

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-570-504]

**Petroleum Wax Candles from the People's Republic of China: Request for Comments on the Scope of the Antidumping Duty Order and the Impact on Scope Determinations**

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

**SUMMARY:** The Department of Commerce ("Department") has considered certain novelty candles (*i.e.*, candles in the shape of an identifiable object or with holiday-specific design both being discernable from multiple angles) outside the scope of the Order. See *Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China*, 51 Fed. Reg. 30686 (August 28, 1986) ("Order"). These exclusions were made in accordance with 19 C.F.R. § 351.225(k)(1) and past Department practices. However, given the extremely large number of scope determinations requested by outside parties, the Department now seeks comments from the interested parties on the best method to consider whether novelty candles should or should not be included within the scope of the Order given the extremely large number of scope determinations requested by outside parties.

**DATES:** Comments must be submitted no later than September 16, 2009.

**ADDRESSES:** Written comments (original and six copies) should be sent to the Secretary of Commerce; Attn: Alex Villanueva, Import Administration, APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Alex Villanueva, Program Manager, AD/CVD Operations, Office 9, Import Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482-3208.

**SUPPLEMENTARY INFORMATION:****Background**

The regulations governing the Department's scope determinations are found at 19 C.F.R. § 351.225. On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations)

and the U.S. International Trade Commission ("ITC"). A determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. See 19 C.F.R. § 351.225(k)(1).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the five additional factors set forth at 19 C.F.R. § 351.225(k)(2). These criteria are: (1) the physical characteristics of the merchandise; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of trade in which the product is sold; and (5) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

In past scope determinations under the Order, the Department has relied on the scope of the Petition, prior scope determinations and documents from the ITC as guidance. We have noted that in its Antidumping Petition on Behalf of the National Candle Association ("NCA"), dated September 4, 1985 ("Antidumping Petition"), the NCA requested that the investigation cover:

{c}ertain scented or unscented petroleum wax candles made from petroleum wax and contain 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. These candles may be scented or unscented ... and are generally used by retail consumers in the home or yard for decorative or lighting purposes.

See Antidumping Petition at 7.

The Department adopted this scope language in its notice of initiation. This scope language carried forward without change through the preliminary and final determinations of sales at less than fair value and the eventual antidumping duty order:

{c}ertain 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.

See *Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 50 Fed. Reg. 39743 (September 30, 1985);

*Petroleum Wax Candles from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 51 Fed. Reg. 6016 (February 19, 1986); *Petroleum Wax Candles from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 51 Fed. Reg. 25085 (July 10, 1986); and *Order*. However, while the ITC adopted a similar definition of the "domestic like product" subject to its determinations, it noted that the investigations did not include "birthday, birthday numeral and figurine type candles." See *Candles from the People's Republic of China: Determination of the Commission in Investigation No. 731-TA-282 (Final)*, Publication 1888 (August 1986) at 4, note 5, and A-2.

The ITC's statement regarding birthday, birthday numeral and figurine type candles was echoed in the Department's instructions to the U.S. Customs Service<sup>1</sup> issued in connection with a July 1987 scope determination concerning an exception from the Order for novelty candles (CBP Notice), which states:

The Department of Commerce has determined that certain novelty candles, such as Christmas novelty candles, are not within the scope of the antidumping duty order on petroleum-wax candles from the People's Republic of China (PRC). Christmas novelty candles are candles specially designed for use only in connection with the Christmas holiday season. This use is clearly indicated by Christmas scenes and symbols depicted in the candle design. Other novelty candles not within the scope of the order include candles having scenes or symbols of other occasions (*e.g.*, religious holidays or special events) depicted in their designs, figurine candles, and candles shaped in the form of identifiable objects (*e.g.*, animals or numerals).

See CBP Notice.

In November 2001, the Department changed its practice on the issue of candle shapes. See *Final Scope Ruling Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504)*; JC Penney Purchasing Corporation, (November 9, 2001) ("JC Penney"). In this ruling, the Department reviewed the

<sup>1</sup> On July 28, 2006, the United States Customs Service since was renamed as the United States Bureau of Customs and Border Protection. See Homeland Security Act of 2002, Pub. L. 107-296, § 1502, 116 Stat. 2135, 2308-09 (2002); Reorganization Plan Modification for the Department of Homeland Security, H.R. Doc. No. 108-32, at 4 (2003).

text of the scope of the Order, beginning with the text of the first sentence of the scope which covers “{c}ertain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.” See *Order*. The Department stated in JC Penney that: {t}he text following this broad inclusive sentence provides a list of shapes, which list is not modified by any express words of exclusivity. The result of our prior practice of excluding candles of a shape other than those listed was arguably inconsistent with the fact that such candles were scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks.’ See JC Penney at 4–5, footnote 1. Furthermore, in JC Penney, the Department stated that:

We now determine that this practice was incorrect because it had the effect of narrowing the broad coverage of the first sentence of the Order’s scope. The list of shapes in the second sentence of the Order’s scope does not provide a textual basis for such a narrowing of the coverage of the first sentence of the Order’s scope. Accordingly, in order to give full effect to the first sentence of the inclusive language of the scope, the Department in this and future cases normally will evaluate whether candles of a shape not listed by the inclusive language of the Order’s scope are scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. See JC Penney at 5, footnote 1. Since 2001, the Department has determined that if the candle is made from petroleum wax and has a fiber or paper-cored wick it falls within the scope of the Order regardless of shape unless the candle possesses the characteristics set out in the CBP Notice, in which case a candle falls within the Department’s novelty candle exception and is not within the scope of the *Order*.

#### Issue of Concern

The Department is reconsidering the JC Penney methodology, given the large number of candles scope request submitted each year, many of which have claimed exclusion on the grounds that they are novelty candles. Since the JC Penney ruling in 2001, the Department has issued 596 scope determinations for this *Order*. Currently, there are 308 pending candles scope determinations. See Scope Requests submitted by Trade Associates Group, Ltd., dated June 11, 2009, and Sourcing International, LLC, dated June 25, 2009, July 28, 2009. The volume of requests in

this *Order* is greater than any other antidumping duty order. It is evident that the methodology adopted in JC Penney has resulted in uncertainty as to what candles fall within the scope of the *Order*, because this methodology requires that the Department examine each individual candle in order to reach a determination as to whether it qualifies as a novelty candle. This methodology has resulted in parties submitting an extremely large number of scope requests, hindering the Department’s ability to conduct a timely analysis of these requests.

#### Request for Comments

As a result of the uncertainty driving the growing number of requests for candles scope determinations and an evaluation of the resources needed to complete these analyses, the Department is requesting that interested parties, as defined by 19 U.S.C. § 1677(9), provide comments on whether it is proper to continue analyzing whether novelty candles are outside the scope of the *Order* pursuant to the JC Penney methodology.

The Department will consider all comments proposed by interested parties. However, we are proposing the following two options:

#### Option A

The Department would consider all candle shapes identified in the scope of the *Order*, (*i.e.*, tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers) to be *within* the scope of the *Order*, regardless of etchings, prints, moldings or other artistic or decorative enhancements including any holiday-related art. All other candle shapes would be considered outside the scope of the *Order*.

#### Option B

The Department would consider all candle shapes, including novelty candles, to be within the scope of the *Order* including those not in the shapes listed in the scope of the *Order*, as that is not an exhaustive list of shapes, but simply an illustrative list of common candle shapes.

The Department is not limiting its consideration to only these two options and welcomes all interested parties to submit comments and proposals for conducting the increasing number of requests for candle scope determinations. We also invite interested parties to consider the historical context in which the novelty exclusion was created and whether the basis for that exclusion should be

reconsidered given the increasing number of requests for candle scope determinations.

The Department intends to issue a preliminary determination with respect to this issue 60 days after September 16, 2009. Parties will then be able to file a brief 30 days after the issuance of the preliminary determination and rebuttal briefs 10 days later. The Department intends to issue a final determination within 60 days after the receiving the comments to the draft response.

#### Pending Scope Determinations

Given the overwhelming number of scope requests, we will not issue a determination on the pending scope requests until we have completed our analysis of the comments submitted by interested parties.

#### Submission of Comments

Persons wishing to comment should file one signed original and six copies of each set of comments by the date specified above. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments responding to this notice will be a matter of public record and will be available for inspection and copying at Import Administration’s Central Records Unit, Room 1117. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies.

Comments filed in electronic form should be submitted either by e-mail to the Webmaster below, or on CD ROM, as comments submitted on diskette is likely to be damaged by postal radiation treatment. Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration Web site at the following address: <http://www.ia.ita.doc.gov>. Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482

0866, e-mail address:  
webmastersupport@ita.doc.gov.

Dated: August 14, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for  
Antidumping and Countervailing Duty  
Operations.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XQ40

#### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

**ACTION:** Notice; request for comments.

**SUMMARY:** The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS, has made a preliminary determination that the subject exempted fishing permit (EFP) application contains all the required information and warrants further consideration. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

**DATES:** Comments must be received on or before September 8, 2009.

**ADDRESSES:** Comments may be submitted by email to [NERO.EFP@noaa.gov](mailto:NERO.EFP@noaa.gov). Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on the SNE Flatfish Discard Mortality EFP." Comments may also be sent via facsimile (fax) to (978) 281-9135.

**FOR FURTHER INFORMATION CONTACT:** Melissa Vasquez, Fishery Management Specialist, (978) 281-9166, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:** An EFP is being requested for eight vessels participating in the Southern New England (SNE) Flatfish Discard Mortality Study conducted by the NOAA/University of Massachusetts Dartmouth School for Marine Science and Technology (SMAST) Cooperative Marine Education and Research program. The primary objective of this study is to assess the effects of different stressors on the mortality of flatfish discarded in the SNE and Mid-Atlantic trawl fisheries. The researchers would conduct field and lab observations of flatfish captured during regular commercial fishing operations for Reflex Action Mortality Predictors (RAMP) under different stressors to assess the discard mortality rates of five flatfish species: SNE yellowtail flounder; SNE winter flounder; summer flounder; northern windowpane flounder; and southern windowpane flounder. In addition, the applicants would use the results of their study to assess the use of RAMP in estimating the mortality of each species within the flatfish complex.

The study would be conducted aboard eight commercial fishing vessels in the SNE and Mid-Atlantic mixed trawl fishery beginning the date of issuance of the EFP and continuing for a full year. All vessels would utilize otter trawl gear with gear configuration and mesh size dictated by current fishery regulations. NOAA/University of Massachusetts technicians and/or commercial fishermen would collect 100 fish of each species per month, during regular commercial fishing operations, for a maximum catch of 6,000 fish over the course of the 12-month study (Table 1). Fish would be landed and transported live to the SMAST seawater lab facility for testing and would not be sold. The applicants have requested an exemption from NE multispecies possession restrictions for SNE yellowtail flounder, SNE winter flounder, and northern windowpane flounder, specified at §§ 648.86(g)(1), 648.86(n)(1), and 648.86(n)(2), respectively, in order to land the live specimens in excess of possession limits. The applicants have also requested an exemption from NE multispecies minimum fish sizes specified at § 648.83 and the summer flounder minimum fish size at § 648.103(a) in order to test a representative sample of the age composition of discarded flatfish.

TABLE 1: ESTIMATED SAMPLE SIZE

Species	#fish/month	#fish total
SNE Yellowtail Flounder	100	1200
SNE Winter Flounder	100	1200
Summer Flounder	100	1200
Northern Windowpane Flounder	100	1200
Southern Windowpane Flounder	100	1200

For the field-based portion of the study, technicians would observe a minimum of 100 fish of each species on commercial fishing trips for RAMP before they are discarded at-sea. The applicants would require a temporary exemption from the summer flounder commercial minimum fish size restriction at § 648.103(a), the NE multispecies minimum fish size restrictions at § 648.83, and the NE multispecies possession restrictions at §§ 648.86(g)(1), 648.86(n)(1), and 648.86(n)(2), for the time period when trained technicians or crew are sampling fish. To ensure that monthly sampling is not disrupted, the applicants have also requested vessels be exempt from the summer flounder closure specified at § 648.101(a) for the purposes of collecting the 100 live specimens of each species each month.

The applicants may request minor modifications and extensions to the EFP throughout the course of research. EFP modifications and extensions may be granted without further public notice if they are deemed essential to facilitate completion of the proposed research and result in only a minimal change in the scope or impacts of the initially approved EFP request.

In accordance with NAO Administrative Order 216-6, a Categorical Exclusion or other appropriate National Environmental Policy Act document would be completed prior to the issuance of the EFP. Further review and consultation may be necessary before a final determination is made to issue the EFP. After publication of this document in the **Federal Register**, the EFP, if approved, may become effective following the public comment period.

**Authority:** 16 U.S.C. 1801 *et seq.*