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August 9, 2006

VIA ELECTRONIC MAIL

Senate Finance Committee
International Trade Subcommittee
ATTN: Ms. Claudia Bridgeford
Washington, D.C.

Re: Miscellaneous Tariff Bill: S. 106
Liquidate or Reliquidate Dumped Candle Entries and
Refund of Antidumping Duties with Interest

On behalf of the National Candle Association ("NCA") we submit this statement of vigorous objection of the NCA to S. 106. The policy of both the House and the Senate has been consistent over the years that the Miscellaneous Tariff Bill would only include provisions that were not controversial. S. 106 is very controversial. It provides for the liquidation or the reliquidation of entries of candles dumped from China and the refund of antidumping duties and interest that were properly paid on such entries. S. 106 is an attempt to overrule the decisions of the Department of Commerce, the Court of International Trade, the Court of Appeals for the Federal Circuit, and the U.S. Customs and Border Protection in properly enforcing the Antidumping and Customs laws of the United States. S. 106 is controversial, not administrable, and blatantly operates retroactively to materially injure the U.S. candle industry.

In its letter of August 25, 2005 to the Chairman of the Subcommittee on Trade of the Ways and Means Committee, HoMedics, Inc. claimed that Customs erroneously collected antidumping duties on scented and tea light candles that it imported from China in the year 2000. HoMedics claims that its imported Chinese candles are not included within the scope of the Antidumping Order regarding candles from China ("the Order"). However, the candles imported by HoMedics in 2000 were properly included within the scope of the Order at that time. It was not until December 12, 2002 in the Final Scope Ruling: *Leader Light, Ltd.*, that the Department of Commerce determined that candles containing more than 50 percent palm wax should be outside the scope of the Order. All palm wax/petroleum wax blended candles containing over 50 percent palm wax that entered before December 12, 2002, were within the scope of the Order. Therefore, at the time of the entry of HoMedics' imported Chinese candles, they were properly considered to be within the scope of the Order. Scope rulings by the Department of Commerce are applied to products that enter *after* the date of the scope determination. The *Leader Light* scope decision cannot be applied retroactively. However, that is precisely what S. 106 would do, in violation of law.

Very importantly, the Department of Commerce ("Commerce") issued an Affirmative Preliminary Determination on June 2, 2006[1] that blended candles containing up to 87.80% palm or vegetable wax are within the scope of the Order. This Determination was issued as a result of an Anticircumvention investigation regarding mixed-wax candles from China as later-developed merchandise. We expect an affirmative Final Determination on October 2, 2006. This determination makes it clear that the candles involved in S. 106 are within the scope of the Order.

Also important, is the finding at the International Trade Commission that candles from China containing *any amount* of petroleum wax are like products and should be included within the Order. This Determination of the ITC came as a result of the *Second Sunset Review* and reported in July 2005.[2] Thus the candles that are the subject to S. 1206 should be included within the scope of the Order as a result of the ITC's Determination.

Under U.S. Customs law, HoMedics was obligated to file a protest with Customs in order to preserve its legal rights with respect to a Customs decision. HoMedics failed to file a protest with Customs and, therefore, cannot under U.S. law claim any right to a refund of any antidumping duties that were entered in the year 2000.

If Congress allows S, 106 to be included in the Miscellaneous Tariff Bill, it will be overruling Commerce and the ITC. It will essentially be rewriting our U.S. Customs laws, and invite all importers to come to Congress for retroactive refund of duties on entries where they failed to file a protest with Customs. Congress will then be making Customs entry decisions on an importer and product-by-product basis. Congress will be deluged with such requests and will have seriously undermined the enforcement of U.S. antidumping and Customs laws. The mission of the U.S. Customs and Border Protection and its ability to enforce U.S. trade and Customs laws will be irreparably undermined. Therefore, the negative issues raised by S. 106 are far greater than the windfall of refunding $107,680 plus interest as a gratuitous favor to an importer of dumped Chinese candles.

We look forward to the opportunity to testify at any hearing on the Miscellaneous Tariff Bill before the Senate Finance Committee, and would appreciate your notifying us of that opportunity, as well as the opportunity to file written comments.

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[1] *Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China: Notice of Preliminary Results of Antidumping Administrative Review*, 71 Fed. Reg. 32,033 (June 2, 2006).

[2] *Petroleum Wax Candles From China, Inv. No. 731-TA-282 (Second Review),* USITC Pub. 3790 (July 2005).

Thank you for your attention to this very important and vital matter to the U.S. Candle industry that is struggling to fight the unfairly traded candles from China.

Very truly yours,

BARNES & THORNBURG LLP

Randolph J. Stayin

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HoMedics, Inc
3000 Pontiac Trail
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July 18, 2006

Attn: MTB
The Honorable Charles E. Grassley
Chairman, Senate Finance Committee
219 Dirksen Senate Office Building,
Washington, DC, 20510

Re: S. 106—Reliquidation of Certain Entries of Candles

Dear Mr. Chairman:

HoMedics Inc. ("HoMedics"), a privately held company headquartered in Commerce Township, Michigan, appreciates this opportunity to comment on S. 106, a bill to provide for the reliquidation of certain entries of candles. Founded in 1987, HoMedics established a reputation as the leading manufacturer of back and body massagers. The company expanded it personal healthcare and wellness line of products to include hot/cold compression wraps, footbaths, dental products, sensory relaxation systems, magnetic therapy products, and a wide range of personal care products. Today, HoMedics manufactures and markets the most complete line of home personal healthcare, wellness, and relaxation products sold in America.

HoMedics strongly supports S. 106, which would provide necessary relief by directing Customs to refund erroneously collected antidumping duties on scented and tea light candles that were imported by HoMedics for some of its desk top fountains. An antidumping (AD) order has been in place on petroleum wax candles from China since 1986. The order imposes AD duties of 54.21% on covered items.

The candles imported by HoMedics are not included within the scope of the order. However, Customs officers at the port of Long Beach, California, erroneously told HoMedics that its candles were within the scope of the AD order. Customs instructed HoMedics that the candles must be separately identified on the manufacturer's invoices and AD duties must paid on the value attributable to the candles. HoMedics was not permitted to enter its merchandise unless it paid AD duties. HoMedics paid AD duties from approximately March 2000 through December 2000. Customs subsequently liquidated those entries to include AD duties.

On March 28, 2000, Customs issued a ruling, NY F84932, stating that candles containing over 50% palm oil wax are not within the scope of the AD order. When HoMedics learned of the ruling, it submitted its scented and tea light candles to an independent laboratory for a content analysis. Customs Science Services, Inc. supplied its Laboratory Analysis Report on April 29,

2001. The report concluded that HoMedics' candles consisted of either 60% palm wax and 40% paraffin wax, or 57% palm wax and 43% paraffin wax. HoMedics submitted a copy of the New York ruling and the lab report to Customs. The agency stopped assessing AD duties on HoMedics' candles and the company's candle entries are now liquidated without antidumping duties.

However, HoMedics cannot get a refund on entries that already were already liquidated. In Mitsubishi Electronic America, Inc. v. United States, 44 F.3d 973 (Fed. Cir. 1994) the Court of Appeals for the Federal Circuit stated that the protest statute, 19 U.S.C. § 1514, excludes antidumping determinations from the list of matters that parties may protest to Customs. Therefore, HoMedics has no administrative remedy to recoup its erroneously collected AD duties.

S. 106 would provide HoMedics the relief it deserves by refunding the erroneously collected duties. HoMedics is not circumventing the AD order. None of its candles were ever subject to the antidumping duty order. Customs erred and HoMedics has no administrative remedy.

The size of the estimated duty refund is $107,680, plus interest. This amount is well below the $500,000 per year threshold allowed for inclusion in a miscellaneous trade bill. S. 106 is non-controversial because Customs agrees that the candles should be liquidated without antidumping duties.

Thank you for your consideration of this request. Please feel free to call me if you have any further questions.

Sincerely,

Renee Chiuchiarelli

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