

January 18, 2006

Re: Anticircumvention Inquiry on Later-Developed Merchandise: Petroleum Wax Candles from the People's Republic of China ("PRC")

To All Interested Parties:

On February 25, 2005, the Department of Commerce ("the Department") initiated an anticircumvention inquiry to determine whether mixed wax candles composed of petroleum wax and varying amounts of either palm or vegetable-based waxes (collectively, "mixed wax candles") are later-developed merchandise within the meaning of section 781(d) of the Tariff Act of 1930, as amended ("the Act"). See Petroleum Wax Candles from the PRC: Initiation of Anticircumvention Inquiries of Antidumping Duty Order, 70 FR 10962 (March 7, 2005) ("Initiation Notice"). In its Initiation Notice, the Department requested that interested parties comment on the appropriateness of the Department's initiation of the later-developed merchandise inquiry. Interested parties submitted comments focusing their analysis on three issues: (1) whether the Department should continue the later-developed merchandise anticircumvention inquiry; (2) whether the Department should examine the "commercial availability" of mixed wax candles as a part of its later-developed analysis; and (3) whether mixed wax candles are later-developed merchandise.

As further discussed below, the Department has concluded that it was appropriate to initiate this anticircumvention inquiry and that "commercial availability" should be included in its later-developed analysis.² In addition, the International Trade Commission ("ITC") recently found, in the ITC Second Sunset Review,³ that mixed wax candles were not commercially produced at the time of the original investigation. This finding may impact our later-developed analysis and any party submitting comments should address this recent ITC determination. As a result, the

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 minor alterations anticircumvention proceeding.

² See Notice of Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986) ("Order").

³ See Petroleum Wax Candles from China, Inv. No. 731-TA-282 (Second Review), USITC Pub. 3790 (July 2005) ("ITC Second Sunset Review") at 6-7.

Department is seeking further information before determining whether mixed wax candles are included in the scope of this Order.

Appropriateness of Initiation

After reviewing the evidence on the record of this proceeding, the Department finds that it was appropriate to initiate an anticircumvention inquiry on petroleum wax candles from the PRC. Neither the original petition nor the ITC's final determination in the original less-than-fair-value ("LTFV") investigation discussed the production of mixed wax candles.⁴ Therefore, at the time of this anticircumvention inquiry's initiation, the Department could not determine based on the information submitted by interested parties and the documents from the LTFV investigation whether these mixed wax candles were later-developed merchandise.

Commercial Availability Factor

The Department finds that "commercial availability" should be included as a factor in the Department's later-developed merchandise analysis of mixed wax candles. Although the Department agrees with Respondents⁵ that section 781(d) of the Act does not instruct the Department to consider commercial availability as a factor in the later-developed merchandise analysis, prior later-developed merchandise determinations by the Department, under section 781(d) of the Act, support the inclusion of commercial availability in this proceeding's analysis. For example, the Department has analyzed "commercial availability" in the context of later-developed merchandise in three previous anticircumvention inquiries. See Portable Electric Typewriters from Japan: Final Scope Ruling, 55 FR 47358, 47367 (November 13, 1990); Electrolytic Manganese Dioxide from Japan: Preliminary Scope Ruling, 56 FR 56977, 56980-81 (November 7, 1991) (unchanged in the Electrolytic Manganese Dioxide from Japan: Final Scope Ruling, 57 FR at 395 (January 6, 1992)); and Eraseable Programmable Read Only Memories from Japan: Final Scope Ruling, 57 FR 11599, 11602-3 (April 6, 1992). Additionally, a 1988 Congressional report emphasized the importance of evaluating the "commercial availability" of

⁴ See *Candles from the People's Republic of China*, Investigation No. 731-TA-282 (Final), USITC Publication 1888 (August 1986) at 2-3, 20 ("International Trade Commission ("ITC") Final Report"), (In the ITC Final Report, the ITC found that PRC producers only used two raw materials during candle production, semi-refined petroleum wax and minute amounts of stearic acid as a hardening agent. Moreover, while the ITC indicated that it considered "candles made of {other} materials," the domestic "like product" analysis never focused on mixed wax candles but only on beeswax and petroleum wax candles.); *Antidumping Petition of National Candle Association ("Petitioners")* (September 3, 1985), at 3, 6, 28, 36 ("Petition"), (In the Petition, the Department notes that petroleum or paraffin wax were the only materials listed as being used in candle production within the PRC at the time of the filing.).

⁵ Respondents that commented on "commercial availability" are: 1) Target Corporation; 2) Qingdao Kingking Applied Chemistry Co., Ltd, Alef Judaica, Inc., Amscan, Inc., and Shonfeld (USA) Inc.; 3) Silk Road Gifts, Ltd. ("Silk Road"); 4) Candle Corporation of America; Michaels Stores, Inc.; 5) J.C. Penney Company, Inc., the National Retail Federation, the MVP Group, the Candle Company, and the World at Large, which was collectively known as the Coalition for Free Trade in Candles ("CFTC") but is now disbanded and only consists of the MVP Group; and, 6) China Chamber of Commerce for Importers Exporters of Foodstuffs, Native Products and Animal By-Products ("CCCFNA") and the China Daily Chemical Association ("Respondents").

later-developed products by advising the ITC to consider commercially significant alterations to merchandise in its injury analyses.⁶

Later-Developed Merchandise

The Department finds that there have been continuing developments in the candle industry as evidenced by the multitude of patents on the record of this proceeding, which in turn indicate that mixed wax candles may be considered later-developed merchandise. For example, there have been significant developments in the hydrogenation process of candles, which facilitates the production process. See, e.g., Target Corporation's April 18, 2005 Response, at Attachment; Petitioner's Later-Developed Merchandise Submission, dated Oct. 8, 2004, at Exhibit B.

The findings of the ITC Second Sunset Review⁷ supports the conclusion that mixed wax candles may be later-developed merchandise. In the ITC Second Sunset Review,⁸ the ITC found that mixed wax candles were not "commercially available" at the time of the investigation. Specifically, the ITC stated: "The evidence in the record of this review indicates that there was **no commercial production in the United States or (elsewhere) of blended {or mixed wax} candles in 1986**, when the Commission made its original determination." Mixed wax candles, according to the ITC, were **not "commercially produced" until the late 1990's when "U.S. candle-makers began commercial production."** ITC Second Sunset Review at 7 (*emphasis added*).

Moreover, the ITC noted that, both during and after the original investigation, candles produced in the United States and the PRC contained either 100 percent petroleum wax or were combined with beeswax. See ITC Second Sunset Review at 6. As a result, the ITC found that mixed wax

⁶ The Conference Report on H.R. 3, Omnibus Trade and Competitiveness Act of 1988 states:

With respect to later-developed products, a significant injury issue can arise if there is a significant technological development or a **significant alteration of the merchandise involving commercially significant changes** in the characteristics and uses of the product. In providing such advice, the ITC should not focus narrowly on the product's features at the time the order was issued, but should analyze its general characteristics and uses in light of its prior determination. Thus, a later-developed product incorporating a new technology that provides additional capability, speed, or functions would be covered by the order as long as it has the same basic characteristics and uses.

See H.R. Conf. Rep. No. 100-576 at 603 (1988) (*emphasis added*).

⁷ 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. The Department notes that the merchandise subject to this inquiry, mixed wax candles, are also candles containing blends of petroleum and vegetable or palm wax.

⁸ In the ITC Second Sunset Review, the ITC redefined the domestic like product to include candles with fiber of paper-cored wicks and containing any amount of petroleum wax, except for candles containing more than 50 percent beeswax. In making this determination, the ITC found: "The record does reflect a clear dividing line between {mixed} wax candles with more than 50 percent petroleum wax content and those with 50 percent or less petroleum wax content. Rather, candles containing differing combinations of vegetable wax and petroleum wax appear to fall within a continuum. Accordingly, we define the domestic like product to include all {mixed wax} candles." Id., at 9.

candles were not considered in the ITC's like product determination in the original investigation; instead, only beeswax and petroleum wax candles were considered during both the initial investigation in 1986 and the first sunset review in 1999.⁹

Additionally, the ITC cited to domestic producers and importers who indicated that the most predominant new substitutes for petroleum wax candles, palm and soy wax candles, have been present within the market only since 2001. *Id.* at II-4, II-8, II-9. The ITC also noted that the raw materials (palm and soy wax) used to produce these mixed wax candles were recent developments within the domestic candle manufacturing industry. *Id.* at II-7. While the ITC did not specifically state that these mixed wax candles were later-developed merchandise, pursuant to section 781(d) of the Act, the ITC agreed with Petitioners' argument made before the ITC that: "These candles had not been developed and were not commercially produced anywhere at the time of the investigation." *Id.* at 7, I-11. Therefore, based on the ITC Second Sunset Review, it appears that these mixed wax candles may have been later-developed merchandise.

Next Steps

The Department hereby invites all parties to submit comments, including evidence, on: (1) the "commercial availability" of mixed wax candles composed of petroleum wax and varying amounts of palm and/or vegetable-based waxes in the marketplace at the time of the LTFV investigation; (2) significant technological advancements between 1985 and 2005 that allowed the commercial production of mixed wax candles composed of petroleum wax and varying amounts of palm and/or vegetable-based waxes; (3) whether mixed wax candles are later-developed merchandise, in light of the findings of the ITC Second Sunset Review; and (4) all other factors that are required for a later-developed merchandise analysis, pursuant to section 781(d) of the Act.

These may include, but are not limited to, the following:

- 1) Product catalogues that identify when mixed wax candles were available for purchase by consumers.
- 2) News reports and articles announcing when companies introduced new candle products, including mixed wax candles containing palm and/or vegetable-based waxes and new types of wax used in candle-making, into the marketplace.
- 3) Market reports on the candle, home fragrance, and wax industries.
- 4) Articles, technical reports, and other publications discussing research, testing, and development of mixed wax candles, including new "hydrogenation" methods, and when these mixed wax candles would be available within the marketplace.

⁹ See ITC Second Sunset Review at 6, II-4, II-7; ITC Final Report at 2-3; Petroleum Wax Candles from China, 1999 Sunset Review: Final Report, Inv. No. 731-TA-282 (Review), USITC Pub. No. 3226, (August 1999) at 4, 18 ("First Sunset Review").

- 5) Proof of purchase of facilities intended for use in the research and development of new products, including waxes for candle-making and mixed wax candles. This may include loan applications, contracts, payment documents, and transfer of ownership. Please provide a brief description of these facilities.
- 6) Various documents, (e.g., articles, technical reports, documents on research and development, proof of purchase of intellectual property rights, announcements of new wax product lines) regarding developments of new types of waxes used in mixed wax candles.
- 7) Journals, articles, scientific reports, progress reports and other publications or documents discussing technological developments in the candle-making and wax industries. Please provide any documentation that may focus on: (1) results of research in developing new waxes; (2) performance results and physical characteristics (i.e., burn ratio, fragrance throw, solidity of the candle body, etc.) of using these waxes in mixed wax candles; and (3) chemical advancements that rectified problems identified in the development of using these waxes in mixed wax candles.

The Department notes that this is not an exhaustive list of what may be submitted as evidence of both the “commercial availability” and significant advancement that allowed commercial production of mixed wax candles.

In addition, for those parties that represent PRC or U.S. producers/exporters/importers, and have access to this information, the Department also requests that you answer the following questions:

- 1) Please separately provide your company’s total annual sales by quantity and value of all types of candles that are composed of up to 50% petroleum wax, and candles composed of 50% or more other waxes (not including beeswax)¹⁰ which are mixed with petroleum wax, that you produced during the period of 1985 through 2005 (YTD). See Attachment I for the chart to be completed.
- 2) Please state when you started producing candles composed of 50% or more other waxes. Please provide supporting documentation (i.e., purchase orders, sales contracts, orders of confirmation, long-term contracts, pro-forma invoices, etc.) that confirms the date when your company started selling these products.

Please be advised that your response to this letter is due no later than **COB, Wednesday, February 1, 2006**. Additionally, rebuttal comments, limited to issues raised in the initial

¹⁰ The Department notes that the scope of the antidumping duty order does not explicitly exclude beeswax candles from subject merchandise. However, the ITC in the original investigation specifically stated: “Beeswax candles are those composed of more than fifty percent beeswax... Based upon different characteristics and uses for petroleum and beeswax candles, we determine that beeswax candles should not be included within the domestic like product.” See Candles from the People’s Republic of China, Investigation No. 731-TA-282 (Final), USITC Publication 1888 (August 1986) at 3-4. Accordingly, please do not report mixed wax candles composed of 50% or more beeswax.

comments, are due no later than **COB, Monday, February 13, 2006. Information submitted with your rebuttal comments that was not previously on the record may be rejected.**

If you have any further questions or need assistance in this matter, please contact Alex Villanueva or Julia Hancock, respectively at (202) 482-3208 or (202) 482-1394.

Sincerely,

Edward C. Yang
Senior Enforcement Coordinator, China/NME Unit
Import Administration

Attachment

ATTACHMENT I

Quantity and Value of Sales

1. Complete the charts given below.
2. Values should be expressed in U.S. dollars.

Indicate any exchange rates used and their respective dates and sources. To the extent possible, all sales values should be reported based on the same terms (e.g., FOB). Please list the quantity reported in kilograms (KG).

3. Average unit value (AUV) should be expressed in U.S. dollars per KG.

FORMAT FOR REPORTING QUANTITY AND VALUE OF SALES

- A. All types of candles produced and sold by your company from 1985 through 2005 (YTD).¹¹

	1985					(continue for 1986- 2005(YTD))
	Quantity	Unit of Measure	Value	Terms of Sale	AUV	
a. Candles composed of 50% or more petroleum wax						
b. Candles composed of 50% or more other waxes						
Total						

¹¹ Please note that the Department considers candles composed of paraffin wax to be petroleum wax candles, which are subject merchandise. The Department determined in a scope ruling that a granular petroleum wax kit containing paraffin wax was within the scope of the antidumping duty order on petroleum wax candles from the PRC. The Department found that petroleum wax candles include candles composed of paraffin wax because the Encyclopedia Britannica indicated that petroleum wax is any wax obtained from petroleum to include paraffin wax. See Final Affirmative Scope Ruling—Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China, (A-570-504); Polardreams Intl. Inc., (May 6, 1998).