

September 29, 2010

The Honorable Gary Locke  
United States Secretary of Commerce  
United States Department of Commerce  
14<sup>th</sup> Street and Constitution Ave., N.W.  
Washington, D.C. 20230

Case No. A-570-504  
Total No. of Pages: 11  
Scope Inquiry  
AD/CVD Operations, Office 9

Attn: Import Administration  
APO/Dockets Unit, Room 1870

**Public Document**

Re: Rebuttal Comments by Trade Associated Group, Ltd. 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 Mr. Secretary:

On behalf of Trade Associates Group, Ltd. ("TAG"), 1730 N. Wrightwood Ave., Chicago, Illinois 60614, we submit these rebuttal comments in response to the September 20, 2010, comments of the National Candle Association ("NCA") on the *Preliminary Results* on the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China ("Order"), 75 Fed. Reg. 49475 (August 13, 2010). See *Petroleum Wax Candles from the People's Republic of China; A-570-504; 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) (hereinafter "*Preliminary Results*"). This response is filed within the time period provided by the Department in the August 13, 2010, Federal Register Notice.

On September 20, 2010, the NCA submitted comments to the Department arguing against the Department's proposed new interpretation for candle scope determinations.<sup>1</sup> The NCA proposes that the Department's final results should include all candles except for utility candles, birthday candles, and figurine candles.<sup>2</sup>

The NCA begins its comments noting that TAG and Sourcing International, LLC "abused the scope determination process by requesting rulings on 308 candles"... "creating a huge administrative burden that made it impossible for the Department to conduct a timely scope analysis of these requests."<sup>3</sup> We make note of two things. First, TAG filed its scope ruling request in good faith in accordance with the statutory right granted by Congress. Second, the substantial number of scope rulings requests over the years is the result of the confusion, unpredictability, and complexity of interpreting the scope, which the Department will have resolved if its *Preliminary Results* are adopted.

### **I. NCA Lacks Support For An Exhaustive Scope**

The NCA argues for an exhaustive scope, even for candles not specifically enumerated in the scope language with the exception of utility candles, birthday candles, and figurine candles.<sup>4</sup> The NCA turns to the *J.C. Penney* scope investigation<sup>5</sup>, the *Later-Developed Merchandise* determination<sup>6</sup>, and the International Trade Commission determination in the original

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<sup>1</sup> Comments regarding Preliminary Results of Request for Comments on the Scope of the Petroleum Wax Candles From the People's Republic of China Antidumping Duty Order by the National Candle Association ("NCA") (September 20, 2010).

<sup>2</sup> *Id.* at 25

<sup>3</sup> *Id.* at 4

<sup>4</sup> *NCA Comments, supra*, at 4

<sup>5</sup> Final Scope Ruling: J.C. Penney Purchasing Corporation (November 9, 2001) ("*J.C. Penney*")

<sup>6</sup> *Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 71 Fed. Reg. 59,075 (Dep't. Commerce, October 6, 2006), amended by Final Results Pursuant to Voluntary Remand, *Target Corp. v. United States*, Consol. Court No. 06-00383 (May 16, 2008) ("*LDM Determination*")

investigation and second sunset review<sup>7</sup> to provide support for its position.<sup>8</sup> We address these arguments.

#### A. J.C. Penney Scope Investigation

The NCA argues that to interpret the Order's scope to exclude candle shapes not specifically listed in the language of the Order avoids subjective interpretations of intent and speculation as to the NCA's original intent at the time the petition was filed.<sup>9</sup> We disagree. We respectfully submit that the NCA, as the petitioner, had primary responsibility for establishing what it was complaining of. Any speculation required in determining the scope in large measure is due to NCA's efforts to change the impact of its originally requested scope. For fifteen (15) years prior to the Department's change in position in *J.C. Penney*, the Department consistently held that candles were outside the scope of the Order if not of a shape identified in the language of the Order. Moreover, in the *Preliminary Results, supra*, at 49479, the Department stated:

[A] close review of the investigation record shows that, although addressing a key enforcement concern, the *JC Penney* methodology did not fully take into account record evidence from the investigation. While *JC Penney* stated that the scope of the Order was inclusive, the language of the Order indicates that the scope is exclusive, whereby only those candles in the enumerated shapes are considered inside the scope.

The Department has inherent authority to define the scope of an antidumping duty order.<sup>10</sup> However, Commerce does not have authority to alter, amend, or expand the scope of an antidumping duty order.<sup>11</sup> The plain language of the scope of the Order clearly limits the scope to "[c]ertain scented or unscented petroleum wax candles made from petroleum wax and having

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<sup>7</sup> *Petroleum Wax Candles from China*, Inv. No. 731-TA-282, USITC Pub. 3790 (July 2005).

<sup>8</sup> *NCA Comments, supra* at 4

<sup>9</sup> *NCA Comments, supra*, at 6.

<sup>10</sup> *Russ Berrie Co., Inc. v. United States*, 57 F. Supp. 2d 1184, 1188 (1999) (citing to *Koyo Seiko Co. v. United States*, 17 CIT 1076, 1078, 843 F. Supp. 1401, 1403 (1993), *aff'd*, 31 F.3d 1177 (Fed. Cir. 1994)).

<sup>11</sup> *Id.* at 1192-93 (citing *Koyo Seiko*, 17 CIT at 1078, 834 F. Supp. at 1402 and *UST, Inc. v. United States*, 9 CIT 352, 356 (1985)).

fiber or paper-cored wicks...sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; ....”<sup>12</sup>

Holding a petroleum wax candle having a fiber or paper-cored wick is subject to the scope’s Order regardless of its shape expanded the scope of the Order and disregarded the exemplars in the scope’s Order. The Department correctly recognized this and has changed its position, which now follows the scope of the case as originally set forth by the Petitioner.

We also note that the *J.C. Penney* change in practice did nothing to ease the administrative burden placed on the Department in issuing scope rulings. Rather, for seven years subsequent to the issuance of the change in practice, the Department issued nearly twice as many scope rulings as it did for the seven years preceding the change in practice.

#### **B. Later-Developed Merchandise Determination**

The NCA’s reliance on the *LDM Anticircumvention Determination* to support its claim that the scope of the Order includes candles of all shapes is misplaced. The LDM investigation did not address whether the scope included candles of all shapes and not just those shapes specifically enumerated in the Order. Rather, the LDM investigation addressed whether mixed wax candles composed of petroleum wax and varying amounts of either palm or vegetable-based waxes were circumventing the Order. Indeed, in addressing this issue, the Department specifically limited its findings to candles that “are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers.” Thus, the LDM investigation is irrelevant as to the shape of the candles covered by the Order.

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<sup>12</sup> *Antidumping Petition* September 4, 1985 at 7.

## II. Adoption of ASTM Definitions

The NCA urges the Department to adopt the candle definitions developed by the Standards Committee of the American Society of Testing Materials International (“ASTM”) arguing that the “ASTM definitions give objectivity to the scope determination process and will reduce the number of scope requests as well as make it easier for Customs examiners to apply.”<sup>13</sup> With the exception of the definition of tealight candles, we fail to see how adopting the ASTM definitions will reduce the number of scope requests or make it easier for Customs to determine which candles fall within the scope of the Order. Instead, we see the exact opposite occurring.

First, the listed ASTM definitions include terms that are not specifically defined in the scope of the Order. We fail to understand how providing definitions of terms not included in the scope of the Order such as “gel type candle,” “freestanding candle,” “filled candle” and “tealight candle” will make it easier for importers or Customs officials to better understand what is covered in the scope of the Order. Rather, we see this as providing further confusion for all parties involved in understanding what is included in the scope of the Order.

Second, the ASTM definitions do not clarify what is covered by the scope. For example, defining a “taper” candle as “slender” does not provide additional guidance as to the shapes of candles included in the Order. That this definition is inadequate is supported by the fact that the even the NCA’s website finds it necessary to provide additional information to define a taper candle (“a slender candle – typically 6 to 18 inches high.”<sup>14</sup>). Similarly, listing “pillar,” “column,” and “figurine,” candles as examples of “rigid” candles under the term “free standing” candle clearly has the potential for raising yet additional issues, such as what “rigid” candles are included in the scope.

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<sup>13</sup> *NCA Comments, supra*, at 18.

<sup>14</sup> See, [http://www.candles.org/home\\_types.html](http://www.candles.org/home_types.html)

Third, the ASTM definitions for the most part were written with fire safety in mind. Thus, most of the definitions concentrate on the receptacle/platform in which the candle is housed or on which it rests. This has absolutely nothing to do with the shape of the candle and thus does not aid the Department, Customs officials, or importers in understanding the Order.

### **III. Adoption of NCA's Proposed Definitions**

The NCA argues that the definitions proposed by the Department are neither recognized nor accepted in the industry.<sup>15</sup> We find this statement difficult to believe since the definitions used by the Department in the proposed new interpretation were taken from the following three sources: (1) historical documents on record from the candles case, such as the Petition and Department memoranda; (2) past candle scope rulings; and (3) sources outside of the Department, including the NCA's website.<sup>16</sup> Up until the NCA's September 20, 2010 response, we are aware of no similar misgivings voiced by the NCA during the 24 year history of this case. The NCA is "the" trade association representing U.S. candle manufacturers and their suppliers, whose members account for more than 90% of all the candles made in the U.S.<sup>17</sup> It is, at best, disingenuous for the NCA to now argue that its own language, the Department's language, and language from other sources is in some way deficient. The time for raising objections of this sort has long passed.

The NCA argues that proposed definitions are too narrow based on the fact that only 19 of 269 candles were preliminarily determined to be within the scope of the Order.<sup>18</sup> This is incorrect. The preliminary determination is not the result of the proposed definitions being too narrow. Rather, it is the result of the Department properly limiting the scope to the enumerated

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<sup>15</sup> *NCA Comments, supra*, at 18

<sup>16</sup> *Preliminary Results, supra*, at 49480, Fn. 12.

<sup>17</sup> See, [http://www.candles.org/nca\\_overview.html](http://www.candles.org/nca_overview.html).

<sup>18</sup> *NCA Comments, supra*, at 18.

shapes set forth in the scope of the Order and is fully consistent with the scope of the case as originally set forth by the Petitioner. Moreover, the preliminary definitions as proposed and applied by the Department would not “effectively eviscerate the intended remedial effect of the Order” as stated by the NCA.<sup>19</sup> The preliminary definitions are clear and unambiguous and remove the confusion, unpredictability, and complexity of currently determining the shapes and types of candles subject to the Order.

The NCA also argues that the narrow size limitations would “encourage Chinese candle producers to make the same candles, but slightly larger or smaller than the definition proposed by the Department” and would “create a bright line that is easily circumvented by unscrupulous foreign producers and U.S. importers.”<sup>20</sup> However, the Department’s proposed size limitations are, in fact, broad and all encompassing that it is extremely unlikely that anyone would try to circumvent the scope by producing a slightly larger candle. In the unlikely case that such circumvention should occur, remedies would be available to NCA (anticircumvention proceedings). Moreover, with the exception of votive candles, there is no possibility of producing a smaller candle to circumvent the scope as there are no minimum size limitations.

The NCA suggests revisions to the definitions provided in the *Preliminary Results*. The NCA’s proposed definitions are basically a reiteration of the request that the Department adopt the Option B proposal. These definitions are overly broad, would expand the scope of the Order, and would negate the effect of the Department’s proposal, which is designed to simplify the Order and bring it in line with how petitioner itself framed the scope of the case.

Finally, the NCA recommends that the Department define “figurine” narrowly as “a small carved or molded figure of a human, animal or deity” and argues that applying this

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<sup>19</sup> *NCA Comments, supra*, at 19.

<sup>20</sup> *NCA Comments, supra*, at 19-20.

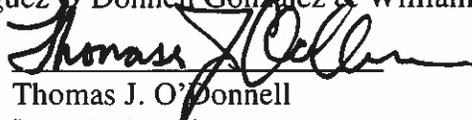
definition “would eliminate the guess work from the Order and substantially lessen the administrative burden to both Commerce and at the Customs’ port.”<sup>21</sup> We wholeheartedly support the Department’s proposed interpretation for analyzing scope requests and urge that it be adopted. In adopting the Department’s proposed interpretation there will be an easy measurable test for determining whether a candle shape and/or type falls within the scope of the order and there will be no need to go back and address the definition of the term “figurine.” Having said that, we submit that the NCA’s narrow definition of the term “figurine” is unsupported by the plain meaning of the term. The term “figurine” is defined as “1. [a] small carved or molded figure. 2. [a] very small figure, whether human or of an animal; especially, one in terra cotta or the like; -- distinguished from statuette, which is applied to small figures in bronze, marble, etc.”<sup>22</sup> The term “figure” is defined in relevant part as “...15. [t]he representation of any form, as by drawing, painting, modeling, carving, embroidering, etc.; especially, a representation of the human body; as, a figure in bronze; a figure cut in marble.”<sup>23</sup> The term “form” is defined in relevant part as “...23. [a] shape; an image; a phantom.”<sup>24</sup> Taking the definitions together, the term “figurine” is defined as a small carved or molded representation of any shape.

### Conclusion

For all the foregoing reasons, we urge the Department to adopt its preliminary results.

Respectfully submitted,  
Rodriguez O’Donnell Gonzalez & Williams, P.C.

By:

  
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<sup>21</sup> *NCA Comments, supra*, at 23.

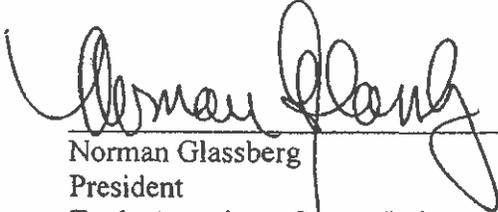
<sup>22</sup> <http://www.websters-online-dictionary.org/definitions/figurine?cx=partner-pub-0939450753529744%3Av0qd01-tdlq&cof=FORID%3A9&ie=UTF-8&q=figurine&sa=Search#922>

<sup>23</sup> <http://www.websters-online-dictionary.org/definitions/figure?cx=partner-pub-0939450753529744%3Av0qd01-tdlq&cof=FORID%3A9&ie=UTF-8&q=figure&sa=Search#922>

<sup>24</sup> <http://www.websters-online-dictionary.org/definitions/form?cx=partner-pub-0939450753529744%3Av0qd01-tdlq&cof=FORID%3A9&ie=UTF-8&q=form&sa=Search#922>

**COMPANY OFFICIAL CERTIFICATION**

I, Norman Glassberg, President, currently employed by Trade Associates Group, Ltd., hereby certify that (1) I have read the attached submission and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.

  
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Norman Glassberg  
President  
Trade Associates Group, Ltd.

September 29, 2010

**COUNSEL'S CERTIFICATION**

I, Thomas J. O'Donnell, counsel to Trade Associates Group, Ltd., hereby certify that (1) I have read the attached submission, and (2) based on the information provided to me by Trade Associates Group, Ltd., I have no reason to believe that this submission contains any material misrepresentation or omission of fact.



Thomas J. O'Donnell

September 29, 2010

**Petroleum Wax Candles from the People's Republic of China  
Case No. A-570-504**

**CERTIFICATE OF SERVICE**

I hereby certify that on September 29, 2010, copies of the foregoing letter were served by first class mail, postage prepaid on the parties listed below.

Date: September 29, 2010



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