A-570-504
Later-Developed Merchandise
Anticircumvention Inquiry
POR: 01/01/00-12/31/00[1]
IA/AD/CVD/9: JH/AV
Public Document

September 29, 2006

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China

SUMMARY:

We have analyzed the information and comments submitted by parties in the final determination of the later-developed merchandise anticircumvention inquiry of petroleum wax candles from the People's Republic of China ("PRC"). As a result of our analysis, we continue to find that U.S. imports of mixed-wax candles[2] are later-developed products of the subject merchandise, within the meaning of section 781(d) of the Tariff Act of 1930, as amended ("the Act"). In addition, we continue to find that mixed-wax candles are of the same class or kind of merchandise as petroleum wax candles and thus, are within the scope of the Order.[3]

We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the

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[1] The period of review ("POR") is a hypothetical period required by, and used only for, internal document tracking purposes to differentiate this anticircumvention proceeding from the pending minor alterations and completion or assembly in the United States anticircumvention proceedings.

[2] Candles composed of petroleum wax and over fifty percent or more palm and/or other vegetable-oil based waxes.

[3] See Notice of Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986) ("Order").

issues in the later-developed merchandise anticircumvention inquiry of petroleum wax candles from the PRC for which we received comments.

COMMENTS:

Comment 1: Appropriateness of Initiation
Comment 2: Prior Department Scope Rulings
Comment 3: Significant Technological Advancement or Significant Alteration of the Merchandise Involving Commercially Significant Changes
Comment 4: Commercial Availability of Mixed Wax Candles
Comment 5: Mixed Wax Candles as In-Scope Products
- A. Physical Characteristics
- B. Expectations of the Ultimate Purchaser
- C. Ultimate Use
- D. Channels of Trade
- E. Advertising/Display

Comment 6: Wax Percentage of In-Scope Mixed-Wax Candles
Comment 7: Retroactive Application of Suspension of Liquidation
Comment 8: Applicability of the Circumvention Statute in this Inquiry
Comment 9: Adverse Facts Available ("AFA")

BACKGROUND:

In response to a request from the National Candle Association ("Petitioners"), the Department of Commerce ("the Department") initiated an anticircumvention inquiry pursuant to section 781(d) of the Act to determine whether mixed wax candles can be considered subject to the antidumping duty order on petroleum wax candles from the PRC under the later-developed merchandise provision. See Notice of Initiation Anticircumention Inquiries of Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 70 FR 10962 (March 7, 2005) ("Initiation Notice").[4]

On May 23, 2006, the Department issued its Preliminary Determination of circumvention of the antidumping duty order on petroleum wax candles from the PRC in which the Department preliminarily found that certain mixed-wax candles are later-developed products of petroleum wax candles, within the meaning of section 781(d) of the Act. See Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order, 71 FR 32033 (June 2, 2006) ("Preliminary Determination"). In

[4] The Department notes that it also received a separate request from Petitioners on October 12, 2004, to initiate an inquiry to determine whether pursuant to section 781(c) of the Act, candles containing palm or vegetable-based waxes as the majority ingredient and exported to the United States are circumventing the antidumping duty order on petroleum wax candles from the PRC under the minor alterations provision.

addition, the Department found that mixed-wax candles are of the same class or kind of merchandise as petroleum wax candles and thus, are within the scope of the Order. However, the Department also found that several questions regarding the analysis remained. Accordingly, on June 2, 2006, the Department requested that interested parties submit comments and information addressing certain areas of the analysis. See Letter to all Interested Parties, from Edward C. Yang, Senior Enforcement Coordinator, China/NME Unit, Import Administration, Re: Anticircumvention Inquiry on Later-Developed Merchandise: Petroleum Wax Candles from the People's Republic of China, (June 2, 2006) ("June 2, 2006, Letter").

On June 23, 2006, the Department received comments and information from the following eight parties: (1) Petitioners; (2) China Chamber of Commerce for Importers and Exporters of Foodstuffs, Native Products and Animal By-Products, the China Daily Chemical Association and their common members, (i.e., Dalian Gift Co., Ltd., Kingking A.C. Co., Ltd., Shanghai Autumn Light Enterprise Co., Ltd., Aroma Consumer Products (Hangzhou) Co., Ltd., Amstar Business Company Limited, Zhongshan Zhongnam Candle Manufacturer Co., Ltd., and Jiaxing Moonlite Candle Art Co., Ltd.) ("CCCFNA"); (3) CCA; (4) Target Corporation ("Target"); (5) Bed Bath & Beyond, Christmas Tree Shops, Inc., and Christmas Tree Shops' subsidiary Nantucket Distributing, Inc.; (6) Amscan, Inc. ("Amscan"); (7) Shonfeld USA, Inc. ("Shonfeld") and (8) CVS Stores ("CVS").[5]

On July 7, 2006, the Department received case briefs from the following parties: (1) Petitioners; (2) CCCFNA; (3) CCA; (4) Target; (5) Smart Marketing, Kate Aspen, and Wisconsin Cheeseman ("SKW"); (6) Christmas Tree Shops, Inc. and Christmas Tree Shops' subsidiary Nantucket Distributing, Inc.;[6] (7) Amscan; (8) CVS and (9) Shonfeld.[7]

On July 17, 2006, the Department informed parties that it was keeping the new information contained within Target's case brief[8] and extended the deadline for parties to submit rebuttal briefs until July 24, 2006.

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[5] Bed Bath & Beyond, Christmas Tree Shops, Inc., and Christmas Tree Shops' subsidiary Nantucket Distributing, Inc., Amscan, Shonfeld and CVS submitted virtually identical information and comments with the only difference being each entity's responses to some of the Department's questions contained in the June 2, 2006 letter.

[6] Although Bed Bath & Beyond submitted comments and new information with Christmas Tree Shops' subsidiary Nantucket Distributing, Inc., it did not file a case brief.

[7] Christmas Tree Shops, Inc. and Christmas Tree Shops' subsidiary Nantucket Distributing, Inc., Amscan, CVS, and Shonfeld submitted four individual briefs containing identical arguments. These parties will hereinafter be referred to as "Merchandisers."

[8] On July 13, 2006, Petitioners submitted a letter stating that Target's case brief contained significant portions of untimely submitted new non-publicly available information and should be resubmitted without the new information. See Target's Case Brief, (July 7, 2006) at Exhibit 1.

On July 24, 2006, the Department received rebuttal case briefs from the following parties: (1) Petitioners; (2) CCCFNA; (3) CCA and (4) Target. On July 28, 2006, the Department informed parties that it was keeping the new information contained within Petitioners' rebuttal brief[9] and provided parties an opportunity to rebut Petitioners' new information with additional comments and information. On August 3, 2006, CCCFNA and CCA[10] submitted additional comments and information.

DISCUSSION OF THE ISSUES:

Comment 1: Appropriateness of Initiation

Citing Wheatland Tube, CCCFNA notes that a proper anticircumvention inquiry must first assess the scope of the Order. See Wheatland Tube Co. v. United States, 161 F.3d 1365, 1371 (Fed. Cir. 1998) ("Wheatland Tube") (the Court of Appeal for the Federal Ciricuit ("CAFC") found that an anticircumvention inquiry is not proper if the product at issue was "unequivocally excluded from the scope of the order in the first place"). However, CCCFNA contends that for the Preliminary Determination, the Department only looked to the U.S. International Trade Commission ("ITC") Final Report in the less-than-fair-value ("LTFV") investigation and the antidumping petition, rather than the scope language itself. See Candles from the People's Republic of China, USITC Pub. 1888 (August 1986) ("ITC Final Report"). CCCFNA argues that the scope language ought to be the starting point of the Department's analysis for determining the appropriateness of this anticircumvention inquiry's initiation.

CCCFNA refers to the scope section of the Department's Preliminary Determination where the language described products covered under the Order as petroleum wax candles made from petroleum wax. CCCFNA argues that the only accurate reading of the scope language determines that petroleum wax candles, as deliberately specified by Petitioners, and not candles made from other waxes, are covered by the Order. CCCFNA states that Petitioners' deliberate exclusion of wax candles made from wax other than petroleum wax purposely limited the scope

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[9] On July 27, 2006, Target submitted a letter stating that Petitioners' rebuttal brief contained significant portions of untimely submitted new non-publicly available information and should be resubmitted without the new information. See Petitioners' Rebuttal Brief, (July 24, 2006) at Appendix.

[10] In its new factual information comments, CCA stated that Petitioners' factual information should be rejected by the Department as untimely new factual information. According to CCA, Petitioners had ample opportunity to submit factual information to bolster its argument during the course of this anticircumvention inquiry. Additionally, CCA states that Petitioners have twice ignored the Department's schedule for submitting factual information and submitted factual information past the established deadline. See CCA's Response to Petitioners' New Factual Information, (August 3, 2006) at 3. Moreover, CCA notes that Petitioners have not provided any justification for submitting this untimely new information and as such, the Department should reject Petitioners' new information for the final results of this anticircumvention inquiry.

However, for the final determination, the Department has kept both Petitioners', CCA's, and CCCFNA's factual information to ensure the fullest possible record.

to petroleum wax candles made from petroleum wax. CCCFNA further argues that any arguments to the contrary by Petitioners are revisionist.

Target argues that, because mixed-wax candles were unequivocally excluded from the scope of the Order, the Department's authority to include mixed-wax candles within the scope of the Order is narrowly circumscribed by section 781 of the Act. According to Target, in Wheatland Tube, the court found that a minor alterations anticircumvention inquiry was not proper if the product at issue was unequivocally excluded from the scope of the order in the first place. See Wheatland Tube, 161 F.3d at 1371. Target disagrees with the Department's Preliminary Determination that mixed-wax candles were not unequivocally excluded from the scope of the Order. Target asserts that Petitioners deliberately chose to limit the scope to a particular candle, a petroleum wax candle. Target argues that by defining the scope to include only one specific type of candle, Petitioners explicitly and unequivocally excluded any other types of candles. See Floral Trade Council v. United States, 716 F. Supp. 1580, 1581-2 (CIT 1989) ("Floral Trade")(the Court found that "the simple fact is that {the Floral Trade Council}("FTC") did not ask for an investigation of every flower that is classified in the chrysanthemum genus. Furthermore, it has not even argued that all of the "daisies" that it wishes investigated are covered by the specific terms "standard chrysanthemums" or "pompon crysantheumum," which are clearly among the flowers covered to be investigated. ITA's conclusion that "daisies" were not discussed in the petition is essentially correct. "Daisies" were not discussed as a product to be investigated"). Thus, pursuant to the holdings of Wheatland Tube, Target argues that the initiation of a later-developed product analysis is not appropriate in this case.

Merchandisers assert that, in Wheatland Tube, the CAFC stated that the anticircumvention statute cannot be used to change the scope of an antidumping duty order or interpret that order contrary to its terms. See Wheatland Tube, 161 F.3d at 1371. In this case, Merchandisers argue that the Order is clearly limited to candles made from petroleum wax. As such, Merchandisers argue candles made from more than fifty percent palm oil-based wax or other vegetable-based wax are explicitly excluded and cannot now be added to the scope through an anticircumvention proceeding. Merchandisers further note that, in Nippon Steel, the CAFC stated that while the Department may include a product within the scope of an existing order, where the product has been altered in a significant way, it may not do so where the product was well known at the time of the original investigation. See Nippon Steel Corp. v. United States, 219 F.3d 1348, 1356 (Fed. Cir. 2000) ("Nippon Steel") (the CAFC found that "although the court, {in Wheatland Tube}, held that Commerce justifiably had decided to conduct a scope investigation, it did not hold that Commerce had no authority to conduct a minor alterations inquiry. Third, it involved two different products, both of which were well known when the order was issued, and not, as here, a product produced by making allegedly insignificant alterations to product"). Merchandisers also refer to the Court of International Trade's ("CIT") decision in Floral Trade where the CIT affirmed the Department's determination not to include a product (daisies) within the scope of an order where the scope was specific and identified numerous flowers, not including daisies.

Merchandisers assert that there is substantial evidence on the record that non-petroleum wax candles, specifically vegetable-based wax candles, were well known before the LTFV investigation and were not mentioned in either the petition, or the Department's LTFV investigation, as was the case in Floral Trade. To support their arguments, Merchandisers cite the ITC Final Report and argue that in the ITC's analysis of the domestic like product, the ITC acknowledged that commercial production of candles generally involved "natural waxes (paraffin, microcrystallines, stearic acid, and beeswax)." See ITC Final Report, at 5-7. Further, Merchandisers note that the ITC defined petroleum wax candles as "those composed of over 50 percent petroleum wax" and noted that these candles "may contain other waxes in varying amounts, ... to enhance the melt-point, viscosity, and burning power." Id. Based on the ITC Final Report, Merchandisers claim that it is clear that mixed-wax candles and other non-petroleum wax candles were well known at the time of the LTFV investigation. In addition, Merchandisers make reference to the Lamborn Manual submitted by CCA. Merchandisers claim that CCA's Lamborn Manual details the physical characteristics of candles made of a mixture of paraffin wax and stearic acid wax (a vegetable-based wax) in varying proportions.[11] Furthermore, Merchandisers point out that CCA's comments submitted on February 15, 2005, also established that Price's Patent Candle Company ("Price's Candle"), a leading British candle manufacturer from the nineteenth and twentieth centuries, manufactured coconut and palm oil wax candles in the 1830s. Accordingly, Merchandisers claim that palm oil-based candles and vegetable-based wax candles cannot now be included within the scope of the Order as later developed merchandise.

CCA notes that, in the Preliminary Determination, the Department declined to apply Wheatland Tube citing to the findings of Nippon Steel. CCA disagrees with the Department that Nippon Steel is a clarification of Wheatland Tube. CCA contends that Wheatland Tube addresses a distinct, broad category of separate products (i.e., line pipe as opposed to standard pipe). CCA argues that Nippon Steel addresses the addition of insignificant amounts of an ingredient, boron, to the product covered by the antidumping duty order. See Nippon Steel, 219 F. 3d at 1356 (the CAFC found that "the statement cannot be read as barring Commerce from conducting an inquiry to determine whether the addition of a small amount of boron constituted a minor alteration that still left the product subject to antidumping duty order. Indeed, the Court of International Trade's ruling is contrary to the statement of Wheatland Tube that section {781(c)} includes within the scope of an antidumping duty order products that are so insignificantly changed from a covered product that they should be considered within the scope of the order even though the alterations remove them from the order's literal scope"). CCA observes that, in Nippon Steel, a product containing .0007 percent of boron was explicitly in-scope, but a product containing .0008 percent of boron was outside the scope. CCA notes that the Department acknowledged that the steel with added boron had not been deliberately excluded from the scope of the antidumping duty order because there was no reason for such steel to exist at the time of the LTFV investigation, and thus, such steel would not have been purposefully manufactured but for

[11] The proportions vary from 90 percent paraffin and 10 percent stearic acid to 90 percent stearic acid and 10 percent paraffin wax.

the antidumping duty order. According to CCA, this case is not about the addition of an infinitesimal amount of an ingredient, which resulted in an insignificant change. Unlike in Nippon Steel, the product at issue is a distinct product, a mixed-wax candle in which vegetable-based wax predominates. Accordingly, CCA argues that vegetable-based wax candles were well known prior to the LTFV investigation and are produced by domestic manufacturers and candle producers in other countries.

Petitioners argue that the Department was correct in finding in the Preliminary Determination that no party had submitted information on the record demonstrating that the Department's initiation was inappropriate. While Respondents[12] continue to argue that Wheatland Tube precludes the Department from conducting this anticircumvention inquiry, Petitioners state that the findings of Wheatland Tube are not applicable to this anticircumvention inquiry. Petitioners argue that Respondents fail to recognize that the CAFC, in Nippon Steel, found that the holdings of Wheatland Tube, which applied to a scope request, do not act as a bar to an anticircumvention inquiry. While Nippon Steel involved a minor alterations anticircumvention inquiry, pursuant to section 781(c) of the Act, Petitioners argue that the CAFC's analysis is equally applicable to this later-developed merchandise anticircumvention inquiry.

Additionally, Petitioners argue that the facts of Wheatland Tube are significantly different from this anticircumvention inquiry and as such, it is inappropriate to find these two cases analogous. In contrast to Wheatland Tube, where the petitioner "expressly excluded" from the scope the product subject to inquiry, Petitioners note that they never expressly excluded mixed-wax candles. Moreover, Petitioners argue that mixed-wax candles could not have been expressly excluded from the scope of the petition because mixed-wax candles were not commercially available at the time of the LTFV investigation. Accordingly, Petitioners conclude that the Department should continue to find that the initiation of this anticircumvention inquiry was appropriate because mixed-wax candles were neither well-known nor expressly excluded from the scope at the time of the LTFV investigation.

In rebuttal, CCCFNA is in agreement with other Respondents that claimed this anticircumvention inquiry was inappropriate, pursuant to the CAFC's analysis in Wheatland Tube, and the CIT's decision in Floral Trade. CCCFNA notes that, in Floral Trade, the CIT agreed with the Department to exclude daisies from the scope because daisies were not contained within the scope, which specifically identified types of flowers that were included. Similar to Floral Trade, CCCFNA argues, because the scope in this case is limited to candles made from a particular type of wax, i.e., petroleum wax, it cannot be read to include candles made from other types of wax. Therefore, CCCFNA urges the Department to conclude that the initiation of this investigation was inappropriate.

[12] For purposes of this document, "Respondents" refers to all parties (excluding Petitioners) submitting comments and information. However, there are some arguments made by certain Respondents that are better addressed by reference to the individual party. In those situations, the individual party reference is used.

Department's Position:

In the Preliminary Determination, the Department examined the petition, the ITC Final Report, the Department's prior scope rulings and relevant court decisions, such as Wheatland Tube and Nippon Steel, and found that mixed-wax candles were not properly considered at the time of the LTFV investigation and thus, the initiation of this anticircumvention inquiry was appropriate. See Preliminary Determination, 71 FR at 32035-32037. Parties have since submitted additional comments regarding the literal language of the scope of the Order, Wheatland Tube, Floral Trade and Nippon Steel, which are considered below.

The Department agrees with CCCFNA's argument that in considering Wheatland Tube, the Department did not specifically discuss the scope of this Order. See Wheatland Tube, 161 F. 3d at 1371 (the CAFC found that an anticircumvention inquiry is not proper if the product at issue was "unequivocally excluded from the scope of the order in the first place"). The literal language of the scope of the Order states that "the products covered by this order are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks." See Order, 51 FR at 30687. Although there is consistent reference to petroleum wax candles, there is no definition of a petroleum wax. Therefore, unlike Wheatland Tube, where the CAFC found that the product at issue was "clearly excluded from the scope of the order," mixed-wax candles subject to this anticircumvention inquiry are not considered in the language of the scope of the Order. See Wheatland Tube, 161 F. 3d at 1371. Accordingly, a finding that Petitioners deliberately excluded candles made from the specific combination of petroleum wax and other waxes subject to this inquiry is not supported by Respondents' arguments and references to the literal scope of the Order.

Target also points to Floral Trade as support for its argument that by defining the scope to include only one specific type of candle, Petitioners explicitly and unequivocally excluded any other types of candles. In Floral Trade, the antidumping duty order covered seven specific flowers: standard and miniature (spray) carnations, stand and pompon chrysanthemums, alstroemeria, gerberas, and gypsophila. See Floral Trade, 716 F. Supp. at 1581. In that case, the Department found that both the petition and the previous scope determinations specifically mention the seven types of flowers, but do not mention daises as a specifically covered flower. Id. Therefore, the Department found that daises are not included within the scope of the flowers antidumping duty orders. Id. In this case, the scope of the order does not provide an exhaustive list of products covered as was present in Floral Trade. The scope of the Order here does not specifically state that only candles made of 100 percent petroleum wax are the only "type" of candle subject to the Order. In fact, it is reasonable to conclude that if Petitioners only expected candles made of 100 percent to be covered, a clear limitation would have been made similar to Petitioners' list of shapes[13] provided within the scope of the Order.

[13] "They {candles} are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; round, columns, pillars, votives; and various wax-filled containers." See Order, 51 FR at 30687.

Citing to Nippon Steel, Merchandisers argue that the CAFC stated that while the Department may include a product within the scope of an existing order where the product has been altered in a significant way, it may not do so where the product was well known at the time of the original investigation. See Nippon Steel, 219 F. 3d at 1356 (the CAFC found that "it involved two different products, both of which were well known when the order was issued, and not, as here, a product produced by making allegedly insignificant alterations to product"). However, as the Department explained in the Preliminary Determination, and explains below in Comment 4, the record does not contain sufficient evidence to conclude that mixed-wax candles were available in market at the time of the LTFV investigation. See Preliminary Determination, 71 FR at 32035-32037. Therefore, Petitioners could not have explicitly excluded such candles from inclusion in the LTFV investigation. The Department addresses Merchandisers' references to the Lamborn Manual and Price's Candle below in Comment 4.

In addition, Merchandisers also argue that the ITC Final Report describes petroleum wax candles as "those composed of over 50 percent petroleum wax." See ITC Final Report, at 5-7. However, in the ITC Second Sunset Review, the ITC noted that, while the Department has relied upon the ITC's original "like product" determination to exclude mixed-wax candles containing over 50 percent vegetable wax from the Order, there is no "clear line dividing" mixed-wax candles with petroleum wax candles. See Petroleum Wax Candles from China, Inv. No. 731-TA-282 (Second Review), USITC Pub. 3790 at 6-9 ("ITC Second Sunset Review"). Moreover, the ITC also found that, while the ITC Final Report noted that some types of "exotic" vegetable waxes were used during the initial investigation, the record of the ITC Second Sunset Review indicates that mixed-wax candles were not commercially produced until recently. Id. at Footnote 29. Because the ITC considered only candles containing beeswax and petroleum wax in the LTFV investigation, the ITC has clarified the domestic "like product," as candles containing any amount of petroleum wax, except for candles containing more than 50 percent beeswax. Id. at 9. Based on the findings by the ITC Second Sunset Review, the Department finds that it did not conclude that mixed-wax candles were the same like product during the LTFV investigation. See ITC Second Sunset Review, at 7.

Therefore, given the above, the Department continues to find that mixed-wax candles were not "unequivocally" excluded from the scope of the Order after reviewing the relevant case precedents, ITC determinations, and the literal scope language and therefore, the Department's initiation was appropriate.

Comment 2: Prior Department Scope Rulings

Merchandisers assert that in Shikoku, the CIT held that when the Department has consistently applied a methodological approach over an extended period of time, the law prohibits the Department from changing its approach when interested parties have relied on that approach. See Shikoku Chemicals Corp. v. United States, 795 F. Supp. 417, 421-2 (CIT 1992) ("Shikoku") (the CIT found that "Commerce's explanation is not an adequate reason for switching methodologies. Commerce does not argue that key facts changed. Such changes could warrant a

new approach... At some point, Commerce must be bound by its prior actions so that parties have a chance to purge themselves of antidumping liabilities. Principles of fairness prevent Commerce from changing its methodology at this late stage"). In this case, Merchandisers argue, because the Department has ruled repeatedly that mixed-wax candles are not subject to the Order, importers are entitled to rely upon the Department's prior scope rulings that mixed-wax candles are not subject to the Order.

CCA argues that Department's regulations and prior scope rulings prohibit Petitioners' requested expansion of the scope of the Order. CCA notes that this proceeding is governed by the Department's regulations concerning scope rulings. CCA observes that in scope rulings the Department must consider whether the determination can be made based upon the scope or scope rulings, which the Department has already done in numerous prior scope rulings, specifically, that candles composed of less that fifty percent petroleum wax are not within the class or kind of merchandise subject to the Order. CCA also notes that none of those prior scope rulings have been withdrawn or revoked. Therefore, CCA argues, under the Department's own regulations, those prior determinations are dispositive and this scope inquiry should be terminated on that basis.

CCA notes that, in the Preliminary Determination, the Department reasoned that once it determines that a product is later-developed, it is obliged to apply the criteria set forth in section 781(d)(1) of the Act, rather than under section 351.225(k)(1) of the Department's regulations. CCA argues that the Department has failed to reconcile its regulations and section 781(d)(1) of the Act by applying its scope regulations at the first stage, by determining whether the products that are the subject of the scope request are later-developed, and then applying the criteria listed in section 781(d)(1) of the Act at the second stage. CCA contends that this is consistent with section 315.225(j) of the Department's regulations, which provides that the Department will apply the criteria in section 781(d) of the Act to determine whether later developed merchandise is within the scope of an antidumping duty order.

SKW argues the Department abused its discretion because importers have openly relied on the Department's prior scope rulings that excluded mixed-wax candles from the Order. If the Department's scope rulings are to have a meaningful effect, SKW contends, the Department must uphold its previous scope rulings and not penalize those importers of mixed-wax candles, who have relied on those rulings.

Petitioners state that Respondents have failed to provide as support any legal precedent that prior scope rulings prevent the Department from having the authority to conduct this anticircumvention inquiry. Specifically, Petitioners argue that Respondents continue to question the Department's initiation of this anticircumvention inquiry without providing any new legal arguments. Additionally, Petitioners note that Respondents also urge the Department to apply its analysis, pursuant to section 351.225(k) of the Department's regulations. However, Respondents again fail to provide any legal precedent that justifies applying this inquiry's analysis under section 351.225(k) of the Department's regulations.

Additionally, Petitioners state that Respondents' suggestion ignores the intent of the anticircumvention provision of section 781(d) of the Act, which is to prevent circumvention of the Order. Petitioners note that the Department is given the statutory authority to initiate a later-developed merchandise anticircumvention inquiry specifically "to address the application of outstanding antidumping and countervailing duty orders to merchandise that is essentially the same as merchandise subject to an order but was developed after the original investigation was initiated." See Notice of Preliminary Scope Ruling: Electroytic Manganese Dioxide from Japan, 56 FR 56979, 56980 (November 7, 1991) ("EMD Prelim"). Accordingly, Petitioners state that the later-developed merchandise anticircumvention provision, pursuant to section 781(d) of the Act, is intended to address different factors. Therefore, Petitioners find that the Department is not precluded from conducting this anticircumvention inquiry.

Department's Position:

Section 781(d) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise is developed after an investigation is initiated ("later-developed merchandise"). In conducting anticircumvention inquiries under section 781(d)(1) of the Act, the Department must then rely upon the following criteria: (A) the later-developed merchandise has the same general physical characteristics as the merchandise with respect to which the order was originally issued ("earlier product"); (B) the expectations of the ultimate purchasers of the later-developed merchandise are the same as for the earlier product; (C) the ultimate use of the earlier product and the later-developed merchandise are the same; (D) the later-developed merchandise is sold through the same channels of trade as the earlier product; and (E) the later-developed merchandise is advertised and displayed in a manner similar to the earlier product.

In all prior scope rulings involving a determination based on the wax composition of the candle, the Department's analysis was focused on whether the descriptions of the merchandise in the petition, the LTFV investigation, and the determinations of the Secretary (including prior scope determinations and those made by the ITC), were dispositive, pursuant to section 351.225(k)(1) of the Department's regulations.

Prior to the initiation of this anticircumvention inquiry, the Department never initiated an anticircumvention inquiry nor made a determination specific to mixed-wax candles, pursuant to section 781(d)(1) of the Act. Therefore, although the Department recognizes that it made previous scope rulings finding certain mixed-wax candles outside the scope of the Order, it did so using an analysis guided by section 351.225(k)(1) of the Department's regulations and not section 781(d)(1) of the Act.

Moreover, in conducting all of its prior scope rulings on candles containing more than fifty percent non-petroleum wax, pursuant to section 351.225(k)(1) of the Department's regulations, the Department was guided by the ITC's analysis in the ITC Final Report. Specifically, the ITC defined the domestic like product as "petroleum wax candles are those composed of over 50

percent petroleum wax, and may contain other waxes in varying amounts, depending on the size and shape of the candles, to enhance the melting point, viscosity, and burning power." See ITC Final Report, at 7. However, as explained below in Comment 4, the ITC clarified its definition of the domestic like product in the ITC Second Sunset Review:

> the evidence on the record of this review indicates that there was no commercial production in the United States (or elsewhere) of blended[14] candles in 1986, when the Commission made its original determination. The Commission therefore did not consider in the original investigation whether to included blended candles containing 50 percent or less petroleum wax in the domestic like product.

See ITC Second Sunset Review, at 7. This is relevant to our analysis because, even if the Department were not conducting an anticircumvention proceeding, the next scope request would necessarily require a re-examination of the record in light of the ITC Final Report and its relevance given the clarification within the ITC Second Sunset Review.

In this case, however, the Department must make a determination based on the factors provided in section 781(d)(1) of the Act. Therefore, the Department's prior scope ruling are not dispositive in reaching a decision under section 781(d)(1) of the Act because the factors to be considered in section 351.225(k)(1) of the Department's regulations are not the same factors as those required under section 781(d)(1) of the Act. In fact, when the Department issued the Pier 1 Final Scope Ruling on May 24, 2005,[15] the difference in the analyses was noted. As such, the Department continues to find that its prior scope rulings do not prevent it from continuing this circumvention analysis under section 781(d) of the Act on mixed-wax candles. Accordingly, the Department finds that, because there were prior scope rulings on mixed-wax candles, it is not precluded, pursuant to section 781(d) of the Act, from conducting this anticircumvention inquiry. Moreover, the Department determines that the findings of these prior scope rulings are no longer relevant because the analysis with these scope rulings, such as the Pier 1 Final Scope Ruling, have been superseded by the Department's analysis in this anticircumvention inquiry.

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[14] In the ITC Second Sunset Review, the ITC defined "blended candles" as "candles containing any blend of petroleum and vegetable wax." See ITC Second Sunset Review, at 7.

[15] "We note that Pier 1's scope inquiry is separate from the anticircumvention inquiries initiated by the Department on the apparent petroleum content of mixed wax candles....The anticircumvention inquiries were initiated in order to determine whether mixed wax candles composed of petroleum wax and varying amounts of either palm or vegetable-based waxes can be considered subject to the Order under either the minor alterations or the later-developed merchandise provision of the statute, pursuant to section 781(c) and (d) of the Tariff Act of 1930, as amended. Although the Pier 1 scope inquiry and the anticircumvention inquiries appear similar, they are separate proceedings and address separate issues. We note that in the course of these anticirucmention inquiries, the Department will examine whether candles with a similar petroleum wax or non-petroleum wax content as the candles involved in this scope inquiry may be subject to the Order." See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China (A-570-504): Pier 1 Imports, Inc., at 10-11 (May 13, 2005) ("Pier 1 Final Scope Ruling").

Comment 3: Significant Technological Advancement or Significant Alteration of the Merchandise Involving Commercially Significant Changes

Petitioners argue that, in the Preliminary Determination, the Department erroneously concluded that the mixed-wax technology was in existence prior to the LTFV investigation. While Petitioners agree that hydrogenation[16] has been known since it was originally described by the French chemist Paul Sabatier in 1897, Petitioners argue that none of patents dating before the LTFV investigation discuss the hydrogenation of vegetable oils to vegetable waxes. Specifically, none of the patents on the record discuss a hydrogenation reaction particularly adapted for preparing waxes from vegetable-based oils.[17] Petitioners state that these patents either address a claim, which is not about a type of candle, or address a claim about a candle, but not the candle's wax content. Instead, Petitioners contend, these patents discuss the following: (1) wick systems that may be used in a candle; (2) decorative features; and (3) candle body production techniques. While Petitioners recognize there are some patents on the record that discuss a wax composition, they argue that none of these patents discuss a wax composition for a mixed-wax candle. Accordingly, Petitioners argue, the necessary hydrogenation reaction was first described in 1989 by Phadeomchit[18] and subsequently used by Bernard Tao[19] in 2001, which is well after the LTFV investigation.

Additionally, Petitioners argue that Bernard Tao was the first to produce a mixed-wax candle because, at the time of Bernard Tao's invention, commercial sources of vegetable wax were finally available. According to Petitioners, the patents issued to Bernard Tao state that the vegetable-based waxes prepared from soybean, cottonseed, sunflower, canola and palm oils used in the invention are available from commercial sources, including Cargill, Archer Daniels Midlands and Central Soya. Therefore, Petitioners argue, mixed-wax candles were first developed in accordance with the Tao Patents. According to Petitioners, the pivotal advancements described in the Tao Patents did not occur until after the LTFV investigation and,

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[16] According to Petitioners, in hydrogenation reactions carbon-carbon double bonds are converted into carbon-carbon single bonds, i.e., they are hydrogenated, while in a hydrogenolysis reaction, bonds are broken, i.e., they are hydrogenalyzed into pieces.

[17] According to Petitioners, naturally occurring vegetable oils may contain as many as three carbon-carbon double bonds on each of the triglyceryl ester side chains and in every case those double bonds have a "cis" geometry. Petitioners argue that it is well-known that cis double bonds are less stable than trans double bonds, the other possible double bond geometry. Accordingly, Petitioners argue, in the presence of a catalyst, the cis double bonds rapidly and easily convert into trans double bonds, an energetically favorable chemical formation. This isomerization reaction, Petitioners assert, produces trans fats from naturally occurring oils. Petitioners note that trans fats are generally solid at ambient temperatures, unlike the naturally occurring cis oils frm which they are formed.

[18] Phadoemchit et al., in U.S. Patent No. 4,842,648 issued June 27, 1989 ("Phadoemchit Patent").

[19] U.S. Patent No. 6,284,007 and 6,497,735 issued to Bernard Tao on September 4, 2001 ("Tao Patent 1"), and December 24, 2002 ("Tao Patent 2").

therefore, mixed-wax candles could not have been produced in commercial quantities prior to that time.

Moreover, Petitioners state that Respondents' reliance on the Lamborn Manual and other evidence as support that the hydrogenation process has remained unchanged since the early-1900's is incorrect. Petitioners also note that they have submitted declarations from domestic producers that describe this process, (i.e., years of research and development of the process and then development of the exact wax blend of petroleum wax with vegetable-based wax, which must be created around specific parameters). Each of these declarations note that there were specific challenges in successfully developing a type of mixed-wax candle, including blooming, cauliflowering, cracking and tunneling. However, Petitioners note that patents on the record, such as the Murphy Patent,[20] discussed specific processes that address these problems.

Finally, Petitioners note that contrary to Respondents' arguments, the record of this anticircumvention inquiry demonstrates that domestic producers carried out research and development specifically to develop a mixed-wax candle. Petitioners note that one of the Respondents, CCA, actually filed a lawsuit to protect it investment in this new technology. See Petitioners' Rebuttal Brief, at Appendix 1 (Candle Corp of America v. Purdue Research Foundation, (Southern District Court of Indiana) (October 10, 2003) ("CCA's Complaint") (where CCA claimed that the "Defendant {Indiana Soybean Board ("ISB")}, who continued the research with Bernard Tao and Purdue Research Foundation} wrongfully obtained or benefitted from research belonging to CCA for candles comprised in a whole or in part from vegetable lipids, replacing wax as the candle's primary ingredient"). Petitioners argue that this technology developed by Bernard Tao and CCA is significant because it was eventually obtained by Cargill. Petitioners state that the fact that Cargill made the major investment of purchasing the rights to this candle patent technology is significant because Cargill stated that its goal was to find markets for this technology. For further discussion of Petitioners' arguments on this issue, please see Memorandum to the File, through Alex Villanueva, Program Manager, Import Administration, from Julia Hancock, Case Analyst, Subject: Evidence Memorandum for the Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China, (September 29, 2006) ("Evidence Memorandum").

CCCFNA claims that Petitioners have failed to substantiate their claim that specific technological advancements resulted in the successful commercial production of mixed-wax candles after the LTFV investigation. Specifically, CCCFNA claims that no technological advancements have occurred in the manufacturing process of mixed-wax candles because the process of making mixed-wax candles is essentially the same process as the production of petroleum wax candles. See ITC Second Sunset Review, at 8. Moreover, CCCFNA contends that the process of hydrogenation, a chemical modification of palm or vegetable-based waxes

[20] The U.S. Patent and Trademark Office issued U.S. Patent No. 6,503,285 to Timothy A. Murphy on January 7, 2003, for a "triacylglycerol based candle wax". ("Murphy Patent").

required to make candles, has not undergone any technological advances since 1926. See CCA's New Factual Information Submission, at 7-8. For further discussion of CCCFNA' arguments on this issue, please see Evidence Memorandum.

CCA argues that mixed-wax candles made with vegetable-based waxes have been available since the 1840's and that vegetable-based waxes made from hydrogenated vegetable oil have been available since the 1920s. CCA argues that there have been no specific technological advancements that have allowed for the sale of mixed-wax candles since the LTFV investigation. Because individual companies engaged in the optimization of a production process for mixed-wax candles, CCA also contends that this does not support a finding that mixed-wax candles were developed after 1985. According to CCA, while it is expected that technological developments to optimize products and production processes will occur in any industry, these developments cannot constitute the basis for finding that the broad category of mixed-wax candles constitutes later developed merchandise.

Additionally, CCA contends that candles have been made entirely from stearic acid[21] for over 150 years, and have produced candles of varying proportions of petroleum wax and stearic acid since the 1800s. Citing to the Lamborn Manual, CCA notes that candle manufacturers have been mixing stearic acid with paraffin since the introduction of petroleum wax as a candle fuel. In addition, citing the Andes Handbook,[22] CCA argues that the Andes Handbook states that acids and alcohols have up to the present been detected in fats and waxes. For further discussion of CCA' arguments on this issue, please see Evidence Memorandum.

Target refutes Petitioners' contention that technological advancements were required for candle-making equipment and procedures. Specifically, Target notes that candle-processing capabilities, including vessels capable of withstanding high temperatures and pressures and ample supplies of hydrogen gas, have been produced via many methods, some dating from the 1400's. In fact, Target contends that a review of hydrogenation patents before 1985 reveals that catalytic hydrogenation of vegetable-based oil to low iodine values ("IV") was well known.[23] According

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[21] According to Tao Patent 1: "Free fatty acids refers to a fatty acid that is not covalently bound through an ester linkage to glycerol... {F}atty acids are obtained preferable from plant sources, including soybean, cottonseed, corn sunflower, canola and palm oils... Furthermore, fatty acids may be botained by hydrolysis of natural triglycerides (e.g. alkaline hydrolysis followed by purification methods known in the art, including distillation and steam stripping) or by synthesis from petrochemical fatty alcohols." See Petitioners' New Factual Information Submission, at Exhibit 1, Tao Patent 1 at Column 2, lines 45-65.

[22] Vegetable Fats and Oils, Their Practical Preparation, Purification and Employment for Various Purposes, Their Properties, Adulteration and Examination: A Handbook for Oil Manufacturers and Refiners: Candle, Soap, and Lubricating Oil Makers and the Oil and Fat Industry in General, Louise Edgar Andes, 1897 ("Andes Handbook"). See CCA's New Factual Information Submission, at Exhibit 5, pages 14-16.

[23] Target and other Respondents submitted the following patents as evidence: 1) in 1930, the U.S. Patent and Trademark Office ("USPTO") issued patent no. 1,950,813 and patent no. 1,950,814 to Wilhelm Pungs, Ludwigshafen-on-the-Rhine and Michael Jahrstorfer ("Pung Patents"); 2) in 1903, the British patent office issued

to Target, advancements in candle-making, (i.e., antioxidants, release agents, color stabilization, mixing conditions, cooling conditions, recipes, use of soybean wax, product appearance, fragrance throw and other aesthetic qualities), are not required to make mixed-wax candles commercially and do not represent significant technological advancements. While each of these factors may improve candles, the efficiency of candle production or improve candle sales, Target argues that these factors are not required to produce mixed-wax candles for commercial sale. For further discussion of Target's arguments on this issue, please see Evidence Memorandum.

Merchandisers claim that there were no significant technological advancements since the LTFV investigation because mixed-wax candles were developed long before the LTFV investigation. Citing to the Lamborn Manual, which dates from 1906, Merchandisers claim that the Lamborn Manual discusses candles made of a mixture of petroleum wax and stearic acid wax (a vegetable-based wax) in varying proportions from 90 percent paraffin and 10 percent stearic acid to 90 percent stearic acid and 10 percent paraffin wax. For further discussion of Merchandisers' arguments on this issue, please see Evidence Memorandum.

Department's Position:

In determining whether merchandise is later-developed, the Department first looked to section 781(d) of the Act. However, the statute does not provide a sufficient definition for the meaning of "development." Therefore, the Department looked to the legislative history of section 781(d) of the Act for further guidance and found that, although it discussed later-developed products with respect to the ITC's injury analysis, it is relevant to our analysis. See Preliminary Determination, 71 FR at 32037. Specifically, we found that the Conference Report on H.R. 3, Omnibus Trade and Competitiveness Act of 1988 defines a later-developed product as a product that has been produced as a result of a "significant technological development or a significant alteration of the merchandise involving commercially significant changes." See id; H.R. Conf. Rep. No.576, 100th Cong., 2d Sess (1988), reprinted in 134 Cong. Rec. H2301, H2305 (April 20, 1988). Therefore, the Department considered whether the merchandise subject to this anticircumvention inquiry was "developed" as a result of a significant technological development **or** a significant alteration of the merchandise involving commercially significant changes.

In the Preliminary Determination, the Department found that in previous later-developed merchandise inquiries, the technology used to produce the later-developed merchandise was never at issue. See Preliminary Determination, 71 FR at 32039. However, in this final determination, the Department must consider whether the merchandise subject to this inquiry was

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G.B. Patent No. 1515 to Wilhelm Normann ("Normann Patent"); 3) U.S. Patent No. 6,758,869 issued to Howard C. Will on April 10, 1934 ("Will Patent"); 4) U.S. Patent No. 1,276,507 issued to Carleton Ellis on August 30, 1918 ("Ellis Patent"); 5) Great Britain Patent No. 155,782 issued to Joel Starrels on November 24, 1921 ("Starrels Patent"); 6) Great Britain Patent No. 388,864 issued to James Yate Johnson on March 9, 1933 ("Johnson Patent"); 7) Great Britain Patent No. 490,127 issued to Conrad Arnold on August 9, 1938 ("Arnold Patent"); 8) Great Britain Patent No. 505,210 issued to Francis Michael Sullivan on May 8, 1939 ("Sullivan Patent"); and 9) Great Britain Patent No. 694,970 issued to Imhausen & Co., on August 9, 1938 ("Imhausen Patent").

the result of a significant technological advancement or a significant alteration of the merchandise involving commercially significant changes as there is sharp disagreement on the record as to whether mixed-wax candles meet either element of this anticircumvention standard.

After examining the information received since the Preliminary Determination, the Department finds that the record does not support a conclusion that there was a clear technological development which permitted the commercial appearance of mixed-wax candles. See Evidence Memorandum. However, as discussed above in Comment 1, the relevant legislative history indicates a second, disjunctive permissible condition for finding a product to be later-developed: whether there was a significant alteration of the merchandise involving commercially significant changes. The Department finds that this standard has been met.

In this case, primarily through a large number of submitted patents, manuals, and brochures, the record supports that there has been a sustained and significant series of scientific studies since the LTFV investigation centered on the composition of waxes and the application of those waxes to candle-making. See Evidence Memorandum for further discussion. As such, it is evident that the composition of the wax content of a candle is a significant constituent component of the candle and, accordingly, changes to the content in excess of 50 percent of the total wax are significant. Moreover, the record also supports that the addition of vegetable and/or palm-oil based waxes to previously 100 percent petroleum wax candles is commercially significant. First, such a capability permits a manufacturer to optimize candle production to take into account varying input costs with obvious commercial benefits. See CCA's New Factual Information Submission, at Exhibit 7. Second, although such an addition yields a comparable product properly considered within the scope of the Order, as discussed below in Comments 5 and 6, creative marketing has begun to highlight the vegetable or palm-oil based wax component of mixed-wax candles to create a new niche market centered on renewable resources or health concerns. This second aspect of the significant change to the candle composition, in that it creates a new marketing possibility, while not creating a separate class of merchandise, also has commercial significance. Based on this analysis, the Department finds that the one of the two requisite conditions for finding that a product is later-developed has been satisfied.

Therefore, it is the appearance of this altered product, mixed-wax candles, from the previously known petroleum wax candles that the Department finds to be relevant. The fact that vegetable-oil based waxes could be mixed with petroleum wax to produce a mixed-wax candle represents a significant alteration. The mixing of vegetable-oil based waxes with petroleum wax, regardless of whether it is now possible due to incremental industry advancements or because petroleum prices have increased since the LTFV investigation, has allowed for the commercial appearance of mixed-wax candles. Accordingly, the Department finds that this can be categorized as a "significant alteration of the merchandise involving commercially significant changes," and thus, satisfies one of the legislative history's criterion for finding these mixed-waxes are later-developed merchandise, pursuant to section 781(d) of the Act. The commercial availability of mixed-wax candles is addressed below in Comment 4.

Comment 4: Commercial Availability of Mixed Wax Candles

Petitioners did not specifically address the Department's "commercial availability standard" within their case and rebuttal briefs. However, Petitioners did state in prior submissions that the Department's commercial availability standard was appropriate in conducting the Department's later-developed analysis.

Petitioners note that the ITC only referred to "paraffins, microcrystallines, stearic acid, and beeswax." See ITC Final Report, at 4. Nowhere did the ITC Final Report refer to mixed-wax candles, which are fifty-percent or more of vegetable-based wax. Accordingly, Petitioners argue that, contrary to Respondents' assertions, the ITC concluded, in the ITC Second Sunset Review, that mixed-wax candles were not in commercial production at the time of the LTFV investigation.

Petitioners argue that the Lamborn Manual's reference to a candle containing petroleum wax and stearic acid is not a mixed-wax candle. According to Petitioners, stearic acid is a decomposed product of vegetable oil in which the triglyceryl ester chemical groups, which define a vegetable-based wax, have been destroyed. Therefore, Petitioners state that, contrary to Respondents' argument, the Lamborn Manual's references to candles that contain either coconut oil or stearic acid, which is not a vegetable-based wax, does not demonstrate that mixed-wax candles were available prior to the LTFV investigation.

Petitioners assert that Respondents' statement that there are patents on the record of this anticircumvention inquiry demonstrating that mixed-wax candles were in existence prior to the LTFV investigation is factually inaccurate. In contrast to Respondents' submissions, Petitioners point out that they have proffered 40 patents discussing novel waxes. Specifically, these patents describe claims that include vegetable-based waxes and mixed-waxes, and novel techniques and processes for making modern candles regardless of wax composition. Accordingly, Petitioners argue that their submitted patent references indicate that commercial availability of mixed-wax candles was not possible prior to these technological advancements and innovations.

Petitioners argue that Respondents' reference to Price's Candle, which refers to composite candles containing coconut oil and stearic acid derived from saponification, does not demonstrate that mixed-wax candles have existed since the 1830's. According to Petitioners, the product subject to this inquiry, mixed-wax candles, are candles composed of a vegetable-based wax and not a vegetable-based oil or stearic acid.

Petitioners argue that the record evidence for this anticircumvention inquiry conclusively establishes that mixed-wax candles were not commercially available at the time of the LTFV investigation. Specifically, Petitioners note that they have submitted product brochures, price lists, and marketing materials, dating from the late-1980's, which neither identify that the respective companies were producing mixed-wax candles nor offering such candles for sale. See Petitioners' February 15, 2006, Comments, at Exhibits C-1 though C-43; Petitioners' New

Factual Information Submission, at Exhibits 3, 4, 6-10. Moreover, Petitioners argue that they also submitted affidavits from members of the domestic industry that state that mixed-wax candles were not commercially available at the time of the LTFV investigation. See Petitioners' February 15, 2006, Comments, at Exhibits B1 to B5. Furthermore, Petitioners note that they submitted independent marketing studies that, they contend, show that mixed-wax candles were not available in the marketplace at the time of the LTFV investigation. See Petitioners' January 14, 2005, Submission, (January 14, 2005) at Exhibit C.

Merchandisers argue that, in the Preliminary Determination, the Department relied upon a "commercial availability" standard to find that mixed-wax candles are later-developed merchandise. However, Merchandisers contend, the three prior later-developed merchandise cases cited by the Department are not applicable to this anticircumvention inquiry. Merchandisers argue that unlike the prior later-developed merchandise cases cited in the Preliminary Determination, this record evidence shows that mixed-wax candles were developed and marketed over 100 years ago, although there have been refinements in the production techniques. If the Department wishes to follow prior case precedent, Merchandisers argue the Department should conduct its analysis of this anticircumvention inquiry by looking to the plain language of the Order, as it did in PET Final. See Portable Electric Typewriters from Japan: Final Scope Ruling, 55 FR 47358 (November 13, 1990) ("PET Final"). Additionally, Merchandise state that by its own admission, the Department has precluded itself from applying the "commercial availability standard," when it stated: "if a product is developed before an antidumping case is initiated, the later-developed product provision is clearly inapplicable." While the "commercial availability" standard may be useful in the context of new products that emerged through research and development to become available in the market after the investigation, Merchandisers argue, it has no application to the mixed-wax candles in this case.

Merchandisers also cite to the ITC Final Report and argue that the ITC acknowledged that commercial production of candles generally involved "natural waxes (paraffin, microcrystallines, stearic acid, and beeswax)." See ITC Final Report, at 5-7. Additionally, the ITC Final Report defined petroleum wax candles as "those composed of over 50 percent petroleum wax" and noted that these candles "may contain other waxes in varying amounts, ... to enhance the melt-point, viscosity, and burning power." Id. Based on the ITC Final Report, Merchandisers claim that it is clear that mixed-wax candles and other non-petroleum wax candles were well known at the time of the LTFV investigation. Merchandisers also point to Price's Candle which started manufacturing coconut and palm oil wax candles in the 1830s.

Target argues that the Department's definition of commercial availability is ambiguous. According to Target, the term "commercial availability" may be used to denote a product that has moved from the development stage, (i.e., research and development or testing), to production and sale in the marketplace.

Target observes that, in the Preliminary Determination, the Department correctly found that the technology to make mixed-wax candles existed prior to the LTFV investigation, but erroneously

concluded that mixed-wax candles were not available in the market at the time of the LTFV investigation. Target contends that the record evidence shows that mixed-wax candles containing more that 50 percent vegetable-based wax were commercially available at the time of the LTFV investigation. Target notes that the ITC stated:

> There are two broad categories of wax used for commercial purposes: natural and synthetic. The bulk of candle manufacturing utilizes natural waxes, principally paraffins, microcrystalline, stearic acid and beeswax. However, specialty candle making operations do have requirements for the more "exotic" types of wax, such as hydrogenated vegetable oil or jojoba.

See ITC Final Report, at 3. According to Target, the ITC's references to "commercial purposes," "candle manufacturing" and "candle making operations" indicate that candles using the more exotic waxes were commercially available in the market. Target argues that the ITC recognized the existence of mixed-wax candles, noting that candles were often made of more that one type of wax in various combinations and noting that in the definition of petroleum wax candles that such candles "may contain other waxes in varying amounts...to enhance melt-point, viscosity and burning power." See ITC Final, at 4-5. Therefore, Target argues, although mixed-wax candles containing less that 50 percent petroleum wax were not as popular as they are today, they were commercially available at the time of the LTFV investigation, and thus, cannot be later-developed products.

Target contends that there are patents on the record that show that mixed-wax candles were commercially available prior to the LTFV investigation. Specifically, Target cites to the Will Patent, which allows for a mixed-wax candle to contain more that 50 percent vegetable-based wax, that was issued in 1934. Additionally, Target notes that, even after 1934, there were numerous patents which allowed for mixed-wax candles containing less than fifty percent petroleum wax. Moreover, Target notes that Petitioners contend that the Tao Patents make the first claims to a mixed-wax candle, which resulted in mixed-wax candles becoming commercially available. However, Target argues that record evidence shows that Lava Enterprises was selling mixed wax candles in 1997, before the first Tao Patent was filed. See Preliminary Determination, 71 FR at 32039.

Target states that if Petitioners' arguments with respect to commercial availability were correct, then that would mean that there were no mixed-wax candles produced prior to 2001. However, Target argues that the Department's Preliminary Determination refutes Petitioners' conclusion by finding that Lava Enterprises began selling mixed-wax candles in 1997.

CCA observes that, in the ITC Final Report, the ITC noted that candle-makers have long mixed stearic acid with petroleum wax when producing candles. According to the CCA, the stearic acid used in candles, which have been offered for commercial sale in the United States, is made with vegetable and/or animal fats.

CCA contends that candles have been made entirely from stearic acid for over 150 years, and manufacturers have produced candles of varying proportions of petroleum wax and stearic acid since the 1800s. Citing to the 1906 Lamborn Manual, CCA notes that candle manufacturers have been mixing stearic acid with petroleum wax since the introduction of petroleum wax in the 1840's. Merchandisers claim that the Lamborn Manual discusses candles made of a mixture of petroleum wax and stearic acid wax (a vegetable-based wax) in varying proportions from 90 percent paraffin and 10 percent stearic acid to 90 percent stearic acid and 10 percent paraffin wax. CCCFNA also cites to the Lamborn Manual from 1906, the Pungs Patent from 1930, and the Will Patent from 1934. See CCCFNA's Case Brief, (July 7, 2006) at 5.

CCA argues that mixed-wax candles have been offered for commercial sale long before the LTFV investigation. Specifically, CCA argues that Price's Candle established a candle factory in the 1830's, which made candles from coconut fat and then palm oil. Moreover, CCA argues that the commercial popularity of these types of candles allowed Price's Candle to expand the production of the candles and led to the establishment of an additional candle factory.

CCA notes that, in the Preliminary Determination, the Department recognized that mixed-wax candles have been commercially available since 1997. As such, CCA argues that mixed-wax candles must, therefore, have been developed no later than the 1990's. However, CCA argues that mixed-wax candles have been available since the 1840's and that vegetable-based waxes, made from hydrogenated vegetable oil, have been available since the 1920's. While individual companies engaged in the optimization of a production process for mixed-wax candles, CCA asserts that this does not support a finding that mixed-wax candles were developed and commercially available only after 1985.

CCCFNA notes that, in the ITC Final Report, the ITC recognized that hydrogenated vegetable oils were used to produce candles, which necessarily presumes that the technology existed at that time. See ITC Final Report, at 51-52. Moreover, CCCFNA noted that, two years prior to the LTFV investigation, an article from the Financial Times specifically identified that palm oil was used in candle production. Moreover, CCCFNA pointed to a number of patents[24] issued between 1918 and 1978 which discuss the various methods of using certain types of waxes, hydrogenated vegetable oils, petroleum wax, etc., to create mixed-wax candles. Accordingly, CCCFNA states that the record evidence shows that the technology to produce mixed-wax candles existed at the time of the LTFV investigation and as such, mixed-wax candles were commercially available in 1985. CCCFNA maintains that evidence on the record strongly suggests that the specialty candles referred to in the ITC Final Report were mixed-wax candles for the ITC noted that candles were often made of more than one type of wax in various combinations, and that candles "may contain other waxes in varying amounts... to enhance melt-point, viscosity, and burning power."

[24] U.S. Patent Nos.: 1,276,507; 2,817,225; 2,845,785; 4,111,203.

CCCFNA argues that mixed-wax candles were available within the commercial market in 1985 and that the burden to prove otherwise lies with Petitioners. CCCFNA argues that the Department incorrectly placed the evidentiary burden of proof with Respondents rather than Petitioners. Contrary to the Preliminary Determination, CCCFNA contends the Department must question whether Petitioners have provided sufficient evidence to conclude that mixed-wax candles were not available in 1985. CCCFNA notes that, in the Preliminary Determination, the Department itself acknowledged a commercial presence of candles containing various wax materials, both mixed and unmixed. See Preliminary Determination, 71 FR at 32038-9. CCCFNA claims that, despite this obvious acknowledgment in the Preliminary Determination, the Department unfairly assumed that the evidence of the commercial availability of mixed-wax candles does not demonstrate that mixed-wax candles were available commercially prior to the LTFV investigation. Moreover, CCCFNA claims the Department even listed the record evidence demonstrating the commercial presence of mixed-wax candles. Id. at FN 15. Accordingly, CCCFNA states that when the burden of proof is properly placed with Petitioners, it is clear that the evidence does not support a conclusion that mixed-wax candles were not commercially available at the time of the LTFV investigation.

In rebuttal, Petitioners take issue with Respondents' suggestion that the burden rests with Petitioners to establish that mixed-wax candles were not commercially available at the time of the LTFV investigation. According to Petitioners, Respondents are requesting that Petitioners demonstrate with concrete evidence the negative, which is that mixed-wax candles were not commercially available in 1985. If Respondents wanted to establish that mixed-wax candles were, in fact, commercially available in 1985, Petitioners argue, Respondents, which are most likely to have such direct information, should have, and would have, provided it. Petitioners note that the Department twice requested that parties provide data showing that mixed-wax candles were available for commercial sale starting in 1985. Instead of providing the requested data, Petitioners contend Respondents stated that they did not keep such data or did not provide such data until the late-1990's. Therefore, Petitioners conclude that none of the Respondents had any evidence that demonstrated that mixed-wax candles were commercially available because the fact is that they were not commercially available at the time of the LTFV investigation.

Finally, Petitioners state that the absence of mixed-wax candles in the marketplace at the time of the LTFV investigation is further established by the numerous scope requests after the issuance of the Order. Petitioners note that the first scope request on a mixed-wax candle was not until 2001. If mixed-wax candles were, in fact, produced and sold at the time of the LTFV investigation, then the imposition of the Order would have provided PRC candle producers the incentive to submit a scope request on a mixed-wax candle. However, this did not occur because mixed-wax candles were not in commercial production at the time of the LTFV investigation.

CCCFNA responds that Petitioners' argument, with respect to Price's Candle, is unpersuasive. Specifically, CCCFNA counters that: 1) Petitioners failed to cite any authority that Price's Candle's composite candles are not, in fact, mixed-wax candles; 2) it is not true that vegetable-based waxes were not available for Price's Candle to use in production; and 3) it is disingenuous

for Petitioners to suggest that Price's Candle was selling 100 percent vegetable-oil candles because Petitioners have stated that vegetable-based oils cannot be used to make a candle until they are made into a solid form through the hydrogenization process.

Additionally, CCCFNA counters that the various U.S. brochures and marketing materials submitted by the Petitioners do not specify the availability of mixed-wax candles as catalogues, brochures, and product initiations usually do not provide specific wax proportions. Additionally, CCCFNA argues that this inquiry is not concerned with whether mixed-wax candles had a significant market position at the time of the LTFV investigation, but rather whether they were available in the U.S. marketplace. Moreover, CCCFNA asserts that the burden of proving that mixed-wax candles were not available in the U.S. marketplace at the time of the LTFV investigation lies with Petitioners and not with the Respondents. Therefore, CCCFNA submits that Petitioners have failed to meet their burden of proving that the mixed-waxed candles were not commercially available.

Department's Position:

In the Preliminary Determination, the Department provided a detailed explanation for including the commercial availability standard as part of its analysis. See Preliminary Determination, 71 FR at 32037-8. The Department disagrees that prior later-developed merchandise cases are not relevant to this inquiry, particularly with respect to determining whether commercial availability is properly part of later-developed merchandise analysis. In each of these cases, EPROMS Final, PET Final, and EMD Prelim, the Department concluded that the commercial availability of the product at issue is relevant because the product's actual presence in the market at the time of the LTFV investigation is a necessary predicate of its inclusion or exclusion from the scope of an antidumping duty order. See Eraseable Programmable Read Only Memories from Japan: Final Scope Ruling, 57 FR 11599, 11602-3 (April 6, 1992) ("EPROMS Final"); PET Final, 55 FR 47358; ("PET Final"); EMD Prelim 56 FR at 56978-81. Consequently, these prior later-developed merchandise inquiries, in addition to the legislative history described above in Comment 3, support the Department's conclusion that commercial availability should be considered as part of the later-developed merchandise analysis.

With respect to Target's argument that the Department's definition of commercial availability was unclear, the Department disagrees. Specifically, the Department's refers Target to the Preliminary Determination where the Department explained that commercial availability is the "product's presence in the commercial market or whether the product was fully "developed," i.e., tested and ready for commercial production." See Preliminary Determination, 71 FR at 32037.

Next, the Department notes that although our decision is not bound by the ITC's findings in the ITC Second Sunset Review, it is relevant because the Department has sought guidance from the findings of the ITC in making prior scope rulings on mixed-wax candles and because parties continue to reference the ITC Final Report and the ITC Second Sunset Review. The Department continues to disagree with Respondents' interpretation of the ITC Final Report, because while

Respondents argue that mixed-wax candles were referenced by the ITC, the Department finds that mixed-wax candles, as subject to this inquiry, were not discussed as being in commercial production. In any case, the ITC clarified its statements in the ITC Second Sunset Review, stating that

> the evidence on the record of this review indicates that there was no commercial production in the United States (or elsewhere) of blended candles in 1986, when the Commission made its original determination. The Commission therefore did not consider in the original investigation whether to included blended candles containing 50 percent or less petroleum wax in the domestic like product.

See ITC Second Sunset Review Report, at 7. Therefore, the clarification issued by the ITC as part of its second sunset review analysis is further affirmative evidence that mixed-wax candles were not available in the United States market or the PRC market at the time of the LTFV investigation. Consequently, the Department finds that, given the ITC's subsequent clarification in the ITC Second Sunset Review, the ITC Final Report[25] does not support a finding that mixed-wax candles were available at the time of the LTFV investigation.

Several parties have argued that, because patents were issued describing mixes of petroleum wax with other waxes (or stearic acid), the Department should conclude that mixed-wax candles were available in the market. The Department disagrees. The Department notes that, although a patent may be issued, the end-product listed as resulting from the invention, as specified within that patent, may never appear in the market. Specifically, only Petitioners have submitted evidence linking the patents issued after the LTFV investigation with the commercial appearance of mixed-wax candles, including a press release from Cargill announcing its buying of the rights to use the ISB's candle patent technology (Bernard Tao's patents) and affidavits from domestic candle producers referencing certain patents issued after the LTFV investigation and the production of mixed-wax candles. See Petitioners' New Factual Information Submission, at Exhibits 4-9. In contrast, Respondents cite to the numerous patents, the Lamborn Manual and a Financial Times article discussing vegetable oil (not wax) mixed with paraffin. Neither of these are indicative of the technology now at issue, much less commercial availability of those mixed-wax candles in the market before the LTFV investigation.

Additionally, the Department disagrees with CCA's argument that Price's Candle product brochure shows that candles containing coconut and palm oil were being sold before the LTFV investigation. The Department notes that Price's Candle specifically advertises the following: "{Price's Candle}used this technique, and added a further distillation, to produce a harder pure white fat called stearine. And stearine candles burned brightly without smoke or smell." See CCA's February 15, 2006 Comments, at Exhibit 5. Additionally, Price Candle's advertisement indicates that coconut fat was used to make candles and that a further innovation was the

[25] The Department notes that the ITC Final Report is not the only source to be considered in making its determination of whether mixed-wax candles were available in the market at the time of the LTFV investigation.

commencement of using palm oil in candle-making. Id. However, the Department notes that there is no mention of producing a mixed-wax candle in any of the submitted Price Candle's advertisements.

Besides the Price's Candle product brochure, Respondents also submitted the Lamborn Manual and the Will & Baumer product catalogue from 1921 as evidence that mixed-wax candles were available prior to the LTFV investigation. See CCA's New Factual Information Submission, at Exhibits 1 and 9. However, the Department notes that neither the Lamborn Manual nor the Will & Baumer product catalogue reference mixed-wax candles. Instead they either refer to candles containing stearic acid, which is not a vegetable-based wax, or they refer to composite candles but without indicating what these composite candles contain.

In contrast, Petitioners submitted product brochures and industry studies which do not list mixed-wax candles appearing until 2002. Specifically, Petitioners submitted a survey of product catalogues dating from 1985 to 2004, which resulted in a review of over 2,227 catalogues, conducted by a company at the archives of Gifts and Decoratives Accessories, a magazine for the gifts and decorative accessories industry. The survey showed that the first instance of a blended candle containing palm wax advertised for sale was in 1998. See Petitioners' New Factual Information Submission, at Exhibit 9. Moreover, the Department notes that Petitioners also submitted a 2000 product catalogue from A.I. Root, which offers "new products in a renewable soy-wax blend." See Petitioners' February 15, 2006, Comments, at Exhibit C1. While the product catalogue does not identify the specific wax proportion of the candle offered for sale by A.I. Root, the Department notes that there is further information on the record that corroborates that this is a mixed-wax candle, which is a "new product."[26] Additionally, the Department notes that Petitioners also submitted industry reports dating from 1995 to 2002, which do not indicate that mixed-wax candles were available until 2002. See Petitioners' LDM Supplemental Response, at Exhibit C, Home Fragrances USA Reports from 1995-2002. Therefore, based on a review of the marketing material submitted by Respondents and Petitioners, the Department finds that no record evidence conclusively establishes that mixed-wax candles were commercially available at the time of the LTFV investigation.

In conducting this inquiry, the Department requested that parties submit evidence that mixed-wax candles were available in the market. The Department finds that both Respondents and Petitioners had the burden to establish whether mixed-wax candles were commercially available at the time of the LTFV investigation. All parties were given the opportunity to submit evidence that mixed-wax candles were available or evidence that mixed-wax candles were not available in the market. Accordingly, the burden did not rest on any single party. Respondents did not provide sales data demonstrating that mixed-wax candles were sold in commercial quantities nor did they establish that the submitted patents were linked to commercial sales. They did not demonstrate through other evidence (i.e., marketing materials, product brochures, etc.) that

[26] Because of the proprietary nature of this information, for further information please see Petitioners' New Factual Information Submission, at Exhibit 9 (Declaration).

mixed-wax candles were commercially available prior to the LTFV investigation. Respondents simply claimed that they did not retain sales records dating back to the LTFV investigation. In contrast, Petitioners submitted information indicating that mixed-wax candles were not commercially available at the time of the LTFV investigation. Specifically, Petitioners submitted sales data, marketing materials, affidavits, product brochures, information on research and development, and linked patents dating after the LTFV investigation to the commercial production of mixed-wax candles.

Furthermore, the Department finds that annual sales data submitted by Petitioners and Respondents do not demonstrate that mixed-wax candles were commercially available at the time of the LTFV investigation. The Department notes that Respondents are correct that, in the Preliminary Determination, the Department stated that mixed-wax candles appeared in the market as early as 1997 and cited to the evidence submitted by Lava Enterprises. See Preliminary Determination, 71 FR at 32039; Lava Enterprise's February 13, 2006, Comments, (February 13, 2006) at 2 and Attachment. However, the Department finds that it erred in its reference to Lava Enterprises, with respect to when mixed-wax candles were first sold within the market. The Department notes that the type of candle sold by Lava Enterprises is not a mixed-wax candle because it contains a mixture of petroleum wax and stearic acid, which as discussed above in Comment 3, is not a wax, but a hardening agent. Nevertheless, the Department notes that another respondent, CCCFNA, submitted sales data and affidavits from its member companies. This information shows that CCCFNA's member companies started producing and selling mixed-wax candles in 1999. Additionally, members of Petitioners also submitted sales data, which shows that they did not start selling mixed-wax candles until the early-2000's. See Petitioners' February 15, 2006, Comments, at Exhibit A; CCCFNA's Quantity and Value Submission, (February 15, 2006), at Exhibits 1-7; CCCFNA's New Factual Information Submission, at Attachments 1-7. Accordingly, the record evidence indicates that the earliest any party sold any mixed-wax candles was in 1999.

Therefore, given the above, having received no information either through relevant product brochures, annual sales data, or any other information from any party demonstrating that mixed-wax candles were commercially available prior to the LTFV investigation, the Department finds that it cannot definitively conclude that mixed-wax candles were available in the market at the time of the LTFV investigation. Accordingly, the Department finds that this satisfies the other statutory criterion for finding these mixed-waxes are later-developed merchandise, pursuant to section 781(d) of the Act.

Comment 5: Mixed-Wax Candles as In-Scope Products

A. Physical Characteristics

Petitioners argue that the Department's Preliminary Determination that mixed-wax candles and petroleum wax candles are indistinguishable in terms of appearance, feel and scent is supported by record evidence. Petitioners note that, after the Preliminary Determination, no respondent has

submitted any sample candles to support their claims that there are key distinction between these two types of candles. In contrast, Petitioners note that they have submitted further candle samples that clearly demonstrate that mixed-wax candles are indistinguishable in appearance to petroleum wax candles. See Petitioners' Factual Information Submission, at 14 and Exhibit 4. Moreover, Petitioners further support this conclusion with a declaration and photographs of mixed-wax candles and petroleum wax candles with similar appearances. Id. at Exhibit 4 (Attachments 1 and 2).

Petitioners contrast their abundant information with Respondents' failure to support with independent supporting evidence their position that mixed-wax candles are physically distinct from petroleum wax candles. While Respondents did submit an excerpt from a website of a producer of palm wax, Petitioners both contend this excerpt is not independent support and question the lack of candle samples or photographs from Respondents. See Petitioners' Case Brief, at 64. Accordingly, Petitioners conclude that the record evidence of this anticircumvention inquiry continues to demonstrate that mixed-wax candles are virtually indistinguishable from petroleum wax candles.

Merchandisers claim that mixed-wax candles, which contain vegetable-based wax, differ significantly in its chemical composition and its physical characteristics from petroleum wax candles. Specifically, Merchandisers claim that mixed-wax candles have the following qualities: 1) they have a crystalline, more opaque, exterior appearance which is preferred by consumers; 2) they are typically harder than petroleum wax candles, which enables them to hold their shape in warm climates; 3) their unique chemical composition enables them to burn cooler than petroleum wax candles, which increases the life of the candles and results in less pollutants; and 4) they have a "cleaner burn" in caparison with petroleum wax candles. Additionally, Merchandisers note that, in contrast to mixed-wax candles, petroleum wax candles release chemicals that some consumers are concerned may have ill effects on human health, as noted in the ITC Second Sunset Review.

CCCFNA argues that mixed-wax candles are not in-scope products. CCCFNA requests that, in the event that mixed-wax candles are determined to be later-developed merchandise, the Department conduct an analysis, based on record evidence, on the differences between mixed-wax candles and petroleum wax candles. Specifically, CCCFNA states that the significant differences between these two types of candles are illustrated by the detailed descriptions of the burning properties of petroleum wax candles versus vegetable based wax candles in various patents. See Petitioners' April 5, 2005, Submission, (April 5, 2005) at Exhibits B, D, E, and G.

Moreover, CCCFNA also cites to a publication from International Group, Inc. ("IGI"), a member of Petitioners, which details several uses for mixed-wax candles. See Petitioners' April 5, 2005, Submission, at Exhibit B. Additionally, the ITC Second Sunset Review indicated that there were numerous differences between petroleum wax candles and mixed-wax candles, including: (1) burning properties, such as soot and duration; (2) consumer demand; (3) relative production price; (4) end-use (i.e., decor versus illumination); and (5) a trend towards "wellness" products.

See ITC Second Sunset Review. Accordingly, CCCFNA concludes and requests that the Department find, if the Department continues to find that mixed-wax candles are later-developed merchandise, the record evidence illustrates that mixed-wax candles are not within the scope of the Order. The record of this anticircumvention inquiry details the various differences, as described by the ITC Second Sunset Review, between mixed-wax candles and petroleum wax candles.

In rebuttal, Petitioners note that its submitted candle samples show that petroleum wax candles and mixed-wax candles have the same physical form, appearance, and use. See Petitioners' New Factual Information Submission, at Exhibit 4. Additionally, Petitioners state that there is no record evidence demonstrating that mixed-wax candles neither hold their shape better nor give off less pollutants than petroleum wax candles.

Department's Position:

With respect to physical characteristics, the Department continues to find, for the final determination, that the record evidence supports the conclusion that there is no substantial difference between mixed and petroleum wax candles' physical characteristics. As in the Preliminary Determination, the Department finds that mixed-wax candles and petroleum wax candles appear to be indistinguishable in terms of appearance, feel, and scent. Although Respondents continue to claim that differences exist, the Department notes that no Respondent since the Preliminary Determination has submitted physical evidence, such as sample candles, that indicate a difference in physical characteristics. In contrast, the Department notes that the sample candles provided by Petitioners were visually similar. Specifically, the sample mixed-wax candle that contains palm wax and the sample petroleum wax candle were both pillars, had a similar feel, contained a fragrant scent, and were in the same burn stage. See Petitioners' New Factual Information Submission, at Exhibit 4 (Attachment 1). While the colors (a three-layer variation of tan, red, and green in one of the pillars) varied slightly in each pillar and the mixed-wax candle contained a label stating "blend," the Department notes that without turning the mixed-wax candle over to identify its wax content, the sample mixed-wax candle and the sample petroleum wax candle have similar physical characteristics making them appear to be indistinguishable by appearance, feel, and scent.

While two of the Respondents, Merchandisers and CCCFNA, continue to argue that mixed-wax candles are distinct from petroleum wax candles because of their different chemical composition, the Department continues to find this argument unpersuasive. Although one of the Respondents, Merchandisers, has placed evidence on the record from manufacturers, including Candlewic and Cargill, Inc., regarding the chemical composition of mixed-wax candles and its impact on the candle's physical characteristics, this does not conclusively establish there are physical differences. Instead of submitting actual physical evidence that documents these differences, Merchandisers submitted advertisements, such as the one from Candlewic that stated candles made from vegetable-based wax are typically harder than petroleum wax candles. See Bed Bath and Beyond's New Factual Information Submission, (June 23, 2006) at Exhibit 2. While the

Department continues to acknowledge that Respondents have demonstrated that one of the components, palm and vegetable-based oils, of mixed-wax candles possesses different chemical structures, this does not necessarily lead to a conclusion that these candles have distinct physical characteristics.[27] As in the Preliminary Determination, the Department continues to find that, without conclusive physical evidence demonstrating the "alleged" physical differences, the sample candles support a conclusion that these mixed-wax candles are not distinguishable from in-scope petroleum wax candles.

Finally, the Department disagrees with CCCFNA's argument that there is other record evidence demonstrating the physical differences between mixed-wax candles and petroleum wax candles. While CCCFNA suggests that there are patents on the record that detail the difference in the burn properties, such as giving off soot, of mixed-wax candles and petroleum wax candles, the Department notes there is other record evidence that contradicts this suggestion. Although the Anderson Patent[28] states that "paraffin produces soot and smoke and tends to have an unpleasant odor during combustion," the Department observes that, in the IGI study, it was found that "using a vegetable wax in a candle blend will not automatically ensure no or low sooting." See Petitioners' February 27, 2006, Rebuttal Comments, at Exhibit 10 (International Group, Inc. New Waxes–New Looks via Candle System Variations. (2004), at 17-21, ("IGI study")). Additionally, the Department disagrees with CCCFNA's contention that the ITC Second Sunset Review indicated that there were differences between mixed-wax candles and petroleum wax candles. The Department observes that statements made by importers, producers, and purchasers, in the ITC Second Sunset Review, of differences between mixed-wax candles and petroleum wax candles is neither supported by the record of this proceeding, as discussed above, nor by the ITC Second Sunset Review's conclusions. See CCCFNA's Case Brief, at 21; ITC Second Sunset Review, at II-5 to II-8. Specifically, the ITC Second Sunset Review found that there "are similarities in physical characteristics... {and} {t}o the extent, producers described any differences in physical characteristics, they defined such differences as minor." See ITC Second Sunset Review, at 8. Therefore, given the above, the Department finds that, for this final determination, mixed-wax candles are virtually indistinguishable from in-scope petroleum wax candles in terms of appearance, feel, and scent.

B. Expectations of the Ultimate Purchaser

Petitioners argue that the Department should continue to find that the ultimate purchaser of a mixed-wax candle has the same expectations as the ultimate purchaser of a petroleum wax

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[27] The Department notes that the CIT has found that the addition of a different material in an "otherwise identical" product does not alone result in a "significant, general physical distinction." See Smith Corona Corp. v. United States, 698 F. Supp. 240, 244 (CIT September 20, 1988) ("Smith Corona II").

[28] On July 29, 2003, the U.S. Patent Office issued Patent No. 6,599,334 to Jill M. Anderson for a solid fuel candle which is highly adapted for use both in a container and also as a free-standing candle including at least 85 percent hydrogenated soybean oil ("Anderson Patent").

candle. Specifically, Petitioners note that, in the Preliminary Determination, the Department appropriately concluded that consumers do not generally prefer one specific wax composition of a candle over another. See Preliminary Determination, 71 FR at 32041. While Respondents contend that consumers are aware of the wax content of the candles that they purchase, Petitioners argue that Respondents have failed to provide any evidentiary support for their claims. Accordingly, Petitioners find that the Department should continue, for this final determination, to find that the primary factors that influence a candle purchaser's decision are scent, color, and cost, and not wax content.

Additionally, Petitioners state that the Department should continue to find, for this final determination, that Respondents' claims that mixed-wax candles give off less soot and carcinogenic toxins than petroleum wax candles are unsupported. Petitioners argue that, while the Department gave Respondents a final opportunity to provide independent scientific support for their claims, Respondents have failed to do so. Specifically, Respondents submitted news articles and a report from the American Petroleum Institute, which Petitioners note do not state that mixed-wax candles are a specific source of high soot deposits. See Bed Bath and Beyond's New Factual Information Submission, at 9 and Exhibits 7 and 11. For instance, one news article, which is from Home Energy Magazine Outline, notes that candles may be a source for soot deposits but does not make a comparison between petroleum wax candles and mixed-wax candles. Id. at Exhibit 7. However, this article also notes that candle wicks are pivotal in the amount soot released by a candle, which Petitioners note is further supported by independent studies. See Petitioners' New Factual Information Submission, at 13; Petitioners' February 27, 2006, Submission, (February 27, 2006) at Exhibit 10 (IGI. New Waxes–New Looks via "Candle System Variations."). Moreover, Petitioners note that the report issued by the American Petroleum Institute is a testing protocol that focuses on the toxicity of waxes and other materials ingested by animals. See Bed Bath and Beyond's New Factual Information Submission, at Exhibit 11. Petitioners argue that, unlike the independent studies submitted by Petitioners, this study has no value regarding whether burning a petroleum wax candle vis-a-vis a mixed-wax candle can harm a person.

Merchandisers claim that consumers are aware of the different physical characteristics resulting from different waxes and make purchasing decisions on types of candles based on certain expectations of appearance, form, burn quality, and aroma. Accordingly, many retailers and manufacturers tout the differences between mixed-wax candles and petroleum wax candles in their marketing materials.

CCCFNA claims that the record of this proceeding demonstrates that the purchaser of a mixed-wax candle does not have the same expectations as a purchaser of a petroleum wax candle. Specifically, CCCFNA notes that other respondents have placed information on the record demonstrating that consumers perceive mixed-wax candles to be more environmentally-friendly. CCCFNA submits that the record shows that toxins and pollutants contained within petroleum wax candles have become a concern for consumers, which is why the consumer more often

purchases mixed-wax candles that give off a cleaner burn. See Shonfeld's New Factual Information Submission, (June 23, 2006) at 8.

In rebuttal, Petitioners note that Respondents have admitted that consumers generally buy candles based upon scent, color, cost, and shape, and not the wax content.

Department's Position:

The Department continues to find, for the final determination, that the record evidence supports the conclusion that the ultimate purchaser of mixed-wax candles does not have different expectations than the ultimate purchaser of in-scope petroleum wax candles. While one of the Respondents, CCCFNA, continues to contend that the ultimate purchaser of mixed-wax candles has different expectations due to the health benefits of these candles, the Department finds that this is not supported by corroborating evidence. Although CCCFNA submits that there are statements, such as one from an importer "who saw a heightened consumer interest in cleaner burning candles," quoted in the ITC Second Sunset Review, the Department notes that, since the Preliminary Determination, CCCFNA did not submit independent evidence to corroborate these statements. See ITC Second Sunset Review, at II-5. Moreover, the Department notes that, in the ITC Second Sunset Review, the ITC, which was presented with these statements, and others, such as "producers indicated that their customers perceive no differences between the products," concluded that mixed-wax candles are within the domestic like product. Id. at 8. Additionally, while CCCFNA submits that patents also demonstrate that there is a consumer demand for mixed-wax candles because of health benefits, the Department again notes that these patents are not supported by corroborative evidence. While one of the patents, the Murphy Patent, cited by CCCFNA states that "there is a strong consumer need and demand for alternative natural waxes as an option to toxic paraffin waxes," the Department notes that this does not establish that consumers' base their purchase on the health benefits obtained from using mixed-wax candles. See CCCFNA's Case Brief, at 19.

Additionally, although another respondent, Merchandisers, submitted some news articles as evidence that consumers prefer to purchase mixed-wax candles because petroleum wax candles contain toxins, the Department does not find this evidence persuasive. While the submitted news articles discuss the growth in the market of natural candles and that the use of petroleum wax candles gives off carcinogenic toxins, the Department does not doubt that a subset of mixed-wax candle purchasers maybe driven by such concerns. However, the Department finds that these news articles do not conclusively establish that the consumer demand as a whole, even in large measure, for mixed-wax candles can be attributed to health concerns. See Bed Bath and Beyond's New Factual Information Submission, at Exhibit 9 (news article from Alternative Medicine that states "vegetable wax burns cleaner, longer and more evenly than paraffin and doesn't give off the oily soot"), Exhibit 10 (news article from Health Supplement Retailer that states "whether scented or unscented, natural candle makers are seeing increased demand at retail for the products...the quality and purity is more important to customers who can tell the difference"). In fact, the Department notes that there is other evidence on the record that shows

that the alleged health benefits of a candle is not one of the factors that primarily influence a consumer's purchase. See Petitioners' February 27, 2006, Rebuttal Comments, at Exhibit 12 (Unity Marketing. Home Fragrance & Candle Report, 2005: Understanding and Predicting Consumers' Passion for Candles and Home Fragrances. "2005 Unity Market Report"). Specifically, the 2005 Unity Market Report found that, because only 7 percent of consumers reported they based their purchase on a candle's health properties, this shows that to date, the "marketing of a more healthful candle alternative has not found much traction in the candle market." Id.

Moreover, while Merchandisers also submitted some studies as evidence that mixed-wax candles give off a cleaner burn and thus, purchasers may have different expectations, the Department finds that this evidence does not provide sufficient corroborative support for their argument. Merchandisers state that their submitted reports, Black Soot Deposition, Waxes and Related Materials, and a review of studies from Home Energy Magazine, demonstrate that the toxins and pollutants in petroleum wax have become a concern for consumers. However, the Department observes that the Black Soot Deposition report, which identifies as sources soft wax, that contains unsaturated hydrocarbons, aromas in the wax, and specific types of wicks, makes no mention of petroleum wax in general or mixed-wax candles in particular as a source for black soot deposition. See Bed Bath and Beyond's New Factual Information Submission at Exhibit 8. Additionally, the Waxes and Related Materials report was a toxicology protocol on waxes, including their use as cosmetic ingredients, but makes no mention of possible toxins or black soot found in either mixed-wax candles or petroleum wax candles. Id. at Exhibit 11. Furthermore, the review from Home Energy Magazine noted that the mixture of fragrances and chemicals, not petroleum wax, can cause a candle to give off not as clean a burn. Id. at Exhibit 7. Based on a review of these three studies, the Department finds that, while these studies indicate that candles may give off soot, the studies do not specifically identify petroleum wax candles as a source that influences purchasers' expectations.

Furthermore, the Department disagrees with Merchandisers' contention that the ultimate purchaser of a mixed-wax candle has different expectations because they are aware of the wax content of the candle. Although Merchandisers have submitted marketing material as support, the marketing material does not demonstrate on a wide-spread basis that consumers are aware of the wax content of the candles they purchase, nor that they prefer one specific wax composition in a candle over another. See Bed Bath and Beyond's New Factual Information Submission, at Exhibit 4 (website for Organic Candle Co. which provides a paraffin wax and soy/vegetable wax comparison chart), Exhibit 5 (marketing material from Cargill's NatureWax website that markets its 80 percent or more NatureWax derived from soy-based wax). In fact, the record evidence continues to show that the two attributes of a candle which primarily drive the purchasing decision of a consumer do not include the wax composition of a candle. Instead, these attributes are fragrance and decorative touches. See Petitioners' LDM Supplemental Response, at Exhibit C, Home Fragrances USA Reports from 1995-2002 at Section 3. Of further note, the Department observes that, in the 2005 Unity Market Report, only thirteen percent of candle purchasers indicated that they based their purchase on the quality of the candle. The report concluded that

this could lead one to infer that the ultimate purchaser of a candle "does not know how to distinguish" between types of candles, particularly when there is no distinction of the wax content. See Petitioners' February 27, 2006, Rebuttal Comments, at Exhibit 12, pp. 25-26. Moreover, Merchandisers, themselves, acknowledged that consumers base their purchase of a candle upon the following criteria: appearance, form, burn quality, and aroma, which corresponds with some of the top purchasing factors, such as favorite scent, style and design, and long lasting burn, listed in the 2005 Unity Market Report. See Bed Bath and Beyond's New Factual Information Submission, at 7. The Department finds that, while two of the Respondents made statements and submitted some evidence, including news articles and other studies, the Department observes that this information, unlike the 2005 Unity Market Report submitted by Petitioners, does not directly measure the actual buying sentiments and expectations of the ultimate purchaser. Therefore, given the above the Department finds for this final determination, the record evidence does not indicate that the ultimate purchaser of mixed-wax candles necessarily has different expectations than the ultimate purchaser of in-scope petroleum wax candles.

C. Ultimate Use

Petitioners argue that the Department should continue to find that mixed-wax candles and petroleum wax candles are used for the same purposes, which are providing light, heat or scent, and decorative purposes. In the Preliminary Determination, Petitioners state that the Department appropriately concluded that "scientific evidence" demonstrates that mixed-wax candles and petroleum wax candles are used for the same purpose. See Preliminary Determination, 71 FR at 32041.

Additionally, Petitioners maintain that the Department was also correct in finding, for the Preliminary Determination, that the record evidence does not demonstrate that the demand within the aromatherapy market was limited solely to mixed-wax candles. Id., 71 FR at 32042. In fact, Petitioners argue that the record evidence shows that there is demand within the aromatherapy market for both mixed-wax candles and petroleum wax candles. For instance, Petitioners note that: "{C}ertain essential oils that can be added to any type of wax, including paraffin and mixed-wax systems, to provide aromatherapy benefits." See Petitioners' New Factual Information Submission, at Exhibit 4. However, Petitioners contend that, since the issuance of the Preliminary Determination, Respondents have failed to submit scientific evidence demonstrating a specific demand within the aromatherapy market for only mixed-wax candles. Accordingly, Petitioners conclude that the Department, for this final determination, should continue to find that mixed-wax candles and petroleum wax candles are used for similar purposes.

CCCFNA claims that the record of this proceeding demonstrates that mixed-wax candles do not share all of the same uses as petroleum wax candles. Specifically, CCCFNA notes that, in the ITC Second Sunset Review, it was noted that "palm wax candles are used more often as

decorations than illumination but burn cleaner than petroleum wax candles when lit." See ITC Second Sunset Review, at II-8.

In rebuttal, Petitioners note that both mixed-wax candles and petroleum wax candles are used for the same purpose, i.e., to provide light, heat or scent, and decorative purposes.

Department's Position:

With respect to the ultimate use of these types of candles, the Department continues to find for the final determination that the ultimate uses of mixed-wax candles as compared with petroleum wax candles are similar: to provide light, heat, scent, or for decorative purposes. The relative levels of such side effects as sooting or toxic emissions are secondary and in any case, are not shown on the record to be more than incrementally different. Based on news articles and other studies, the Department disagrees with CCCFNA's contention that the record of this anticircumvention inquiry shows that mixed-wax candles are not used for the same purpose as petroleum wax candles. Although CCCFNA submits that a statement from the ITC Second Sunset Review demonstrates that mixed-wax candles are used for different purposes, this is not the case. While the statement indicates that palm wax candles are used "more often as decorations than illuminations," the Department notes that this statement does not indicate that this specific candle contains a mixture of palm wax and petroleum wax in proportions that would make it a mixed-wax candle. See ITC Second Sunset Review, at II.-8. Instead, the statement only indicates that the candle contains palm wax and as such, is not the product subject to this inquiry. Accordingly, this does not demonstrate that mixed-wax candles do not share the same uses, which is to provide light, heat, or scent, and for decorative purposes.

Additionally, the Department observes that CCCFNA's contention that mixed-wax candles are not used for the same purpose, such as giving off a cleaner burn, is not supported by independent scientific evidence. Although CCCFNA and another respondent, Merchandisers, point to news articles and other studies as evidence that mixed-wax candles do not give off as much soot as petroleum wax candles, the Department notes that the submitted news articles neither are supported by scientific evidence nor specifically state that petroleum wax candles give off more soot. See Bed Bath and Beyond's New Factual Information Submission, at Exhibits 7, 9, and 10. Additionally, the Department notes that the submitted reports, Black Soot Deposition and Waxes and Related Materials, do not identify the use of petroleum wax candles as a health concern. In fact, the Black Soot Deposition report, which identifies soft wax, that contains unsaturated hydrocarbons, makes no mention of petroleum wax as a source for black soot deposition. Id. at Exhibit 8. Moreover, the Waxes and Related Materials report was a toxicology protocol on waxes, including their use as cosmetic ingredients, but makes no mention of possible toxins or black soot found in either mixed-wax candles as opposed to petroleum wax candles. Id. at Exhibit 11. Furthermore, the Department notes that, in fact, there is another report, the IGI study, which found there is no substantial difference in the burn properties of mixed-wax candles in comparison to petroleum wax candles in similar wax proportions. See Petitioners' February 27, 2006, Rebuttal Comments, at Exhibit 10. The IGI study found that, not only the wax

composition, but numerous other factors (i.e., fragrance composition, wick shape and size, and dye used) contribute to the burn properties of a candle. See Petitioners' February 27, 2006, Rebuttal Comments, at Exhibit 10, p. 4. While CCCFNA and Merchandisers have continued to argue that mixed-wax candles do not share the same use as petroleum wax candles due to their alleged health benefits, the Department finds that, other than news articles, other marketing materials, and some reports, such as the Black Soot Deposition report, that do not demonstrate it, there is no scientific evidence on the record that supports this claim.

Moreover, the Department agrees with Petitioners' claim that both mixed-wax candles and petroleum wax candles are used for aromatherapy. Although Merchandisers submitted in their factual information submission that mixed-wax candles give off a more pleasant scent, the Department notes that, other than their submission of marketing materials, Merchandisers have failed to submit independent evidence that supports this claim. See Bed Bath and Beyond's New Factual Information Submission, at Exhibit 1 (website for Wax Industri Nusantara, which states that "palm candle has the ability to absorb fragrance or essential oil in higher concentration"). In fact, there is other independent evidence on the record that shows that there is not a substantial difference in the fragrance throw of mixed-wax candles and petroleum wax candles and that the demand within the aromatherapy market is not limited to mixed-wax candles. See Petitioners' February 27, 2006, Rebuttal Comments, at Exhibit 10, at p.12 (the IGI study found that a 100 percent petroleum wax candle had the best fragrance throw, with a mixed-wax candle having an intermediate fragrance throw, and a 100 percent vegetable-based wax candle having the worst fragrance throw); Petitioners' LDM Supplemental Response, (January 14, 2005) at Exhibit C (the 1999 Home Fragrances USA Report indicated that there was an increase in demand for candles, specifically scented candles, within the aromatherapy market). Therefore, given the above, the Department finds that, for this final determination, mixed-wax candles and in-scope petroleum wax candles have similar uses.

D. Channels of Trade

Petitioners argue that the Department should continue to find that mixed-wax candles and petroleum wax candles are sold in the same channels of trade, i.e., mass-marketing stores to high-end specialty shops. Since the Preliminary Determination, Petitioners note that it has submitted overwhelming evidence that continues to demonstrate that both mixed-wax candles and petroleum wax candles are sold in the same channels of trade, i.e., bath, body, and beauty stores, spas and salons, specialty stores, natural food retailers, and over the Internet. See id. at 16; Petitioners' February 27, 2006, Submission, at Exhibit 10. Additionally, Petitioners note that, in the Preliminary Determination, the Department appropriately concluded that record evidence submitted by one of the Respondents, CCA, contradicts its claim that only mixed-wax candles are sold in spas and similar health-oriented retailers. See Preliminary Determination, 71 FR at 32042. Therefore, Petitioners conclude that the Department, for this final determination, should continue to find that mixed-wax candles and petroleum wax candles are sold in the same channels of trade.

No other party submitted comments addressing this criterion.

Department's Position:

With respect to the channels of trade, the Department agrees with Petitioners that mixed-wax candles and petroleum wax candles are sold in the same channels of trade. Since the Preliminary Determination, only one Respondent, Merchandisers, submitted information regarding whether mixed-wax candles were sold in different channels of trade than petroleum wax candles. While Merchandisers alleged in their new factual information submission that some retailers only sell candles made of natural wax, the Department notes that Merchandisers did not provide any supporting documentation or an indication as to how large a share of the trade this observation covered. See Bed, Bath, and Beyond's New Factual Information Submission, (June 23, 2006) at 12. Additionally, Merchandisers also alleged that retailers market the environmental and health benefits of mixed-wax candles. However, the Department notes that, while Merchandisers submitted some advertisements marketing the health benefits from mixed-wax candles, this does not establish that mixed-wax candles are sold in different channels of trade, or the extent to which this phenomenon exists throughout the trade as well. Id. at Exhibit 4 (website from Organic Candle Co., which states that paraffin wax is toxic and carcinogenic, while vegetable-based wax candles offer a cleaner and healthier alternative) and Exhibit 6 (advertisement for Cargill's Nature Wax that states this kind of wax allows retailers to meet rising expectations for products that preserve the quality of the environment). Although the Organic Candle Co.'s website notes that the U.S. Food and Drug Administration ("FDA")'s *Polar Compounds in Fragrances of Consumer Products* noted that fragrance oils, which are in both mixed-wax candles and petroleum wax candles, contain chemicals listed on the Environmental Protection Agency's hazardous waste list, the Department notes that there is no discussion on this website about the FDA finding that mixed-wax candles are less toxic than petroleum wax candles. Id. at Exhibit 4, p. 5. As in the Preliminary Determination, the Department finds that these advertisements, while marketing mixed-wax candles or the wax used in mixed-wax candles under a "natural" strategy, are not supported by adequate corroborative evidence that mixed-wax candles are sold in different channels of trade.

Unlike Respondents, who either did not provide further information or the submitted information that was not supported by corroborative evidence, the Department finds that Petitioners have submitted information on the record demonstrating that mixed-wax candles are sold in the same channels of trade as petroleum wax candles. Specifically, the Department notes that Petitioners submitted photographs of displays from various retailers, including Target; Walmart; Kohls'; and Bed Bath and Beyond; which shows that candles are sold side-by-side without indication of health benefits and wax content. See Petitioners' New Factual Information Submission, at Exhibit 4. The Department notes that these photographs of displays from various retailers, including a previously submitted survey of retailers by Petitioners, are corroborated by the Spa and Industry Salon Report, which states that both mixed-wax candles and petroleum wax candles are sold within the spa and salon industry. See Petitioners' February 27, 2006, Rebuttal Comments, (February 27, 2006) at Exhibit 14; CCA's February 15, 2006, Comments, (February

15, 2006) at Exhibit 26, pp. 32-35. Moreover, the Department notes that the fact that the displays show that candles are sold side-by-side without indication of their wax content corroborates previous statements that manufacturers rarely indicate the wax composition contained within the specific candle. See Petitioners' February 15, 2006, Comments, at Exhibit 13. Accordingly, the Department finds that the record evidence shows that mixed-wax candles and petroleum wax candles are sold in the same channels of trade without distinction regarding the wax content of the candle or any potential health or environmental benefits.

E. Advertising/Display

Petitioners argue that the Department should continue to find that mixed-wax candles and petroleum wax candles are advertised and displayed in similar manners. Specifically, Petitioners state that, in the Preliminary Determination, the Department was correct to find that advertisements submitted by Respondents do not show that mixed wax candles are marketed based on their alleged health benefits. See Preliminary Determination, 71 FR at 32042. The advertisements submitted by Respondents were for 100 percent vegetable-based wax candles, which are not mixed-wax candles. While Respondents continue to argue that mixed-wax candles are advertised and displayed as environmentally-friendly, which petroleum wax candles never are, Petitioners note that the record evidence does not demonstrate this claim. Specifically, Petitioners note that they submitted a photograph of the label of a petroleum wax candles, which states: "{E}njoy this candle with knowledge that you are selecting the finest, cleanest, environmentally-friendly.... {composed of} top grade, pure, solid, paraffin wax." See Petitioners' New Factual Information Submission, at 14 and Exhibit 13.

Additionally, Petitioners argue that Respondents' claim that the ITC's recognition in the ITC Second Sunset Review that there is a growing consumer demand for "cleaner-burning candles" using other waxes does not conclusively establish that mixed-wax candles are advertised and displayed differently. If anything, Petitioners state that this shows that manufacturers were using marketing strategies to create a growing consumer demand for "cleaner-burning candles," which includes petroleum wax candles.

Moreover, Petitioners argue that the Department should continue to find that mixed-wax candles and petroleum wax candles are advertised and displayed in the same manner. Specifically, retailers do not provide any advertising or signs that differentiate the offered candle products by wax content. Petitioners note that, since the Preliminary Determination, they have submitted photographs of retail displays from Kohls, Target, Walmart, Michaels, and Bed, Bath & Beyond, which offered mixed-wax candles and petroleum wax candles for sale in the same display area. See Petitioners' New Factual Information Submission, at Exhibit 4. Accordingly, Petitioners conclude that the Department, for this final determination, should continue to find that mixed-wax candles and petroleum wax candles are advertised and displayed in virtually the same manner.

Merchandisers claim that mixed-wax candles give off a more subtle and pleasant scent, impart an attractive opaque or crystalline look to the candle, and hold their shape better than do petroleum wax candles. These qualities, according to Merchandisers, meet the needs of consumers who typically buy candles based on the four factors of scent, color, cost and shape. Therefore, Merchandisers argue that mixed-wax candles are of higher quality and as such, are advertised and displayed as environmentally friendly, healthy, and natural.

In rebuttal, Petitioners point out that they have submitted photographs of product displays of certain retailers, which show that petroleum wax candles and mixed-wax candles are displayed in the same manner.

Department's Position:

With respect to advertising and display, the Department continues to find for the final determination that the record indicates that advertising and display appear to be virtually the same for mixed and petroleum wax candles. One of the Respondents, Merchandisers, continues to argue that mixed-wax candles are advertised and displayed as environmentally friendly and natural, which petroleum wax candles never are. As support for its argument, Merchandisers submitted website advertisements. However, the Department notes there is record evidence that shows that petroleum wax candles also are advertised and displayed as being environmentally friendly. See Petitioners' New Factual Information Submission, at Exhibit 13. While Merchandisers have argued that, the ITC Second Sunset Review shows there is growing consumer demand for mixed-wax candles the Department finds that the marketing by manufacturers of petroleum wax candles as environmentally-friendly shows that this consumer demand for environmentally-friendly candles includes both mixed-wax candles and petroleum candles. As in the Preliminary Determination, the Department finds that this marketing strategy of advertising mixed-wax candles as environmentally-friendly does not demonstrate that mixed-wax candles are advertised differently than petroleum wax candles.

Additionally, the Department finds that the majority of the evidence on the record does not establish that mixed-wax candles as a rule are displayed differently than petroleum wax candles. As noted by Merchandisers and the 2005 Unity Market Report, consumers typically base their purchase upon the following criteria: scent, color, cost, and shape. See Amscan, Inc.'s Case Brief, (July 7, 2006) at 12; Petitioners' February 27, 2006, Rebuttal Comments, at Exhibit 12. While Merchandisers argue that consumers may not usually not be aware of the wax content of the candles they purchase, they can identify mixed-wax candles because these candles are physically distinct from petroleum wax candles. However, as discussed above, the Department finds this argument unpersuasive with respect to display because mixed-wax candles are virtually indistinguishable from petroleum wax candles. Accordingly, in reviewing the other record evidence, which includes photographs of displays of candles offered for sale at various retailers, the Department finds that mixed-wax candles are displayed in the same manner as petroleum wax candles. Of note is that the submitted pictures of Kohls, Bed Bath & Beyond, and Walmart shows that both in-scope petroleum wax candles and mixed-wax candles, such as the Chesapeake

Bay candles that contain more than fifty-two percent palm oil-based wax, are displayed without any differentiation between these types of candles. See Petitioners' New Factual Information Submission, at Exhibit 4 (Attachments V, VII, VIII, and XI). Therefore, based on the advertisements and submitted copies of displays that show mixed-wax candles, the Department observes that mixed and petroleum wax candles are in general, advertised and displayed in mostly the same manner.

Therefore, given the above, the Department continues to find that the addition of palm and/or other vegetable-based waxes to a petroleum wax candle that results in a mixed-wax candle does not exclude such later-developed mixed-wax candles from the scope of the Order. Mixed-wax candles appear to be indistinguishable from petroleum wax candles based on physical characteristics, (i.e., appearance, feel, and scent). The ultimate purchasers of mixed and petroleum wax candles appear to have the same expectations because it does not appear that consumers can always identify the candle's wax composition. While a few purchasers of mixed-wax candles may base their purchase on the expectation that the candle will provide health benefits, there is no evidence on the record that this is any more than a niche market segment for which insufficient evidence has been presented to override the four key reasons why one buys a candle. Moreover, the evidence on the record indicates that most purchasers base their purchasing decision on the scent of the candle. Both mixed-wax candles and petroleum wax candles are used for the same applications, (i.e., to provide light, scent, and for decorative purposes). Additionally, the channels of trade for mixed-wax candles and petroleum wax candles appear to be largely identical and thus, channels of trade is not dispositive in this case. Similarly, mixed-wax candles and petroleum wax candles are generally advertised and displayed together; therefore, advertisement and display are not dispositive in this case. Finally, there is no information or further comments on the record demonstrating that mixed-wax candles are classified under a different tariff classification or that these candles appear to perform any additional function. Accordingly, the Department finds that the record indicates that mixed-wax candles are of the same class or kind of merchandise as petroleum wax candles and are thus within the scope of the Order, pursuant to section 781(d)(1) of the Act.

Comment 6: Wax Percentage of In-Scope Mixed-Wax Candles

Petitioners argue that for the final determination the Department must find that any mixed-wax candle that contains any amount of petroleum wax is within the scope of the Order. In the Preliminary Determination, the Department recognized that mixed-wax candles are blends of petroleum and palm or other vegetable-based waxes based upon the ITC Second Sunset Review's definition of the domestic like product: "blended candles containing any blend of petroleum and vegetable wax." See Preliminary Determination, 71 FR at 32039 and Footnote 22. However, Petitioners argue that the Department's decision in the Preliminary Determination to limit the types of mixed-wax candles within the scope of the Order as those containing up to 87.80 percent petroleum wax was inappropriate. Petitioners state that there is no proportion of non-petroleum wax content in a candle that is so large that a mixed-wax candle can no longer be considered within the same class or kind of merchandise subject to the Order. Citing to previous

submissions on the record, Petitioners state that petroleum wax candles and mixed-wax candles that contain all types of wax composition are of the same class or kind of merchandise.

Citing to the ITC Second Sunset Review, Petitioners state that the ITC's definition of the domestic like product clearly indicates that all types of mixed-wax candles are within the scope of the Order. In the ITC Second Sunset Review, the ITC specifically examined the physical characteristics, ultimate use, channels of trade, advertising and display of petroleum wax candles and mixed-wax candles. After considering all these factors, Petitioners note that the ITC Second Sunset Review appropriately concluded that all mixed-wax candles are within the domestic like product, which is petroleum wax candles. Additionally, Petitioners point out that the ITC Second Sunset Review recognized that establishing a bright-line distinction based on wax proportions for in-scope products would only result in continued circumvention of the Order. Accordingly, Petitioners state the Department's decision in the Preliminary Determination, to establish that only mixed-wax candles containing up to 87.80 percent non-petroleum wax are within the scope has resulted in continued circumvention. Specifically, Petitioners point to an email that they have submitted from a PRC candle producer that claims to offer for sale a mixed-wax candle containing eighty percent palm wax, which would be labeled as containing ninety percent palm wax. See Petitioners' New Factual Information Submission, at Exhibit 12. This Petitioners contend, clearly demonstrates that the Department's bright-line has resulted in attempts by PRC producers to circumvent the Order by claiming their mixed-wax candles contain more than 87.80 percent non-petroleum wax.

Moreover, Petitioners state that the Department should include all types of mixed-wax candles, regardless of wax content, within the scope of the Order because the candle industry does not distinguish products based on wax content. Petitioners argue that the record evidence demonstrates that mixed-wax candles are not marketed or advertised for sale based upon wax content. Additionally, Petitioners contend, the record of this anticircumvention inquiry does not demonstrate that consumers base their purchase of a mixed-wax candles over a petroleum wax candles based upon wax content or proportion. Moreover, Sherry Everett,[29] a U.S. consultant, stated that "increasing proportions of palm and/or vegetable-based wax does not result in a mixed-wax candles with physical characteristics distinct from a petroleum wax candle." See Petitioner's New Factual Information Submission, at Exhibit 4. Accordingly, Petitioners state that the record evidence of this anticircumvention inquiry demonstrates that there is no distinction between mixed-wax candles and petroleum wax candles, regardless of wax proportion.

Finally, Petitioners contend that the record evidence demonstrates that the Department cannot continue to rely upon the Pier 1 Final Ruling to define a bright-line for what types of mixed-wax candles are within the scope of the Order. See Pier 1 Final Ruling. While the Preliminary Determination stated that there was limited data regarding the wax proportions of mixed-wax

[29] Sherry Everett is an independent consultant within the domestic industry. See Petitioners' February 27, 2006, Rebuttal Comments at Exhibit 8, p. 4.

candles, Petitioners submit that the record now shows that all types of mixed-wax candles are within the scope of the Order. Petitioners state that the Tao Patents describe various types of mixed-wax candles in varying proportions, ranging from candles containing 51 percent up to 99 percent vegetable-based wax. See Petitioners' Case Brief, at Exhibit 1. Moreover, Petitioners note that the rights to the types of mixed-wax candles described within the Tao Patents have been obtained by Cargill, which demonstrates that these types of mixed-wax candles have been commercially produced. See Petitioners' New Factual Information Submission, at Exhibit 5. Furthermore, Petitioners note that Sherry Everett, who used to work for IGI[30], indicated that mixed-wax candles containing up to 99 percent vegetable-based wax have been recommended by IGI for commercial development by the candle industry. Id. at Exhibit 4. Therefore, Petitioners conclude that the record evidence shows that mixed-wax candles containing any amount of petroleum wax are commercially available and thus are, of the same class or kind of merchandise as petroleum wax candles.

According to CCA, the Department's definition that mixed-wax candles that are later-developed merchandise and argue candles containing less than 50 percent petroleum wax and up to 87.80 percent vegetable-based wax is arbitrary. CCA contends that the Department's percentage criteria fails because it does not explain how a candle containing as little as 12.20 percent petroleum wax can be properly characterized as a petroleum wax candle subject to the Order. According to CCA, a closer consideration of the Pier 1 Final Ruling shows that the Department found that the STR test used to determine the 87.80 percent vegetable-based wax content was found to not be a reliable representation of the actual petroleum content of the candle under review. Instead, the Department used a SEA test to determine the vegetable-based wax content. However, CCA notes, the SEA test relied upon by the Department is redacted from the Pier 1 Final Scope Ruling. Therefore, CCA argues, the indeterminate nature of the upper limit for the vegetable-based wax content of a mixed-wax candle underscores the failure of the Department to identify the specific technological advancement that has created this later developed product.

CCCFNA claims that, because there are significant differences between mixed-wax candles and petroleum wax candles, mixed wax candles are not within the scope of the Order. Even if mixed-wax candles were in-scope products, CCCFNA aruges, it cannot reasonably be concluded that any amount of petroleum wax makes a candle "a petroleum wax candle made of petroleum wax." CCCFNA counters Petitioners' argument that a vegetable-based wax candle containing any trace of petroleum wax (i.e., 0.1 percent) should fall within the scope of the Order, as was found in the ITC Second Sunset Review. CCCFNA urges the Department to continue to find, as in the Preliminary Determination, that it is not bound by the findings of the ITC Second Sunset Review. Additionally, CCCFNA alleges that there is no evidence that candles produced according to the Tao Patents have ever been sold. Moreover, in cases where petroleum wax is a minor element of a mixed-wax candle, CCCFNA argues that the petroleum wax is but an additive and does not define the candle.

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[30] IGI is a involved in the manufacturing of petroleum wax and vegetable wax blends sold to the candle industry as well as other smaller industry segments. See Petitioners February 27, 2006, Comments, at Exhibit 8.

Petitioners rebut that Respondents' argument that the Department cannot find that mixed-wax candles containing less than fifty percent petroleum wax are later-developed merchandise is disingenuous. Specifically, Respondents are requesting that the Department deliberately ignore the findings of the ITC Second Sunset Review, which is that the domestic like product includes all candles containing any amount of petroleum wax. However, Petitioners note that Respondents' argument, which is that the Department should rely on the definition of the domestic like product from the ITC Final Report, is without merit because that definition no longer bears weight for this Order.

Additionally, Petitioners argue that the Department's finding in the Preliminary Determination that only mixed-wax candles containing up to 87.80 percent palm and/or vegetable-based wax are later-developed merchandise is not based on any industry standard. Specifically, Petitioners argue that if the Department wants to consider all the information on the record then there is evidence that describes mixed-wax candles containing up to 99 percent vegetable-based wax. In fact, Petitioners point out that the Tao Patents specifically describe a type of mixed-wax candle containing 96 percent vegetable-based wax. Accordingly, Petitioners conclude that there is evidence on the record that there are types of mixed-wax candles that are commercially available, which contain more than 87.80 percent palm and/or vegetable-based wax.

Department's Position:

The Department disagrees with Respondents' argument that, for the final determination, only mixed-wax candles containing fifty percent or more petroleum wax should be within the scope of the Order. The Department notes, as discussed within the entirety of Comment 5, no respondent submitted any information indicating that mixed-wax candles above a certain percentage are sufficiently different from other mixed-wax candles and petroleum wax candles. Specifically, no Respondent submitted any evidence demonstrating that mixed-wax candles above a certain percentage: (1) are distinguishable by their physical characteristics; (2) that their purchaser has different expectations; (3) have different uses; and (4) are sold in separate channels of trade and are advertised/displayed in a different manner. However, the Department recognizes that there may be a type of mixed-wax candle containing a given amount of vegetable-based wax that is sufficiently different from petroleum wax candles. At this time, however, the Department notes that the record evidence does not demonstrate that "increasing proportions of palm and/or vegetable-based wax... result in a mixed-wax candles distinct from a petroleum wax candle. See Petitioner's New Factual Information Submission, at Exhibit 4. Accordingly, the Department finds that the totality of the record evidence does not demonstrate that mixed-wax candles are distinct from petroleum wax candles because, as discussed above, the record demonstrates that mixed-wax candles are of the same class or kind of merchandise as petroleum wax candles. See the entirety of Comment 5.

Additionally, the Department agrees with Petitioners' argument that, for the final determination, any mixed-wax candle containing any amount of petroleum should be considered within the scope of the Order. While the Pier 1 Final Scope Ruling, which was used to establish that

mixed-wax candles containing up to 87.80 percent non-petroleum wax were within the scope of the Order, was the best available information at the time of the Preliminary Determination, the Department now finds that there is further information on the record that establishes that there are mixed-wax candles in proportions higher than 87.80 non-petroleum wax. Specifically, the Department notes that Petitioners have submitted the Tao patents, which describe a type of mixed-wax candle containing 96 vegetable-based wax and 4 percent petroleum wax. While one of the Respondents, CCCFNA, contends that there is no indication that this type of mixed-wax candle has been commercially produced, the Department notes that Cargill has obtained the rights to the types of mixed-wax candles described within the Tao Patents. See Petitioners' New Factual Information Submission, at Exhibit 5. Furthermore, the Department notes that there is other record evidence that shows it may be possible to produce a mixed-wax candle in commercial quantities containing up to 99 percent non-petroleum wax. See Petitioners' New Factual Information Submission, at Exhibit 4. Therefore, the Department finds that since the Preliminary Determination, there is other record evidence that indicates that there are mixed-wax candles that may and/or have been produced in quantities containing more than 87.80 percent non-petroleum wax.

Moreover, the Department disagrees with CCCFNA's contention that, if mixed-wax candles are within the scope of the Order, the highest percentage of non-petroleum wax contained within mixed-wax candles should be from between 55 to 65 percent. Although the Department recognizes that CCCFNA has submitted record evidence demonstrating that there are mixed-wax candles being produced by PRC manufacturers in this range, the Department notes that, as discussed above, there is other information on the record demonstrating that there are mixed-wax candles in proportions higher than this range. In fact, the Department observes that Petitioners have submitted an email that indicates that PRC candle- producers are manufacturing mixed-wax candles already at proportions of up to 80 percent non-petroleum wax. See Petitioners' New Factual Information Submission, at Exhibit 12. Accordingly, the Department finds that CCCFNA's suggestion that, if mixed-wax candles are within the scope of the Order, then the mixed-wax candles subject to the Order should only be candles containing up to 65 percent non-petroleum wax is contradicted by other record evidence.

Therefore, given the above, the Department finds that, for this final determination, mixed-wax candles containing any amount of petroleum wax are within the scope of the Order because there is record evidence demonstrating that mixed-wax candles are produced in proportions higher than 87.80 percent of vegetable-based wax. See Petitioners' Case Brief, at Exhibit 1; Petitioners' New Factual Information Submission, at Exhibits 4 and 5. Moreover, no party has submitted any evidence indicating that mixed-wax candles containing vegetable-based wax above a certain percentage are distinct from other mixed-wax candles and petroleum wax candles.

However, the Department recognizes that there may be types of mixed-wax candles containing a given amount of vegetable-based wax that places these mixed-wax candles outside the scope of the Order. Accordingly, the Department notes that interested parties may submit a scope request,

pursuant to 351.225 of the Department's regulations, regarding whether a certain type of mixed-wax candle is outside the scope of the Order.

Comment 7: Retroactive Application of Suspension of Liquidation

Merchandisers claim that the Department does not have the authority to apply its findings from the Preliminary Determination or the final determination in this proceeding retrospectively.[31] According to Merchandisers, the retroactive application of the determinations in this anticircumvention inquiry is a complete departure from the Department's long-standing interpretation of the scope of this Order. Therefore, Merchandisers argue that this is an abuse of discretion by the Department. See McDonald v. Watt, 635 F.2d 1035 (5th Cir. 1981) ("McDonald") (the court found that even if an agency's determination that is reasonable as applied prospectively, the retroactive application of the determination is an abuse of discretion).

Additionally, Merchandisers claim that the anticircumvention statute, pursuant to section 781 of the Act, is completely silent as to the suspension of liquidation, the collection of deposits and the retroactive applicability of anticircumvention determinations. Nevertheless, the Department's regulations, pursuant to section 351.225(l)(2), provide that the Department will "instruct, upon an affirmative preliminary or final circumvention determination (whichever comes first), CBP to suspend from liquidation and require cash deposits all entries made on and after the date of initiation of the inquiry." According to Merchandisers, it is a fundamental principal of administrative law that an agency may only enact regulations to the extent such powers have been delegated to it by Congress. Therefore, Merchandisers construe that the Department has exceeded its delegated authority, particularly with respect to retroactivity, by application of its regulations.

Furthermore, Merchandisers argue that interested parties were not provided adequate notice of the regulatory provisions under which the Department applied the retrospective effect for its determination. According to Merchandisers, the language of the Department's current regulations was changed from that which was proposed in response to comments from domestic interested parties. Merchandisers claim that the Department's regulations as enacted are opposite to the regulations proposed by the Department and upon which parties submitted comments. See Notice of Final Rule: Antidumping Duties, Countervailing Duties, 62 FR 27,296, 27328 (May 19, 1997) (citing the Department's statement that "{it} revised {the regulation} to make the suspension of liquidation, when ordered in conjunction with a preliminary or final affirmative ruling, effective as to {all} entries of affected merchandise made on or after the date of initiation of the scope inquiry") ("Final Rule"). Merchandisers argue that this dramatic change in language was adopted after the "notice and comment" process, and therefore, interested parties were not given effective notice of the new regulation and denied an opportunity to comment. According

[31] Since the Preliminary Determination, the Department has issued instructions to the U.S. Customs and Border Protection ("CBP") to suspend liquidation on all entries made on or after February 25, 2005, the date of initiation, and to collect cash deposits on all such unliquidated entries.

to Merchandisers, while an agency need not adopt a rule identical to that which was proposed, the new rule must at least be a logical outgrowth of the proposed rule. See National Ass'n of Psychiatric Health Systems v. Shalala, 120 F. Supp. 2d 33 (D.D.C., 2000) (the court found that a final rule is considered a "logical outgrowth" of the proposed rule if at the "germ" of the outcome is found in the original proposal). Nonetheless, Merchandisers claim that the Department's change in language resulted in a new regulation, and therefore, section 351.225(l)(2) of the Department's regulations is a wholly different regulation from what was originally proposed and is invalid.

SKW argues that the retroactive application of dumping duties with regard to the instant anticircumvention inquiry is punitive towards U.S. companies, which have previously relied upon the Department's scope rulings. Citing to Landgraf, Princess Cruises, Chevron, and FAG Italia, SKW argues that Congress has not given the Department the authority to impose retroactive antidumping duties in an anticircumvention inquiry. See Landgraf v. USI Film Products, 511 US 244, 254 (1994) ("Landgraf") (the Court found that Congress must make its intention to enable the Department to do so clear to ensure that the "Congress has determined that the benefits of retroactivity outweigh the potential for disruption or fairness"); Princess Cruises, Inc. v. United States, 397 F.3d 1358, 1362 (Fed. Cir. 2005) ("Princess Cruises") (the CAFC found that "a rule or regulation will not be applied retroactively unless the agency clearly intended that the rule have retroactive effect and Congress authorized retroactive rulemaking"); Chevron USA Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-44 (1984) ("Chevron") (the CAFC found that with regards to an agency's legislative interpretation, the first question that must be answered is whether Congress has spoken to the precise question at issue); and FAG Italia S.p.A. v. United States, 291 F.3d 806, 815 (Fed. Cir. 2002) (the CAFC found that "in the absence of clear direction from the statute, we then ask whether there is ambiguous statutory language that might authorize the agency to fill a statutory gap"). SKW argues that even if Congress did not expressly grant the Department the power to retroactively apply anticircumvention duties, there is no room for interpreting a potential gap left in the statute. SKW contends that, as there is no ambiguity in the statute providing the Department any authority to interpret the statute to allow for the retroactive imposition of antidumping duties in an anticircumvention inquiry, any such action is unreasonable and contrary to law.

Additionally, SKW states that, in the case of "critical circumstances," where retroactive authority is expressly stated in the statute, the statute does not state that this provision is also applied to anticircumvention inquiries. Citing to Brown, SKW argues that Congress's inclusion of certain language in one section of the statute but omitted in another section of the statute presumes that Congress intentionally excluded it. See Brown v. Gardner, 513 U.S. 115, 120 (1994) ("Brown") (the Court found that "where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion"). Moreover, SKW points out that in subsequent amendments to the retroactive imposition of antidumping duties for "critical circumstances" in an antidumping duty investigation, no subsequent provision for retroactivity was ever included for anticircumvention inquiries.

Furthermore, SKW contents that the Department has not only ignored its legislative history and statutory regulations, but also its own findings regarding these regulations. Specifically, the Department has previously proposed that retroactively suspending liquidation and imposing cash deposits in anticircumvention inquiries would unfairly punish those parties who circumvented an order without knowledge. See Notice of Proposed Rulemaking and Request for Public Comments; Antidumping Duties; Countervailing Duties, 61 FR 7308, 7322 (February 27, 1996). As in Landgraf and NTN Bearing, SKW stresses that antidumping laws are remedial rather than punitive and that in the instant proceeding, retroactive application of dumping duties is punitive rather than remedial. See Landgraf, 511 US at 267 (the court found that the discouragement of retroactive action properly "restricts governmental power by restraining and potentially vindictive legislation"); and NTN Bearing Corporation v. United States, 74 F.3d 1204, 1208 (Fed. Cir. 1995) (the Court found that "antidumping laws by themselves are "remedial not punitive").

Finally, SKW argues that, assuming the Department has the authority to retroactively impose antidumping duties, the Department has failed to provide interested parties the appropriate advance notice of its intent to do so. Specifically, SKW notes that the Initiation Notice did not place the public on notice of the Department's intent to impose antidumping duties retroactive to the date of initiation of the inquiry. See Initiation Notice, 70 FR at 10965. Rather, the Initiation Notice only states that the suspension of liquidation and the assessment of cash deposits will operate prospectively from the date of the Department's affirmative preliminary determination. Additionally, SKW claims that the only notice provided to the public regarding the Department's retroactive imposition of antidumping duties was the Department's March 10, 2005, letter, which had a limited circulation. See Letter to Interested Parties from Alex Villanueva, Program Manager, Office 9, Import Administration, (March 10, 2005) ("March 10, 2005, Letter"). Accordingly, SKW states that the public did not receive notice that any decision would result in the imposition of antidumping duties dating back to the Initiation Notice until the publication of the Preliminary Determination.

CCA also objects to such retroactivity, noting that as in prior scope rulings the Department has consistently ruled that mixed-wax candles are outside the scope of the Order, the Department should not apply any affirmative determination of circumvention retroactively to the date of the initiation of the scope inquiry. According to CCA, importers were entitled to rely on prior scope rulings, which have never been withdrawn or revoked, two of which were issued in May 2005, while the instant anticircumvention inquiry was pending. CCA contends that, should the Department hold to the Preliminary Determination that its regulations governing scope rulings, 351.225(d) and 351.225(k)(1) of the Department's regulations, do not apply to anticircumvention inquiries, then there is equally no basis to apply the portion of those regulations governing suspension of liquidation.

In their rebuttal, Petitioners state that Respondents' assertion that Congress did not give the Department the authority to impose antidumping duties, pursuant to an affirmative finding of circumvention under section 781 of the Act, is incorrect. Specifically, Congress provided that

the anticircumvention provision for later-developed merchandise, pursuant to section 781(d) of the Act, stipulates that the Department "may not exclude a later-developed merchandise from... the antidumping duty order." Based on this, Petitioners state that the Department has the statutory authority to impose antidumping duties in anticircumvention inquiries dating back to the implementation of the Order. However, Petitioners note that the Department, in section 351.225(l)(2) of the Department's regulations, has limited this authority to only include application of antidumping duties starting "on or after the date of initiation."

Additionally, Petitioners argue that Respondents' contention that the presence of a retroactive application in the "critical circumstances" provision of the statute is evidence that Congress did not intend for the anticircumvention provision to be applied retroactively is irrelevant. Petitioners state that the "critical circumstances" provision and the anticircumvention provision are two separate provisions and serve entirely different purposes. While the "critical circumstances" provision specifically states that there is a retroactive application, Petitioners argue that because the anticircumvention provision is on an existing antidumping duty order, the retroactive effect of this provision is implicit in the statute.

Finally, Petitioners state that contrary to Respondents' argument, the Department did provide the public sufficient notice that, in the event of an affirmative preliminary determination, antidumping duties would be imposed dating back to the date of initiation. Petitioners argue that Respondents have misinterpreted the Notice of Initiation, which stated that pursuant to section 351.255(l)(2) of the Department's regulations, in the event of an affirmative preliminary determination, the Department would impose antidumping duties "on or after the date of initiation." See Notice of Initiation, 70 FR at 10964-10965. Moreover, Petitioners state that Respondents' argument that the public notice of the retroactive application was untimely is incorrect. Specifically, Petitioners note that the Department's March 10, 2005, Letter, which Respondents' allege was not issued to the entire public, provided the same information on the retroactive application of antidumping duties as the Notice of Initiation. Accordingly, Petitioners argue that the public had ample notice of the retroactive application of antidumping duties prior to the Preliminary Determination of this anticircumvention inquiry.

Department's Position:

The Department disagrees with Respondents' argument that the Department does not have the authority to retroactively apply suspension of liquidation for this anticircumvention inquiry. While the Department recognizes that the statute, pursuant to section 781 of the Act, does not address suspension of liquidation, the collection of deposits, or retroactive applicability, it does not preclude the Department from doing such. Specifically, the Department notes that the purpose for enacting antidumping regulations, as established in the Preamble of the Department's regulations is to:

> translate the principles of the implementing legislation into specific and predictable rules, thereby facilitating the administration of these laws and

> providing greater predictability for private parties affected by these laws; simplify and streamline the Department's administration of antidumping and countervailing duty proceedings in a manner consistent with the purpose of the statute and the President's regulatory principles; and codify certain administrative practices determined to be appropriate under the new statute and under the President's Regulatory Reform Initiative.

See Notice of Final Rule, 62 FR at 27296. As specified in the Preamble, the purpose of the Department's antidumping regulations was to "translate the principles of the implementing legislation into specific and predictable rules." While section 781 of the Act does not address the suspension of liquidation, collection of deposits, and the retroactive applicability of such, the Department notes that the principle of section 781 of the Act is "prevention of circumvention of antidumping and countervailing duty orders." See H.R. Conf. Rep No. 576, 100th Cong., 2d Sess. (1988), reprinted in 134 Cong. Rec. H2031, H2303-5 (daily ed. April 20, 1988). By "translating the principles" of section 781 of the Act into "specific and predictable rules" through the Department's regulations for anticircumvention inquiries, pursuant to section 351.225 of the Department's regulations, the Department was attempting to ensure "prevention of circumvention." Id. Accordingly, the Department finds that just because the statute does not address suspension of liquidation, collection of deposits, and the retroactive applicability of such, there is no authority to suspend liquidation, collect deposits, and apply such retroactively.[32]

The Department finds that it has the authority to suspend liquidation, collect cash deposits, and retroactively apply such in anticircumvention inquiries, pursuant to section 351.225 of the Department's regulations, because by doing such it is carrying out the principles of the statute. Specifically, this longstanding understanding is clearly enacted in section 351.225(l)(2) of the Department's regulations, which states: "If liquidation has not been suspended, the Secretary will instruct the Customs Service to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry." The Department notes that the provisions of section 351.225(l)(2) of the Department's regulations do not state that the Department "may" "suspend liquidation" for entries "on or after the date of initiation," the regulations state that the Department "will" do such. While the Department recognizes that Respondents are correct that section 351.225(l)(2) of the Department's regulations specifies such for a scope inquiry, the Department notes that section 351.225 of the Department's regulations also specifies regulations for later-developed merchandise anticircumvention inquiries. Moreover, the Department finds that, in prior cases, most recently in Fish Fillets, it has suspended liquidation and required a cash deposit of antidumping duties dating back to the date of initiation of the respective anticircumvention inquiry. See Notice of

[32] The Department also observes that the statute does not address scope rulings. The Department notes this because Respondents have argued that due to prior scope rulings mixed-wax candles cannot be within the scope of the Order. Accordingly, if Respondents were correct that the Department does not have the authority to retroactively apply antidumping duties because the statute does not address this, then the Department would also not have the authority to conduct scope rulings.

Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry: Circumvention and Scope Inquiries on Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 71 FR 38608, 38610 (July 7, 2006) ("Fish Fillets"); Notice of Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order: Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy, 63 FR 18364, 18366 (April 15, 1998); Notice of Affirmative Final Determination of Circumvention of Antidumping Duty Order: Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy, 63 FR 54672, 54675-6 (October 13, 1998). The Department notes that, in each of these cases, the Department's findings were not challenged. Accordingly, the Department finds that for this final determination it has the authority, pursuant to section 351.225(l)(2) and (3) of the Department's regulations, to suspend liquidation and require a cash deposit of antidumping duties dating back to the date of initiation.

Additionally, the Department disagrees with Respondents that it has failed to provide interested parties the appropriate advance notice of its intent to retroactively impose antidumping duties. Specifically, the Department notes that, in the Initiation Notice, it specifically stated: "In accordance with section 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection ("CBP") to suspend liquidation and require a cash deposit of estimated duties on the merchandise." See Initiation Notice, 70 FR at 10964. Additionally, pursuant to section 351.225(e) and (f) of the Department's regulations, the Department published its Initiation Notice in the Federal Register on March 7, 2005, and also, notified all parties on the Department's scope service list of the Initiation Notice. Moreover, the Department also placed a factsheet on its website, which also stated that, as in the Initiation Notice: "In accordance with section 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct CBP to suspend liquidation and require a cash deposit of estimated duties on the merchandise." See http://ia.ita.doc.gov/newitems.html. Furthermore, on March 10, 2005, the Department issued a letter to all interested parties that stated: "In accordance with section 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct CBP to suspend liquidation and require a cash deposit of estimated duties on the merchandise from the date of initiation." See March 10, 2005, Letter, at 2.

The Department finds that it had given interested parties appropriate notice, in the event of an affirmative Preliminary Determination, of its intent to impose antidumping duties dating back to the date of initiation because the Department: (1) published the Initiation Notice, which notified the public of the Department's intent, pursuant to section 351.225(l)(2) of the Department's regulations; (2) served all interested parties with the Initiation Notice, which notified them of the Department's intent, pursuant to section 351.225(l)(2) of the Department's regulations; (3) placed a factsheet on its website, and to which the public had access, which notified them of the Department's intent, pursuant to section 351.225(l)(2) of the Department's regulations; and (4) issued the March 10, 2005, Letter to all interested parties, which notified them of the Department's intent, pursuant to section 351.225(l)(2) of the Department's regulations.

Accordingly, the Department finds that the public was given adequate notice of the Department's intent, in the event of a Preliminary Determination, to impose antidumping duties dating back to the date of initiation, pursuant to section 351.225(l)(2) of the Department's regulations.

Moreover, the Department disagrees with Respondents' argument it should not apply antidumping duties dating back to the date of initiation because of prior scope rulings. While Respondents argue that importers have relied upon prior scope rulings that mixed-wax candles were outside the scope of the Order, the Department notes, as discussed in Comment 2, that, as stipulated in the Pier 1 Final Scope Ruling, scope rulings and anticircumvention inquiries are separate proceedings and address separate issues. See Pier 1 Final Scope Ruling, at 10-11. The Department notes, in response to Respondents' argument, that sections 351.225(d) and 351.225(k)(1) of the Department's regulations do not apply to anticircumvention inquiries, and that this is not relevant to the application of applying antidumping duties retroactively, pursuant to section 351.225(l)(2) of the Department's regulations. While anticircumvention inquiries are governed by different factors that make each inquiry's analysis separate from scope rulings, the Department notes that the regulations that guide anticircumvention inquiries are also provided in section 351.225 of the Department's regulations. Indeed, in the Preamble of the Department's regulations, the Department specifically noted that "the term scope ruling includes rules relating to anticircumvention." See Final Rule, 62 FR at 27329. Accordingly, section 351.225(l)(2) of the Department's regulations does apply to both scope rulings and anticircumvention inquiries. Moreover, as noted above, the Department has previously applied, in prior anticircumvention determinations, antidumping duties dating back to the date of initiation, pursuant to section 351.225(l)(2) of the Department's regulations. Accordingly, the Department finds that, while anticircumvention inquiries and scope rulings are separate proceedings, section 351.225(l)(2) of the Department's regulations governs both.

Furthermore, SKW's argument that the Department cannot apply antidumping duties retroactively because this provision is not provided for under the "critical circumstances" provision for anticircumvention inquiries is irrelevant. The Department notes that anticircumvention inquiries and "critical circumstances" are separate provisions, and thus, the regulations of "critical circumstances" do not apply in anticircumvention inquiries.

Therefore, given the above, the Department finds that in the Preliminary Determination the Department had the regulatory authority, pursuant to section 351.225(l)(2) of the Department's regulations, to suspend liquidation and collect cash deposits on entries dating back to the date of initiation of this anticircumvention inquiry.

Finally, the Department further notes that it now finds that mixed-wax candles containing an amount of non-petroleum wax greater than 87.80 percent are within the scope of the Order, as discussed above in Comments 5 and 6. Accordingly, the Department is now suspending liquidation for all entries of mixed-wax candles containing any amount of petroleum wax that were entered, or withdrawn from warehouse, for consumption on or after February 25, 2005, the

date of initiation of this anticircumvention inquiry, pursuant to section 351.225(l)(3) of the Department's regulations. Section 351.225(l)(3) of the Department's regulations states:

> If the Secretary issues a final scope ruling under either paragraph (d) or (f)(4) of this section, to the effect that the product in question is included within the scope of the order, any suspension of liquidation under paragraph (l)(1) or (l)(2) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and to require a cash deposit of estimated duties at the applicable rate, for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry.

See section 351.225(l)(3) of the Department's regulations. Because the Department, in the Preliminary Determination, did not suspend liquidation for those entries of mixed-wax candles containing an amount of non-petroleum wax greater than 87.80 percent, the Department is hereby suspending liquidation for these mixed-wax candles dating back to the date of initiation, pursuant to section 351.225(l)(3) of the Department's regulations. Therefore, for the final determination, the merchandise subject to suspension of liquidation are mixed-wax candles containing any amount of petroleum wax.

Therefore, the Department finds that for this final determination it has the regulatory authority, pursuant to section 351.225(l)(3) of its regulations, to suspend liquidation and collect cash deposits on entries dating back to the date of initiation of this anticircumvention inquiry.

Comment 8: Applicability of the Circumvention Statute in this Inquiry

Petitioners argue that Respondents' proposition, in the public hearing held May 2006, that the appropriate forum for addressing the PRC candle industry's circumvention of the Order through exportation of mixed-wax candles is by filing a new antidumping petition, not an anticircumvention inquiry, is flawed. According to Petitioners, the flaw in Respondents' argument is that any product that is allegedly circumventing an antidumping duty order has not been explicitly subject to a LTFV investigation. However, Petitioners argue, if such a product had been subject to a LTFV investigation, then that product would be subject to the antidumping duty order and there would be no need for an anticircumvention inquiry.

Based on the arguments by Respondents at the hearing, Petitioners state that Respondents are requesting that the Department ignore the provisions for an anticircumvention inquiry, pursuant to section 781 of the Act. By ignoring section 781 of the Act, the Department would require respective domestic industries, which are suffering from circumvention, to file antidumping petitions, while permitting foreign producers the ability to deliberately evade the antidumping duty order.

Petitioners argue that Respondents have submitted such a proposal because the record evidence clearly demonstrates that mixed-wax candles are later-developed merchandise and subject to the Order, pursuant to section 781(d) of the Act. Additionally, Petitioners note that PRC candle producers have attempted to circumvent the Order for a number of years by primarily exporting mixed-wax candles. This has resulted, Petitioners argue, as demonstrated by recent CBP data, in imports of candles subject to the Order falling to less than five percent of total imports from the PRC in 2004. See ITC Second Sunset Review, at IV-2; Petitioners' Case Brief, at 74.

Additionally, Petitioners state that Respondents have requested that the Department ignore the circumvention provisions because the Respondents never considered the other alternative, which is that PRC candle producers stop dumping candles in the U.S. market. Instead of requesting that the Department ignore the circumvention provisions, Respondents could request an administrative review, which would possibly result in a de minimis antidumping margin, if there is no dumping. However, Petitioners state that Respondents have not considered such an alternative because, in fact, until this anticircumvention inquiry was initiated PRC candle producers continued to extensively export both mixed-wax candles and petroleum wax candles to the United States.

Moreover, Petitioners argue that Respondents' reasoning for the Department to ignore the circumvention provisions, which is that it would allow the domestic industry to "game the system," is unreasonable. According to Respondents, the Department's use of the circumvention provisions, as in this anticircumvention inquiry, would allow the domestic industry to purposely not include products within the scope of the LTFV investigation. By not including certain products within the scope of the LTFV investigation, the domestic industry would use the circumvention provisions to include certain products within the scope in the future. However, Petitioners state that Respondents' argument that the domestic industry would purposely leave certain products out of the scope of an LTFV investigation after spending years undergoing such a process, is without credibility. Specifically, Petitioners note that this anticircumvention inquiry involves a product, mixed-wax candles, that was not in commercial production in either the PRC or the United States at the time of the LTFV investigation. Since the LTFV investigation, Petitioners state that mixed-wax candle have gone from being non-existent to accounting for almost all U.S. imports of candles from the PRC. Therefore, Petitioners conclude that the Department should use the circumvention provisions, pursuant to section 781(d) of the Act, to find that mixed-wax candles are later-developed merchandise for this final determination.

Rebutting Petitioners, CCA reasserts that it was Petitioners who defined the original scope of the Order. Specifically, CCA argues that Petitioners could have included mixed-wax candles in the original petition. Accordingly, CCA contends, this anticircumvention petition is only a means to circumvent an antidumping investigation to determine whether the class or kind of merchandise is being sold at less than fair value and is causing injury to the domestic industry. Additionally, CCA alleges that Petitioners provide no support for their claim that the only reason why the scope of the antidumping petition was framed around petroleum wax candles was to distinguish beeswax candles from all other candles in the market.

Concerning the Petitioners' strong reaction to CCCFNA's suggestion that the Department carefully consider the policy ramifications that an affirmative decision in this anticircumvention inquiry may have on future cases, and the fairness of broadly expanding the plain language of the written scope of the Order, CCCFNA maintains that to impose antidumping duties on a product, economic injury and dumping must be found. Specifically, CCCFNA asserts that it has significant fairness implications to assume that mixed-wax candles, which were previously outside of the scope of the Order, but are now in and thus, covered by the 103.80 percent tariff that applies to petroleum wax candles.

Department's Position:

The Department disagrees with Respondents' argument that the question of whether mixed-wax candles are circumventing the Order should be addressed through an antidumping investigation, not an anticircumvention inquiry. Respondents argue that without finding economic injury and dumping, the Department cannot impose antidumping duties by expanding the scope of the Order. The Department does not agree that these are sufficient reasons to not conduct an anticircumvention inquiry. The Department notes that in fact, economic injury and dumping have already been found on the class or kind of merchandise, petroleum wax candles, which are subject to the Order. In the LTFV investigation, both the Department and the ITC found that petroleum wax candles were being, or likely to be sold, at less-than-fair-value and that the industry was materially injured. See Notice of Final Determination of Sales at Less Than Fair Value: Petroleum Wax Candles from the People's Republic of China, 51 FR 25085 (July 10, 1986) ("LTFV Final"); ITC Final Report, at 1. Additionally, since the LTFV investigation, the Department and the ITC, in the first and second sunset reviews, found that revocation of the Order would likely lead to continuation or recurrence of material injury to the domestic industry. See Notice of Continuation of Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 64 FR 51514 (September 23, 1999); Notice of Final Results of the Expedited Sunset Review of the Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 69 FR 75302 (December 16, 2004); ITC Second Sunset Review, at 1. Accordingly, the Department finds that, contrary to Respondents' argument, the Department has satisfied the threshold for imposing antidumping duties on the class or kind of merchandise, petroleum wax candles, subject to the Order because both economic injury and dumping have been found.

Additionally, the Department disagrees with Respondents' proposition that Petitioners should have filed an antidumping petition, instead of the anticircumvention petition. The Department notes that once economic injury and dumping have been found, pursuant to section 731 of the Act, and an Order has been issued, there are other statutory provisions that address possible circumvention of an existing Order. One of these statutory provisions is for a later-developed merchandise anticircumvention inquiry, pursuant to section 781(d) of the Act. See section 781(d) of the Act. Additionally, the Department notes that the legislative history of section 781(d) of the Act establishes that Congress intended for this section to address situations where the product was not developed at the time of the LTFV investigation, and thus not included with

the antidumping petition. Specifically, the Conference Report on H.R. 3, Omnibus Trade and Competitiveness Act of 1988 states: "The Senate amendment is designed to address the application of outstanding antidumping and countervailing duty orders to merchandise that is essentially the same merchandise subject to an order, but was developed after the original investigation was initiated." See H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. (1988), reprinted in 134 Cong. Rec. H2031 (daily ed. April 20, 1988). Therefore, the Department finds that for this final determination, it is following the statutory provisions, pursuant to section 781(d) of the Act, and the intent of Congress, to address the question of whether mixed-wax candles are later-developed merchandise through an anticircumvention inquiry.

Comment 9: Adverse Facts Available ("AFA")

Petitioners argue that for the final determination the Department must apply AFA to all Respondents because they have withheld sales information. Specifically, Petitioners argue that Respondents have withheld information, which was in their possession, and requested by the Department. Petitioners contend that three of the Respondents, CCA, Target, and CCCFNA, only answered some of the questions contained within the Department's June 2, 2006, letter. Additionally, Petitioners argue, none of the Respondents provided the sales data that was requested by the Department. Petitioners contend that Respondents either stated that the data requested by the Department involved "an enormous task that could not be collected in the time frame" allotted or that they did not retain the requested data. See CCCFNA's New Factual Information Submission, at 2 and Footnote 1; CCA's New Factual Information Submission, at 9.

While Respondents, such as CCA, may not have retained sales data going back to the LTFV investigation, Petitioners state that Respondents, at the very least, could have provided sales data for the last few years. Specifically, Petitioners point out that, since the anticircumvention inquiry was initiated in 2004, Respondents, such as CCA, should have known that sales data would have been requested for 2004 and 2005. Accordingly, Petitioners state that there is no excuse for CCA and the other Respondents' failure to cooperate in this anticircumvention inquiry. By deliberately withholding the requested sales data, Petitioners argue, CCA and the other Respondents have failed to cooperate to the best of their ability for this anticircumvention inquiry.

Accordingly, Petitioners argue that for the final determination the Department must apply total facts available to all Respondents, pursuant to section 776(a)(2) of the Act. Additionally, Petitioners state that, in accordance with section 776(b) of the Act, the Department may apply an adverse inference because all Respondents have failed to cooperate to the best of their ability to comply with the Department's request for the sales information. As in Nippon Steel, Petitioners argue, the Department may apply an adverse inference to the Respondents because the Respondents failed to: (1) notify the Department about the difficulties they were encountering in preparing a timely response; and (2) request assistance from the Department in narrowing the timeframe of the requested data. See Nippon Steel, 337 F. 3d at 1382. It is evident, pursuant to

the findings of Nippon Steel, that the Respondents failed to meet the "best of its ability" standard because they failed to put forth the maximum effort to promptly investigate and obtain the requested information. As such, the Department must apply as an adverse inference that all mixed-wax candles, regardless of wax content, are later-developed merchandise and are the same class or kind of merchandise as petroleum wax candles.

In rebuttal, CCA states that this request must be rejected. Specifically, CCA argues that the Department's June 2, 2006, letter, which requested interested parties to submit additional factual information, was not a questionnaire and cannot be properly characterized as a request for information under section 776(a)(2) of the Act. Additionally, CCA contends that Petitioners did not provide any evidence that demonstrates that the requirements of section 781(d) of the Act were fulfilled. More importantly, CCA notes that the Department did not inform parties of their deficient response and thus parties were not given the opportunity to remedy any perceived deficiencies.

Additionally, CCA argues that there is no evidence that the parties failed to cooperate to the best of their ability in responding to the Department June 2, 2006, letter. Rebutting Petitioners' citation to Nippon Steel, CCA distinguishes this case with Nippon Steel by stating that Nippon Steel was concerned with an administrative review, which resulted in an obligation to maintain such information. In this case, CCA and other Respondents were under no such obligation to maintain sales information. Because the Department has held in prior scope rulings that mixed-wax candles were not within the scope of the Order, CCA and other Respondents had no obligation to retain the detailed data. Finally, CCA argues that there is no corroboration of any information the Department could use as "facts available".

With respect to Petitioners' allegation that AFA should be applied to Respondents, CCCFNA contends that Petitioners' request is factually inaccurate. CCCFNA states that it timely complied with the Department's request to its best ability. Specifically, CCCFNA notes that it submitted new factual information on June 23, 2006, which detailed the highest percentage of palm and/or other vegetable oil-based waxes in mixed-wax candles that were ever exported to the United States by its PRC candle producers.

Department's Position:

In general, sections 776(a)(1) and (2) of the Act state that the Department may use facts otherwise available in the reaching the applicable determination if: 1) the necessary information is not available on the record; or, 2) an interested party or any other person (A) withholds information that has been requested by the administering authority under this subtitle, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, (C) significantly impedes a proceeding under this subtitle, or (D) provides such information but the information cannot be verified.

Furthermore, section 776(b) of the Act states that "if the administrating authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." See also Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103-316 at 870 (1994).

The Department finds that the application of facts otherwise available is not warranted under sections 776(a)(1) and (2) of the Act. Specifically, the Department finds that the application of facts available is not warranted in this case because each of the Respondents have provided the Department with sufficient information to allow the Department to make a determination, with respect to the issue of commercial availability. Specifically, the Department notes that each of the Respondents have submitted at least some of the following as evidence, with respect to commercial availability: (1) patents; (2) affidavits; (3) marketing materials; (4) product brochures; (5) news articles; (6) information on research and development; (7) product announcements; and (8) sales data. See CCA's February 15, 2006, Comments; CCA's February 27, 2006, Comments; CCA's March 7, 2006, Comments; CCA's New Factual Information Submission; CCCFNA's February 15, 2006, Comments; CCCFNA's February 27, 2006, Comments; CCCFNA's March 7, 2006, Comments; CCCFNA's New Factual Information Submission; Target's February 15, 2006, Comments; Target's February 27, 2006, Comments; Target's March 7, 2006, Comments; Target's New Factual Information Submission; Merchandisers, respective, New Factual Information Submission. Moreover, the Department notes that each of the Respondents has submitted a response to the Department's request for factual information, and has submitted its responses in a timely manner. As such, in this case, the Department need only consider the information on the record in preparing for the final determination. Therefore, there is no basis to conclude that Respondents failed to provide the requested information on commercial availability of mixed-wax candles. Accordingly, the Department finds that each of the Respondents has not significantly impeded this proceeding, and thus, has participated to the best of its ability, respectively.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, we will publish the final results of review and the final weighted-average dumping margins in the Federal Register.

AGREE_____ DISAGREE_____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date