

November 8, 2010

**TO:** Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

**FROM:** Susan H. Kuhbach  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**RE:** Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China

## **SUMMARY**

We have analyzed the substantive response of the domestic interested party in the sunset review of the antidumping duty order on petroleum wax candles from the People's Republic of China ("PRC"). We recommend that you approve the positions we describe in this memorandum. Below is a complete list of issues in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping; and
2. Magnitude of the dumping margin likely to prevail.

### History of the Order

On July 10, 1986, the Department of Commerce ("the Department") published in the Federal Register its determination that imports of petroleum wax candles from the PRC were being sold in the United States at less than fair value and that the dumping margin was 54.21 percent.<sup>1</sup> On August 28, 1986, the Department published the antidumping duty order on petroleum wax candles from the PRC.<sup>2</sup>

The Department has conducted eight administrative reviews since the issuance of the Order. In the first administrative review the Department assigned a margin of 54.21 percent to the

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<sup>1</sup> See 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) ("LTFV").

<sup>2</sup> See Antidumping Duty Order: Petroleum Wax Candles From the People's Republic of China, 51 FR 30686 (August 28, 1986) ("Order").

producer/exporter.<sup>3</sup> In the second administrative review, the Department determined a margin of 54.21 percent existed for all reviewed producer/exporters and resellers.<sup>4</sup> In the third administrative review, the PRC-wide rate remained 54.21 percent, and the manufacturer/exporter under review received a margin of 65.02 percent.<sup>5</sup> In the fourth administrative review, the Department determined a margin of 108.30 percent for the producer/exporter under review, and both the PRC-wide rate and the rate assigned to separate rate applicants also increased to 108.30 percent.<sup>6</sup> The fifth and sixth administrative reviews were both rescinded and, thus, no margins were calculated.<sup>7</sup> In the seventh and eighth administrative reviews, the PRC-wide rate remained 108.30 percent, which was the same rate given to the reviewed producer/exporters in each of these reviews.<sup>8</sup>

On January 4, 1999, the Department initiated its first sunset review of the Order.<sup>9</sup> On June 17, 1999, in the final results of the first sunset review, the Department determined that revocation of the Order would be likely to lead to continuation or recurrence of dumping and reported the margin of 54.21 percent.<sup>10</sup> After the International Trade Commission (“ITC”) determined that revocation of the Order would lead to a continuation or recurrence of injury to the domestic industry, the Department published a notice of continuation on September 23, 1999.<sup>11</sup>

On December 16, 2004, the Department initiated its second sunset review of the Order.<sup>12</sup> In the final results of the second sunset review, the Department determined that revocation of the order would be likely to lead to continuation or recurrence of dumping. While the dumping margin from LTFV was 54.21 percent, the Department also noted that it may, in certain instances, determine that a more recently calculated rate for a company may be appropriate, such as when,

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<sup>3</sup> See Petroleum Wax Candles From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 53 FR 47742 (November 25, 1988).

<sup>4</sup> See Petroleum Wax Candles From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 66 FR 14545 (March 13, 2001).

<sup>5</sup> See Petroleum Wax Candles From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 13264 (March 19, 2003).

<sup>6</sup> See Notice of Final Results and Rescission, in Part, of the Antidumping Duty Administrative Review: Petroleum Wax Candles From the People’s Republic of China, 69 FR 12121 (March 15, 2004); see also Amended Notice of Final Results of the Antidumping Duty Administrative Review: Petroleum Wax Candles from the People’s Republic of China, 69 FR 20858 (April 19, 2004) (“4<sup>th</sup> AR”).

<sup>7</sup> See Petroleum Wax Candles From the People’s Republic of China: Rescission of Antidumping Duty Administrative Review, 69 FR 18871 (April 9, 2004); and Notice of Rescission of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People’s Republic of China, 70 FR 33733 (June 9, 2005) (“6<sup>th</sup> AR”).

<sup>8</sup> See Petroleum Wax Candles From the People’s Republic of China: Final Results of the 2004-2005 Antidumping Duty Administrative Review, 71 FR 62417 (October 25, 2006); and Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People’s Republic of China, 72 FR 52355 (September 13, 2007) (“8<sup>th</sup> AR”).

<sup>9</sup> See Initiation of Five-Year (“Sunset”) Reviews, 64 FR 364 (January 4, 1999).

<sup>10</sup> See Final Results of Expedited Sunset Review: Petroleum Wax Candles from the People’s Republic of China, 64 FR 32481 (June 17, 1999) and accompanying Issues and Decision Memorandum (“Sunset I”).

<sup>11</sup> See Continuation of Antidumping Duty Order: Petroleum Wax Candles From the People’s Republic of China, 64 FR 51514 (September 23, 1999).

<sup>12</sup> See Initiation of Five-Year (“Sunset”) Reviews, 69 FR 46134 (August 2, 2004).

for the particular company, dumping margins increased after the issuance of the order, even if the increase was as a result of the application of best information available or facts available.<sup>13</sup> Thus, in Sunset II, the Department determined the rate of 108.30 percent (the PRC-wide rate in the most recently completed administrative review that occurred during the period covered by Sunset II) to be the magnitude of dumping that would exist if the Order were lifted.<sup>14</sup> After the ITC determined that revocation of the Order would lead to a continuation or recurrence of injury to the domestic industry, the Department published a second notice of continuation on September 29, 2005.<sup>15</sup>

On October 6, 2006, the Department determined in the first anticircumvention proceeding of the Order that candles composed of petroleum wax and over fifty percent or more of palm and/or other vegetable oil-based waxes (“mixed-wax candles”) were later-developed merchandise and thus circumvented the Order under section 781(d) of the Tariff Act of 1930, as amended (“the Act”).<sup>16</sup> In that proceeding, the Department also determined that mixed-wax candles containing any amount of petroleum are covered by the scope of the Order.<sup>17</sup> In the June 5, 2007 final determination of the second anticircumvention proceeding of the Order, the Department determined that the importation by, or sale to, three U.S. importers of wickless petroleum wax forms from the PRC, which subsequently underwent insertion of a wick and clip assembly in the United States, constituted circumvention of the Order pursuant to section 781(a) of the Act.<sup>18</sup>

## Background

On July 9, 2010 the Department published the notice of initiation of the third sunset review of the Order pursuant to section 751(c) of the Act. See Initiation of Five-Year (“Sunset”) Review, 75 FR 39494 (July 9, 2010). On July 16, 2010, the Department received a notice of intent to participate from the National Candle Association (“NCA” or “Petitioner”). Submission of the notice of intent to participate filed by Petitioner was within the deadline specified in 19 CFR 351.218(d)(1)(i). Petitioner claimed interested party status under section 771(9)(E) of the Act as NCA is a trade association, a majority of whose members manufacture candles in the United States. On August 9, 2010, the Department received an adequate substantive response from Petitioner within the deadline specified in 19 CFR 351.218(d)(3)(i). We did not receive adequate substantive responses, or any response at all, from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR

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<sup>13</sup> See Petroleum Wax Candles From the People’s Republic of China; Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 69 FR 75302 (December 16, 2004) and accompanying Issues and Decision Memorandum (“Sunset II”). See also Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18873 (April 16, 1998).

<sup>14</sup> See Sunset II.

<sup>15</sup> See Continuation of Antidumping Duty Order: Petroleum Wax Candles from the People’s Republic of China, 70 FR 56890 (September 29, 2005); see also Petroleum Wax Candles from China, 70 FR 44695 (August 3, 2005).

<sup>16</sup> See Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 71 FR 59075 (October 6, 2006) (“Anticircumvention I”).

<sup>17</sup> Id.

<sup>18</sup> See Petroleum Wax Candles from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 72 FR 31053 (June 5, 2007).

351.218(e)(1)(ii)(C)(2), the Department determined to conduct an expedited sunset review of the Order.

### Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting a sunset review to determine whether revocation of the Order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments made by Petitioner in this proceeding.

#### 1. Likelihood of continuation or recurrence of dumping

### Petitioner's Arguments

Petitioner argues that revocation of the Order is likely to lead to continued or recurring dumping, which is illustrated by the fact that dumping has continued without interruption since the issuance of the Order. To bolster this point, Petitioner argues that the original margin of 54.21 percent was eventually increased to 108.30 percent in the 4<sup>th</sup> AR. See Petitioner's substantive response dated August 9, 2010, at 7 ("Petitioner's Substantive Response").

Petitioner also argues that the widespread circumvention of the Order throughout its history indicates that dumping would continue if the Order were revoked. See Petitioner's Substantive Response at 7-8. Specifically, Petitioner contends that the Order's effectiveness was proven in combating a massive circumvention involving mixed-wax candles, as evidenced by the fact that only after mixed candles were found to be subject to the Order did imports of candles from the PRC drop from 208 million pounds in 2004 to 47 million pounds in 2006. See Petitioner's Substantive Response at 8.

Petitioner asserts that there is evidence that after 2006, the PRC diverted petroleum wax candles from the United States to other world markets. Therefore, Petitioner contends, these candles would be diverted back to the U.S. market if the Order were revoked. See Petitioner's Substantive Response at 16. Petitioner adds that this influx would be amplified because the European Union recently imposed antidumping duties on candles from the PRC, which would make the United States without the Order in place an even more attractive market to dump those candles that cannot easily enter European markets. See Petitioner's Substantive Response at 17.

Petitioner additionally argues that due to the current recession in the United States, PRC producers have more incentive to lower their prices in order to increase their share of a shrinking market. See Petitioner's Substantive Response at 19.

## Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"),<sup>19</sup> the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above de minimis after the issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.<sup>20</sup>

Although no respondent interested party filed a statement of waiver pursuant to 19 CFR 351.218(d)(2) in this proceeding, the Department did not receive any substantive response from any respondent interested party pursuant to 19 CFR 351.218(d)(3). Accordingly, the Department finds that respondent interested parties have decided not to participate in the Department's sunset review. Section 751(c)(4)(B) of the Act provides that, in a sunset review in which an interested party declines to participate, the Department shall conclude that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping with respect to that interested party. Pursuant to section 752(c)(1)(A) of the Act, the Department considered the weighted-average dumping margins determined in the investigation and reviews.

While tariff classification code 3406.0000 in the Order is a basket category (thereby only allowing for an approximation of subject imports), these data represent the best data available. Although there was an increase in imports in the third sunset period as compared to the period before the issuance of the Order, this was likely attributed to the increase in imports of mixed-wax candles which were not subject to the Order until late 2006. As noted above, in 2006, the Department determined that mixed-wax candles were now subject to the Order pursuant to Anticircumvention I. Therefore, the Department finds that this decrease of imports of subject merchandise from the PRC following Anticircumvention I, as well as the continued dumping above de minimis margins with the Order in place, are highly probative of the likelihood of continuation or recurrence of dumping, if the Order were revoked. Thus, the Department determines that dumping would likely continue or recur if the Order were revoked.

## 2. Magnitude of the Margins Likely to Prevail

### Petitioner's Arguments

Petitioner argues that if the Order were revoked, imports of petroleum wax candles would be dumped at a rate of at least 108.30 percent, the same PRC-wide margin determined to exist in the

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<sup>19</sup> See, e.g., Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103-316, vol. 1, 889 (1994); House Report, H. Rep. No. 103-826, pt. 1 (1994); and Senate Report, S. Rep. No. 103-412 (1994).

<sup>20</sup> See, e.g., Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 72 FR 16765 (April 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1; see also, Pure Magnesium in Granular Form from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 72 FR 5417 (February 6, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

4<sup>th</sup> AR through 6<sup>th</sup> AR<sup>21</sup> and Sunset II. See Petitioner’s Substantive Response at 19.

### Department’s Position

Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Normally, the Department will select a margin from the final determination in the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.<sup>22</sup> For companies not investigated individually, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the all-others rate from the investigation.<sup>23</sup> However, because this case involves the PRC, which the Department considers to be a non-market economy as defined by section 771(18) of the Act, the Department does not have an all-others rate; instead, there is a PRC-wide rate which applies to all imports from an exporter that has not established its eligibility for a separate rate. The Department’s preference for selecting margins from the investigation is based on the fact that they are the only dumping rates that reflect the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place. However, as noted in Sunset II, the Department may, in certain instances, determine that a more recently calculated rate for a company may be appropriate. As a result of the 4<sup>th</sup> AR, which included 97 entities who failed to cooperate with the Department to the best of their ability, the Department determined to apply a PRC-wide rate of 108.30 percent, the dumping margin calculated for the producer/exporter under review in that segment.<sup>24</sup> Since Sunset II, the Department has had only one administrative review, in which the sole respondent received the adverse facts available rate of 108.30 percent. Currently, no exporters of petroleum wax candles from the PRC have a rate separate from 108.30 percent.

For these final results of the expedited sunset review, the Department has determined to report to the ITC the margin from the previous sunset review, which was also assigned in the 8<sup>th</sup> AR, the most recent administrative review in the current sunset review period, and therefore will report to the ITC a margin of 108.30 percent for all PRC exporters and producers of petroleum wax candles.

Pursuant to section 752(c) of the Act, the Department will report to the ITC the margin as indicated in the “Final Results of Review” section, below.

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<sup>21</sup> The 4<sup>th</sup> AR through 6<sup>th</sup> AR did not occur during the period of review of the current sunset review.

<sup>22</sup> See Persulfates From the People’s Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>23</sup> See Hot-Rolled Carbon Steel Flat Products from Argentina, the People’s Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders, 71 FR 70506 (December 5, 2006), and accompanying Issues and Decision Memorandum at Comment 2, “Magnitude of the Margins Likely to Prevail.”

<sup>24</sup> See 4<sup>th</sup> AR.

Final Results of Review

We determine that revocation of the Order would be likely to lead to continuation or recurrence of dumping at the following percentage margins:

Manufacturers/Producers/Exporters	Margin (percent)
PRC-Wide	108.30

Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the Federal Register.

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Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

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Date