

DATE: July 26, 2011

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

FROM: Gary Taverman  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for Final Results of Request for  
Comments on the Scope of the Petroleum Wax Candles from the  
People's Republic of China Antidumping Duty Order

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We have analyzed the case and rebuttal briefs received from the National Candle Association (“NCA”), the petitioner in the less-than-fair value antidumping duty investigation (“LTFV investigation”), Universal Candle Company (“UC”), Trade Associates Group, Ltd. (“TAG”), and HSE USA, Inc. (“HSE”) for the request for comments on the scope of the petroleum wax candles (“candles”) from the People’s Republic of China (“PRC”) antidumping duty order.<sup>1</sup> As a result of our analysis, we have chosen a different scope interpretation from that which we advocated in the Preliminary Results.<sup>2</sup>

We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of issues for which we received comments and rebuttal comments from interested parties:

**General Issues**

**COMMENT 1: INCLUSIVITY OF THE SCOPE**  
**COMMENT 2: MEASUREMENTS AND DEFINITION OF THOSE CANDLE SHAPES ENUMERATED IN THE ORDER**  
**COMMENT 3: EXCLUSIONS FROM THE ORDER**  
**A. Birthday Candles**  
**B. Utility Candles<sup>3</sup>**

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<sup>1</sup> See Antidumping Duty Order: Petroleum Wax Candles from the People’s Republic of China, 51 FR 30686 (August 28, 1996) (“Order”).

<sup>2</sup> See 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 FR 49475 (August 13, 2010) (“Preliminary Results”).

<sup>3</sup> Those candles known as “household,” “utility,” “emergency,” or “household emergency” candles will be termed “utility candles” for purposes of this memorandum.

**C. Figurine Candles**  
**D. Religious, Holiday, or Special Occasion Themed Candles**

**BACKGROUND**

On August 21, 2009, given the extremely large number of scope determinations requested by outside parties, the Department solicited comments from interested parties on the best method to consider whether novelty<sup>4</sup> candles should or should not be included within the scope of the Order.<sup>5</sup> Because the scope of the Order does not specifically list any exclusions in its text,<sup>6</sup> the request was ultimately based on ascertaining whether the NCA originally intended during the LTFV investigation to include all candles within the scope of the Order, or only some, with exclusions based on novelty characteristics. Interested parties were presented with two options (as well as the choice to submit additional options and ideas):

Option A: The Department would consider 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) to be 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 be considered outside of the scope of the Order.

Option B: 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.

In interpreting the scope of an order, the Department first examines the descriptions of the merchandise contained in the petition, the initial investigation and the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (“ITC”).<sup>7</sup> This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether the subject merchandise is covered by the Order.<sup>8</sup>

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<sup>4</sup> The term “novelty candle,” as defined in Scope Comments and prior scope rulings, refers to candles that are in the shapes of identifiable objects, or are holiday themed.

<sup>5</sup> See 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 FR 42230 (August 21, 2009).

<sup>6</sup> The NCA requested that the investigation cover “candles {made} 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.” See Antidumping Petition Submitted on Behalf of the National Candle Association in the Matter of: Petroleum Wax Candles from the People’s Republic of China (September 3, 1985) (“Petition”), at 7. The Department adopted this same language as the scope in its notice of initiation, with the modification that the Department placed “certain” before “petroleum wax candles.” This scope language carried forward without change through the eventual antidumping duty order and subsequent proceedings.

<sup>7</sup> 19 C.F.R. 351.225(k)(1).

<sup>8</sup> Id.

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: (1) the physical characteristics of the merchandise; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of trade in which the product is sold; and (5) the manner in which the product is advertised and displayed.<sup>9</sup>

In the Preliminary Results, the Department looked to the descriptions of the merchandise, in accordance with 19 C.F.R. 351.225(k)(1), to interpret the scope of the Order. The Department preliminarily chose Option A, with the added modification that birthday and utility candles would be excluded from the scope of the Order. That is, the Department stated that any candle shapes not specifically listed in the Order's scope would be excluded; birthday and utility candles would be excluded from the scope of the Order even if in one of the shapes (such as tapers or pillars) specifically mentioned in the scope's text. The Department found in the Preliminary Results that no evidence on record from the LTFV investigation supported excluding candles from the order on the basis of religious, holiday, or special occasion themed characteristics.<sup>10</sup>

## DISCUSSION OF THE ISSUES

### COMMENT 1: INCLUSIVITY<sup>11</sup> OF THE SCOPE

#### *The NCA*

- The NCA never advocated for an exclusive scope where candles not specifically enumerated in the scope language were excluded. Instead, it intended to have the scope of the Order be as broad as possible to include “virtually all shapes and types of candles.”<sup>12</sup>
- The record evidence on which the Department relied to formulate its scope interpretation, such as passages from the Petition related to surrogate country selection and pricing data, are vague, ambiguous, and unrelated to defining the scope of the Order. As such, it does not accurately convey the NCA's true intent at the time of the LTFV investigation.<sup>13</sup>

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<sup>9</sup> 19 C.F.R. 351.225(k)(2).

<sup>10</sup> See e.g., Preliminary Results, 75 FR at 49478 (noting that both the ITC injury investigation and the Department's early scope rulings found that candles should not be excluded merely because of seasonal or holiday characteristics).

<sup>11</sup> The term “inclusive” as used in this case, denotes that the scope of the Order should cover not only the enumerated shapes/types, but also all other candle shapes, even though they are not specifically mentioned in the scope's language. This is to be contrasted with the terms “exhaustive” or “exclusive,” which denote that only the enumerated shapes/types are covered by the scope of the Order, with the exception of utility and birthday candles (which are often in shapes listed in the Order's scope). The term “enumerated shapes/types” refers to the candle shapes and candle types specifically mentioned in the scope of the Order. Candle shapes and types not specifically mentioned in the scope would be excluded under the “exhaustive” definition.

<sup>12</sup> The NCA uses an affidavit from Robert J. Staab, NCA president during the LFTV investigation, as support for this assertion. See Letter to the Secretary of Commerce from the NCA, Preliminary Results of Request for Comments on the Scope of the Petroleum Wax Candles from the People's Republic of China (A-570-504) (September 20, 2010) (“the NCA's Comments”), at Exhibit A.

<sup>13</sup> See the NCA's Comments, at 13-14.

- The final results of the ITC’s injury determination<sup>14</sup> show that the scope of the Order is inclusive, since the ITC described the subject merchandise as being made in “various shapes and sizes, including tapers, spirals, straight-sided dinner candles, rounds, columns, pillars, votives, and various wax-filled containers” (emphasis added).<sup>15</sup>
- The Department confirmed in the LDM Anticircumvention Determination<sup>16</sup> that the scope of the Order is inclusive, because it found that mixed-wax candles were subject to the scope of the Order even though they were not specifically excluded from the LTFV investigation. The NCA maintains that similarly, since candles other than the enumerated shapes/types were not expressly excluded from the scope’s language, they are within the scope of the Order.<sup>17</sup>
- The ITC’s Sunset II<sup>18</sup> indicates an inclusive scope, because that ruling found that mixed-wax candles were part of the domestic like product, even though they were not specifically analyzed during the LTFV investigation.<sup>19</sup>
- As the Department found in JC Penney,<sup>20</sup> the list of the candle shapes and types in the scope language has no definite exclusion language.<sup>21</sup>

### *UC*

- All candles, including utility and figurine candles, should be covered by the scope of the Order (while birthday candles should not) so that a “more even playing field for all domestic and importing producers would be created.”<sup>22</sup>
- An additional reason to support an interpretation of the scope of the Order as covering utility candles is because producers in the PRC may try to circumvent the Order by labeling tapers and straight-sided dinner candles as utility candles.<sup>23</sup>

### *HSE*

- Mr. Staab’s affidavit does not cite to any record evidence to derive the NCA’s intent during the LTFV investigation.
- The plain language taken from the Petition, which was written by the NCA, denotes that the scope of the LTFV investigation was limited only to certain shapes and types of candles.<sup>24</sup>

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<sup>14</sup> See Determination of the Commission in LFTV investigation No. 731-TA-282 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the LFTV investigation, USITC Publication 1888 (August, 1986) (“ITC Final Determination”).

<sup>15</sup> Id. at 4.

<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) (“LDM Anticircumvention Determination”).

<sup>17</sup> See the NCA’s Comments at 8-9.

<sup>18</sup> See Petroleum Wax Candles from the People’s Republic of China, Inv. No. 731-TA-282, USITC Pub. 3790 (July, 2005) (“Sunset II”).

<sup>19</sup> Mixed wax candles are candles containing a blend of petroleum and vegetable-based waxes.

<sup>20</sup> See Final Scope Ruling Antidumping Duty Order on Petroleum Wax Candles From the People’s Republic of China (A-570-504); JC Penney Purchasing Corporation, (November 9, 2001) (“JC Penney”).

<sup>21</sup> See the NCA’s Comments at 5.

<sup>22</sup> See Letter to the Department of Commerce from the Universal Candle Company, 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 (September 20, 2010) (“UC’s Comments”).

<sup>23</sup> See UC’s Comments, at 1.

That is, the use of phrases in the scope language such as “certain petroleum wax candles” and “these candles are sold in the following shapes” are clear indicators that the NCA intended to limit the products covered, or else it would have used words like “the products covered by this LTFV investigation are all petroleum wax candles” and “these candles are sold in the following shapes, such as.”

- The NCA is advocating an impermissible expansion of the scope by arguing that the list of shapes and types mentioned in scope of the Order is merely illustrative, and not exhaustive.<sup>25</sup>
- UC’s contention that all candle shapes and types (except for birthday candles) should be covered by the scope of the Order to level the playing field between PRC exporters and U.S. producers has no relevance, as the Department’s responsibility is to properly interpret the scope of the Order.<sup>26</sup>

#### *TAG*

- Interpreting the scope as covering only the enumerated shapes/types clearly construes the language used by the Department during the course of the LTFV investigation and is in keeping with the scope of the case as originally set forth by the NCA.<sup>27</sup>
- The NCA’s use of the LDM Anti-circumvention Determination as support for an inclusive scope is misplaced because the primary concern in that case was whether candles mixed with non-petroleum waxes were covered by the scope of the Order, not whether candles of a certain shape/type were covered. In that case, the Department specifically limited its findings to candles that “are sold in the following shapes: tapers, spirals, { ... }”<sup>28</sup>

#### **Department’s Position:**

For the final results, the Department finds that it can determine whether the scope of the order is inclusive or exclusive<sup>29</sup> after examining the criteria establishing in 19 CFR 351.225(k)(1). In this regard, the issue of whether the enumerated shapes/types is a definitive list of all the candles covered by the scope of the Order, in accordance with Option A, or an illustrative list that merely identifies some examples of within-scope merchandise, in accordance with Option B, cannot be determined from the scope language alone, which can reasonably be interpreted to support either option. Consequently, the Department has analyzed different documents from the LTFV investigation such as the Petition, the Department’s and the ITC’s respective preliminary and final determinations, memoranda from the investigation, Customs communications dating from the LTFV investigation, and scope rulings issued shortly after publication of the Order to ascertain which exclusions from the scope (if any) were present at the issuance of the Order.

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<sup>24</sup> See Letter to the Secretary of Commerce: Rebuttal Comments on the Scope of the Antidumping Duty Order and the Impact on Scope Determination in Petroleum Wax Candles from the People’s Republic of China (A-570-504) (September 30, 2010) (“HSE’s Comments”) at 6.

<sup>25</sup> Id., at 4.

<sup>26</sup> Id., at 8.

<sup>27</sup> See TAG’s Comments, at 3.

<sup>28</sup> See Letter to the Secretary of Commerce from TAG, 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; A-570-504 (September 29, 2010) (“TAG’s Rebuttal”), at 4.

<sup>29</sup> See note 11, supra.

In the Preliminary Results, the Department concluded that the NCA originally intended to exclude those candle shapes not specifically mentioned in the scope of the Order based partly on two instances of the Petition where the NCA discussed possible surrogate country choices. In the first instance, the Department analyzed the passage where the NCA stated, “Korea was deemed a poor choice as a surrogate because its primary domestic production of candles consists of types of candles which are not similar to candles exported by the PRC. Korea produces mostly small, plain, white utility candles and hand-crafted novelty candles,”<sup>30</sup> and concluded that the statement means that the NCA wanted to exclude all candles other than those specifically listed in the scope’s language. In the second instance from the Petition, the Department analyzed the section in which the NCA, via a consulting firm, requested pricing information from a market research firm in Malaysia and stated that the candles with which they were concerned were “high-volume standard types of candles, not specialty candles such as figurines or other unusual shapes.”<sup>31</sup> The Department finds that its interpretation of these documents in the Preliminary Results was incorrect and that these documents support an inclusive interpretation of the Order. In both cases, the NCA indicated that a country was an improper surrogate where its candle producers focused on specific types of candles: utility candles, hand-crafted novelty candles (in the case of Korea), and figurine candles (in the case of Malaysia). While these statements provide support for the exclusion of these specific types of candles, they cannot be read more broadly to indicate that all shapes not listed within the Order were outside the LTFV investigation.

Indeed, the NCA’s statement that it was concerned with “high-volume standard types of candles” supports an expansive interpretation of the scope that would include any candle shape that is standard or high-volume.<sup>32</sup> For instance, geometric cone-shaped candles would fall within a description of high-volume standard candles, yet they do not fall within any of the enumerated candle shapes in the Order. Were the Department to adopt its proposed narrow interpretation from the Preliminary Results, these candles would be outside the Order despite their being of the high-volume standard type NCA specifically intended for inclusion. Thus, this statement supports an inclusive interpretation of the Order.

A re-examination of record evidence from the LTFV investigation in light of comments and rebuttal comments from parties subsequent to the Preliminary Results indicates that there is no evidence that limits the scope only to certain candle shapes. The broad exclusions inherent in Option A that were advocated by the Department in the Preliminary Results for all candles not specifically enumerated in the scope’s language was based on an unnecessary reading between the lines of the record evidence from the LTFV investigation. Once again, the NCA’s statement that it wished to include all “high-volume standard types of candles” indicates a broad intent to cover many candle types.<sup>33</sup> As such, the Department finds that the Petition’s description of subject candles as being “made from petroleum wax and contain{ing} fiber or paper-cored wicks” should be the dispositive language that defines the class of subject merchandise. Because the Department finds that the list of enumerated shapes/types is an illustrative list, we find that

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<sup>30</sup> See Petition, at 14.

<sup>31</sup> Id., at Exhibit 21.

<sup>32</sup> Id.

<sup>33</sup> Id.

petroleum wax candles in any shape are included within the scope of the Order, with the exception of those candles discussed below in Comment 3.

The Department also cited its message to the U.S. Customs Service (“Customs”)<sup>34</sup> during the LTFV investigation (“Scope Clarification Communication”)<sup>35</sup> in its Preliminary Results.<sup>36</sup> In this document, the Department stated that “{c}andles not described above, such as birthday, birthday numeral, and figurine type candles are outside the scope of this investigation.”<sup>37</sup> While the language “such as” could be interpreted as indicating a broad exclusion of candle types, as discussed above, no other evidence from the LTFV investigation supports such sweeping exclusions from the Order. Instead, the NCA specifically stated its interest in “high-volume standard types of candles,” indicating an intent to include a broad-range of candles beyond those enumerated shapes in the scope.<sup>38</sup> To the extent that the Scope Clarification Communication indicates some types of candles are excluded from the Order, the Department has given effect to this language by excluding those candle types specifically noted in the communication, as further discussed below in Comment 3.

HSE and TAG contend that the phrase in the scope text “certain petroleum wax candles” indicates that the scope covers only those enumerated shapes/types in the Order (emphasis added). Though the word “certain” indicates that the Order does not include all petroleum wax candles, the phrase is ambiguous and cannot itself define what types of petroleum wax candles are excluded. HSE and TAG have cited no record evidence indicating that “certain” is specifically intended to exclude all candle shapes not listed in the scope of the Order. And as further discussed below, the Department has given effect to the word “certain” by excluding those types of candles for which there is record evidence that the NCA intended their exclusion from the Order.

Additionally, the ITC Final Determination supports an inclusive interpretation of the Order. In the ITC Final Determination, the commission described the like product as being sold in “various shapes and sizes, including {the enumerated shapes/types}”(emphasis added), indicating that the ITC considered the enumerated shapes to be merely illustrative.<sup>39</sup> The ITC Final Determination’s market analysis also included data on candle types beyond the shapes enumerated in the Order.<sup>40</sup> In contrast, there are no statements from the LTFV investigation, including from the ITC Preliminary Determination and ITC Final Determination, that the only

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<sup>34</sup> On July 28, 2006, the United States Customs Service since was renamed as the United States Bureau of Customs and Border Protection. See Homeland Security Act of 2002, Pub. L. 107-296, §1502, 116 Stat. 2135, 2308-09 (2002); Reorganization Plan Modification for the Department of Homeland Security, H.R. Doc. No.108-32, at 4 (2003).

<sup>35</sup> See Communication to All U.S. Customs Field Officers from John Durant, Acting Director, Commercial Compliance Division: Petroleum Wax Candles from the People’s Republic of China: Clarification of Scope of Investigation (dated March 20, 1986) (“Scope Clarification Communication”).

<sup>36</sup> See Preliminary Results, 75 FR at 43477-78.

<sup>37</sup> See Scope Clarification Communication.

<sup>38</sup> See Petition, at Exhibit 21.

<sup>39</sup> See ITC Final Determination, at 4.

<sup>40</sup> Id., at A-6.

candles subject to the scope of the Order are the enumerated shapes/types. Therefore, the totality of evidence on record supports broad scope coverage inclusive of all candle shapes.

While finding that the scope of the Order is inclusive, the Department disagrees with the NCA's argument that the LDM Anticircumvention Determination and Sunset II provide support for this inclusivity. The Department agrees with TAG, and notes that the primary issue at hand in the LDM Anticircumvention Determination was whether the technology for producing mixed-wax candles was present at the time of the LTFV investigation.<sup>41</sup> In this case, in contrast, the question is whether the scope was limited only to the enumerated shapes/types during the LTFV investigation (not whether the technology present at the time of the LTFV investigation was such that those candles not of the enumerated shapes/types could be produced).

We also continue to find that, as explained in the JC Penney scope ruling, the scope should be read inclusively. Though unlike JC Penney, which relied largely on the text of the Order, we find that the descriptions of the merchandise from the LTFV investigation are dispositive regarding an inclusive reading of the scope.

Finally, while the Department agrees with UC's contention that the Order should be interpreted to include all candle shapes (with the exception of those candles discussed in Comment 3 below), the Department disagrees with UC's contention that the reason for this interpretation should be to create a more even playing field between PRC and U.S. candle producers. The Department agrees with HSE that such considerations are not relevant to the Department's interpretation and administration of the Order.

For the final results, the Department is adopting an inclusive scope interpretation regarding candle shapes that is based on Option B. The added modification to this option is that three types of candles are excluded from the scope of the Order: birthday candles, utility candles, and figurine candles.<sup>42</sup> For a full description of these exclusions, see infra, at Comment 3.

## **COMMENT 2: MEASUREMENTS AND DEFINITIONS OF THOSE CANDLE SHAPES ENUMERATED IN THE ORDER**

### *The NCA*

- The language formulated by the Department to convey the new scope interpretation in the Preliminary Results is ambiguous, and will narrow the scope of the Order.<sup>43</sup>
- The Department should not include measurements in its candle definitions, because by including candle sizes and dimensions, PRC producers can easily circumvent the Order by slightly altering size.<sup>44</sup>

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<sup>41</sup> See LDM Anti-circumvention Determination, at Comment 3.

<sup>42</sup> For the definitions and size specifications of birthday, utility, and figurine candles, see infra.

<sup>43</sup> See Letter to the Secretary of Commerce from the NCA, Rebuttal Comments on the Preliminary Results of Request for Comments on the Scope of the Petroleum Wax Candles from the People's Republic of China (A-570-504) (September 30, 2010) ("NCA's Rebuttal"), at 5.

<sup>44</sup> See the NCA's Comments, at 19.

- The definitions of the enumerated shapes/types proposed by the Department in the Preliminary Results are arbitrary, and are neither recognized nor accepted by the industry.
- The measurements included in the definitions of the enumerated shapes/types create an overly narrow interpretation that will encourage PRC producers to circumvent the Order by slightly altering candle size.<sup>45</sup>
- While the best interpretation would be for the Department to include all candles within the scope of the Order, except for birthday, utility, and figurine candles, the second best alternative would be for the Department to adopt the candle definitions as written by the ASTM.<sup>46</sup> If the Department adopts the ASTM definitions, it would give objectivity to the scope determination process and would reduce the number of scope requests as well as make it easier for U.S. Customs and Border Protection (“CBP”) examiners to apply.<sup>47</sup>
- Should the Department choose not to adopt the ASTM definitions, and instead base its new interpretation on shape, the Department should use the Preliminary Results’ proposed definitions, but in a form revised by the NCA.<sup>48</sup>
- Adopting the Department’s proposed Preliminary Results definitions in its new interpretation will stifle creativity and innovation within the U.S. candle industry.<sup>49</sup>

#### TAG

- It would be a mistake to adopt the ASTM definitions proffered by the NCA because these definitions introduce new candle types, such as “gel type candle,” “freestanding candle,” and “filled candle” into the scope of the Order.
- Introducing ASTM definitions will, contrary to the NCA’s assertion, make scope rulings more difficult for the Department and identification of such candles more difficult for CBP.<sup>50</sup>
- The lack of measurements found in most of the ASTM definitions will create additional ambiguity, and the logic that measurements are necessary to lessen ambiguity is supported by the fact that even the NCA’s website finds it necessary to include measurements in its candle definitions.<sup>51</sup>
- The ASTM definitions are inadequate because they were written with fire safety in mind and thus concentrate on the receptacle/platform in which the candle rests and not the candle’s defining characteristics.<sup>52</sup>
- The NCA argument that the definitions proposed by the Department are neither recognized nor accepted in the industry is false since these definitions were taken from historical documents on record from the LTFV investigation, past candle scope rulings, and sources outside of the Department, including the NCA’s website.<sup>53</sup>

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<sup>45</sup> Id.

<sup>46</sup> The American Society of Testing Materials International (“ASTM”) is an organization that provides a forum for the development and publication of voluntary consensus standards for materials, products, systems and services.

<sup>47</sup> See the NCA’s Comments, at 18.

<sup>48</sup> Id. at 20. See also the NCA’s Rebuttal, at 7.

<sup>49</sup> See the NCA’s Comments, at 5.

<sup>50</sup> See TAG’s Rebuttal, at 5.

<sup>51</sup> Id.

<sup>52</sup> Id. at 6.

<sup>53</sup> Id.

- The NCA’s objections to the proposed definitions are disingenuous, because much of these definitions were taken from the NCA itself, and (as stated on the NCA’s website), “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>54</sup>
- The NCA’s contention that the measurements listed in the Department’s proposed definitions would encourage circumvention by PRC producers by altering the size of their candles is false, because the Department’s proposed size limitations are broad and all-encompassing enough that it is extremely unlikely that anyone would try to circumvent the Order by producing a slightly larger candle. In the unlikely case that such circumvention should occur, remedies such as anticircumvention proceedings are available. 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.<sup>55</sup>
- The NCA’s reformulation of the Department’s proposed definitions should not be adopted because they simply have the effect of covering all petroleum wax candles. Such a reformulation negates the original intent of the NCA.<sup>56</sup>

#### *HSE*

- HSE did not comment on this issue.

#### *UC*

- The measurements and descriptions proposed for utility candles by the Department in the Preliminary Results could result in circumvention of the Order because the utility candles’ proposed measurements are already similar to those of subject tapers and straight-sided dinner candles.
- If certain candles that are meant to be covered by the scope, such as columns, are produced with larger dimensions in response to a changing market, they might technically become outside of the scope.<sup>57</sup>

#### **Department’s Position:**

The issue of formulating measurements and other specifications for the purpose of identifying the enumerated shapes/types in the Order is no longer relevant because the inclusive scope interpretation that the Department is adopting in the final results does not require any such measurements. That is, the Department’s interpretation of the scope of the Order as inclusive (*i.e.*, as covering all candle shapes) does not require that the Department define the enumerated shapes/types within the Order, since all candle shapes would fall within the scope of the Order except for three exceptions discussed in Comment 3. However, for those candles found to be excluded from the Order, further discussed below, the Department has provided definitions

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<sup>54</sup> Id.

<sup>55</sup> Id. at 7.

<sup>56</sup> Id.

<sup>57</sup> See Letter to the Department of Commerce from the Universal Candle Company, 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 (September 20, 2010)(“UC’s Comments”), at 1.

below. Further, we have addressed UC's comments pertaining to the Department's definition of utility candles below in Comment 3.B.

### **COMMENT 3: EXCLUSIONS FROM THE ORDER**

#### **A. Birthday Candles**

##### *The NCA*

- At the time of the LTFV investigation, in response to questions from the Department, the NCA agreed to exclusions only for utility, birthday, and figurine candles, and for no other candle shapes or types.<sup>58</sup>

##### *UC*

- Birthday candles should be excluded from the scope of the Order.<sup>59</sup>

#### **Department's Position:**

As noted above, the Order's coverage of "certain" petroleum wax candles indicates that some types of petroleum wax candles are excluded from the scope of the Order. Record evidence from the LTFV investigation supports the exclusion of three specific types of candles: birthday, utility, and figurine candles. A document detailing a communication from the NCA during the LTFV investigation ("the April 1986 Memo")<sup>60</sup> is the basis for the exclusion of these candles, and this memo records that the NCA specified that "household" or "utility candles," "birthday" and "birthday numeral" candles, and "figurine-type" candles were outside the scope of investigation. In addition, the Department conveyed the exclusions for birthday candles and figurine candles to Customs during the LTFV investigation with the Scope Clarification Communication. Based on the Scope Clarification Communication, the ITC confirmed the exclusions for birthday and figurine candles in its final determination.<sup>61</sup> We also note that no party has objected to the exclusion of birthday candles from the Order. Accordingly, we find that birthday candles are excluded from the scope of the Order.

As in the Preliminary Results, the Department finds that birthday candles are typically small, thin, pillar-shaped candles that range from 2 inches to 3.5 inches in height, 0.18 inch to 0.25 inch in width, and packaged in quantities of 10 to 24; and birthday numeral candles as candles that are in the shape of numbers that typically range from 2 to 4 inches in height.<sup>62</sup> Because no party objected to this definition, the Department continues to rely on this definition for the exclusion of birthday candles.

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<sup>58</sup> See the NCA's Comments, at Exhibit A. However, the NCA continues to support the exclusion of utility candles, birthday candles, and figurine candles, and of no other types of candles. Id. at 25.

<sup>59</sup> See UC's Comments.

<sup>60</sup> See Memorandum to the File from Michael Ready, Subject: Petroleum Wax Candles from the PRC – Scope of the Investigation (April 30, 1986) ("the April 1986 Memo").

<sup>61</sup> See ITC Final Determination, at 4.

<sup>62</sup> See Preliminary Results, 75 FR at 49480.

## B. Utility Candles

### *The NCA*

At the time of the LTFV investigation, in response to questions from the Department, the NCA agreed to exclusions only for utility, birthday, and figurine candles, and for no other candle shapes or types.<sup>63</sup>

### *UC*

- Utility candles should not be excluded from the scope of the Order because the proposed dimensions for utility candles in our Preliminary Results are similar to the dimensions of tapers and straight-sided dinner candles, allowing for these candles to be packaged as utility candles and thereby circumvent the Order.<sup>64</sup>

No other party commented on the exclusion of utility candles.

### **Department's Position:**

As noted above, the Order's coverage of "certain" petroleum wax candles indicates that some types of petroleum wax candles are excluded from the scope of the Order. Record evidence from the LTFV investigation supports the exclusion of three specific types: birthday, utility, and figurine candles. The April 1986 Memo is the basis for the exclusion of these candles, and this memo records that the NCA specified that "household" or "utility candles," "birthday" and "birthday numeral" candles, and "figurine-type" candles were outside the scope of investigation.<sup>65</sup> In addition, as noted above, NCA stated during the LTFV investigation that "Korea was deemed a poor choice as a surrogate because its primary domestic production of candles consists of types of candles which are not similar to candles exported by the PRC. Korea produces mostly small, plain, white utility candles ..."<sup>66</sup> Finally, the Department excluded candle imports from Jamaica in the final determination of its LTFV investigation as a basis for fair market value "because we received information from petitioner that the Jamaican candles were 'household candles' not subject to this investigation."<sup>67</sup> Thus, record evidence from the LTFV investigation indicates that the NCA intended to exclude utility candles from the scope of the Order. However, the Department neglected to convey the utility candle exclusion in the Scope Clarification Communication. Accordingly, the Department is taking this opportunity to find that, in agreement with the NCA,<sup>68</sup> utility candles are excluded from the scope of the Order.

As in the Preliminary Results, the Department finds that utility candles are typically white in color, 5 inches long, 0.75 inch in diameter, and packaged in quantities of two or more.<sup>69</sup> UC contends that circumvention of the Order would be encouraged due to the fact that the proposed dimensions of utility candles in our Preliminary Results are similar to the dimensions of tapers

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<sup>63</sup> See the NCA's Comments, at Exhibit A.

<sup>64</sup> See UC's Comments, at 1-2.

<sup>65</sup> See April 1986 Memo.

<sup>66</sup> See Petition, at 14.

<sup>67</sup> See Petroleum Wax Candles from the People's Republic of China: Final Determination of Sales at Less than Fair Value, 51 FR 25085, 25088 (July 10, 1986). Birthday and figurine candles were not mentioned.

<sup>68</sup> See the NCA's Comments, at 25.

<sup>69</sup> See Preliminary Results, 75 FR at 49480.

and straight-sided dinner candles, and that, consequently, we should include utility candles in the scope to discourage such circumvention. The speculation of circumvention alleged by UC does not provide a basis to include utility candles within the Order. Record evidence from the LTFV investigation shows that the NCA intended for utility candles to be excluded from the Order, as discussed above. We also note that a definition entailing some physical specifications and measurements is necessary to identify utility candles so that they may be excluded from the Order, and no other definition for utility candles has been suggested in this proceeding. Accordingly, the Department continues to rely on its definition of utility candles from the Preliminary Results.

### C. Figurine Candles

#### *The NCA*

- At the time of the LTFV investigation, in response to questions from the Department, the NCA agreed to exclusions only for utility, birthday, and figurine candles, and for no other candle shapes or types. See the NCA's Comments, at Exhibit A.
- The Department has throughout the history of the Order relied on an overly broad definition of the term "figurine" in candle scope ruling requests. Instead, the Department should apply the correct definition of a figurine, which the NCA quoted from Webster's Online Dictionary: "'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>70</sup> Thus, a figurine candle "does not include representations solely of inanimate objects, such as flipflops {sic}, watering cans, or flowers."<sup>71</sup>

#### *HSE*

- HSE argues that the NCA's contention that a "figurine" can only be a small statuette in the shape of a human, animal, or deity is overly narrow and does not conform to the industry, which also considers candles in the form of inanimate objects to be figurines. To support its assertion, HSE points to the webpage<sup>72</sup> of a candle supplier, which lists various inanimate objects under the figurine category.

#### *TAG*

- A candle's shape or type, and not whether the candle is a figurine, should be the arbiter of scope coverage.
- An analysis of the figurine definition proffered by the NCA shows this candle type is one that is in the shape of not only humans, animals, or deities, but also of inanimate objects. Quoting from Webster's Online Dictionary, TAG states that 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.'" The term "form" is defined by a quote from Webster's Online Dictionary as "'... 23. {a} shape; an image; a phantom.'" Taking the definitions

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<sup>70</sup> See the NCA's Comments, at 25.

<sup>71</sup> Id. at 22.

<sup>72</sup> See HSE's Comments at 7.

together, therefore, the term “figurine” is defined as a small carved or molded representation of any shape.<sup>73</sup>

### **Department’s Position:**

As noted above, the Order’s coverage of “certain” petroleum wax candles indicates that some types of petroleum wax candles are excluded from the scope of the Order. Record evidence from the LTFV investigation supports the exclusion of three specific types of candles: birthday, utility, and figurine candles. The April 1986 Memo is the basis for the exclusion of these candles, and this memo records that the NCA specified that “household” or “utility candles,” “birthday” and “birthday numeral” candles, and “figurine-type” candles were outside the scope of investigation.<sup>74</sup> In addition, the Department conveyed the exclusions for birthday candles and figurine candles to Customs during the LTFV investigation with the Scope Clarification Communication. Based on the Scope Clarification Communication, the ITC confirmed the exclusions for birthday and figurine candles in its final results.<sup>75</sup> And, as discussed in the Preliminary Results, a scope ruling issued shortly after publication of the Order excluded a candle on the basis of a figurine shape molded to the candle, thus affirming the exclusion of figurine candles from the scope of the Order.<sup>76</sup> Accordingly, the Department finds that figurine candles are excluded from the scope of the Order.

However, the scope’s language entails no description of figurine candles. As such, the Department has relied on record evidence in this proceeding to determine an appropriate definition for figurine candles.

Webster’s Online Dictionary defines “figurine” 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>77</sup> The Department agrees with the NCA that, for purposes of this antidumping order, a figurine candle should be based on the second definition found in Webster’s. Specifically, the Department determines that a figurine candles is one in the shape of a human, animal, or deity. While both the NCA and TAG rely on definitions found in the Webster’s Online Dictionary to derive the meaning of the term “figurine,” the NCA relies on the definition of the word itself.<sup>78</sup> TAG, on the other hand, relies on an analysis of other words found in the NCA’s figurine definition to come to the conclusion that “[t]aking the definitions together, the term ‘figurine’ is defined as a small carved or molded representation of any shape.” As such, TAG’s description of a figurine does not appear to conform to the actual meaning of the definition as it appears in the Webster’s Online Dictionary. TAG infers that because a figurine can be described as a figure, and a figure can be described as a form, and a form can be described as “a shape, an image, a phantom,” it logically follows that a figurine can be in any shape or image; however, this logic is strained, and strays from the actual issue, which is the true definition of “figurine.” We note that even if the

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<sup>73</sup> See TAG’s Rebuttal, at 8.

<sup>74</sup> See the April 1986 Memo.

<sup>75</sup> See ITC Final Determination, at 4.

<sup>76</sup> See Preliminary Results, 75 FR at 49480.

<sup>77</sup> See the NCA’s Comments at 22.

<sup>78</sup> Id.

Department were to adopt TAG's logic, the description of the term "form," which TAG cites as support for its proffered definition (i.e., "{...}especially, a representation of the human body {...}"{emphasis added}), instead appears to support the NCA's definition of a figurine as a representation of a human, animal, or deity.

The Department also notes the necessity of adopting a clear and precise definition of figurine candles to promote the consistent administration of the Order. Otherwise, the question of what constitutes a "figurine candle" will remain ambiguous and generate confusion as to the Order's scope. HSE's proposal that figurine candles include representations of any inanimate object, and TAG's proposal that figurine candles include a representation of any shape, are so vague and broad as to seemingly include any and all candle shapes resulting in an extremely large exclusion that would be difficult to determine and would consequently undermine the efficacy of the Order. For all these reasons, the Department finds that the NCA's proffered definition of "figurine candle," as quoted from Webster's Online Dictionary, to be reasonable and promote the proper administration of the Order.

Though HSE cites a webpage that it contends supports its proposed definition of figurine candles, the Department finds that HSE's proposed definition is not reasonable. HSE's proposed definition, which would include representations of any inanimate object, is vague and would undermine the Department's efforts to bring clarity to the Order. Further, the NCA's proposed definition of figurine is supported by the definitions of figurine cited by parties in this proceeding. Because the NCA's definition is both more administrable and supported by definitions of figurine, the Department has not adopted HSE's proposed definition.

Therefore, for the final results, the Department is adopting a scope interpretation whereby a "figurine candle" is described as a candle that is in the shape of a human, animal, or deity. This more precise figurine definition is in keeping with the inclusive nature of Option B.

#### D. Religious, Holiday or Special Occasion Themed Candles

No party commented on this issue.

#### **Department's Position:**

As in the Preliminary Results, the Department continues to find that there is no basis for excluding religious, holiday or special occasion themed candles from the scope of the Order.<sup>79</sup> Though the record of the LTFV investigation contains one reference to "hand-crafted novelty candles"<sup>80</sup> in relation to Korea's suitability as a surrogate country, this term is nowhere defined in the LTFV investigation, and the NCA did not reference novelty candles when specifying the types of candles excluded from the scope of investigation in the April 1986 memo. Instead, the exclusion for such candles first emerged from scope rulings pertaining to "novelty candles" issued after completion of the LTFV investigation. The first ruling addressed a figurine candle that was also intended for the Christmas holidays.<sup>81</sup> However, in communicating this scope

<sup>79</sup> See Preliminary Results, 75 FR at 49479-80.

<sup>80</sup> See Petition, at 14.

<sup>81</sup> See Preliminary Results, 75 FR at 49478.

ruling and another ruling to Customs, the Department appears to have merged the concepts of figurine candles and holiday candles into a broader exclusion for “novelty candles,” which included “Christmas holiday candles” and other candles “having scenes or symbols of other occasions (e.g., religious holidays or special events)” as well as figurine candles.<sup>82</sup> However, the record of the LTFV investigation does not support the expansion of the figurine candle exclusion to include holiday and religious candles. As noted above, the record of the LTFV investigation contains numerous statements from the NCA that figurine candles were excluded from the Order, but the record contains no evidence that the NCA intended to exclude religious, holiday or special occasion themed candles from the Order.

Accordingly, the Department finds that the record of the LTFV investigation does not support the exclusion of candles based on criteria related to religious, holiday or special occasion themes, and that such candles are within the scope of the Order where they otherwise satisfy the descriptions of the merchandise.

**RECOMMENDATION:**

Based on our analysis of the comments received, we recommend adopting an inclusive interpretation of the scope of the Order, that all candles (regardless of holiday or special occasion theme), are included within the scope of the Order except for birthday, utility, and figurine candles. We also recommend you find that a “figurine candle” is a candle that is in the shape of a human, animal, or deity.

AGREE \_\_\_\_\_

DISAGREE \_\_\_\_\_

\_\_\_\_\_  
Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date

<sup>82</sup> Id.