and the Department should continue this finding in the Final Results.

Additionally, the Department should include all candles within the scope of the Order, except for utility candles, birthday candles, and figurine candles. Alternatively, the Department

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<sup>18</sup> It is a merely decorated in scope round.

<sup>19</sup> Universal Candle September 20, 2010 Comments at 2.

<sup>20</sup> *Id.*

The Honorable Gary Locke  
Secretary of Commerce  
September 30, 2010  
Page 7

should adopt the ASTM definitions, except for utility candles, birthday candles, and figurine candles. Lastly, if the Department insists on using candle shapes as a basis for interpreting the scope of the Order, it should adopt the NCA's revised definitions set forth in its September 20<sup>th</sup> comments.

Should you have any questions, please do not hesitate to contact us.

Respectfully submitted,

BARNES & THORNBURG LLP



Karen A. McGee  
Randolph J. Stayin  
*Counsel to the National Candle Association*

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REBUTTAL COMMENTS ON  
PRELIMINARY RESULTS OF REQUEST FOR COMMENTS  
ON THE SCOPE OF THE ANTIDUMPING DUTY ORDER  
PETROLEUM WAX CANDLES FROM THE  
PEOPLE'S REPUBLIC OF CHINA (A-570-504)

CERTIFICATION

I, Allen Weidman, currently employed by the National Candle Association ("NCA"),  
certify that:

- (1) I have read the attached Rebuttal Comments on  
Preliminary Results of Request for Comments; and
- (2) Information contained in the submission is, to the best of  
my knowledge, true and accurate.



Allen Weidman, Executive Vice President

9/30/2010

Date

REBUTTAL COMMENTS ON  
PRELIMINARY RESULTS OF REQUEST FOR COMMENTS  
ON THE SCOPE OF THE ANTIDUMPING DUTY ORDER  
PETROLEUM WAX CANDLES FROM THE  
PEOPLE'S REPUBLIC OF CHINA (A-570-504)

CERTIFICATION

I, Karen A. McGee, of Barnes & Thornburg LLP, counsel to the National Candle Association certify that:

- (1) I have read the attached submission, and
- (2) based on the information made available to me by the members of the National Candle Association, I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

  
\_\_\_\_\_  
Karen A. McGee

  
\_\_\_\_\_  
Date

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PETROLEUM WAX CANDLES FROM THE  
PEOPLE'S REPUBLIC OF CHINA (A-570-504)

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2010, no copies were sent of the attached Rebuttal Comments on Preliminary Results on the Scope of the Petroleum Wax Candles From the People's Republic of China Antidumping Duty Order addressed to John The Honorable Gary Locke, U.S. Department of Commerce, because there is no service list on the record at this time.



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Date: September 30, 2010