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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: Affirmative Final Determination of Circumvention of the Antidumping Duty Order

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

ACTION: Notice of Affirmative Final Determination of Circumvention of the Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China.

SUMMARY: On March 28, 2007, the Department of Commerce (the Department) published its preliminary determination 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 antidumping duty order on petroleum wax candles from the People's Republic of China (*see Antidumping Duty Order: Petroleum Wax Candles From the People's Republic of China*, 51 FR 30686 (August 28, 1986) (*Candles Order*)), within the meaning of section 781(a) of the Tariff Act of 1930, as amended (the Act). *See 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*, 72 FR 14518 (March 28, 2007) (*Preliminary Determination*). We gave interested parties an opportunity to comment on the *Preliminary Determination*, and notified the United States International Trade Commission (ITC) because, pursuant to section 781(e) of the Act, the ITC may request consultations concerning the Department's proposed inclusion of the subject merchandise. The ITC notified the Department on April 24, 2007, that consultations were not necessary. The National Candle

Association (NCA), the petitioners in this proceeding, filed the circumvention allegation, submitted a case brief, and no parties submitted rebuttal briefs. The Department addresses the issue raised in the case brief, and the Department's final determination is unchanged from its preliminary determination.

EFFECTIVE DATE: June 5, 2007.

FOR FURTHER INFORMATION CONTACT:

Steve Bezirgianian or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade 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 March 28, 2007, the Department of Commerce (the Department) published its preliminary determination 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 constitutes circumvention of the aforementioned order, within the meaning of section 781(a) of the Tariff Act of 1930, as amended (the Act). *See Preliminary Determination*, 72 FR 14518. On April 24, 2007, the Department was notified by the ITC that consultations pursuant to section 781(e)(2) of the Act were not necessary. *See Memorandum to the File from Steve Bezirgianian*, dated May 9, 2007. The NCA is the only interested party that filed a case brief.

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 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 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) of the Act 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.

Analysis

We have analyzed the comment of NCA, namely, that the Department's precedent requires the Department to use an inference that is adverse to the interests of the three respondents that did not respond to our requests for information because they failed to cooperate by not acting to the best of their ability, and that the Department should apply an adverse rate of 108.30 percent (the PRC-wide rate) for each of the three respondent importers.

The Department agrees with NCA that adverse facts available (AFA) is appropriate for DECOR-WARE, Inc., A&M Wholesalers, Inc., and Albert E. Price. Pursuant to sections 776(a) and 776(b) of the Act, the Department applied adverse facts available for those respondents in its Preliminary Determination because these respondents did not provide responses to the Department's requests for information, and the Department determined that these respondents failed to cooperate to the best of their ability. The *Preliminary Determination* states, in pertinent part:

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.

See *Preliminary Determination*, 72 FR at 14520. The Department's adverse inference is that all such wickless petroleum wax forms imported by, or sold to, the three respondents ultimately are completed or assembled in the United States by the insertion of a wick and clip assembly.

With respect to the cash deposit rate to be used for entries of wickless petroleum wax forms imported by, or sold to, the three respondents in question, the Department's preliminary determination indicated that Customs and Border Protection (CBP) "shall require cash deposits in accordance with those rates prevailing at the time of entry, depending upon the exporter in question." See *Preliminary Determination*, 72 FR at 14520. As noted, the adverse inference is that all of the wickless petroleum wax candles imported by, or sold to, the three respondents in question are covered by the scope.

With respect to NCA's request that the Department assign an AFA rate to the three respondents, we note that the purpose of an anticircumvention proceeding is to determine whether the importation of the product in question (wickless petroleum wax forms) is evading or circumventing the *Candles Order* (see section 781 of the Act, and 19 CFR 351.225(a) and (g)). Other provisions of the statute, namely those in section 751 of the Act, provide for the periodic determination of antidumping duty rates for specific exporters/producers.

Assigning importer-specific cash deposit rates would constitute a change to the cash deposit rates for the parties subject to an order (*i.e.*, exporters and producers), and the cash deposit rate of a company subject to an order is only changed as the result of a new shipper review or an administrative review (see *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews*, 64 FR 66880, 66881 (November 30, 1999)). If an interested party believes that the deposits paid do not accurately reflect the actual amount of dumping, it is entitled to request an administrative review during the anniversary month of

the publication of the order of those entries to determine the proper importer-specific assessment rates (see, *e.g.*, *Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 70 FR 37327, 37330 (June 29, 2005), results unchanged in *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 70 FR 48673 (August 19, 2005)).¹

Thus, consistent with sections 781(a), 776(a), and 776(b) of the Act, we continue to apply as AFA the inference that all wickless petroleum wax forms imported by, or sold to, DECOR-WARE, Inc., A&M Wholesalers, Inc., and Albert E. Price ultimately are completed or assembled in the United States by the insertion of a wick and clip assembly, and are covered by the scope of the *Candles Order*.

Affirmative Final Determination of Circumvention

For the reasons described in the *Preliminary Determination*, we continue to find 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.

Continuation of Suspension Of Liquidation

In accordance with section 351.225(l)(3) of the Department's regulations, the Department will continue to direct U.S. Customs and Border Protection (CBP) to suspend liquidation for 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. CBP shall require cash deposits in accordance with those rates prevailing at the time

¹ We note, however, that as of the date of this final determination, the current cash deposit rate for all PRC exporters of subject merchandise is 108.30 percent, which is the PRC-wide rate. As such, the 108.30 percent rate will apply to all subject merchandise imported by the three respondents. As a result of a future administrative review, however, the PRC-wide rate may change and/or different separate rates may be established for specific exporters.

of entry, depending upon the exporter in question.

This affirmative final circumvention determination is in accordance with section 781(a)

of the Act and 19 CFR 351.225(g).

Dated: May 30, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Palmer Barge Superfund Site in Jefferson County, TX; Settlement Agreement and Draft Restoration Plan and Environmental Assessment

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a proposed Settlement Agreement and Draft Restoration Plan and Environmental Assessment for ecological injuries and service losses associated with the Palmer Barge Superfund Site in Jefferson County, Texas and of a 30-day period for public comment on the Settlement Agreement and the Draft Restoration Plan and Environmental Assessment beginning July 5, 2007.

SUMMARY: Pursuant to 43 CFR 11.32 and 11.81-82, notice is hereby given that a proposed Settlement Agreement in resolution of the Natural Resource Trustees' claim for natural resource damages (Agreement) associated with the Palmer Barge Superfund Site and the "Draft Restoration Plan and Environmental Assessment for the Palmer Barge Waste Site, Port Arthur, Jefferson County, Texas" (Draft DARP/EA) are available for public review and comment. This document has been approved by the state and federal Natural Resource Trustee agencies to address natural resource injuries and resource services losses of an ecological nature attributable to releases of hazardous substances from the Palmer Barge Superfund Site (Site). The natural resource trustees include: The National Oceanic and Atmospheric Administration (NOAA), Commerce; United States Department of the Interior (DOI); Texas Parks and Wildlife Department (TPWD); Texas General Land Office (GLO); and Texas Commission on Environmental Quality (TCEQ). The Natural Resource Trustees

have reached a proposed agreement with E.I. du Pont de Nemours and Company, Texaco Inc., Ashland Inc. and Kirby Inland Marine to resolve their liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) for damages to natural resources resulting from releases of hazardous substances from the Site. This draft DARP/EA presents the Trustees' assessment of these natural resource injuries and service losses attributable to the Site, and the plan for restoring ecological resources and services to compensate for those injuries and losses. The Trustees will consider input received during the public comment period before finalizing the DARP/EA.

FOR FURTHER INFORMATION: Comments must be submitted in writing on or before thirty (30) days from the publication of this notice to Richard Seiler of the TCEQ or Jessica White of NOAA at the addresses listed in the previous paragraph. The Trustees will consider all written comments prior to finalizing the DARP/EA.

To receive a copy of the proposed Agreement, the Draft DARP/EA, or any other related information, interested members of the public are invited to contact Richard Seiler at the Texas Commission on Environmental Quality, Remediation Division MC 225, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2523 (phone) or (512) 239-4814 (fax), or contact Jessica White of NOAA at NOAA c/o US EPA, 1445 Ross Avenue, MC 6SF\T, Dallas, TX 75202, (214) 665-2217 (phone) or (214) 665-6460 (fax).

SUPPLEMENTARY INFORMATION: The Site consists of approximately 17 acres located 4.5 miles northeast of the city of Port Arthur in Jefferson County along Ferry (or Old Yacht Club) Road on Pleasure Islet, approximately one-half mile southwest of the confluence of the Neches River and the Sabine-Neches Ship Channel. The Site is bordered by the State Marine Superfund site to the south, Sabine Lake to the east, Old Yacht Club Road to the West, and vacant property to the north.

The Site was originally used as a municipal landfill for the city of Port Arthur, which operated the landfill from 1956 until the mid-1980s. In 1982, the city of Port Arthur sold the property and it was subsequently used as a marine barge cleaning operation (Palmer Barge Marine) from 1982 until 1997. Operations performed at the site included cleaning, degassing, maintenance and inspection of barges and marine equipment. A flare was located on-site to burn excess gasses and

liquids produced during the facility operations, in addition to multiple above-ground storage tanks. In July 1997, Palmer Barge Line was purchased and operations on the property ceased. Currently the site is owned by a private individual who is redeveloping it as an industrial property.

In 1996, the TCEQ (then known as the Texas Natural Resource Conservation Commission, or TNRCC) conducted a multi-media inspection of the Site which identified large areas of contamination on Site soils. These findings triggered further investigation by both the U.S. Environmental Protection Agency (EPA) and TCEQ. In 1996, an expanded site inspection (ESI) was performed for the purpose of evaluating the nature and extent of on-site and off-site contamination and evaluating the environmental fate of the contaminants. This evaluation indicated the presence of both organic and inorganic contaminants in Site soils and in the shallow near-shore sediments of Sabine Lake. Semi-volatile contaminants of concern identified at the Site include acenaphthylene, anthracene, benzo(a)pyrene, chrysene and fluoranthene. There were also numerous pesticides and polychlorinated bi-phenyls detected in the Site soil samples. Elevated levels of inorganic contaminants included chromium, copper, lead, and zinc.

The Site was placed on the National Priorities List (Superfund) on July 27, 2000 and the EPA authorized an emergency removal action for reduction of on-site contamination in August 2000. Removal activities included removal of wastes, wastewater treatment, and sludge stabilization. A Remedial Investigation (RI) was performed at the Site pursuant to an Administrative Order on Consent signed by the EPA and the Settling Parties in 2002, and based on information developed in the RI, a Record of Decision (ROD) for the Site was signed on September 30, 2005. The ROD requires the excavation of approximately 1,204 cubic yards of soil which exceeded risk-based levels, backfilling of excavated areas with clean soil, and off-site disposal of excavated soils at a permitted disposal facility. Existing above-ground storage tanks will be demolished and removed. As planned, and when implemented, the remedy selected to address the contamination at the Site is expected to protect natural resources in the vicinity of the Site from further or future injury.

NOAA, DOI, TPWD, GLO and TCEQ are designated Natural Resource Trustees under Section 107(f) of CERCLA, Section 311 of the Federal