

**DEPARTMENT OF COMMERCE****International Trade Administration****[A-570-504]****Notice of Preliminary Results and Preliminary Partial Rescission of the Antidumping Administrative Review: Petroleum Wax Candles From the People's Republic of China**

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

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) in response to requests from Dongguan Fay Candle Co. (Fay Candle), a PRC producer and exporter of subject merchandise, and its U.S. importers, TIJID, Inc. (TIJID) (d/b/a DIJIT Inc.), and Palm Beach Home Accents, Inc. (Palm Beach), Wal-Mart Stores, Inc. (Wal-Mart), Qingdao Kingking Applied Chemistry Co., Ltd. (Qingdao Kingking), and petitioner, the National Candle Association (NCA). The review covers the period August 1, 2001, through July 31, 2002.

We preliminary determine that sales have been made below normal value (NV). The preliminary results are listed below in the section titled "Preliminary Results of Review." If these preliminary results are adopted in our final results, we will instruct the U.S. Bureau of Customs and Border Protection (Customs) to assess antidumping duties on imports into the United States of subject merchandise exported by the respondents. Interested parties are invited to comment on these preliminary results. (See the "Preliminary Results of Review" section of this notice.)

**EFFECTIVE DATE:** September 9, 2003.

**FOR FURTHER INFORMATION CONTACT:** Sally C. Gannon or Mark Hoadley, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482-0162 or (202) 482-3148, respectively.

**Background**

The Department published in the **Federal Register** an antidumping duty order on petroleum wax candles from the PRC on August 28, 1986 (51 FR 30686). Pursuant to its *Notice of Opportunity to Request an Administrative Review*, 67 FR 50856 (August 6, 2002), and in accordance

with section 751(a)(1)(A) of the Act and section 351.213(b) of the Department's regulations, the Department received timely requests to conduct an administrative review of the antidumping duty order on petroleum wax candles from the PRC for 108 companies.<sup>1</sup> More specifically, the Department received administrative review requests from Fay Candle, Wal-Mart (who requested a review of three Chinese producers), Qingdao Kingking, and petitioner, the NCA. The NCA requested the Department review 104 alleged Chinese candle producers/exporters. On September 25, 2002, the Department published its *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Review*, 67 FR 60210 (September 25, 2002) (*Initiation Notice*), initiating on all 108 candle companies for which an administrative review was requested.<sup>2</sup> On November 18, 2002, the Department received a timely withdrawal from Wal-Mart of its request for an administrative review of the three companies for which it had requested a review (*i.e.*, Generaluxe Factory, Guangdong Xin Hui City Si Qian Art & Craft Factory, and Sincere Factory Company). Pursuant to section 351.213(d)(1) of the Department's regulations, the Department rescinded the review as to Generaluxe Factory, Guangdong Xin Hui City Si Qian Art & Craft Factory, and Sincere Factory Company. See *Notice of Rescission, in Part, of Antidumping Duty Administrative Review, Petroleum Wax Candles from the People's Republic of China*, 68 FR 40906 (July 9, 2003). Therefore, there were 105 candle companies remaining for which an administrative review was requested.

In accordance with section 777A(c)(2) of the Act, the Department determined that it was not practicable to determine individual weighted-average dumping margins for each exporter/producer for which a review was requested. Therefore, on October 11, 2002, the Department requested information concerning the quantity and value (Q&V) of sales to the United States from all 108 companies. The Department received responses to its request from 17 companies, including the two

companies that had requested reviews of their own exports.<sup>3</sup> Based on that information, the Department selected five mandatory respondents to examine in this review. See *Memorandum from Jessica Burdick through Sally C. Gannon to Barbara E. Tillman, Regarding 2001-02 Administrative Review of Petroleum Wax Candles from the People's Republic of China: Respondent Selection* (January 29, 2003) (*Respondent Selection Memo*). The five mandatory respondents chosen were: Fay Candle, Qingdao Kingking, Smartcord Int'l Co. Ltd./Rich Talent Trading (Smartcord), Amstar Business Co., Ltd (Amstar), and Jiangsu Holly Corporation (Jiangsu Holly). See *Respondent Selection Memo*. The Department also determined that it would consider requests for separate rates from those companies that were not selected as mandatory respondents, but who provided Q&V information and also submitted a timely response to the Department's section A questionnaire. See the Department's March 26, 2003 letter from Barbara E. Tillman, Director, Office of AD/CVD Enforcement VII, Import Administration. Only two companies, Shandong Jiaye General Merchandise Co., Ltd. (Shandong Jiaye) and Shanghai Charming Wax Co., Ltd. (Shanghai Charming), met the criteria and therefore have been considered for a separate rate.

The Department issued complete questionnaires to all five mandatory respondents. On December 18, 2002, the Department received Fay Candle's and Qingdao Kingking's responses to the Department's section A-E questionnaires. On March 24, 2003, the Department received Smartcord's response to the Department's section A questionnaire. Smartcord failed to submit its response to sections B-E of the Department's questionnaire. Amstar and Jiangsu Holly failed to submit responses to any section of the Department's questionnaires.

Due to the complexity of the selection process and of analyzing the numerous questionnaire responses, on March 26, 2003, the Department determined that it was not practical to complete the preliminary results of this review within the statutory time limit. Consequently, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department extended the deadline for completion of the preliminary results of the administrative review by 120 days,

<sup>1</sup> Although there were 109 actual requests for review, one company (Qingdao Kingking) individually requested a review and was also listed on the NCA's request for review; therefore, there were only 108 companies for which an administrative review was requested.

<sup>2</sup> Although the *Initiation Notice* lists 109 companies, Qingdao Kingking is listed twice since it made its own request for review but was also requested to be reviewed by the NCA.

<sup>3</sup> The Department received Q&V information from an additional three parties to whom the Department had sent the Q&V questionnaire on behalf of parties listed in the initiation notice. These three companies stated that they were unrelated to the parties named in the initiation notice.

to September 2, 2003. *See Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 68 FR 14578 (March 26, 2003).

On June 6, 2003, the Department issued supplemental questionnaires to Fay Candle and Qingdao Kingking. On June 20, 2003, the Department issued its second supplemental questionnaire to Qingdao Kingking. On June 24, 2003, the Department issued its second supplemental questionnaire to Fay Candle. Both Fay Candle and Qingdao Kingking requested an extension of time to respond to the Department's supplemental questionnaires, which the Department granted.

On July 9, 2003, the Department received Fay Candle's response to the Department's first supplemental questionnaire. On July 11, 2003, the Department received Fay Candle's response to the Department's second supplemental questionnaire. On July 11, 2003, the Department received Qingdao Kingking's response to the Department's first and second supplemental questionnaires. On July 29, 2003, the Department issued its third supplemental questionnaire to Qingdao Kingking. On July 30, 2003, the Department issued its third supplemental questionnaire to Fay Candle, and the petitioner submitted publicly available information for consideration in valuing the factors of production for the preliminary calculations.

On August 1, 2003, Qingdao Kingking and Fay Candle submitted publicly available information for consideration in valuing the factors of production for the preliminary calculations. On August 4, 2003, Fay Candle requested an extension of time to respond to the Department's third supplemental questionnaire. On August 11, 2003, the Department granted an extension of time to August 13, 2003, to Fay Candle to respond to question 2 of the Department's third supplemental questionnaire, and to August 14, 2003 for the remaining questions. On August 12, 2003, the Department received Qingdao Kingking's response to the Department's third supplemental questionnaire. On August 13, 2003, the Department received Fay Candle's response to question 2 of the third supplemental questionnaire. On August 14, 2004, the the Department received the response to the remaining questions of the third supplemental questionnaire. On August 21, 2003, the Department received comments from petitioner on the relationship between Fay Candle and its U.S. importers. On August 26,

2003, petitioner submitted information concerning what it termed the "involuntary bankruptcy of TIJID, Inc.," for the Department to consider in examining the relationship between TIJID and Fay Candle.<sup>4</sup>

#### Scope of the Antidumping Duty 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 under the Tariff Schedules of the United States (TSUS) item 755.25, Candles and Tapers. The products 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 and customs purposes, our written description of the scope of this proceeding remains dispositive.

#### Period of Review

The period of review (POR) is August 1, 2001, through July 31, 2002.

#### Preliminary Partial Rescission of Administrative Review

On September 25, 2002, the Department published its *Initiation Notice*, initiating on all 108 candle companies for which an administrative review was requested. The Department subsequently requested information concerning the quantity and value of sales to the United States from all these companies. The Department received responses to its request from 17 companies, five of which indicated that they had no sales to the United States of subject merchandise during the POR, citing various reasons, including: They were not a producer, exporter, or importer of candles during the POR; they were an importer of candles and not a producer/exporter; and/or they did not have a relationship with the alleged Chinese candle producer/exporter cited in petitioner's request for review. *See Respondent Selection Memo*. These companies included: Dalian Hanbo Lighting Co., Ltd. (Dalian Hanbo); Premier Candle Co., Ltd. (Premier Candle); Zhong Hang-Scanwell International (ZHS); Zen Continental Co., Inc. (Zen Continental); and Li & Fung Trading Ltd. (Li & Fung).

As part of its standard procedure in administrative reviews, the Department

reviewed data on entries under the order during the POR from Customs. Our review of this data revealed that one party, Li & Fung, which claimed it was merely a buying agent for the subject merchandise, may have, in fact, exported the subject merchandise to the United States during the POR. On November 22, 2002, the Department issued a letter to Li & Fung, asking it to clarify whether it had exports of petroleum wax candles during the POR. On February 10, 2003, Li & Fung submitted a letter and attachments to the Department stating that it neither produced, sold, nor exported the subject merchandise during the POR, but that it merely acted as a buying agent. *See Memorandum from Javier Barrientos through Sally Gannon to Barbara E. Tillman, Regarding Petroleum Wax Candles from the People's Republic of China: Preliminary Intent to Rescind Antidumping Duty Administrative Review, in Part (POR: August 1, 2001 to July 31, 2002)* (September 2, 2003) (*Intent to Rescind Memo*).

Pursuant to our regulations, the Department may rescind an administrative review if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. *See* 19 CFR 351.213(d)(3). Because we have found no evidence that there were entries, exports, or sales of the subject merchandise by four of the five companies that reported no shipments during the current POR, in accordance with 19 CFR 351.213(d)(3), the Department is preliminarily determining that this administrative review should be rescinded with respect to Dalian Hanbo, Premier Candle, ZHS, and Zen Continental. The Department therefore intends to issue a final notice of rescission of review with the final results of review, and to send appropriate assessment instructions to Customs.

With respect to Li & Fung, information obtained from Customs does not substantiate Li & Fung's claim that it was merely a buying agent during the POR. *See Intent to Rescind Memo*, a business proprietary discussion on Li & Fung. Therefore, we do not intend to rescind the administrative review with respect to this company.

#### Application of Adverse Facts Available

As further discussed below, pursuant to sections 776(a)(2)(A) and (B) and section 776(b) of the Act, the Department determines that the application of total adverse facts available (AFA) is warranted for the PRC entity, including the following companies: Mandatory respondents

<sup>4</sup> This submission was received too late for the Department to examine it for purposes of the preliminary results.

Smartcord, Amstar, and Jiangsu Holly; Li & Fung; 88 companies that failed to respond to the Department's Q&V letter; and five companies who provided Q&V information to the Department, but did not demonstrate their eligibility for a separate rate.

The latter five companies are: Simon Int'l Ltd.; Taizhou Int'l Trade Corp.; Universal Candle Co., Ltd.; Suzhou Ind'l Park Nam Kwong Imp & Exp Co. Ltd. (Zhongxing City, Conghuan Rd., Suzhou); and Candle World Industrial Co.

Smartcord, Amstar, and Jiangsu Holly, all mandatory respondents, failed to respond to all or part of the Department's questionnaire for this POR. Smartcord responded to section A of the Department's questionnaire, but then failed to submit its response to sections B–E of the Department's questionnaire. Amstar and Jiangsu Holly failed to respond to any section of the Department's initial questionnaire. Li & Fung, who did not provide a Q&V response, reported no shipments, but the Department has been unable to confirm this claim. *See* "Preliminary Partial Rescission of Administrative Review" section above. Another 88 companies failed to respond to the Department's Q&V letter. The five additional companies listed above provided Q&V information but did not demonstrate eligibility for a separate rate. None of these companies qualifies for a separate rate. Therefore, the Department is applying AFA to the PRC entity, of which these companies are a part. The 97 firms (Smartcord, Amstar, Jiangsu Holly, Li & Fung, the 88 who did not respond to the Q&V request, and the five additional companies who did not qualify for a separate rate), named individually in the *Initiation Notice*, who are subject to the PRC-wide rate are listed in Attachment I.

Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. These 97 companies (listed in Attachment I), for the reasons detailed above, failed to provide information explicitly requested by the Department; therefore, we must resort to the facts otherwise available. Because these companies did not respond to the Department's questionnaire, sections 782(d) and (e) of the Act are not applicable. In addition, section 782(c)(1) does not apply because these parties did not indicate that they were unable to submit the information required by the Department. Section

776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that a party has failed to cooperate to the best of its ability. In applying the facts otherwise available, the Department has determined that an adverse inference is warranted pursuant to section 776(b) of the Act.

The Department finds that, by not providing the necessary responses to the A&V letters or questionnaires issued by the Department, these companies have failed to cooperate to the best of their ability. None of these companies cited any reason for their failure to respond. Neither did they indicate that they were having any difficulties in responding to the questionnaires or request assistance or clarification about the questionnaires. Without this information, the Department cannot calculate margins for these companies nor determine that there was merit for a separate rate. This information was in the sole possession of the respondents, and could not be obtained otherwise. Thus, the Department is precluded from calculating margins for these companies or determining eligibility for separate rates. Therefore, in selecting from the facts available, the Department determines that an adverse inference is warranted. Because the 97 companies listed in Attachment I did not demonstrate their eligibility for a separate rate, we have preliminarily determined that they are subject to the PRC-wide rate. In accordance with sections 776(a)(2)(A) and (B), and section 776(b) of the Act, we are applying total AFA to the PRC entity, which includes Smartcord, Amstar, Jiangsu Holly, and the 94 other non-cooperating companies (*see* Attachment I). As AFA, and as the PRC-wide rate, the Department is assigning these companies the rate of 95.74—the highest rate determined in the current or any previous segment of this proceeding. This is the rate calculated in this review for Fay Candle and, thus, as discussed in the "Corroboration of Information Used As Adverse Facts Available" section below, does not need to be corroborated.

#### **Corroboration of Information Used as Adverse Facts Available**

Section 776(c) of the Act provides the following when the Department relies on the facts otherwise available:

When the administering authority or the Commission relies on secondary information *rather than on information obtained in the course of an investigation or review*, the administering authority or the Commission,

as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.

(Emphasis added.)

With respect to Smartcord, Amstar, Jiangsu Holly and the 94 other non-cooperating companies, we are applying the highest calculated rate from the current administrative proceeding as AFA. This rate, the rate calculated for Fay Candle, is also the highest rate from any other segment of this administrative proceeding. Accordingly, we find that it is unnecessary to corroborate the dumping margin calculated for Fay Candle in this administrative review because this rate was based on, and calculated from, information obtained in the course of the administrative review. *See generally* SAA at 870 (stating that information obtained from interested parties during the particular review is an independent course of data used to corroborate secondary information, such as petition information, a determination from a prior review, etc.). *See also Notice of Final Determination of Sales at Less Than Fair Value: Solid Agricultural Grade Ammonium Nitrate from Ukraine*, 66 FR 38632, 38634 (July 25, 2001) and *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 52100, 52103 (Oct. 12, 2001) (unchanged in the final results).

Furthermore, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total AFA a calculated dumping margin from the current or a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See, e.g., Grain-Oriented Electrical Steel From Italy: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 36551, 36552 (July 11, 1996). The information used to determine Fay Candle's margin in this administrative review will be fully verified and has been subject to the comments of both respondent and petitioner throughout this review. Thus, it is based on the analyzed sales and production data of Fay Candle, as well as on the most appropriate surrogate value information available to the Department, chosen from submissions by the parties as well as information

gathered by the a itself. Accordingly, we determine that the Fay Candle's rate is appropriate to be used in this administrative review as AFA in accordance with sections 776(b) and (c) of the Act.

### Cooperative Companies That Merit Separate Rates

Two PRC producers/exporters, Shandong, Jiaye and Shanghai charming, responded to the Department's Q&V letter, as well as the Department's Section A questionnaire (which includes eligibility for a separate rate), but were not selected as mandatory respondents. Based on our analysis, these two companies have demonstrated their eligibility for a separate rate (*see* "Separate Rates" section below). Accordingly, for these two companies, we have calculated a weighted-average margin based on the rates calculated for those producers/exporters that were selected as mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on AFA. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China*, 62 FR 41347, 41350 (August 1, 1997).

### Companies That Claimed No Shipments

With respect to five PRC producers/exporters who responded to the Department's A&V letter claiming that they had no shipments during the POR, the Department is preliminary rescinding this review, in part, with respect to the four producers/exporters for which the Department was able to confirm their claim, as follows: Dalian Hanbo, Premier Candle, ZHS, and Zen Continental (*see* "Preliminary Partial Rescission of Administrative Review" section above). The fifth producer/exporter, Li & Fung, will receive the AFA rate (*see* "Application of Facts Available" section above).

### Verification

As provided in section 782(i) of the Act, we intend to verify all company information relied upon in making our final results.

### Separate Rates

Fay Candle, Qingdao, Kingking, Shandong Jiaye, and Shanghai Charming have all requested a separate, company-specific rate.<sup>5</sup> It is the

Department's policy to assign all exporters of the merchandise subject to review in non-market economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to export activities. To establish whether a company operating in an NME country is sufficiently independent to be eligible for a separate rate, the Department analyzes each exporting entity under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors; (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

### De Jure Control

With respect to the absence of *de jure* government control over the export activities of the companies reviewed and those how applied for a separate rate, evidence on the record indicates that Fay Candle's, Qingdao Kingking's, Dhandong Jiaye's, and Shanghai Charming's export activities are not controlled by the government. Fay Candle, Qingdao Kingking, Shandong Jiaye, and Shanghai Charming submitted evidence of their legal right to set prices independently of all government oversight. We find no evidence of *de jure* government control

restricting Fay Candle's, Qingdao Kingking's, Shandong Jiaye's or Shanghai Charming's exportation of candles.

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control over privately-owned companies, such as Shandong Jiaye or Shanghai Charming, and that control over these enterprises rests with the enterprises themselves. Qingdao Kingking, Fay Candle, Shandong Jiaye, and Shanghai Charming submitted the following laws: the Foreign Trade Law of the People's Republic of China, promulgated on May 12, 1994, at the Seventh session of the Standing Committee of the Eighth National People's Congress and effective on July 1, 1994, the Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations, issued on June 3, 1988, by the State Council of the PRC, the Law of the People's Republic of China on Chinese-Foreign Cooperative Joint Ventures, promulgated on April 13, 1998, by Order No. 4 of the President of the People's Republic of China and effective from April 13, 1998. In addition, Qingdao Kingking and Shandong Jiaye submitted the Sino Foreign Equity Joint Venture Law, promulgated on July 1, 1979, by the Fifth National People's Congress. Qingdao Kingking also submitted the Company Law of the People's Republic of China, promulgated on December 29, 1993, at the Fifth Session of the Standing Committee of the Eighth National People's Congress and effective on July 1, 1994. The legislation placed on the record of this review provides that to qualify as legal persons, companies must have the "ability to bear civil liability independently" and the right to control and manage their businesses. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995) (*Manganese Metal*). Therefore, we preliminarily determine that there is an absence of *de jure* government control over export activity with respect to these companies.

### De Facto Control

With respect to the absence of *de facto* government control over the export activities of the companies reviewed and those who applied for a separate rate, evidence on the record indicates that the government has no

<sup>5</sup> Although Smartcord, a mandatory respondent, submitted a response to section A of the questionnaire, it did not respond to the remainder of the Department's questionnaire. As a mandatory respondent, Smartcord was required to provide complete questionnaire responses. Therefore, as

detailed in the "Application of Adverse Facts Available" section above, adverse facts available have been assigned to Smartcord. As a result, Smartcord will not receive a separate rate for these preliminary results.

involvement in the determination of export prices, profit distribution, marketing strategy, and contract negotiations of Fay Candles, Qingdao Kingking, Shandong Jiaye's, and Shanghai Charming's companies. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for these companies. In addition, we found that the Fay Candle's, Qingdao Kingking, Shandong Jiaye's, and Shanghai Charming's pricing and export strategy decisions are not subject to any governmental review or approval, and that there are no governmental policy directives that affect these decisions.

With regard to Qingdao Kingking, its vice general manager has the right to negotiate prices and enter into contracts on behalf of Qingdao Kingking. There is no evidence that this authority is subject to any level of governmental approval. In addition, there are no restrictions on the use of Qingdao Kingking's export earnings. Qingdao Kingking reported that its general manager is selected by the board of directors, and subordinate management personnel are selected by the general manager. Qingdao Kingking is not required to notify the government about its management selection process.

With regard to Fay Candle, Fay Candle's chief executive officer (CEO) has the authority to enter into contracts on behalf of Fay Candle, and it sets prices pursuant to negotiations with its importers. There is no evidence that this authority is subject to any level of governmental authority. In addition, other than the requirement that hard currency earnings from exports be repatriated through an account in a state bank, there are no restrictions on the use of Fay Candle's export earnings. Fay Candle reported that the entrepreneurial investors who own the company appoint the CEO, and the CEO selects subordinate management personnel. Fay Candle provides identification of company officials to local government authorities for contact purposes only; it is not required to notify the government about its management selection process.

With regard to Shandong Jiaye, its export sales manager has the right to negotiate prices, while the general manager has the authority to enter into contracts on behalf of Shandong Jiaye. There is no evidence that this authority is subject to any level of governmental authority. In addition, there are no restrictions on the use of Shandong Jiaye's export earnings. Shandong Jiaye reported that its board of directors selects its general manager and the general manager selects subordinate management personnel. Shandong Jiaye

provides the name of the general manager to the government for purposes of receiving its business license; however, it is not required to notify the government about its management selection process.

With regard to Shanghai Charming, its general manager has the authority to set the price and to enter into contracts on behalf of Shanghai Charming. There is no evidence that this authority is subject to any level of governmental authority. In addition, there are no restrictions on the use of Shanghai Charming's export earnings. Shanghai Charming reported that its management is appointed by its parent company, a non-Chinese company. Shanghai Charming is not required to notify the government about its management selection process.

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over Fay Candle's, Qingdao Kingking's, Shandong Jiaye's, and Shanghai Charming's export activities, we preliminarily determine that these companies have met the requirements for receiving a separate rate for purposes of this review.

#### **Quantity and Value Discrepancy for Qingdao Kingking**

The Department has identified a significant discrepancy between the quantity and value data Qingdao Kingking reported with the quantity and value information that the Department identified through Customs data queries. The Department requested an explanation from Qingdao Kingking in its June 6, 2003, supplemental and received Qingdao Kingking's response in its July 11, 2003, submission; however, in this response, Qingdao Kingking did not adequately explain why there could be such a significant discrepancy. The Department also contacted Customs about this issue and will be working closely with it to determine the cause of this discrepancy. In addition, the Department will further examine this issue for the final results by requesting additional information from Qingdao Kingking and addressing the issue at verification.

#### **Treatment of Fay Candle and Its U.S. Importers, TIJID and Palm Beach**

Respondent Fay Candle claimed in the questionnaire responses that it is affiliated with its U.S. importers, TIJID and Palm Beach. In its section A questionnaire response, Fay Candle submitted evidence to the Department concerning its corporate structure, ownership, and relationship to its U.S. importers, TIJID and Palm Beach. The evidence on the record regarding Fay

Candle's relationship with TIJID and Palm Beach does not demonstrate that TIJID and Palm Beach were affiliated with Fay Candle under section 771(33) of the Act during the POR. For a full discussion of this issue (which includes business proprietary details), see *Memorandum from Sebastian G. Wright through Sally C. Gannon to Barbara E. Tillman, Regarding Petroleum Wax Candles from the People's Republic of China for the Period of August 1, 2001 through July 31, 2002: Analysis of the Relationship between Dongguan Fay Candle Co., Ltd., and TIJID, Inc. and Palm Beach Home Accents, Inc.* (September 2, 2003) (*Affiliation Memo*). Therefore, the Department preliminarily finds that Fay Candle is not affiliated with TIJID and Palm Beach for purposes of these preliminary results and is basing its fair value comparisons on export price rather than constructed export price. The Department will continue to examine Fay Candle's relationship with its U.S. importers in the context of verification and for the final results of this administrative review.

#### **Date of Sale**

Fay Candle and Qingdao Kingking reported various dates as the basis for their dates of sale. Although the Department maintains a presumption that invoice date is the date of sale (19 CFR 351.401(i)), "[i]f the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale." *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27349 (May 19, 1997) (*Preamble*).

With regard to Fay Candle, it reported two distinct dates of sale based on the type of sale. According to Fay Candle, the terms of the sales transactions become fixed at different stages based on the type of sale. After examining the documentation placed on the record by Fay Candle, the Department preliminarily determines that the invoice date is the appropriate date of sale to use for Fay's EP sales in these preliminary results. Because the information regarding Fay Candle's dates of sale is mostly business proprietary, the Department's full analysis of Fay Candle's dates of sale can be found in the *Memorandum from Sebastian Wright through Sally C. Gannon to The File, Regarding Petroleum Wax Candles from the People's Republic of China for the Period of August 1, 2001 through July 31, 2002: Analysis of the Sales Date for Dongguan Fay Candle Co., Ltd.*

(September 2, 2003) (*Fay Candle's Date of Sale Memo*). With regard to Qingdao Kingking, its reported date of sale is based upon invoice date because both quantity and price may change up to the date of invoice. Thus, for Qingdao Kingking, the terms of the sales transaction only become fixed once the actual invoice is generated. After examining the sales documentation placed on the record by Qingdao Kingking, the Department preliminarily determines that invoice date is the most appropriate date of sale for all sales by Qingdao Kingking.

#### Fair Value Comparisons

To determine whether sales of the subject merchandise by Fay Candle and Qingdao Kingking were made at prices below normal value (NV), we compared the export price (EP) to the NV, as described in the "Export Price" and "Normal Value" sections of this notice, below.

#### Export Price

As discussed above in the "Treatment of Fay Candle and Its U.S. Importers, TIJID and Palm Beach" section, and as discussed in the *Affiliation Memo*, we have preliminarily determined that Fay Candle is not affiliated with its U.S. importers. Therefore, for Fay Candle and Qingdao Kingking, we based United States price on EP in accordance with section 772(a) of the Act, because the first sales to unaffiliated purchasers were made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on packed prices from the exporter to the first unaffiliated purchaser in the United States. Where applicable, we deduct foreign inland freight, inland insurance, brokerage and handling expenses in the PRC, international freight, and marine insurance from the starting price (gross unit price) in accordance with section 772(c) of the Act.

#### Normal Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production (FOP) methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 772(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign

country is an NME country shall remain in effect until revoked by the administering authority. None of the companies contested such treatment in these reviews. Accordingly, we have applied surrogate values to the factors of production to determine NV. See *Memorandum from Sebastian Wright through Sally Gannon to The File, Regarding Factor Values Memorandum in the Administrative Review of Petroleum Wax Candles from the People's Republic of China* (September 2, 2003) (*Factor Values Memo*). We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original investigation and prior administrative reviews of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. See *Memorandum from Mark Hoadley through Sally Gannon to The File, Regarding Selection of Surrogate Country in the Administrative Review of Petroleum Wax Candles from the People's Republic of China* (August 13, 2003) (*Surrogate Country Memo*). We valued the factors of production using publicly available information from India. We added freight expenses to these values when necessary to make then delivered prices. All import data were contemporaneous with the POR; therefore, no adjustments for inflation were necessary. For factors valued using other sources, we have noted below when inflation adjustments were made. The calculations for the inflation adjustments can be found in the *Factor Values Memo*.

The Department calculated factors for approximately 100 inputs for this review. Except as noted below, we calculated all raw material inputs and packing using contemporaneous Indian import data obtained from the World Trade Atlas, which notes that its data was obtained from the Ministry of Commerce of India. Consistent with our policy, we excluded from this data imports into India from NME countries and countries providing their exporters with non-specific export subsidies. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002). Also consistent with our policy, we excluded, in a few instances, import data that appeared to be aberrational. See, e.g., *Memorandum to Jeff May, Acting Assistant Secretary for Import Administration, from Barbara Tillman,*

*Acting Deputy Assistant Secretary for Import Administration, Group III, Regarding Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Saccharin from the People's Republic of China*, dated May 20, 2003, at Comment 2, page 5, for a discussion of this issue. Complete data for these calculations, the calculations themselves, and full citations to sources for all inputs, whether based on Indian import data or not, are attached to the *Factor Values Memo*. The *Factor Values Memo* also indicates which import data were excluded, for any of the reasons mentioned above, and the harmonized tariff schedule section selected for each input in collecting Indian import data.

We valued several factors—depending on the respondent—and particular freight items at the average of the market economy prices actually paid, because these were purchased from market economy countries, in market economy currencies, and in meaningful quantities.

*Factors valued using sources other than Indian import data or market economy purchases:*

- To value wax, we used the average Indian price for paraffin wax derived from rates published in *Chemical Weekly* for the period August 2001–July 2002, as found in petitioner's July 30, 2003, surrogate value submission, and Qingdao Kingking's August 1, 2003 surrogate value submission. Since the petitioner's and Qingdao Kingking's *Chemical Weekly* price quotes are contemporaneous with the POR, we did not adjust for inflation. This price was adjusted on a tax-exclusive basis to account for the Indian excise tax of 16 percent.

- To value diesel oil, we used Indian commercial prices for diesel fuel published in the first quarter 2001 edition of the International Energy Agency's *Energy Prices and Taxes*. This price for diesel oil was provided exclusive of Indian excise tax. Because this data was not contemporaneous with the POI, we adjusted the rate for inflation. See *Factor Values Memo*.

- To value electricity, we used the annual report of an Indian chemical producer, National Peroxide Ltd. Because this data was not contemporaneous with the POI, we adjusted the rate for inflation. See *Factor Values Memo*.

- Water was valued using the publicly available water tariff rates reported in the second *Utilities Data Book: Asian and Pacific Region*. This publication provides water tariff rates as of 1995–1996 for three areas in India: Chennai, Delhi and Mumbai. We



averaged the rupee per cubic meter rates applicable to industrial users in Chennai, Delhi, and Mumbai. Because this data was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor Values Memo.*

- For labor, consistent with section 351.408(c)(3) of the Department's regulations, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised September 2002 (see <http://ia.ita.doc.gov/wages>). The source of the wage rate data on the Import Administration's Web site can be found in the Yearbook of Labour Statistics 2001, International Labor Office (Geneva: 2001), Chapter 5B: Wages in Manufacturing, and GNP data as reported in World Development Indicators, The World Bank, (Washington, DC 2002)).

- To value truck freight expenses we used nineteen Indian price quotes as reported in the February 14, 2000 issue of *The Financial Express*, which were used in the antidumping duty investigation of certain circular welded carbon-quality steel pipe from the PRC. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 67 FR 36570 (May 24, 2002) (*China Pipe*). Because this data was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor Values Memo.*

- To value factory overhead, selling, general, and administrative expenses, and profit we used information reported in the January, 2001 *Reserve Bank of India Bulletin*, "Statement 1—Combined Income, Value of Production, Expenditure and Appropriation Accounts, Industry Group-wise" of that report for the Indian metals and chemicals (and products thereof) industries. The Department attempted to find, through Internet searches and contacts with the U.S. Foreign Commercial Service, financial statements for a candle producer in India, but was unable to do so.

#### Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank of New York.

#### Preliminary Results of Review

As a result of our review, we preliminarily determine the dumping

margins for the period of August 1, 2001 through July 31, 2002, to be as follows:

Manufacturer/Exporter	Margin (percent)
Dongguan Fay Candle Co., Ltd ...	95.74
Qingdao Kingking Applied Chemistry Co., Ltd .....	13.64
Shanghai Charming Wax Co., Ltd	86.95
Shandong Jiaye General Merchandise Co., Ltd .....	86.95
PRC-Wide Rate .....	95.74

#### Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of petroleum wax candles from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates established in the final results of this review; (2) for previously reviewed PRC and non-PRC exporters with separate rates, the cash deposit rates will be the company-specific rates established for the most recent period; (3) for all other PRC exporters, the rate will be the PRC-wide rate, which is now 95.74 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Assessment Rates

Upon completion of this administrative review, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct Customs to assess the resulting assessment rates, where appropriate, on the entered Customs quantity for the subject merchandise for each of the importer's entries during the review period.

#### Notification of Interested Parties

The Department will disclose calculations performed within five days of the date of publication of this notice

to the parties of the proceedings in this review in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. The Department will notify interested parties of the hearing date of this proceeding, if one is requested, and such hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with section 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, the presentations will be limited only to arguments raised in the case and rebuttal briefs. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the schedule time. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in the briefs, within 120 days from the date of publication of these preliminary results, unless the time limit is extended.

#### Notification to Importers

This notice also serves as preliminary reminder to importers of their responsibility under 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent

assessment of double antidumping duties.

This administration review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 2, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

#### Attachment I

Companies Listed in the *Initiation Notice* that are Subject to the PRC-Wide Rate (97 Companies):

ADP (Ningbo, PRC)  
ADP Shanghai  
Allock Ltd.  
Amstar Business Company Limited  
Anyway International Trading & Manufacturing Co., Ltd.  
Aroma Consumer Products (Hangzhou) Co., Ltd.  
Candle World Industrial Co.  
China Hebei Boye Great Nation Candle Co., Ltd.  
China Overseas Trading Dalian Corp.  
China Packaging Import & Export Liaoning Co.  
China Xinxing Zhongyuan (Wuhan) Imp. & Exp.  
CNACC (Zhejiang) Imports & Export Co., Ltd.  
Cnart China Gifts Import & Export Corp.  
Dandong Hengtong Handicraft Article Co., Ltd.  
Dandong Hengtong Handicraftarticle Co., Ltd.  
DDP Qingdao  
Dongjeng Fecund Imp. & Exp. Co., Ltd.  
Ever-gain Industrial Co.  
Excel Network Limited  
Far Going Candle Gifts Co., Ltd.  
Fu Kit  
Fujian Provincial Arts & Crafts Imp. & Exp. Corp.  
Fushun Candle Corporation  
Fushun Economy Development Zone Xinyang Candle Factory  
Fushun Huaiyuan Wax Products Co., Ltd.  
Fushun Yuanhang Paraffin Products Industrial Company  
Fushun Yuhua Crafts Factory  
Gansu Textiles Imp. & Exp. Corp.  
Green Islands Industry Shanghai Co., Ltd.  
Huangyan Imp. & Exp. Corp.  
Huangyan Imp. & Exp. Corp.  
Jason Craft Corp.  
Jiangsu Holly Corporation  
Jiangsu Yixing Foreign Trade Corp.  
Jilin Province Arts and Crafts  
Jintan Foreign Trade Corp.  
Kingking A.C. Co., Ltd.  
Kuehne & Nagel (Hon Kong) Beijing  
Kwung's International Trade Co., Ltd.  
LI & Fung Trading Ltd.  
Liaoning Arts & Crafts Import & Export  
Liaoning Light  
Liaoning Light Industrial Products Import & Export Corp.  
Liaoning Native Product Import & Export Corporation, Ltd.  
Liaoning Province Building Materials Industrial Im  
Liaoning Xinyuan Textiles Import and Export  
Lu Ke Trading Co., Ltd.  
Ningbo Free Trade Zone Weicheng Trading Co., Ltd.

Ningbo Free Zone Top Rank Trading Co.  
Ningbo Kwung's Giftware Co., Ltd.  
Ningbo Kwung's Import & Export Co.  
Ningbo Sincere Designers & Manufacturers Ltd.  
Qingdao Allite Radiance Candle Co., Ltd.  
Qingdao Happy Chemical Products Co., Ltd.  
Quanzhou Wenbao Light Industry Co.  
Red Sun Arts Manufacture (Yixing) Co., Ltd.  
Rich Talent Trading Ltd./Smartcord Int'l Co., Ltd.  
Round-the-World (USA) Corp.  
Round-the-World International Trade & Trans. Service (Tianjin) Co., Ltd.  
Seven Seas Candle Ltd.  
Shandong H&T Corp.  
Shandong Native Produce International Trading Co., Ltd.  
Shanghai Arts and Crafts Company  
Shanghai Asian Development Int'l Tr  
Shanghai Broad Trading Co., Ltd.  
Shanghai Gift & Travel Products Import & Export Corp.  
Shanghai Gifts & Travel  
Shanghai Jerry Candle Co., Ltd.  
Shanghai New Star Im/Ex Co., Ltd.  
Shanghai Ornate Candle Art Co., Ltd.  
Shanghai Shen Hong Corp.  
Shanghai Sincere Gifts Designers & Manufacturers, Ltd.  
Shanghai Success Arts & Crafts Factory  
Shanghai Xietong Group O/B Asia 2 Trading Company  
Shanghai Zhen Hua c/o Shanghai Light Industrial Int'l Corp., Ltd.  
Silkroad Gifts  
Simon Int'l Ltd.  
Suzhou Ind'l Park Nam Kwong Imp & Exp Co. Ltd. (No. 339 East Baodai Road, Suzhou)  
Suzhou Ind'l Park Nam Kwong Imp & Exp Co. Ltd. (Zhongxing City, Conghuan Rd., Suzhou)  
T.H.I. (HK) Ltd.  
Taizhou Int'l Trade Corp.  
Taizhou Sungod Gifts Co., Ltd.  
THI (HK) Ltd.  
Thi Group Ltd. and THI (HK) Ltd.  
Tianjin Native Produce Import & Export Group Corp., Ltd.  
Tonglu Tiandi  
Universal Candle Co., Ltd.  
Weltach  
World Way International (Xiamen)  
World-Green (Shangdong) Corp., Ltd.  
Xiamen Aider Import & Export Company  
Xiamen C&D Inc.  
Xietong (Group) Co., Ltd.  
Zhejiang Native Produce & Animal By-Products Import & Export Corp.  
Zhong Nam Industrial (International) Co., Ltd.  
Zhongnam Candle  
Zhongxing Shenyang Commercial Building (Group) Co., Ltd.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-580-835]

#### Preliminary Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From the Republic of Korea

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

**ACTION:** Notice of Preliminary Results of Countervailing Duty Administrative Review.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on stainless steel sheet and strip in coils from the Republic of Korea for the period January 1, 2001, through December 31, 2001. For information on the net subsidy for the reviewed companies, see the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results. (See the "Public Comment" section of this notice).

**EFFECTIVE DATE:** September 9, 2003.

**FOR FURTHER INFORMATION CONTACT:** Carrie Farley or Darla Brown, Office of AD/CVD Enforcement VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-2786.

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 6, 1999, the Department published in the **Federal Register** the CVD order on stainless steel sheet and strip in coils from the Republic of Korea. See *Amended Final Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip from France, Italy and the Republic of Korea*, 64 FR 42923 (August 6, 1999) (*Amended Sheet and Strip*). On August 6, 2002, the Department published a notice of opportunity to request an administrative review of this CVD order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 50856 (August 6, 2002). On August 30, 2002, we received a timely request