	Period
Countervailing Duty Proceedings	
CANADA:	
Softwood Lumber,[2] C–122–839	4/1/05–3/31/06
ITALY:	
Grain-Oriented Electrical Steel, C–475–812	1/1/05–12/31/05
Suspension Agreements	
RUSSIA:	
Ammonium Nitrate, A–821–811	6/1/05–5/31/06

In [2] accordance with section 351.213 (b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[3] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration web site at *http://ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of June 2006. If the Department does not receive, by the last day of June 2006, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 30, 2006.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4, Import Administration.

[FR Doc. E6–8627 Filed 6–1–06; 8:45 am]

BILLING CODE 3510–DS–P

[2] In the notice of opportunity to request administrative review that published on May 1, 2006 (71 FR 25566), we listed the period of review for Softwood Lumber from Canada (C–122–839) incorrectly. The correct period of review is listed above.

[3] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

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

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

ACTION: Notice of Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order.

SUMMARY: In response to a request from the National Candle Association (''NCA'' or ''Petitioners''), the Department of Commerce (''the Department'') initiated an anticircumvention inquiry pursuant to section 781(d) of the Tariff Act of 1930, as amended (''the Act''), to determine whether candles composed of petroleum wax and over fifty percent or more palm and/or other vegetable oil–based waxes (''mixed–wax candles'') can be considered subject to the antidumping duty order on petroleum wax candles from the People's Republic of China (''PRC'') under the later–developed merchandise provision. *See Notice of Initiation Anticircumvention Inquiries of Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China*, 70 FR 10962 (March 7, 2005) (''*Initiation Notice*'').

We gave interested parties an opportunity to comment on the *Initiation Notice*, on the commercial availability of mixed–wax candles at the time of the less–than-fair–value (''LTFV'') investigation, and on whether mixed–wax candles otherwise should be subject to the antidumping duty order on petroleum wax candles from the PRC under the later–developed merchandise provision. *See Notice of Antidumping Duty Order: Petroleum Wax Candles*

from the People's Republic of China, 51 FR 30686 (August 28, 1986) (''*Order*'').

EFFECTIVE DATE: June 2, 2006.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or Julia Hancock, AD/CVD of Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–3208 and (202) 482–1394, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On October 8, 2004, Petitioners requested that the Department conduct a later–developed merchandise anticircumvention inquiry pursuant to section 781(d) of the Act to determine whether candles containing palm or vegetable–based waxes as the majority ingredient and exported to the United States are circumventing the *Order*.

On October 12, 2004, Petitioners also requested that the Department conduct a minor alterations anticircumvention inquiry pursuant to section 781(c) of the Act to determine whether candles containing palm or vegetable–based waxes and exported to the United States are circumventing the *Order*.

On February 25, 2005, the Department initiated the later–developed merchandise anticircumvention inquiry to determine whether mixed–wax candles can be considered subject to the Order, as provided in section 781(d) of the Act. Also, on February 25, 2005, the Department initiated a minor alterations anticircumvention inquiry to determine whether mixed–wax candles have been subject to a minor alterations from the subject merchandise such that mixed–wax candles can be considered subject to the Order, as provided in section 781(c) of the Act. *See Initiation Notice*, 70 FR at 10962, 10964.

On March 9, 2005, a memorandum to the file was placed on the record of this inquiry by the Department noting that the date of initiation was the signature date of February 25, 2005. On March 10, 2005, the Department issued a letter to all interested parties that the Department established a separate record for these anticircumvention inquiries. Additionally, on March 10, 2005, the Department issued a letter notifying all parties that the final determination had initially been extended by 12 days from December 22, 2005, to January 3, 2006.

On March 15, 2005, the Department issued a letter to all interested parties informing them that submissions must follow the appropriate filing format. On April 4, 2005, a memorandum to the file was placed on the record of these inquiries by the Department regarding the administrative protective order (''APO'').

On April 6, 2005, Petitioners; Target Corporation (''Target''); Candle Corporation of America (''CCA''); Silk Road Gifts, Ltd. (''Silk Road''); CCCFNA;[1] GDLSK Respondents;[2] Coalition for Free Trade in Candles (''CFTC'');[3] and Michaels' Stores, Inc. (''Michaels'') submitted comments regarding the appropriateness of the Department's initiation of the later–developed merchandise anticircumvention inquiry. On April 18, 2005, Petitioners; Target; CCA; Silk Road; CCCFNA; and CFTC submitted rebuttal comments. Additionally, on April 18, 2005, Petitioners submitted a letter requesting that the Department issue a questionnaire to respondents in these inquiries.

Between May 11–17, 2005, the Department issued quantity and value (''Q&V'') questionnaires to 115 PRC producers and/or exporters for the minor alterations anticircumvention inquiry. Also, between June 6, 2005, and June 17, 2005, the Department received Q&V questionnaire responses from ten companies[4] for the minor alterations anticircumvention inquiry.

On December 20, 2005, the Department issued a letter to all interested parties notifying them that the Department was extending the deadline of the final determination for the anticircumvention inquiries by 90 days from January 3, 2006, to April 3, 2006. On January 6, 2006, CCCFNA submitted a letter requesting that the Department not issue any more extensions of the deadline of the final determination for these anticircumvention inquiries.

On January 17, 2006, a memorandum to the file was placed by the Department placing the International Trade Commission (''ITC'')'s determination in the second five-year review regarding the antidumping duty order on petroleum wax candles from the PRC on the record.

On January 18, 2006, the Department issued a letter, with respect to the later–developed merchandise inquiry, to all interested parties inviting parties to submit comments, including evidence, on: (1) the ''commercial availability'' of mixed–wax candles 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; (3) whether mixed–wax candles are later–developed merchandise, in light of the findings of the *ITC Second Sunset Review Report*[5]; and (4) all other factors that are required for a later–developed merchandise analysis, pursuant to section 781(d) of the Act.

On January 19, 2006, and January 20, 2006, CCCFNA and Target requested a two-week extension of the deadlines for interested parties to submit comments and rebuttal comments with regard to the Department's January 18, 2006, letter. On January 25, 2006, the Department extended the deadlines by two-weeks for interested parties to submit comments from February 1, 2006, to February 15, 2006, and for rebuttal comments from February 13, 2006, to February 27, 2006.

On February 10, 2006, Lava Enterprises, Inc., (''Lava''), submitted comments in response to the Department's January 18, 2006, letter. On February 15, 2006, Target; CCCFNA; the MVP Group; CCA; and Petitioners also submitted comments. Also, on February 15, 2006, the MVP Group submitted a request for a public hearing. On February 27, 2006, Target; CCCFNA; Petitioners; and CCA submitted rebuttal comments.

On March 6, 2006, CCCFNA submitted a letter to the Department stating that Petitioners' rebuttal comments contained significant portions of non–publicly available information. On March 15, 2006, the Department issued a letter to all interested parties requesting comments

[1] The China Chamber of Commerce for Imports and Exporters of Foodstuffs, Native Products and Animal By-Products, and the China Daily Chemical Association, as well as their common members, including Dalian Talent Gift., 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., collectively known as ''CCCNFA.''

[2] Qingdao Kingking Applied Chemistry Co., Ltd.; Shonfeld's (USA), Inc.; Alef Judaica, Inc.; and Amscan, Inc., collectively known as ''GDLSK Respondents.''

[3] This coalition consisted of J.C. Penney Company, Inc., Target Corporation, the National Retail Federation, the MVP Group, the Candle Company, and the World at Large. On May 26, 2005, the CFTC was disbanded. However, counsel for the CFTC was retained for a former CFTC member, the MVP Group, which remains an interested party.

[4] The ten companies that submitted Q&V questionnaire responses are: (1) Fleming International; (2) Zhongshan Zhongnam Candle Manufacturer Co., Ltd.; (3) Dalian Talent Gift Co.; (4) Shanghai Autumn Light Enterprises Co. Ltd; (5) Jiaxing Moonlite Candle Art Co. Ltd.; (6) Universal Candle; (7) Qingdao Kingking Applied Chemistry Co. Ltd.; (8) PeakTop and Silk Roads Gifts; (9) Aroma Consumer Products (Hangzhou) Co., Ltd.; and (10) Amstar Business Company Limited.

[5] *See Petroleum Wax Candles from China*, Inv. No. 731-TA-282 (Second Review), USITC Pub. 3790 (July 2005) (''*ITC Second Sunset Review Report*'').

and rebuttal comments on the non–publicly available information contained within Petitioners' February 27, 2006, rebuttal comments. Also, in the letter, the Department notified interested parties that deadline of the final determination wax extended by 50 days from April 3, 2006, to May 23, 2006.

On March 28, 2006, Target; CCCFNA; and CCA submitted comments on the non–publicly available information contained within Petitioners' February 27, 2006, rebuttal comments. On April 7, 2006, Petitioners submitted rebuttal comments.

On April 19, 2006, the MVP Group withdrew their request for a hearing that had been submitted within their February 15, 2006, comments. On April 24, 2006, CCCFNA submitted a request for a public hearing for the later–developed merchandise inquiry. On April 26, 2006, Petitioners submitted a letter objecting to CCCFNA's request for a public hearing due to the lateness of the request in this proceeding.

On April 28, 2006, the Department issued a letter to all interested parties announcing that it would hold a public hearing on May 9, 2006, limited to issues raised in the comments and rebuttal comments submitted by parties in response to the Department's January 18, 2006, letter.

On May 2, 2006, the Department issued a letter to the ITC notifying them of the Department's upcoming determination scheduled for May 23, 2006.

On May 3, 2006, the Department issued a letter to all interested parties notifying them of a room change with respect to the public hearing. On May 5, 2006, the Department issued a letter to all interested parties notifying them of a further room change. On May 9, 2006, the Department held a public hearing on the later–developed merchandise inquiry.

On May 23, 2006, the Department placed the hearing transcript on the record. Also, on May 23, 2006, the Department placed a memorandum on the file regarding additional information considered in making this preliminary determination.

Scope Of 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; round, columns, pillars, votives; and various wax–filled containers. The products were classified under the Tariff Schedules of the United States (''TSUS'') 755.25, Candles and Tapers. The products covered are currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') item 3406.00.00. Although the HTSUS subheading is provided for convenience purposes, our written description remains dispositive. *See Order* and *Notice of Final Results of the Antidumping Duty New Shipper Review: Petroleum Wax Candles from the People's Republic of China*, 69 FR 77990 (December 29, 2004).

Preliminary Determination

We have analyzed the information, comments, and rebuttal comments of interested parties in this anticircumvention inquiry, and conducted our own research. Based upon our analysis of the comments and information received, we determine that mixed–wax candles are later–developed products pursuant to section 781(d) of the Act. However, for the purposes of this preliminary determination, we have determined that only mixed–wax candles containing no more than 87.80 percent palm or vegetable oil–based wax with petroleum wax are within the scope of the antidumping duty order on petroleum wax candles from the PRC, as provided in section 781(d) of the Act.[6]

General Overview

In reaching its preliminary determination, the Department undertook several analytical steps in response to its obligations under the statute, as well as information and comment provided by the interested parties. The Department first considered again, the issue of whether it was appropriate to initiate this anticircumvention inquiry. Then, the Department analyzed whether these mixed–wax candles were later–developed merchandise pursuant to section 781(d) of the Act. Prompted by comments raised by interested parties, the Department began this analysis by first considering whether the ''commercial availability'' factor it had used in prior later–developed merchandise inquiries was appropriate in this instance. Next, the Department considered whether these mixed–wax candles were commercially available at the time of the LTFV investigation, as well as considering whether a significant technological advancement or a significant alteration of the merchandise involving commercially significant changes occurred. The Department's analysis next examined whether these mixed–wax candles are properly included within the scope of the *Order* pursuant to section 781(d) of the Act. Finally, the Department considered certain additional issues submitted the parties.

Appropriateness Of Initiation

In the Department's January 18, 2006, letter to interested parties, the Department explained that it was appropriate to initiate this anticircumvention inquiry. However, certain parties continued to argue that the Department's initiation was inappropriate.

Since the issuance of the Department's January 18, 2006, letter to interested parties, the Department finds that Respondents have not placed any new information on the record that shows that the Department's initiation was inappropriate. Respondents argue that, pursuant to the findings of *Wheatland Tube*, the Department may not, through the anticircumvention provisions of the statute, expand the scope of the *Order*. The Department disagrees that *Wheatland Tube* precludes finding that later–developed merchandise is within the scope of the order. *See Wheatland Tube Co. v. United States*, 161 F. 3d 1365, 1371 (Fed. Cir. 1998) (''*Wheatland Tube*''). In *Wheatland Tube*, the Court of Appeals for the Federal Circuit (''the Federal Circuit'') found that a minor alterations anticircumvention inquiry, pursuant to section 781(c) of the Act, 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. *Wheatland Tube* involved an antidumping duty order on standard pipe, and the petitioner had ''expressly and unambiguously'' excluded a slightly higher grade of pipe, ''line pipe,'' from the scope of both its petition at the Department and from the ITC's injury determination. *Id.* at 1369. Subsequently, when exporters began to substitute line pipe for standard pipe, the petitioner alleged that imports of line pipe were circumventing the order on standard pipe, under the minor alterations provision. The Court of International Trade (''the CIT'') held that, because the petitioner had deliberately excluded line pipe from the standard pipe investigations and order, it could not subsequently use the

[6] If the Department affirms this preliminary determination which covers all mixed-wax candles in proportions of no more than 87.80 percent palm or vegetable oil-based wax with petroleum wax, then the minor alterations anticircumvention inquiry will be rescinded as the products subject to that inquiry would already have been determined to be within the scope pursuant to the instant inquiry. If any candles with a higher percentage are brought to the Department's attention, we will conduct a scope inquiry on a model-specific basis.

''minor alterations'' provision to bring line pipe into the scope of that order. *Id.* at 1369. The Federal Circuit affirmed the CIT on appeal. *Id.* at 1371.

However, a more recent case, *Nippon Steel*, provided further guidance on the application of the minor alterations provision. *See Nippon Steel Corp. v. United States*, 219 F.3d 1348 (Fed. Cir. 2000) (''*Nippon Steel*''). *Nippon Steel* involved a minor alterations circumvention inquiry arising from the antidumping duty order on corrosion–resistant carbon steel flat products from Japan. The petitioner in that case alleged that respondents had added minute amounts of boron to their carbon steel products, so as to remove them from the literal scope of the order without significantly affecting either their physical characteristics or uses of the steel. *See Corrosion–Resistant Carbon Steel Flat Products from Japan: Initiation of Anticircumvention Inquiry on Antidumping Duty Order*, 63 FR 58364 (October 30, 1998).

In upholding the Department's circumvention inquiry, the Federal Circuit emphasized that, in contrast to *Wheatland Tube*, which involved a distinct product line that the petitioner had expressly and unequivocally excluded from the scope of the order, *Nippon Steel* involved simply adding an insignificant amount of boron to the precise product covered by the order. In addition, the Federal Circuit held that steel with an insignificant amount of added boron had not been deliberately excluded from the scope of the order, because there was no commercial reason for such steel to exist at the time of the investigation, and in fact it did not exist as a commercial product. The Federal Circuit observed that indeed such steel would not have been purposely manufactured but for the antidumping order, which supplied the only reason for its existence. Under these circumstances, the Federal Circuit held that, although the Department had previously found that the boron–added steel was technically outside the order, the circumvention inquiry could proceed. Thus, contrary to Respondent's contentions, the Federal Circuit clarified in *Nippon Steel* that the minor alteration inquiry in *Wheatland Tube* was prohibited only because the product in question was well–known prior to the order and was specifically excluded from the investigation.[7] *See Nippon Steel*, 219 F.3d at 1356.

Having examined relevant precedent, the Department looked anew to the original petition, *ITC Final Report* and previous Department determinations to determine if mixed–wax candles were well–known prior to the *Order* and were specifically excluded from the LTFV investigation, such that *Wheatland Tube* applies. *See Candles from the People's Republic of China*, USITC Pub. 1888 (August 1986) (''*ITC Final Report*'')[8]. With respect to the original petition, the Department observed that petroleum or paraffin waxes were the only materials used in candle production within the PRC at the time of the filing. *See Antidumping Petition of National Candle Association*, (September 3, 1985) at 3, 6, 28, 36 (''*Petition*'')[9].

Regarding the *ITC Final Report*, the Department notes that the initial investigation found that ''{PRC} candle factories that manufacture for export reportedly use only semi–refined petroleum waxes... stearic acid[10] or plastic wax as a hardening agent accounts for approximately one percent of the composition of {PRC} manufactured candle.'' *See ITC Final Report*, at 20. Moreover, the Department now finds that it is not apparent from the language of the *ITC Final Report* whether mixed–wax candles were being produced within the United States at the time of the investigation. The ITC found that ''petroleum wax candles'' were the domestic ''like product'' after considering whether ''candles made of materials other than petroleum, principally beeswax,'' were within the ''like product.'' *Id.* at 2–3. However, the Department notes that while the ITC indicated that it considered ''candles made of {other} materials,'' as highlighted by various Respondents, the domestic ''like product'' analysis did not focus on mixed–wax candles, but only on beeswax and petroleum wax candles. *See ITC Final Report*, at 2–3; *Petroleum Wax Candles from China*, Inv. No. 731–TA–282 (Second Review), USITC Pub. 3790 (July 2005) at 6–7 (''*ITC Second Sunset Review Report*'').

Finally, the Department considered its prior scope ruling finding certain mixed–wax candles outside the scope of the Order. While the Department recognizes that it made previous such scope rulings, the Department notes that the factors that govern the Department's analysis of whether a product is within the scope of the *Order* differ for anticircumvention inquiries and other scope determinations. In scope rulings under section 351.225(k)(1) of the Department's regulations, the Department relies upon relevant documents (*i.e.*, descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the ITC) in determining whether a particular product is included within the scope of an antidumping duty order. If the Department finds that the descriptions are dispositive, the Department will issue a final scope ruling of whether the product is within the scope of the antidumping duty order. But when the descriptions are not dispositive, the Department will further consider the additional five factors, as stipulated in section 351.225(k)(2) of the Department's regulations. In five of the one hundred and forty three scope rulings requested, starting with the *J.C. Penney Final Ruling*, the Department found that mixed–wax candles were outside the scope of the *Order* because the *ITC Final Report* defined a petroleum wax candle as one ''composed of fifty percent or more petroleum wax.'' *See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China (A–570–504): J.C. Penney* (May 21, 2001) at 12 (''*J.C. Penney Final Ruling*'')[11]; *ITC Final Report*, at 3. Thus, the Department found it was unnecessary in these prior scope rulings to consider the additional factors, (*i.e.*, physical characteristics, expectations of the ultimate purchaser, ultimate use, channels of trade, and advertising/display), set forth in section 351.225(k)(2). *See also 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 7 (May 13, 2005) (''*Pier 1 Final Ruling*'')[12].

Later–developed merchandise anticircumvention inquiries are governed by section 781(d) of the Act,

[7] The Department recognizes that both *Wheatland Tube* and *Nippon Steel* were minor alterations anticircumvention inquiries and has discussed them here not only because they were raised by interested parties but also because they provide guidance as to the general issue of initiating anticircumvention inquiries.

[8] *See Memo to the File from Julia Hancock, International Trade Analyst, Subject: Placing Additional Information on the Record* (May 23, 2006), at Attachment 1 (''*May 23, 2006, Additional Information Memo*'').

[9] *See May 23, 2006, Additional Information Memo*, at Attachment 2.

[10] Stearic Acid is a fatty acid with long hydrocarbon chains varying in length typically found in hydrogenated vegetable or animal oils. *See Petitioners' April 6, 2005, Comments*, at Exhibit F. In the LTFV investigation, the ITC noted that ''a composite of paraffin and roughly five to ten percent stearic acid as a hardening agent became the basic candle stock for U.S. manufacturers.'' *See ITC Final Report*, at 19.

[11] *See May 23, 2006, Additional Information Memo*, at Attachment 3.

[12] *See May 23, 2006, Additional Information Memo*, at Attachment 4.

which instructs the Department to determine whether the product in question was developed after the investigation was initiated, and, if so, whether it is within the scope of the order. If the Department finds that the product subject to the inquiry is later–developed, then section 781(d)(1) of the Act instructs the Department to consider: (A) whether 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) whether the expectations of the ultimate purchasers of the later–developed merchandise are the same as for the earlier product; (C) whether the ultimate use of the earlier product and the later–developed merchandise is the same; (D) whether the later–developed merchandise is sold through the same channels of trade as the earlier product; and (E) whether the later–developed merchandise is advertised and displayed in a manner similar to the earlier product. In contrast to the prior scope rulings, in the present inquiry, the Department is obligated, pursuant to section 781(d) of the Act, to make a determination by explicitly analyzing these additional factors.

As neither the original petition or the *ITC Final Report* unequivocally excluded these products and as the statute compels a different analytical framework than the prior scope ruling in this context, the Department conclude it was appropriate to initiate this inquiry as Wheatland Tube does not apply in this instance.

Later–Developed Merchandise

Statutory Provision

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 examine the following criteria: (A) whether 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) whether the expectations of the ultimate purchasers of the later–developed merchandise are the same as for the earlier product; (C) whether the ultimate use of the earlier product and the later–developed merchandise is the same; (D) whether the later–developed merchandise is sold through the same channels of trade as the earlier product; and (E) whether the later–developed merchandise is advertised and displayed in a manner similar to the earlier product.

In addition, section 781(d)(2) of the Act also states that the administering authority may not exclude later–developed merchandise from a countervailing or antidumping duty order merely because the merchandise (A) is classified under a tariff classification other than that identified in the petition or the administering authority's prior notices during the proceeding, or (B) permits the purchaser to perform additional functions, unless such additional functions constitute the primary use of the merchandise, and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the merchandise.

Legislative History and Prior Case Precedents

The statute does not provide further guidance in defining the meaning of further development. The only other source of guidance available is the brief discussion of later–developed products in the legislative history for section 781(d), which although addressed later–developed products with respect to the ITC's injury analysis, we find is also relevant to the Department's analysis. 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 advancement or a significant alteration of the merchandise involving commercially significant changes.''** *See* H.R. Conf. Rep No. 576, 100th Cong., 2d Sess. (1988), reprinted in 134 Cong. Rec. H2031, H2305 (daily ed. April 20, 1988) (*emphasis added*). In addition, in the first section 781(d) determination involving portable electric typewriters, the Department also cited a U.S. Senate report:

> [s]ection 781(d) was designed to prevent circumvention of an existing order through the sale of later developed products or of products with minor alterations that contain features or technologies not in use in the class or kind of merchandise imported into the United States at the time of the original investigation.

See S. Rep No. 40., 100th Cong., 1st Sess. 101 (1987).

Additionally, the Department noted the following:

> 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. Sec. 323(a) of Sen. amendment to H.R. 3, October 6, 1987. H.R. Conf. Rep No. 576, 100th Cong., 2d Sess. (1988), reprinted in 134 Cong. Rec. H2031, H2305 (daily ed. April 20, 1988).

The language of the statute and legislative history makes clear that for **any product to be considered later–developed it must be an advancement of the original product** subject to the investigation, as opposed to a product recently found to be within the scope of the order.

See Portable Electric Typewriters from Japan: Preliminary Scope Ruling, 55 FR 32107, 32114 (August 7, 1990) (''*PET Prelim*'') *(emphasis added).*

In addition to the legislative history, prior later–developed merchandise cases also provide further guidance, foremost of which is that the Department has considered ''commercial availability'' in some form in its prior later–developed merchandise anticircumvention inquiries: *PET Final*; *EMD Final*; and *EPROMs Final. See Portable Electric Typewriters from Japan: Final Scope Ruling*, 55 FR 47358 (November 13, 1990) (''*PET Final*''); *Electrolytic Manganese Dioxide from Japan: Final Scope Ruling*, 57 FR 395 (January 6, 1992) (''*EMD Final*''); and *Eraseable Programmable Read Only Memories from Japan: Final Scope Ruling*, 57 FR 11599 (April 6, 1992) (''*EPROMS Final*''). In each case, the Department addressed the ''commercial availability'' of the later–developed merchandise in some capacity, such as the product's presence in the commercial market or whether the product was fully ''developed,'' *i.e.*, tested and ready for commercial production.[13]

[13] The fourth later-developed merchandise inquiry conducted by the Department was Television Receiving Sets, Monochrome and Color, from Japan. In that inquiry, the Department found that hand-held LCD televisions (LCD TVs) were later-developed merchandise. *See Television Receiving Sets, Monochrome and Color, from Japan: Final Scope Ruling*, 56 FR 66841 (December 26, 1991) (''*TV Final*''). In its final determination, the Department reviewed LCD TVs based upon the later-developed merchandise provision and noted that the LCD TVs technology did not exist at the time the original product descriptions were developed. If the technology did not exist, LCD TVs could not have been ''commercially available'' at the time of the investigation. In other later-developed merchandise inquiries, such as *EPROMs Final*, the Department addressed ''commercial availability'' in some form as a factor in its later-developed merchandise analysis because the

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Based upon the legislative history of the anticircumvention provision and prior later–developed merchandise inquiries, the Department finds that it should include a ''commercial availability'' standard in its analysis of this proceeding, as was indicated in the January 18, 2006, letter to interested parties. *See* January 18, 2006, Letter, at 2–3. As noted above, both the legislative history and prior later–developed merchandise inquiries place emphasis on evaluating the ''commercial availability'' of the specific product to determine whether that product is later–developed, pursuant to section 781(d) of the Act. Accordingly, the Department must find that mixed–wax candles were not ''commercially available'' at the time of the LTFV investigation in order to be properly considered later–developed merchandise.

Consideration of Later–Developed Merchandise Factors

The legislative history and prior later–developed merchandise inquiries show that there are two key elements to a later–developed merchandise analysis. Specifically, that the alleged later–developed merchandise was not commercially available at the time of the LTFV investigation and second, that there was a significant technological advancement or a significant alteration of the merchandise involving commercially significant changes.

A. Commercial Availability

There are two key components implicit in the Department's prior analyses of the commercial availability factor. The first is whether it was possible, at all, to manufacture the product in question. Second, if the technology existed, whether the product was available in the market.

Existence of Mixed–Wax Candle Technology[14]

In previous later–developed merchandise inquiries, the Department considered whether technology existed at the time of initiation of the LTFV investigation, which may have resulted in the creation of a new product. *See EPROMs Final*, 57 FR at 11602–3. Therefore, the Department will consider in this analysis whether the appropriate technology required to produce the kind of mixed–wax candles at issue (hydrogenation) existed at the time of the LTFV investigation.[15]

One of the Respondents, Target, submitted a candle–making manual from 1906 that discusses the history of candle–making manufacturing in the 19th century.[16] *See Target's February 15, 2006, Comments* (February 15, 2006), at Exhibit 1. Specifically, it discusses the process by which a candle made of paraffin and stearic/fatty acids is produced, including the process of distilling fatty and stearic acids and the melting and solidifying points of mixtures of stearic and palmitic acids. Although the manual does not specifically reference hydrogenation, a review of this manual and other patents submitted by parties, which details the hydrogenation process, appear to be similar. Specifically, the Lamborn manual demonstrates that stearic acid, or ''stearine,'' which may be ''palm stearin,'' can be produced by either a ''lime–saponification process, or by acid saponification with distillation.'' *Id.* at Exhibit 1, p. 493.

In addition, Target also submitted a patent issued by the U.S. Patent and Trademark Office (''USPTO'') to Wilhelm Pungs, Ludwigshafen–on-the–Rhine, and Michael Jahrstorfer in 1930 (''Pungs Patent'') that discusses the hydrogenation process in producing candles with paraffin and natural waxes. *See Target's February 15, 2006, Comments*, at Exhibit 3. The Pungs Patent describes many different candle formulations such as

> Candles with a cotton wick are cast in the usual manner from a fused mixture (about 85 C.) of equal parts of hard paraffin wax and of the mixture of alcohols of high molecular weight obtainable by the catalytic hydrogenation, with the aid of hydrogen at about 200 C., at a pressure of about 200 atmosphere and in the presence of metallic nickel, of a Montan wax which has been bleached with chromic acid and the acids of which bleached wax have been esterified with methyl alcohol before the hydrogenation.

Id.

In addition, both Respondents and Petitioners acknowledge the existence of hydrogenation technology prior to the time of the LTFV investigation as discussed in the patent issued to Howard C. Will in 1934. *See CCA's February 15, 2006, Comments* (February 15, 2006), at Attachment 8 (''Will Patent''). Specifically, the Will Patent states that:

> I have found that a very satisfactory candle can be produced which comprises a substantial percentage, as 50% or more vegetable oil combined with paraffin wax, stearic acid, beeswax or other waxes if the vegetable oil, such as rapeseed oil is first hydrogenated and then mixed with paraffin wax, stearic acid, beeswax or other waxes.

Id.

Given the description of the candles within the patents on the record and the Lamborn Manual, the Department finds that the mixed–wax candle technology existed prior to the LTFV investigation.

Market Availability of Mixed–Wax Candles

The interested parties submitted a significant amount of information on the record as to whether these mixed–wax candles were available at the time of the LTFV investigation. The types of information the Department received from interested parties was in the form of marketing materials (product brochures, etc.), affidavits, patents, direct quantity and value information, and statements made in various ITC documents. Moreover, the Department conducted its own research and placed this information on the record. The record information as a whole does not definitively demonstrate that these mixed–wax candles were available in the market at the time of the LTFV investigation.

While the marketing materials and affidavits demonstrate a commercial presence of candles containing various wax materials, both mixed and unmixed, none of the submitted materials demonstrate that the subject candles, with the specific kind of mixed–waxes in the specific proportions, (*i.e.*, more than fifty percent non–petroleum wax), were available for commercial sale in the market prior to time of the LTFV

technology to ''developrdquo; the new product existed at the time of the original investigation. *See EPROMs Final*, 57 FR at 11602-3.

[14] The Department notes that in all previous later-developed merchandise inquiries, the existence of the technology central to the manufacturing of the product was not at issue.

[15] In their petition, Petitioners specifically requested that this anticircumvention inquiry focus on mixed-wax candles containing palm and/or vegetable-based oils. More importantly, Petitioners noted in their request that neither palm and/or vegetable-based oils could be used by itself as a candle wax because they are liquid at room temperature. Accordingly, Petitioners noted that these oils must be chemically modified, (*i.e.*, undergo the hydrogenation process), resulting in a carbon chain chemistry that allows the long chains to fit closely together, which is a necessity for candle wax. *See Petitioners' October 8, 2004 LDM Petition* (October 8, 2004), at 15 and Exhibit 4 (''*Petitioners' LDM Petition*''). As such, the hydrogenation process and any developments to it are the central technologies to this inquiry.

[16] *Modern Soaps, Candles and Glycerin: A Practical Manual of Modern Methods of Utilization of Fats and Oils in the Manufacture of Soap and Candles, and of the Recovery of Glycerin*, Leebert Lloyd Lamborn, D. Van Nostrand Company, 1906. (''Lamborn Manual'').

investigation.[17] For instance, one of the respondents, CCCFNA, submitted a Colonial Candle/Mrs. Baker's catalogue from 1988 for bayberry candles, which this company has sold since 1909, as evidence that mixed–wax candles were available for commercial sale at the time of the LTFV investigation. *See CCCFNA's February 27, 2006, Rebuttal Comments*, at Exhibit 5. However, this catalogue only references that the candles for sale are made of bayberry wax. By not mentioning any other wax in a blend with bayberry, this catalogue does not demonstrate that the offered candles are either mixed or composed of the waxes subject to the inquiry.

With respect to the patents, the Department notes that it cannot conclusively ascertain that the candle production methods described in the patents dated prior to the LTFV investigation were ever used for commercial production.[18] Further, consistent with *EMD Prelim*, the Department notes that patents by themselves are not dispositive in determining whether a product is later–developed. *See Electrolytic Manganese Dioxide from Japan: Preliminary Scope Ruling*, 56 FR 56977 (November 7, 1991) (''*EMD Prelim*''). In the *EMD Prelim*, the Department found that while patents for CMD–U were in existence at the time of the investigation, the product was not ''developed,'' *i.e.*, not fully tested or readied for commercial production, at the time of the investigation. *See EMD Prelim*, 56 FR at 56978–81.

As an additional method of gathering direct information on this question, the Department sought sales information directly from the parties participating in this proceeding. These parties included U.S. candle importers, U.S. candle producers, and Chinese candle producers and exporters. None provided any evidence that there were any sales of candles composed of greater than fifty percent vegetable or palm oil–based waxes mixed with petroleum wax prior to, or contemporaneous with, the LTFV investigation. The record indicates that Petitioners and one of the respondents, CCCFNA, did sell mixed–wax candles of the type subject to this inquiry, but not until the late–1990s. *See Petitioners' February 15, 2006, Comments*, at Exhibit A; *CCCFNA's Quantity and Value Submission* (February 15, 2006), at Exhibits 1–7.[19] Although the annual sales data submitted by Petitioners and CCCFNA are only separated into two categories, (*i.e.*, candles containing more than fifty percent petroleum wax and candles containing more than fifty percent non–petroleum wax), they show that mixed–wax candles, (*i.e.*, less than fifty percent non–petroleum wax), were not available for commercial sale as late as 1997.[20]

Although the Department is not bound by the ITC's findings in the second sunset review, we find that it is relevant to our later–developed merchandise analysis.[21] The ITC recently found that mixed–wax candles[22] were not considered as part of its analysis at the time of the LTFV investigation because there was ''no commercial production of the {mixed–wax} candles in 1986 when {the ITC} made its original determination.'' *See ITC Second Sunset Review Report*, at 7. The ITC noted that, both during and after the 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 Report*, at 6. Mixed–wax candles, according to the ITC, were not ''commercially produced'' until the late 1990s when ''{domestic} producers began commercial production.'' *Id.* at 7.[23] Therefore, the Department finds the

[17] *See Petitioners' February 15, 2006, Comments*, at Exhibit C16 (1987 Candle World brochure, which offers a ''new patented process for making candles'' that includes ''only highly-refined microcrystalline wax''), C1 (2000 A.I. Root Company brochure which offers ''new products in a renewable soy-wax blend''); *CCCFNA's February 27, 2006, Rebuttal Comments*, at Exhibit 1 (1985 Emkay Price List, which offers specialty candles, such as ''wax lighting tapers, little lites, and bottle decorators''), Exhibit 3 (1993 Williamsburg Soap and Candle Company catalogue, which offers handcrafted tapers made of ''special blend of waxes''), and Exhibits 5 and 7 (1988 Colonial Candle/Mrs. Baker's catalogue and price list, which offer candles made of bayberry wax); *Lava Enterprise's February 13, 2006, Comments* (February 13, 2006), at Attachment 1 (1997 Lava Enterprises product catalogue, which offer Glowing Art-Masters candles); *CCA's February 15, 2006, Comments*, at Exhibit 11 (2004 Health Supplement Retailer article, which discusses ''palm oil candles are a relatively new addition to the market''), Exhibit 13 (1998 StratSoy News Service article, which states that ''new soybean oil-based candles were commercially launched at the 1998 Farm Progress Show''), and Exhibit 18 (2002 Colonial Candle Company of Cape Cod product initiation); *Target's February 15, 2006, Comments*, at Exhibit 2 (Price's Patent Candle Company product brochure, which is for a Sherwood dinner candle created in the 1830's, that is composed of ''stearine made from pure vegetable wax''); and *CCA's March 28, 2006, Comments* (March 28, 2006), at Exhibit 4 (International Group, Inc. (''IGI'') Paper which discusses scrape surface heat exchanger (''SSHE'') technology that was researched by IGI to develop candles, from petroleum wax-only blends, vegetable wax-only blends, and blends containing petroleum wax and vegetable wax, for the general market).

[18] While one of the Respondents, Target, did submit a list of patents relating to candles and their production from 1906 through 1983, the Department notes that Target neither provided the claim nor the body of the patent issued within its list. *See Target's February 15, 2006 Comments*, at Exhibit 5. Accordingly, the Department is unable to ascertain from the list submitted by Target whether the patents listed establish that there were significant developments in hydrogenation technology that allowed mixed-wax candles, in the specific wax proportions subject to the inquiry, to be produced prior to the LTFV investigation. As a result, the Department could not consider these patents in its analysis as they are not on the record of this proceeding.

[19] The Department notes that all Respondents were requested to provide the quantity and value of sales of mixed-wax candles in order to establish when these candles were ''commercially available.'' However, four of the Respondents either did not submit the requested data or stated that they were under no legal obligation to maintain such sales records. *See CCA's February 15, 2006, Comments*, at 1; *Lava Enterprises Comments' on the Department's January 18, 2006 Letter* (February 13, 2006), at 2 (≥*Lava's February 13, 2006, Comments*≥). In addition, only 5 NCA members provided quantity and value data because, as noted at the hearing, they were the only member companies that had this data or made sales of mixed-wax candles. *See Anticircumvention Inquiry, In the Matter of Petroleum Wax Candles from the People's Repbulic of China: Hearing Transcript* (May 18, 2006), at 105-106 (''*Hearing Transcript*'').

[20] While Lava was one of the respondents that did not provide annual sales data of mixed-wax candles, Lava did acknowledge that it started selling mixed-wax candles in 1997, over ten years after the LTFV investigation. *See Lava's February 13, 2006, Comments*, at 2.

[21] The Department recognizes that the ITC's findings in the *ITC Second Sunset Review Report* was primarily based on information provided by Petitioners. However, U.S. importers did provide information to the ITC for consideration in the second sunset review.

[22] In the *ITC Second Sunset Review Report*, the ITC defined ''blended candles'' as ''candles containing any blend of petroleum and vegetable wax.'' *See ITC Second Sunset Review Report*, at 7. The Department notes that the merchandise subject to this inquiry, mixed-wax candles, are also candles containing blends of petroleum and palm or other vegetable oil-based waxes.

[23] The Department further observes that in the ITC's examination of the U.S. market in the late 1990s, domestic candle production was threatened by increased energy and raw material costs. *Id.* at II-3. According to U.S. candle producers, {increased petroleum prices were having a significant effect on the price of petroleum wax candles,} and thus, hindering these producers' ability to compete with foreign imports of mixed-wax candles, (*i.e.*, less than fifty percent non-petroleum wax). *Id.* at II-2 (footnote 8) and II-3. These factors, according to the ITC, resulted in an increased availability of mixed-wax candles within the U.S. market. Of note, U.S. candle producers described the increased availability, particularly after 2001, of mixed-wax candles, ''as an explosion.''; *Id.* at II-4. The shift from petroleum wax candles to mixed-wax candles was also due to a consumer demand for substitute products, particularly candles using materials other than petroleum wax. Specifically, the ITC noted that two materials, soy wax, which was developed in 1996, and palm wax, were recent developments. *Id.* at II-7. Moreover, the ITC noted that domestic producers and importers indicated that the most predominant new substitutes for petroleum wax candles, palm and soy wax candles, have only been present within the market since 2001. *Id.* at II-4, II-8, II-9. Due to this change in the market, the ITC also found that ''{PRC} candle producers have been able to produce and increase their exports to the United States of {mixed-wax} candles following {the Department's} issuance of scope exclusions.'' *Id.* at 19. Based on the evidence presented during its proceeding, the ITC defined the domestic like product to include candles with fiber or paper-cored wicks and containing any amount of

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ITC's Second Sunset Review Report relevant to the Department's later–developed merchandise analysis.

Given the overall paucity of data shedding light as to the commercial availability factor, the Department is unable to conclusively establish that mixed–wax candles were available in the market at the time of the LTFV investigation. The most clear evidence submitted on the record, quantity and value information, shows that these mixed–wax candles were first sold in the late 1990s and therefore, were not available in the market at the time of the LTFV investigation.

B. Significant Technological Advancement or a Significant Alteration of the Merchandise Involving Commercially Significant Changes

Although the data on the record support a conclusion that the mixed–wax candles were not available at the time of the LTFV investigation, the Department must also consider this second factor. At the outset, the Department notes that this factor was not explicitly addressed in prior later–developed merchandise inquiries because whether there was a significant technological advancement was not at issue in those cases. However, the legislative history cited above makes clear that this criteria is implicit in the later–developed merchandise provision. This criteria is necessary to distinguish those cases in which a product is not commercially available during the LTFV investigation merely due consumer preferences or other factors, rather than the product not having been developed at the time of the LTFV investigation. In this case, the Department finds that the record evidence, although adequate for the Department to draw a reasonable inference, is somewhat opaque, particularly with respect to the exact significant technological advancements that have occurred enabling the production of mixed–wax candles and the timing of these advancements.

The Department notes that numerous patents were issued from the late 1990s, onward for the production of candles containing a mix of petroleum and other types of waxes. These patents appear at the same time the Department began receiving a surge of scope ruling requests regarding mixed–wax candles. Moreover, during that same period, large volumes of Chinese mixed–wax candles appeared in the market. Finally, the Department notes that a few patents issued in the early 2000s appear to directly bear on the question of producing candles with less than fifty percent petroleum wax. Based on this information, the Department finds it reasonable to infer that the patents issued from the late 1990s onward are correlated with the commercial presence of mixed–wax candles and concludes that a significant technological advancement or a significant alteration of the merchandise involving commercially significant changes occurred.

Although the Department's inferences are reasonable and based on substantial evidence, there are several serious remaining concerns that require further inquiry. Among these considerations are:

• the lack of a clear and definitive statement of the precise significant technological advancement that allowed for the commercial sale of mixed–wax candles;

• the extent to which the concentration of palm or vegetable–based oil wax has any effect on the physical properties of the mixed–wax candle as well as the proper characterization of such as candle as a petroleum wax candle;
• a direct link between patents awarded during this period and commercial sale of mixed–wax candles;
• a comprehensive survey showing the technological developments regarding mixed–wax candles.

C. Conclusion

Based on the above analysis, although not all evidence is definitive or supportive of this conclusion, the Department finds that mixed–wax candles were not commercially available at the time of the LTFV investigation and infers that there was a significant technological advancement regarding such candles well after the time of the LTFV investigation. Therefore, the Department finds that mixed–wax candles meet the statute's meaning of a later–developed product.

Mixed–Wax Candles As Is–Scope Products

Pursuant to section 781(d) of the Act, once the Department finds a product to be later–developed, it must determine whether it is included in the scope of the Order by using the following criteria: (A) whether 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) whether the expectations of the ultimate purchasers of the later–developed merchandise are the same as for the earlier product; (C) whether the ultimate use of the earlier product and the later–developed merchandise is the same; (D) whether the later–developed merchandise is sold through the same channels of trade as the earlier product; and (E) whether the later–developed merchandise is advertised and displayed in a manner similar to the earlier product. *See* Section 781(d)(1) of the Act.

The data available to the Department is not precise regarding the proportion of different waxes in mixed–wax candles. As such, the Department's analysis necessarily addresses the entire range of products (less than one–hundred percent to over fifty percent palm and/or other vegetable–oil based waxes). However, because the data on the record is imprecise with regard to wax proportions, the Department has concerns. Chief among them is whether there is a proportion of non–petroleum wax content of a candle that is so large that the candle can no longer properly be considered within the same class or kind of merchandise subject to the *Order* as a petroleum wax candle. While the Department has adequate information to address the entire range of mixed–wax candles generally, the Department has only limited information with which to establish a distinction, if any, between subject and non–subject mixed–wax candles. The best information available to the Department is the information submitted by Pier 1 regarding a candle purported to be a mixed–wax candle containing 87.80 percent of non–petroleum wax. *See Pier 1 Final Ruling*, at 7. Therefore, the Department preliminarily concludes that the preponderance of the record evidence supports a finding that candles containing up to 87.80 percent palm and/or other vegetable–oil based waxes mixed with petroleum wax are within the scope of the Order.

Physical Characteristics

With respect to physical characteristics, the Department first notes that the available data is limited. No party provided comprehensive evidence regarding the wax proportions of the mixed–wax candles that they sell. Moreover, no party provided an analysis addressing the precise effects of increasing proportions of palm and/or other vegetable oil–based waxes on the physical characteristics of mixed–wax candles. Absent this information, the Department cannot precisely evaluate the physical characteristics of mixed–wax candles in varying proportions.

Despite these consideration, when taken as a whole, the limited record evidence supports the conclusion that there is no substantial difference

petroleum wax, except for candles containing more than 50 percent beeswax.

between mixed and petroleum wax candles' physical characteristics. The Department notes that mixed–wax candles and petroleum wax candles appear to be indistinguishable in terms of appearance, feel, and scent. Although Respondents claim that differences exist, the Department notes that Respondents have not submitted evidence, such as sample candles, that indicate a difference in physical characteristics. The Department observes that one of the Respondents, the MVP Group when it was part of the Coalition for Free Trade in Candles (''CFTC''), did submit sample candles prior to the *Initiation Notice*. However, these sample candles were neither in the same burn stage nor were the candles the same unit of comparison, (*i.e.*, the sample candles were in different containers, the color of the wax was different, and the packaging was different). *See CFTC's Candle Samples* (February 7, 2005), at Exhibits 4 and 5. In contrast, the Department notes that the sample candles provided by Petitioners were visually similar, (*i.e.*, the sample mixed–wax candles that contains palm wax and the petroleum wax candles were both pillars and the color of the wax was similar). *See Petitioners' Sample Candles* (January 25, 2005), at Sample A. The Department notes that the mixed–wax candles contained labels on the bottom of the candle, which indicated that the candles contained fifty–two percent palm wax. However, the Department finds that without turning the mixed–wax candles over to identify their wax content, the sample mixed–wax candles and the sample petroleum wax candles have similar physical characteristics which make them appear to be indistinguishable by appearance, feel, and scent. *Id.*

Additionally, while there were claims that mixed–wax candles have distinct physical differences that stem from these candles' differing chemical structures, the Department again notes that there are no submitted samples of mixed–wax candles to conclusively establish these physical differences. Instead, there are declarations from members of the candle industry as support for this argument. For instance, one of the Respondents, CCA, submitted a declaration from James Groce, R&D Analytical Lab Manager of CCA, who stated that their research showed that the difference in the chemical structure of petroleum wax and vegetable–based waxes results in a distinct difference in the appearance and performance of mixed–wax candles. *See CCA's February 15, 2006, Comments*, at 34–43, Exhibit 38. Because of the chemical difference in the structure of vegetable–based waxes, another declaration from Andrew Birch, Vice President of Manufacturing for PartyLite[24], noted that this required his company to invest significant outlays of capital equipment to successfully produce mixed–wax candles. *Id.* at Exhibit 37. While the Department acknowledges 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. Therefore, the Department preliminarily finds the sample candles and information on the record tend to support a conclusion that these mixed candles are not distinguishable from in–scope petroleum wax candles.[25]

Expectations of the Ultimate Purchaser

Similar to the record with respect to physical characteristics, there is little definitive information on the record with respect to the expectations of the ultimate of mixed–wax candles. No party has submitted clear information that consumers on a wide–spread basis are aware of the wax content of the candles they purchase, or that they prefer one specific wax composition in a candle to another. While both Petitioners and Respondents have provided information purporting to show a preference or lack thereof, none of the submitted evidence appears to override the obvious expectations of the ultimate purchaser. Specifically, the Department notes that numerous industry studies indicate 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 Home Fragrances and Candle Report for 2005, 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 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.

Respondents argue that the ultimate purchaser of mixed–wax candles has different expectations due to the health benefits of these candles. Respondents submitted some scientific evidence as support for their argument that the ultimate purchaser derives health benefits purportedly from using mixed–wax candles instead of petroleum wax candles, which are unnatural and allegedly give off more soot. For instance, one of the Respondents, CCA, submitted a study conducted by their research and development department, which showed that mixed–wax candles, containing a mixture of petroleum wax and soy wax, gave off a cleaner burn than a one hundred percent petroleum wax candle. *See CCA's February 15, 2006, Comments*, at Exhibit 38. Additionally, Respondents also submitted numerous advertisements and news articles as support for their argument that petroleum wax candles ''release carcinogenic toxins into the air,'' whereas, mixed–wax candles ''burn cleaner, longer and more evenly than {petroleum} and do not give the oily soot.'' *Id.*, at Exhibit 14. In reviewing the evidence submitted by Respondents, the Department finds that the evidence, while tending to support their argument, is not at this time accompanied with adequate corroborative support for the Department to accord sufficient weight to conclude on balance that the expectation of the ultimate consumer is discernibly different for mixed–wax candles. Therefore, the Department finds that the limited available 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.

Ultimate Use

Concerning whether the ultimate uses of mixed–wax candles as compared with petroleum wax candles are similar, Petitioners maintain that these candles share the same uses: 1) providing light, heat, or scent; and, 2) decorative purposes. The Department observes that Petitioners provided scientific evidence demonstrating that these candles are used for the same purposes. Specifically, Petitioners submitted an analysis of wax compositions conducted

[24] CCA and PartyLite are divisions of Blyth, Inc., their parent company.

[25] In response to the argument that the Department should address the product's predominant raw material, with respect to physical characteristics, 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*'').

by IGI, which found there is no substantial difference in the fragrance throw or burn properties of mixed–wax candles in comparison to petroleum wax candles in similar wax proportions. *See Petitioners' LDM Supplemental Response*, at Exhibit B. Although IGI is a member of Petitioners, the study is persuasive because the study, which was presented at conference held by Petitioners in Spring 2004, which was not requested until October 2004. While Respondents did provide some scientific evidence to show that there was a difference in the fragrance throw and burn properties of mixed–wax candles in comparison to petroleum wax candles, the submitted scientific evidence was conducted specifically for this inquiry. *See CCA's February 15, 2006, Comments*, at 38–43. Similarly, Petitioners submitted argument that by employing varying processing conditions and other factors, mixed–wax candles and petroleum wax candles can have similar chemical properties. Citing the IGI study, they note 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 8, p. 4; *Petitioners' LDM Supplemental Response*, at Exhibit B.

The Department recognizes that parties provided information showing that some retailers have tried to create a market for mixed–wax candles by advertising their health benefits.[26] However, while this information is intriguing, there is currently insufficient data to link these observations and claims to the ultimate use of mixed–wax candles.

Moreover, contrary to arguments made by Respondents, there is little independently supported evidence that the strong demand within the aromatherapy market is limited solely to mixed–wax candles. The 1999 Home Fragrances USA Report (''*Report*'') indicates that there was an increase in demand for candles within the aromatherapy market. However, the *Report* did not state that the demand was solely for mixed–wax candles. *See Petitioners' LDM Supplemental Response*, at Exhibit C. Specifically, the *Report* discusses a growth in demand for candles, particularly scented candles, but does not identify a specific demand for candles containing palm and/or vegetable–based waxes. Therefore, based on the information available on the record the Department finds that mixed–wax candles and in–scope petroleum wax candles have similar uses.

Channels of Trade

The Department finds that the same entities, which range from mass marketing stores to high–end specialty stores, offer both mixed candles and in–scope petroleum wax candles. While Respondents argue that mixed–wax candles are sold in other channels of trade (*i.e.*, bath and beauty stores, spas, specialty stores, natural food retailers, the internet, etc.) because these candles are natural products, the Department observes that the evidence on the record is conflicting. The Department notes that one of the Respondents, CCA, submitted a study on ''Candle Marketing Opportunities within the Spa and Salon Industry,'' as evidence that these channels of trade often exclusively sell mixed–wax candles. *See CCA's February 15, 2006, Comments*, at Exhibit 26, p. 31. However, the Department observes that the submitted study does not, in fact, state that spa and salon channels of trade only sell mixed–wax candles.[27] *Id.* at Exhibit 26, p. 32–35. In actuality, both mixed–wax candles and petroleum wax candles are sold within the spa and salon industry. *See Petitioners' February 27, 2006, Rebuttal Comments*, at 25. Additionally, the Department observes that Respondents' argument that mixed–wax candles are also primarily sold within the Internet does not establish this is a separate channel of trade from in–scope petroleum wax candles. Both Petitioners and Respondents have submitted Internet advertisements offering for sale both in–scope petroleum wax candles and mixed–wax candles. *See Petitioners' LDM Supplemental Response*, at Exhibits N (Scentsations web advertisement for paraffin wax candles and soy wax candles), P (Crafted Candles web advertisement for taper containing blend of waxes); *CCA's February 15, 2006, Comments*, at Attachment 32 (Er'go web advertisement for a soy wax candle). However, the Department notes that the evidence on the record, with respect to channels of trade, also does not distinguish between candles containing wax mixtures in any proportion and the specific range of wax mixtures subject to this inquiry.

In addition, the Department finds unsupported by adequate corroborative evidence Respondents' assertions that mixed–wax candles, which are sold in mass merchandise stores, are marketed under a ''natural'' strategy that sets these candles apart from petroleum wax candles. A review of the record shows that these mass merchandise stores, such as Whole Foods and Target, sell both petroleum wax candles and mixed–wax candles. *See Petitioners' February 27, 2006, Rebuttal Comments* at 25, and Exhibit 14. Moreover, these mass merchandise stores do not differentiate the types of candles for sale primarily based on wax content or any alleged ''environmental'' benefit. *Id.* at Exhibit 14. Accordingly, the Department finds that the limited record evidence of this proceeding indicates that mixed and in–scope petroleum wax candles share similar channels of trade.

Advertising/Display

The Department finds that the record indicates that advertising and display appear to be virtually the same for mixed and petroleum wax candles. While Respondents provided advertisements as evidence that mixed–wax candles, containing palm or soy wax, are marketed based on their alleged health benefits, the Department notes that most of these advertisements are for one hundred percent vegetable–based wax candles. For instance, one Respondent, CCA, submitted an advertisement from Pure Impressions for one hundred percent palm wax candles, not subject to this inquiry, which states: ''Made from environmentally friendly natural palm wax (100% stearine).'' *See CCA's February 15, 2006, Comments*, at Exhibit 16. In addition, the Department also observes that Respondents placed other information from companies on the record as evidence that the all–natural and health–related benefits of mixed–wax candles are central to these companies' marketing strategy. However, the Department again notes that this evidence, such as a webpage from Aloha Bay, does not demonstrate that mixed–wax candles, in the specific

[26] *See CCA's February 15, 2006, Comments*, at Exhibits 20-24 (Exhibit 20 contains a news article that states that estheticians are using mixed wax candles because ''paraffin, a by-product of petroleum, is known to be harmful,'' Exhibit 21 is an advertisement from Sephora for a scented candle that says ''this soy-based candle ... helps promote a cleaner, healthier environment,'' Exhibit 22 is a CW Group catalogue for CleanWax, which is ''patent pending alternative to paraffin with a lower propensity to soot,'' Exhibit 23 is an Aroma Naturals catalogue that offers 100% Vegetable wax pillars that are ''the cleanest burning candles on our planet, Exhibit 24 is a Nirvana Candles webpage that offers soybean wax aromatherapy candles that are ''soot-free and longer burning than paraffin, and biodegradable,''); *MVP Group's February 15, 2006, Comments*, at Exhibit 5 (*CFTC's February 7, 2005, Minor Alterations Rebuttal Comments*, at Exhibit 1, p.2 (which states that the EPA report finds ''sooting associated with burning candles can cause property damage by blackening walls, ceilings, and carpets).

[27] For further discussion of this study, which is business proprietary, please *see Memorandum to the File from Julia Hancock, Import Compliance Analyst, Subject: Anticircumvention Inquiry on Later-Developed Merchandise, Re: CCA's February 15, 2006, Comments, Exhibit 26* (May 23, 2006).

wax proportions subject to this inquiry, are advertised differently than petroleum wax candles. *See id.* at Exhibit 36; *Target's February 15, 2006, Comments*, at Exhibit 6.

Additionally, the Department finds that the majority of the evidence on the record does not establish that mixed–wax candles are advertised and displayed differently than petroleum wax candles. Petitioners submitted advertisements and submitted copies of displays for candles as evidence that mixed–wax candles are displayed in the same manner as petroleum wax candles. *See Petitioners' LDM Supplemental Response*, at Exhibits L (Illuminations 2004 Holiday catalogue), P (internet web page for Crafted Candles), Z (pictures of Target's product display). Of note, the submitted pictures of Target's product display shows that both in–scope petroleum wax candles and mixed–wax candles, which contain more than fifty–two percent palm oil–based wax, are displayed without any differentiation between these types of candles. *Id.* at Exhibit Z.

The Department does note that some Respondents submitted product catalogues as evidence that mixed–wax candles are displayed differently than petroleum wax candles. However, the Department finds that the product catalogues submitted by these Respondents do not indicate whether the mixed–wax candles, in the specific wax proportions subject to this inquiry, are displayed in a manner different than petroleum wax candles. One of the Respondents, CCA, submitted a catalogue from Blyth Homescents International that contains pictures of palm and vegetable–based wax candles. *See CCA's February 15, 2006, Comments*, at Exhibit 35. However, the labels on the candles noted within this catalogue only indicate that they are made of soy or palm wax, but not the wax proportion and, therefore, could be one hundred percent soy or palm wax and not subject this inquiry or could be less than fifty percent soy or palm wax and already be in the scope of the *Order*. *Id.* at 52. Of the advertisements and submitted copies of displays that show mixed–wax candles, in the specific wax proportion, subject to this inquiry, the Department observes that mixed and petroleum wax candles are advertised and displayed in mostly the same manner.

Additional Factors

(A) Tariff Classification

The Department notes that all imports of candles, regardless of the majority wax ingredient, into the United States are classified under HTSUS 3406.00.00. Therefore, this factor would not impact the Department's analysis in determining whether mixed–wax candles should be excluded from the *Order*.

(B) Additional Functions

As explained in the above analysis, the Department finds the record does not indicate that mixed–wax candles perform any additional function that would result in a determination that these candles are not the same class or kind of merchandise as petroleum wax candles. Rather, our analysis has led us to conclude that consumers would not derive any significant benefit from using mixed–wax candles instead of petroleum wax candles.

Conclusion

Based on our analysis, on balance the limited evidence available shows that the addition of palm and/or other vegetable–oil 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), from petroleum wax candles. 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 some purchasers of mixed–wax candles may base their purchase on the expectation that the candle will provide health benefits, there is little evidence on the record as it stands to support that claim. Moreover, the evidence on the record tends to support 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 that mixed–wax candles are outside the scope of the *Order*. 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, mixed–wax candles are neither classified under a different tariff classification nor do these candles appear to perform any additional function. Therefore, 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 thus, are within the scope of the *Order*.

III. Other Comments

Adverse Facts Available

In light of Respondents' allegation that Petitioners should receive adverse facts available for providing minimal annual sales data for only some of its member companies, the Department must determine whether it should apply adverse facts available to Petitioners pursuant to section 776(a) and (b) of the Act. The Department finds that there is no basis, under sections 776(a)(1) and (2) of the Act to resort to facts available. While Petitioners only provided sales data for five member companies, the Department notes that there is no evidence on the record indicating that Petitioners did not provide all relevant information available to them, as stated by Petitioners at the hearing. *See Hearing Transcript*, at 105–106; *Petitioners' February 15, 2006, Comments*, at Exhibit A.[28] Accordingly, the use of facts available is not warranted. As such, there is no basis to conclude that Petitioners failed to act to the best of their ability.

Summary

The evidence on the record of this inquiry, taken as a whole, leads to our preliminary determination that U.S. imports of mixed–wax candles are later–developed products of the subject merchandise, within the meaning of section 781(d) of the Act.

In addition, as a result of our analysis, we have determined that exports of mixed–wax candles containing up to 87.80 percent of palm and/or other vegetable oil–based waxes mixed with petroleum wax candles, are within the scope of the antidumping duty order on petroleum wax candles from the PRC.

Suspension Of Liquidation

Section 351.225(l)(2) of the Department's regulations 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

[28] The Department also notes that four of the respondents did not respond to the same request for annual sales data and other supporting sales documentation. *See CCA's February 15, 2006, Comments* at 1; *Lava Enterprises Comments* at 2; *Target's February 15, 2006, Comments*; and *MVP Group's February 15, 2006, Comments.*

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 entries of mixed–wax candles containing up to 87.80 percent of palm and/or other vegetable oil–based waxes mixed with petroleum wax candles, from the People's Republic of China that were entered, or withdrawn from warehouse, for consumption on or after February 25, 2005, the date of initiation of this anticircumvention inquiry. *See 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 merchandise subject to suspension of liquidation based on this determination is limited to mixed–wax candles containing up to 87.80 percent of palm and/or other vegetable oil–based waxes mixed with petroleum wax candles. CBP shall require a cash deposit in the amount of 108.30 percent for all such unliquidated entries, which is the most recently calculated PRC–wide rate. *See Amended Notice of Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 69 FR 20858, 20859 (April 19, 2004).

This suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 781(d) of the Act, we have notified the ITC of the proposed inclusion of mixed–wax candles in the antidumping duty order on petroleum wax candles from the PRC. Pursuant to section 781(e)(2) of the Act, the ITC has determined that consultations are not necessary. *See May 23, 2006, Additional Information*, at Attachment 5.

Public Comment

The Department will be setting a briefing schedule following the publication of this preliminary determination.

Final Determination

The final determination will be issued not later than ninety days from the date of publication of this notice.

This determination is issued and published in accordance with section 781(d) of the Act and section 351.225(j) of the Department's regulations.

Dated: May 23, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–8629 Filed 6 –1–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

The Manufacturing Council: Meeting of The Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Manufacturing Council will hold a full Council meeting to discuss topics related to the state of manufacturing. The Manufacturing Council is a Secretarial Board at the Department of Commerce, established to ensure regular communication between Government and the manufacturing sector. This meeting of The Manufacturing Council will include updates by the Council's three subcommittees and discussion on research and development, and trade. For information about the Council, please visit the Manufacturing Council Web site at: *http://www.manufacturing.gov/council.htm.*

DATES: June 16, 2005. *Time:* 10:30 a.m.

ADDRESSES: National Institute of Standards and Technology, 100 Bureau Drive, Administration Building, Employees Lounge, Gaithersburg, MD 20899. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted no later than June 12, 2006, to The Manufacturing Council, Room 4043, Washington, DC 20230.

To Attend: Due to security rules, if you would like to attend, please send your full name and affiliation to *sam.giller@mail.doc.gov* no later than June 12, 2006.

FOR FURTHER INFORMATION CONTACT: The Manufacturing Council Executive Secretariat, Room 4043, Washington, DC 20230 (Phone: 202–482–1369). The Executive Secretariat encourages interested parties to refer to The Manufacturing Council Web site (*http://www.manufacturing.gov/council/*) for the most up-to-date information about the meeting and the Council.

Dated: May 26, 2006.

Sam Giller,

Executive Secretary, The Manufacturing Council.

[FR Doc. E6–8622 Filed 6–1–06; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052406C]

Marine Mammals; File Nos. 455–1760, 116–1786, 898–1764

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that permits to conduct research and/or enhancement activities on captive Hawaiian monk seals (*Monachus schauinslandi*) have been issued to the following organizations:

File No. 455–1760: The Waikiki Aquarium, 2777 Kalakaua Avenue, Honolulu, HI 96815 (Dr. Andrew Rossiter, Responsible Party).

File No. 116–1786: Sea World, Inc., 7007 Sea World Dr., Orlando, FL 32821 (Brad Andrews, Responsible Party).

File No. 898–1764: Sea Life Park Hawaii, 41–202 Kalanianaole Highway, Waimanalo, HI 96795 (Dr. Renato Lenzi, Responsible Party).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301)713–2289.

SUPPLEMENTARY INFORMATION: On May 19, 2005, notice was published in the **Federal Register** (70 FR 28909) that a request for an enhancement permit had been submitted by Sea World, Inc. On July 15, 2004, notice was published in the **Federal Register** (69 FR 42424) that a request for a scientific research and