



September 16, 2009

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Acting Deputy Assistant Secretary,  
Antidumping and Countervailing Duty Operations  
U.S. Department of Commerce  
International Trade Administration  
14<sup>th</sup> Street & Constitution Ave., NW  
Washington, DC 20230

Re: 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

The National Retail Federation submits the following statement in the above-referenced matter pursuant to a request for public comment published by the International Trade Administration in the Federal Register on August 21, 2009 (74 Fed. Reg. 42,230).

In the Federal Register notice, the U.S. Department of Commerce ("Commerce") states that it is reconsidering the so-called "JC Penney" methodology, under which a candle will fall within the scope of the current antidumping duty order if it is made from petroleum wax and has a fiber or paper-cored wick regardless of shape unless the candle possesses the characteristics as a novelty candle, and therefore are exempt from the scope of the order.

Since the adoption of that methodology, Commerce states that it has received a large number of scope requests claiming exclusion from the scope of the order under the novelty candles exception. Therefore, Commerce is considering two options with respect to defining the scope of the candles antidumping order:

**Option A** – All candle shapes identified in the scope of the order, (*i.e.*, tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers) fall within the scope of the order, regardless of etchings, prints, moldings, or other artistic or decorative enhancements including any holiday-related art. All other candle shapes would not be included in the scope of the order.

**Option B** – All candle shapes, including novelty candles, would fall within the scope of the order, including those not among the shapes listed in the current scope of the order, as Commerce would consider it to be illustrative, rather than exhaustive list of common candle shapes.

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Both of these options could expand the number and types of candles facing antidumping duties. Nonetheless, given the choice, NRF would urge Commerce to adopt Option A. This option is most consistent with the original scope of the case that retailers have operated under for over 20 years. On the other hand, Option B would have an immediate negative impact on retailers. It would significantly expand the scope of the case, and, for the first time, subject candles that have not been covered since the order first went into effect in 1986 to duties exceeding 100 percent.

Rather than subject retailers and other importers to the uncertainty of scope ruling requests and the long lag time between the filing of the request by the importer and DOC ultimate decision, Commerce should provide real guidance on the issue, similar to what Customs and Border Protection (CBP) does with respect to Informed Guidance, which would eliminate many of duplicative ruling requests. Commerce should also consider having a designated person that importer can call to discuss the scope issues. CBP also provides this service through NIS positions to discuss whether an item would be within or outside the scope of the case.

Finally, which ever option Commerce chooses, it needs to clarify to importers the impact on existing scope ruling requests. If Commerce chooses Option A, it will have to address prior decisions that have included items within the scope of the order that are now not one of the shapes listed in the order. If Commerce chooses Option B, it will have to deal with scope decisions that previously held that items identified as novelty candles are not included within the scope of the order. Even if Commerce decides on another alternative, the key consideration in deciding how to define the scope of the order in this case is not to expand the scope in a way that will add many types of candles that would then be subject to significantly higher duties and substantially disrupt retail supply chains and business operations, ostensibly in an effort to achieve "simplicity." If retailers end up facing this situation, NRF has been informed by its member companies that they would likely seek alternative sources in Asia for novelty candles.

The **National Retail Federation** is the world's largest retail trade association, with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet, independent stores, chain restaurants, drug stores and grocery stores as well as the industry's key trading partners of retail goods and services. NRF represents an industry with more than 1.6 million U.S. retail establishments, more than 24 million employees - about one in five American workers - and 2006 sales of \$4.7 trillion. As the industry umbrella group, NRF also represents more than 100 state, national and international retail associations. [www.nrf.com](http://www.nrf.com).

Sincerely,



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National Retail Federation