

⁷ The initiation of the administrative review for the above referenced case will be published in a separate initiation notice.

⁸ If one of the above-named companies does not qualify for a separate rate, all other exporters of certain preserved mushrooms from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

⁹ The initiation of the administrative review for the above referenced case will be published in a separate initiation notice.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia v. United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: March 21, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-5689 Filed 3-27-07; 8:45 am]

Billing Code: 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-504

Petroleum Wax Candles From the People's Republic of China: Partial Termination of Circumvention Inquiry and Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Partial Termination and Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order: Petroleum

Wax Candles from the People's Republic of China.

SUMMARY: On December 14, 2005, the Department of Commerce (the Department) received from the National Candle Association (NCA) an allegation of circumvention of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). Pursuant to that allegation, the Department initiated an anticircumvention inquiry on May 11, 2006, with respect to four importers. We preliminarily determine that the importation by, or sale to, three U.S. importers (DECOR-WARE, Inc.; A&M Wholesalers, Inc.; and Albert E. Price) of wickless petroleum wax forms from the PRC, which subsequently undergo insertion of a wick and clip assembly in the United States, constitutes circumvention of the aforementioned order, within the meaning of section 781(a) of the Tariff Act of 1930, as amended (the Act). Because NCA withdrew its allegation with respect to the fourth importer, Northern Lights Enterprises, the Department is terminating the inquiry with respect to Northern Lights Enterprises.

EFFECTIVE DATE: March 28, 2007.

FOR FURTHER INFORMATION CONTACT:

Steve Bezirgianian or Robert James, AD/CVD Operations, Office 7, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: 202-482-1131 and 202-482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 14, 2005, the NCA requested that the Department conduct an anticircumvention inquiry pursuant to section 781(a) of the Act to determine whether candles assembled in the United States from certain wax forms produced in the PRC are circumventing the antidumping duty order on petroleum wax candles from the PRC. *See Antidumping Duty Order: Petroleum Wax Candles From the People's Republic of China*, 51 FR 30686 (August 28, 1986) (Candles Order). NCA asserted that the molded or carved articles of wax from the PRC are essentially wickless wax candles, and that producers in the PRC are shipping these wickless wax forms to the United States, with or without a pre-drilled

hole in the center, for final assembly of the candle through insertion of a wick and clip assembly. Such assembly in the United States, NCA stated, constitutes circumvention of the order on petroleum wax candles from the PRC. *See Request for Determination of Circumvention - Wickless Wax Candles Petroleum Wax Candles from the People's Republic of China (A-570-504)*, dated December 14, 2005 (NCA Request).

On April 3 and 4, 2006, NCA supplemented the record with additional information. The April 3, 2006, submission contained a revised list of names of alleged PRC producers/exporters and alleged U.S. importers/assemblers of the wickless wax candles; the April 4, 2006, submission contained copies of Customs Tariff Classification Rulings that NCA had identified in its original December 14, 2005, request.

On May 11, 2006, the Department initiated the anticircumvention inquiry with respect to four importers. *See Petroleum Wax Candles from the People's Republic of China: Initiation of Anticircumvention Inquiry on Antidumping Duty Order*, 71 FR 28661 (May 17, 2006) (Notice of Initiation).

The Department issued questionnaires to each of the four importers: Northern Lights Enterprises (on June 20, 2006); A&M Wholesalers, Inc. (on June 20, 2006); DECOR-WARE, Inc. (on June 21, 2006); and Albert E. Price (on June 22, 2006). Responses to those questionnaires were originally due on July 11, 2006. Northern Lights Enterprises requested, and was granted, an extension for responding to the original questionnaire, and submitted its response on August 12, 2006. The remaining three importers (DECOR-WARE, Inc.; A&M Wholesalers, Inc.; and Albert E. Price) failed to respond by the deadline of July 11, 2006. Each of these remaining three importers was sent a letter on July 27, 2006, requesting each to respond to the questionnaire by July 31, 2006, and indicating that further delays or lack of response may result in the Department proceeding with results based on facts available including, where appropriate, facts adverse to the importer. All three failed to respond.

On May 17, 2006, the Department indicated to NCA that any request to add additional importers to the inquiry needed to be filed by July 5, 2006. *See Memorandum from Robert James for the*

File, dated June 30, 2006. NCA submitted a letter on July 5, 2006 requesting that the Department add to the inquiry an entity identified as Indulgence Candles and Home; however, the request did not contain sufficient evidence that the firm in question was importing wax forms for completion into finished candles in the United States. On September 11, 2006, NCA submitted a letter requesting that the Department add to the inquiry an entity identified as Deluxe in Commerce.¹

On February 21, 2007, NCA submitted a letter withdrawing its request with respect to Northern Lights Enterprises. On March 2, 2007, the Department extended the deadline for the final determination to June 5, 2007. See Letter from Robert James to All Interested Parties, dated March 2, 2007.

Scope of the Order

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. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers.

The products were classified in the original investigation under the Tariff Schedules of the United States item 755.25, Candles and Tapers. The products covered are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 3406.00.00. Although the HTSUS subheading is provided for convenience purposes, the written description remains dispositive.

In addition, the Department has determined that mixed-wax candles containing any amount of petroleum wax are later-developed merchandise and are within the scope of the *Candles Order*. See *Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 71 FR 59075 (October 6, 2006).

Scope of the Anticircumvention Inquiry

The products covered by this inquiry are certain scented or unscented petroleum wax forms that do not incorporate a wick within the wax, whether or not having pre-drilled wick holes (wickless petroleum wax forms)

that are imported into the United States and assembled into petroleum wax candles, and are currently classifiable under HTSUS subheading 9602.00.40. Wickless petroleum wax forms are sold in the following shapes: tapers, spirals, straight-sided wax forms; rounds, columns, pillars, votives; and various wax-filled containers. This inquiry only covers such products that are imported by, or sold to Northern Lights Enterprises, DECOR-WARE, Inc., A&M Wholesalers, Inc., or Albert E. Price.

Applicable Statute

Section 781 of the Act addresses circumvention of antidumping or countervailing duty orders. With respect to merchandise assembled or completed in the United States, section 781(a)(1) of the Act provides that if: (A) the merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of an antidumping duty order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components produced in the foreign country is a significant portion of the total value of the merchandise, then the Department may include within the scope of the order the imported parts or components produced in the foreign country used in the completion or assembly of the merchandise in the United States, after taking into account any advice provided by the United States International Trade Commission (ITC) under section 781(e) of the Act.

In determining whether the process of assembly or completion in the United States is minor or insignificant, section 781(a)(2) of the Act directs the Department to consider: (A) the level of investment; (B) the level of research and development; (C) the nature of the production process; (D) the extent of production facilities and (E) whether the value of processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.

Section 781(a)(3) sets forth the factors to consider in determining whether to include parts or components in an antidumping duty order. The Department shall take into account: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise

sold in the United States; and (C) whether imports into the United States of the parts or components produced in the foreign country have increased after the initiation of the investigation which resulted in the issuance of the order.

Partial Termination of the Anticircumvention Inquiry

As noted above, NCA withdrew its inquiry request with respect to Northern Lights Enterprises. Accordingly, we are terminating this inquiry with respect to Northern Lights Enterprises. Regarding the remaining three importers (DECOR-WARE, Inc.; A&M Wholesalers, Inc.; and Albert E. Price), see the Facts Available section below.

Affirmative Preliminary Determination of Circumvention

For the reasons described below, we preliminarily determine that circumvention of the antidumping duty order on petroleum wax candles from the PRC is occurring by reason of exports of wickless petroleum wax forms from the PRC imported by, or sold to, DECOR-WARE, Inc., A&M Wholesalers, Inc., and Albert E. Price, and which subsequently undergo insertion of a wick and clip assembly in the United States.

Facts Available

DECOR-WARE, Inc., A&M Wholesalers, Inc., and Albert E. Price failed to respond to the Department's requests for information. The questionnaires the Department issued to these importers were designed to elicit information for purposes of conducting both qualitative and quantitative analyses in accordance with the criteria enumerated in section 781(a) of the Act as outlined above. This approach is consistent with our analysis in previous anticircumvention inquiries. See, e.g., *Circumvention and Scope Inquiries on the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry*, 71 FR 38608 (July 7, 2006); *Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom; Negative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 64 FR 40336 (July 26, 1999).

Without this information the Department has no choice but to resort to the use of facts available in making its determination pursuant to section 776(a)(2) of the Act. In selecting from among the facts available, the

¹ As this submission was untimely, the Department did not consider adding Deluxe in Commerce to this inquiry.

Department determined that an adverse inference is warranted, pursuant to section 776(b) of the Act, because these importers failed to comply with the Department's requests for information to the best of their ability.

Section 776(a) of the Act requires the Department to resort to facts otherwise available if necessary information is not available on the record or when an interested party or any other person fails to provide (requested) information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782. See sections 776(a)(1) and 776(a)(2)(B) of the Act. As provided in section 782(c)(1) of the Act, if an interested party, promptly after receiving a request from the Department for information, notifies the Department that such party is unable to submit the information requested in the requested form and manner, the Department may modify the requirements to avoid imposing an unreasonable burden on that party. However, neither DECOR-WARE, Inc., A&M Wholesalers, Inc., nor Albert E. Price notified the Department that they were unable to comply with the Department's requests. Consequently, because these importers failed to respond to the Department's questionnaire, we must base the preliminary determination in this inquiry on the facts otherwise available.

Section 776(b) of the Act permits the Department to use an inference that is adverse to the interests of an interested party if that party fails to cooperate by not acting to the best of its ability to comply with a request for information. Because DECOR-WARE, Inc., A&M Wholesalers, Inc., and Albert E. Price refused to comply with the Department's request for information, we find that these importers failed to cooperate by not acting to the best of their ability. The refusals by DECOR-WARE, Inc., A&M Wholesalers, Inc., and Albert E. Price to respond to our questionnaire precludes the Department from making an informed determination based on record evidence as to whether they are (or are not) circumventing the antidumping duty order. In addition, because these importers failed to provide the Department with any information, we are also unable to distinguish between their imports or purchase of wickless petroleum wax forms for purposes other than U.S. assembly into merchandise covered by the *Candles Order*. Accordingly, we are making an adverse inference pursuant to section 776(b) of the Act that wickless petroleum wax forms imported by, or sold to, DECOR-WARE, Inc., A&M Wholesalers, Inc., and Albert E. Price

are completed or assembled in the United States by the insertion of a wick and clip assembly within the meaning of section 781(a) of the Act. Therefore, we preliminarily find that these wickless petroleum wax forms are subject merchandise.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The Statement of Administrative Action (SAA), which accompanied the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103rd Congress, 2nd Session (1994), states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the investigation or review. SAA at 870. The SAA also clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To the extent practicable, the Department will examine the reliability and relevance of the information used. See, e.g., *Circumvention and Scope Inquiries on the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry*, 71 FR 38608 (July 7, 2006) and accompanying decision memorandum, dated June 30, 2006 (at Comment 2B).

We reviewed all information on the record including NCA's December 14, 2005, application for this anticircumvention inquiry, its subsequent submissions, and the Department's initiation of this inquiry. See *Notice of Initiation*. NCA presented information demonstrating an increase in imports of wax forms that may be used in the assembly of finished candles within the United States. *Id.* NCA also provided evidence that the wick and clip assembly process in the United States is minor or insignificant. *Id.* Although NCA did not have direct and specific information from U.S. assemblers, it was able to provide information based on the actual experience of its constituent members, U.S. domestic candle producers, that provided significant information on wick and clip assembly in particular, and commercial candle production in general. *Id.* With respect to whether the value of the parts or components

produced in the PRC (the wickless petroleum wax forms) is a significant portion of the total value of the candle, NCA was able to provide information from the domestic candle industry indicating the value of the wax form is typically a significant portion of the total value of the finished candle.² Thus, we conclude that NCA identified the elements required by 781(a) of the Act and supported its allegations with reliable and relevant information that continue to be of probative value.

Suspension Of Liquidation

Section 351.225(l)(2) of the Department's regulations states that, "{i}f the Secretary issues a preliminary scope ruling under paragraph (f)(3)" and "{i}f 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." In accordance with section 351.225(l)(2) of the Department's regulations, we will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all wickless petroleum wax forms (as defined in the Scope of the Anticircumvention Inquiry section above) from the People's Republic of China imported by, or sold to DECOR-WARE, Inc., A&M Wholesalers, Inc., or Albert E. Price that were entered, or withdrawn from warehouse, for consumption on or after May 11, 2006, the date of initiation of this anticircumvention inquiry. See *Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta From Italy: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 63 FR 18364, 18366 (April 15, 1998); *Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta From Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672, 54675-6 (October 13, 1998). CBP shall require cash deposits in accordance with those rates prevailing at the time of entry, depending upon the exporter in question.

² *Id.* NCA did acknowledge, in its February 21, 2007, letter withdrawing its request with respect to the importer Northern Lights Enterprises, that this importer "does more than just drill a hole and insert a wick" in the imported wickless petroleum wax forms.

Notification to the International Trade Commission

The Department, consistent with section 781(e) of the Act, is notifying the ITC of this affirmative preliminary determination to include the merchandise subject to this inquiry within the antidumping duty order on petroleum wax candles from the PRC. Pursuant to section 781(e) of the Act, the ITC may request consultations concerning the Department's proposed inclusion of the subject merchandise. These consultations must be concluded within 15 days after the date of the request. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 60 days to provide written advice to the Department.

Public Comment

Interested parties may request a hearing within 10 days from the date of publication of this notice. Comments from interested parties may be submitted no later than 20 days from the publication of this notice. Rebuttals limited to issues raised in the initial comments may be filed no later than 27 days after publication of this notice. Any hearing, if requested, will be held no later than 34 days after publication of this notice. The Department will publish the final determination with respect to this anticircumvention inquiry, including the results of its analysis of any written comments. The deadline for the final determination is currently June 5, 2007. See Letter from Robert James to All Interested Parties, dated March 2, 2007.

This affirmative preliminary circumvention determination is in accordance with section 781(a) of the Act and 19 CFR 351.225.

Dated: March 22, 2007.

David M. Spooner,
Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-504

Petroleum Wax Candles from the People's Republic of China: Initiation of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 28, 2007.

SUMMARY: The Department of Commerce (the "Department") has determined that a request for a new shipper review of the antidumping duty order on petroleum wax candles from the People's Republic of China ("PRC"), received before February 28, 2007, meets the statutory and regulatory requirements for initiation. The period of review ("POR") of this new shipper review is August 1, 2006, through January 31, 2007.

FOR FURTHER INFORMATION CONTACT: Nicole Bankhead, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-9068.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on petroleum wax candles from the PRC published in the **Federal Register** on August 28, 1986. See *Antidumping Duty Order: Petroleum Wax Candles From the People's Republic of China*, 51 FR 30686 (August 28, 1986).¹ On February 16, 2007, pursuant to 19 CFR 351.214(c), the Department received a new shipper review request from Hangzhou Fashion Living Co., Ltd ("Fashion Living"). On March 7, 2007, the Department requested that Fashion Living correct certain filing deficiencies. See the Department's letter dated March 7, 2007. On March 8, 2007, Fashion Living resubmitted its new shipper request. Fashion Living certified that it is both the producer and exporter of the subject merchandise upon which the request for a new shipper review is based.

Pursuant to section 751(a)(2)(B)(i)(I) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.214(b)(2)(i), Fashion Living certified that it did not export petroleum wax candles to the United States during the period of investigation ("POI"). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Fashion Living certified that, since the initiation of the investigation, it has never been affiliated with any PRC exporter or producer who exported petroleum wax candles to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Fashion Living also certified that its export activities were

not controlled by the central government of the PRC.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Fashion Living submitted documentation establishing the following: (1) the date on which Fashion Living first shipped petroleum wax candles for export to the United States and the date on which the petroleum wax candles were first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.

The Department conducted customs database queries to confirm that Fashion Living's shipment of subject merchandise had entered the United States for consumption and had been suspended for antidumping duties. We confirmed that Fashion Living's shipment had entered for consumption and been suspended for antidumping duties.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), the Department finds that Fashion Living's request meets the threshold requirements for initiation of a new shipper review for the shipment of petroleum wax candles from the PRC it produced and exported. See *Memo to the File from Nicole Bankhead, Senior Case Analyst, through Alex Villanueva, Program Manager, Office 9: New Shipper Review Initiation Checklist*, dated March 19, 2007.

The POR for this new shipper review is August 1, 2006, through January 31, 2007. See 19 CFR 351.214(g)(1)(ii)(B). The Department intends to issue the preliminary results of this review no later than 180 days from the date of initiation, and final results of this review no later than 270 days from the date of initiation. See section 751(a)(2)(B)(iv) of the Act.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

¹Therefore, a request for a new shipper review based on the semiannual anniversary month, February, was due to the Department by February 28, 2007. See 19 CFR 351.214(d)(2).

²Fashion Living made no subsequent shipments to the United States, which the Department corroborated using data from U.S. Customs and Border Protection.