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BY HAND

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

Re: Comments on Scope of Antidumping Duty Order and
Impact on Scope Determinations
Petroleum Wax Candles from the People's Republic of China (A-570-504)

Dear Secretary Locke:

On behalf of the National Candle Association (“NCA”), we submit these comments in response to the Department of Commerce’s notice, *Petroleum Wax Candles from the People’s Republic of China: Request for Comments on the Scope of the Antidumping Duty Order and the Impact on Scope Determinations*, 74 Fed. Reg. 42230 (Aug. 21, 2009) (hereinafter “*Comment Request*”). In this notice, the Department of Commerce (the “Department”) has requested public comment “...from interested parties on the best method to consider whether novelty candles should or should not be included within the scope of the Order given the extremely large numbers of scope determinations requested by outside parties.”¹

¹ *Petroleum Wax Candles from the People’s Republic of China, Request for Comments on the Scope of the Antidumping Duty Order and the Impact on Scope Determinations*, 74 Fed. Reg. 42230 (Aug. 21, 2009).

1) NCA's Proposed Scope Methodology

The Department is reconsidering methodology for determining what candles fall within the scope of the Antidumping Duty Order (the "*Order*") regarding petroleum wax candles from the People's Republic of China.²

In the *Comment Request*, the Department proposed two options. For the reasons set forth below, NCA proposes merging the two options to read as follows:

The Department would consider all candle shapes, including novelty candles, to be within the scope of the Order, including those not in the shapes listed in the scope of the Order, as that is not an exhaustive list of shapes, but simply an illustrative list of common candle shapes. All candle shapes would be included, regardless of etchings, prints, moldings, or other artistic or decorative enhancements, including any holiday-related art.

2) The Department's Investigation Did Not Exclude Any Candles

The NCA Antidumping Petition did not exclude any candles made of petroleum wax from the scope of the investigation requested.³ The NCA requested that the investigation cover:

...candles 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.

There is no reference to any novelty candles or any exclusion in the scope requested.

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

³ See, *Antidumping Petition on Behalf of the National Candle Association*, Sept. 4, 1985 ("*Antidumping Petition*") at 7.

In the *Comment Request*, the Department noted that it had adopted the Petitioner's scope language in its Notice of Initiation, and that "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."⁴ At no time during the Department's investigation did the Petitioner or Respondents claim that Christmas candles, or any other candles, should be outside the scope of the *Order*. The Department's investigation included all petroleum wax candles.

3) **The U.S. International Trade Commission Did Not Exclude Christmas and Other Holiday Candles**

The U.S. International Trade Commission ("ITC") investigation included all petroleum wax candles, as did the Antidumping Petition, the Department's investigation, and the *Order* except for "birthday, birthday numeral, and figurine-type candles."⁵ As indicated above, the Department's investigation included even these candles. The only other candles that were excluded by the ITC were beeswax candles. While the Respondents attempted to have Christmas candles excluded from the ITC investigation, the ITC specifically included Christmas candles within its "like product" determination:

⁴ *Comment Request* at 42230.

⁵ See, *Candles from the People's Republic of China: Determination of the Commission in Investigation No. 31-TA-282 (Final)*, (USITC Pub. 1888 (Aug 1986) at 4, note 5, and A-2 ("ITC Final").

We cannot conclude that because there are more Chinese candles shipped for Christmas that they do not compete with domestic candles. Indeed, the contrary conclusion is as easily supportable: that Chinese candles best compete with domestic shipments during the Christmas season and consequently more are shipped then.

Thus, we determine that the domestic like product shall consist only of petroleum wax candles. The domestic industry, therefore, consists of the producers of petroleum wax candles.⁶

The ITC specifically found that Chinese and U.S. candles compete head-to-head for sales in the Christmas season and, therefore, the ITC included Christmas candles within its investigation and final determination. Neither the ITC nor Commerce excluded Christmas candles from their final determinations, nor were they excluded in the *Order*. The reason is apparent: Christmas is the most important time of the year for the sale of candles.

4) The CBP Notice Was Not Supported By Fact or Law

The Department's misguided instructions to the U.S. Customs Service in 1987 ("CBP Notice") established the novelty candle exclusion. Considering the scope language in the Petition, in the Department's Investigation, and in the *Order*, it seems as if the novelty candle exclusion was plucked out of thin air. The erroneous CBP Notice focuses on Christmas novelty candles. The Department's regulations governing scope determinations require that the Department examine descriptions of the merchandise contained in the Petition, the initial investigation, and the determinations of the Department and the ITC.⁷ Had the Department considered the *ITC Final*, it would have been required to include the novelty candles within the scope of the *Order*.⁸ The *ITC Final* was dispositive of the issue of Christmas candles. The

⁶ *Id.* at 9 and A-7, including fn 1.

⁷ *See*, 19 C.F.R. Section 351.225.

⁸ *See*, 19 C.F.R. Section 351.225(k)(1).

ITC's like product analysis is virtually identical with that used by the Department under 19 C.F.R. Section 351.225(k)(2), and it specifically included Christmas candles within its like product description. The CBP Notice was incorrect because it had the effect of narrowing the broad coverage of the *Order's* scope. Therefore, the CBP Notice is not supported by fact or law and should be rejected as a basis for scope determinations under the *Order*.

In the *J.C. Penney Scope Ruling* (Nov. 9, 2001), the Department determined that its methodology was incorrect because it had the effect of narrowing the broad coverage of the first sentence of the *Order's* scope:

We now determine that this practice was incorrect because it had the effect of narrowing the broad coverage of the first sentence of the *Order's* scope. The list of shapes in the second sentence of the *Order's* scope does not provide a textual basis for such a narrowing of the coverage of the first sentence of the *Order's* scope. Accordingly, in order to give full effect to the first sentence of the inclusive language of the scope, the Department in this and future cases normally will evaluate whether candles of a shape not listed by the inclusive language of the *Order's* scope are scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. *See, J.C. Penney* at 5, footnote 1.⁹

While this change of practice had the appropriate effect of including most shapes of candles, it should have also rejected the unsupported Christmas/novelty exclusion.

5) The Requests for 308 Scope Determinations Is an Abuse of the Administrative Process

While there have been a large number of scope requests under the *Order*, in June and July 2009, the Department experienced an abusive use of the scope determination process by two importers regarding 308 candles.¹⁰ Instead of relying on precedent established in prior scope

⁹ *Comment Request* at 42231.

¹⁰ *See*, scope requests submitted by Trade Associates Group, Ltd. (dated June 11, 2009), and Sourcing International, LLC (dated June 25, 2009 and July 28, 2009).

determinations which are published on the Department's website, these two importers dumped 308 candle scope requests on the Department at almost the same time, creating a huge administrative burden that made it impossible for the Department to conduct a timely scope analysis of these requests. The Department's practice of publishing pictures and prior scope determinations should remove any uncertainty as to what candles fall within the scope of the *Order*. There is no reason to file scope requests on similar products that the Department has previously ruled upon. Furthermore, there is no reason to file separate scope requests for multiple copies of the same products. The Department's regulations should be amended to allow the Department to respond to this type of broad irresponsible attack on the Department's administrative process by issuing a summary determination that all of the candles fall within the scope of the *Order*.

6) Conclusion

The *Comment Request* has been issued because of the Department's concerns that its current methodology has resulted in uncertainty as to what candles fall within the scope of the *Order*, and that this has resulted in the large number of candle scope requests submitted each year. Rather than focusing on the methodology adopted in the *J.C. Penney* scope ruling, the Department should focus on its initial mistake in publishing the baseless CBP Notice, and creating the Christmas and other novelty candle exclusions from the scope of the *Order*. It is the erroneous CBP Notice that has generated the 596 scope determinations and the 308 pending candle scope determinations.

As discussed above, there is no basis in law or fact to support the novelty candle exclusion. The NCA's proposed methodology described in section 1) above would resolve the uncertainty, bring the Department's methodology in line with the antidumping Petition, the Department's investigation, the scope of the *Order*, and the ITC Determination. It would be incongruous for the Department to expend further precious resources of its own, of CBP, and of U.S. producers and of importers in attempting to resolve what candles now and in the future fall

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within the scope of the *Order*. The methodology proposed by the NCA herein would accomplish the Department's goal of administrative efficiency.

For all of the reasons expressed herein, the NCA respectfully requests that the Department adopt the methodology recommended by the NCA herein.

Respectfully submitted,

BARNES & THORNBURG LLP

A handwritten signature in black ink, reading "Randolph J. Stayin". The signature is written in a cursive style with a prominent initial "R".

Randolph J. Stayin

Karen A. McGee

Counsel to the National Candle Association

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