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MEMORANDUM TO: \_\_\_\_\_ James J. Jochum  
Assistant Secretary  
for Import Administration

FROM: Jeffrey A. May  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Rescission of the  
New Shipper Review of Petroleum Wax Candles from the People's  
Republic of China

### **Summary**

We have analyzed the arguments of interested parties in the new shipper review of Shanghai R&R Import/Export Co. Ltd. (Shanghai R&R) under the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). As a result of our analysis, we have not made any changes from our preliminary intent to rescind this new shipper review. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this new shipper review for which we received case and rebuttal briefs from interested parties:

1. Whether Shanghai R&R met the requirements for a new shipper review;
2. The *bona fides* of Shanghai R&R's sale and use of adverse facts available;
3. Shanghai R&R's producer's eligibility as a new shipper;
4. Whether the factors of production information supplied by the producer is based on production during the POR.

### **Discussion of Issues**

#### **Comment 1: Whether Shanghai R&R met the requirements for a new shipper review**

The National Candles Association (petitioner) argue that the Department's verification of Shanghai R&R revealed major discrepancies calling into question the veracity and accuracy of the certifications and documentation submitted by Shanghai R&R in the initiation request. The petitioner states that it was revealed at verification that Shanghai R&R's shipment was actually made to an importer other than the importer initially identified in Shanghai R&R's initiation

request and its subsequent questionnaire responses. Additionally, petitioner argues verification also revealed major discrepancies in the reported sales process, invoice, and date of sale that Shanghai R&R provided in its initiation request and questionnaire responses. Specifically, the petitioner argues that because of these discrepancies the Department properly determined that Shanghai R&R failed to demonstrate its entitlement to a new shipper review in its initiation request.

Shanghai R&R argues that it has met the requirements for initiation and is therefore eligible for a new shipper review. Shanghai R&R argues that the importer of record and the date of sale reported in the initiation request and questionnaire responses are in fact the correct information supporting its single shipment. Shanghai R&R cites to the questionnaire responses and Customs Form 7501 for this shipment as evidence that the importer of record and the date of sale correspond with the information it reported in its initiation request and questionnaire responses. Further, Shanghai R&R argues that any perceived inconsistencies the Department may have noted during verification were due to confusion from either poor translations or were the result of errors made by Shanghai R&R while installing a new computerized accounting system for its company. Shanghai R&R therefore argues that the Department should calculate a dumping margin for Shanghai R&R in the final results based on the information it submitted pertaining to its single sale in this new shipper review.

Shanghai R&R has also requested that the Department question the other alleged importer identified by the Department at verification, which Shanghai R&R has stated is not the buyer of the shipment in question, to determine if that importer actually paid for the involved shipment. Shanghai R&R states that this will resolve whether the company it reported as the importer which Shanghai R&R argues purportedly paid for this sale is in fact the importer of record.

**Department's Position:** Section 351.214(b)(2)(iv)(C) of the Department's regulations requires that the company that exports or produces subject merchandise and that is making the request for a new shipper review provide documentation establishing the date of the first sale to an unaffiliated customer in the United States. In the preliminary intent to rescind, the Department found that Shanghai R&R failed to provide documents establishing the date of the sale to the first unaffiliated customer in its request for a new shipper review as provided in section 351.214(b)(2)(iv)(C) of the Department's regulations. See Preliminary Intent to Rescind the Antidumping New Shipper Review of Shanghai R&R Import/Export Co. Ltd., 69 FR 46509 (August 3, 2004) (Preliminary Rescission).

At verification, consistent with normal verification practices, the Department examined company accounting and sales records in an effort to confirm that information provided by Shanghai R&R was complete and accurate. See Memorandum to the File from Scott Lindsay through Dana Mermelstein, Sales Verification Report for Shanghai R&R Import/Export Co., Ltd., July 15, 2004 (Verification Report). Specifically, the Department attempted to verify the information Shanghai R&R provided in its initiation request and subsequent questionnaire responses. During verification, Shanghai R&R was unable to reconcile the information it

submitted in its initiation request, which showed that Shanghai R&R's reported importer purchased the involved merchandise, with internal accounting records that showed that another company was involved with the purchase of Shanghai R&R's reported sale to the United States. Furthermore, discrepancies in the description of the sales process, internal accounting records, and verbal explanations provided by Shanghai R&R employees fail to support the documentation and certifications submitted by Shanghai R&R in requesting the initiation of this new shipper review. See Verification Report. These discrepancies included information regarding the date of the first sale to an unaffiliated customer in the United States, the invoice date, and *inter alia* the importer of record. Shanghai R&R also failed to provide an accurate description of its sales process either during verification or in its questionnaire responses, for which Shanghai R&R provided a certification from a responsible company official attesting to the completeness and accuracy of the information submitted to the Department pursuant to section 351.303(g)(1). Specifically, we found that Shanghai R&R failed to provide complete and accurate information with regard to the issuance of pro-forma invoices and the date of sale. The Department further found that Shanghai R&R made modifications to the electronic invoice maintained on Shanghai R&R's filing system prior to verification and was unable to provide a clear explanation for the invoice modifications. See Verification Report.

Shanghai R&R's arguments that these discrepancies were due to clerical errors made by Shanghai R&R or poor translations is not supported by the evidence on the record and does not provide sufficient information to cause the Department to change its position from the Preliminary Rescission. The Department finds the discrepancies in question were too frequent and found in too many separate and distinct forms (*i.e.* accounting records, computer files, and verbal explanations) to support Shanghai R&R's argument that these discrepancies were due to clerical errors or poor translations. See Verification Report. Moreover, Shanghai R&R's claim that these errors were due to poor translation is unpersuasive given that Shanghai R&R did not raise this claim at verification, which would have been the first available opportunity to make such a claim. Instead, Shanghai R&R did not make this argument until its case brief, well after verification. Further, these arguments do not change the fact that the completeness and accuracy of the information Shanghai R&R provided to establish its eligibility for a new shipper review could not be ascertained at verification. Thus, because the Department finds that Shanghai R&R failed to provide the information as required under section 351.214(b)(2)(iv)(C), we determine that Shanghai R&R did not meet the requirements for initiation of a new shipper review and that rescission of Shanghai R&R's new shipper review is appropriate. See, e.g., Honey from the Peoples Republic of China: Notice of Preliminary Results and Partial Rescission of Antidumping Duty New Shipper Review, 69 FR 31348 (June 3, 2004) (Honey Rescission) (the Department rescinded a new shipper review where the company failed to provide certifications and documentation establishing the date of the first sale to an unaffiliated customer in the United States).

With regard to Shanghai R&R's request that the Department now request additional information from the other alleged importer, the Department finds that an additional questionnaire is unnecessary. It is Shanghai R&R's responsibility to provide complete, accurate, and verifiable

information on the record for the Department to make its determination. In this case, as detailed above, Shanghai R&R provided information and documentation which the Department found was not complete and accurate. See Preliminary Rescission. Thus, the Department finds that Shanghai R&R failed to establish its eligibility for a new shipper review. See, e.g., Honey Rescission.

**Comment 2: The *bona fides* of Shanghai R&R's sale and use of adverse facts available**

The petitioner argues that because the Department properly determined to preliminarily rescind this review, the Department has not fully addressed the issues surrounding the *bona fides* of Shanghai R&R's candles sale in this review. The petitioner argues that all aspects of Shanghai R&R's sale in this review are atypical of normal business practices and undermine the legitimacy of this single transaction. The petitioner argues that Shanghai R&R's is not a *bona fide* sale because of the commercially unreasonable and atypical sales price; quantity; unusual payment terms; lack of sales documentation; petitioner's doubt as to the legitimacy or existence of the entity that repurchased the subject candles; and lack of information as to the disposition of the goods in the United States. The petitioner states that based on the totality of the circumstances, the Department can only conclude that this sale by Shanghai R&R was not a *bona fide* commercial transaction.

Shanghai R&R argues that the sale by Shanghai R&R was *bona fide*. Shanghai R&R states that the fact that Shanghai R&R only had one sale to the United States does not disqualify the sale from being *bona fide*. Shanghai R&R further states that the subject merchandise was resold in the United States and the initial and the resale prices were reasonable.

Shanghai R&R also argues that if the Department calculates a weighted average margin, the Department should not apply adverse facts available (AFA). Shanghai R&R argues that it has met all of the criteria provided in Section 782(e) of the Act, and therefore the Department can use the information provided in Shanghai R&R's submissions rather than making an AFA determination.

**Department's Position:** Because the Department has reached a final determination to rescind this new shipper review based on Shanghai R&R's failure to establish its eligibility for a new shipper review in its initiation request, we have not addressed the issue of whether the sale under review is *bona fide* or whether the application of AFA is appropriate.

**Comment 3: Shanghai R&R's producer's eligibility as a new shipper**

Petitioner argues that information discovered during verification brings into question the validity of this new shipper review. Because the Department was unable to verify information concerning Shanghai R&R's producer's former structure, specifically information about previous company names and the date of creation, petitioner argues that the Department cannot be sure that the producer is eligible for a new shipper review.

Shanghai R&R rebuts this argument by stating that it is highly unlikely that its producer was in operation during the investigation of this order, and therefore even if they had shipped before to the United States the producer would still be eligible for a new shipper review. Further, Shanghai R&R states that the producer cooperated to the best of its ability during verification, and satisfactorily answered all of the Departments questions concerning its current and previous exporting practices.

**Department's Position:** Because the Department has reached a final determination to rescind this new shipper review based on Shanghai R&R's failure to establish its eligibility for a new shipper review in its initiation request, we have not addressed the issue of whether the producer for the sale in question is eligible for a new shipper review.

**Comment 4: Whether the factors of production information supplied by the producer is based on production during the POR**

Petitioner argues that Shanghai R&R included production data from outside of the POR in its factors of production calculations, and therefore the reported factors are unusable for calculating Shanghai R&R's margin.

Shanghai R&R argues that the reported information covers the sales that were exported to the United States. Shanghai R&R explains that as this is the paramount consideration in determining the viability of reported data, and this data was found by the Department to be accurate, the Department should use this data to calculate Shanghai R&R's weighted average dumping margin.

**Department's Position:** Because the Department has reached a final determination to rescind this new shipper review based on Shanghai R&R's failure to establish its eligibility for a new shipper review in its initiation request, we have not addressed the issue of whether the reported factor information is viable.

**Recommendation**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final rescission notice of this new shipper review in the Federal Register.

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James J. Jochum  
Assistant Secretary  
for Import Administration

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Date