

Oct 30, 1996

A—570-504  
Scope Review  
Public Document  
G2-04/RWB

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On October 10, 1995, Enesco Corporation (Enesco) requested that the Department of Commerce (the Department) issue a scope ruling on whether ten types of candles, imported by Enesco, are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). In accordance with 19 CFR 353.29(i)(1), the Department has determined that six of Enesco's products described as Holiday Novelty Candles and Disk-Shaped Candles are outside the scope of order. The Department will issue a separate ruling on three products described as Cube Candles and on the product described as Birthday Novelty Candles, shortly.

Enclosed is a memorandum containing the Department's analysis. We will notify the U.S. Customs Service of this decision. If you have any questions, please contact Robert W. Blankenbaker or Zev Primor, at (202) 482-0989 or (202) 482-5253, respectively.

Sincerely,

Holly A. Kuga  
Director  
Office IV, Enforcement Group II

Enclosure

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MEMORANDUM      Jeffrey P. Bialos  
FOR:                Principal Deputy Assistant Secretary  
                      for Import Administration

FROM:              Holly A. Kuga, Director  
                      Office of AD/CVD Enforcement, Group II

SUBJECT:          Final Scope Ruling - Antidumping Duty Order on Petroleum Wax  
                      Candles From the People's Republic of China (A-570-504);  
                      Enesco Corporation.

#### SUMMARY

On October 10, 1995, Enesco Corporation (Enesco) requested that the Department of Commerce (the Department) issue a scope ruling finding that its petroleum wax candles, imported from the People's Republic of China (PRC), are outside the scope of the antidumping duty order on candles from the PRC. In accordance with 19 CFR 353.29 (i) (1), we recommend that the Department determine that Enesco Corporation's candles described as Disk Candles and Holiday Novelty Candles are outside the scope of the antidumping order. Regarding Enesco's exclusion request for the Cube Candles and Birthday Novelty Candles, we will issue a separate ruling on these candles, shortly.

#### BACKGROUND

In its October 10, 1995 request for a scope ruling, Enesco contends that three candles, style numbers 9501118 and 9501185 (red and white wax versions), are Cubes and fall outside of the scope of the order. Further, Enesco claims that five candles, style numbers 9180966 and 9540237 (9540237 has white, blue, red and green-colored versions), are Holiday Novelty Candles and, thus fall outside the order. Enesco also asserts that one candle, style number 9540717, is shaped as a disk and is excluded from the scope of the order. Finally, Enesco argues style number 9500340, is a Birthday Novelty Candle and, therefore, is outside the scope of the antidumping duty order. We will issue a separate ruling on the cube and birthday candles, shortly. On January 26, 1996, the National Candle Association ("NCA"), petitioner in the original less than fair value (LTFV) investigation, submitted comments on the Cube and Birthday Novelty Candles. No comments were filed by NCA with respect to disk candles and holiday novelty candles.

#### ANALYSIS

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 353.29. On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the determinations of the Secretary and the International Trade Commission (ITC), the initial investigation and the order. This 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 merchandise subject to the scope inquiry is covered by the order. See 19 CFR 353.29(b) and (i)(1).

Conversely, where these descriptions of the merchandise are not dispositive, the Department will consider the additional factors set forth at 19 CFR 353.29 (i)(2). These criteria, commonly referred to as the Diversified Products criteria, are: i) the physical characteristics of the merchandise; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; and iv) the channels of trade. See 19 CFR 353.29 (i)(2); see also *Diversified Products v. United States*, 572 F. Supp. 883 (CIT 1983); *Kyowa Gas Chemical v. United States*, 582 F. Supp. 887 (CIT 1984); and *Smith-Corona v. United States*, 678 F. Supp. 285 (CIT 1987). 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 the instant case, we have evaluated this request in accordance with 19 CFR 353.29 (i) (1) because the descriptions of the subject merchandise contained in the petition, the final determinations of the Secretary and the ITC, the antidumping duty order and subsequent scope ruling, dispositive of the issue.

Documents, and parts thereof, from the underlying investigation deemed relevant by the Department to the scope of the outstanding order were made part of the record of this determination and are referenced herein. Documents that were not presented to the Department, or placed by it on the record, do not constitute part of the administrative record for this scope determination.

In its petition of September 4, 1985, the National Candle Association requested that the investigation cover.

candles [which] are 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.

Antidumping Petition, September 4, 1985, at 7.

The Department defined the scope of the investigation in its notice of initiation. This scope language, carried forward without change through the preliminary and final LTFV determinations and the eventual antidumping duty order, states, in part:

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.

Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty Investigation. 50 FR 39743 (September 30, 1985) (emphasis added); see also Preliminary Determination of Sales at Less Than Fair Value, 51 FR 6016, (February 19, 1986) and Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986). The ITC adopted a similar definition of the "like product" subject to its determinations, noting that it did not include "birthday, birthday numeral and figurine type candles."

See Determinations of the Commission (Final), USITC Publication 1888, August 1986, at 4, note 5, and A-2.

Relevant to the present scope issue regarding the five Holiday Novelty Candles is a notice we issued to the United States Customs Service in connection with a July 1987 scope determination, which states, in part:

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).

C.E. N-212/85, September 21, 1987; Letter from the Director, Office of Compliance to Burditt, Bowles & Radzius, Ltd., July 13, 1987.

In adhering to the criteria as outlined above, the Department agrees that the four candles defined as style number 9540237 represent Christmas Novelty Candles. These candles are designed for use only in connection with the Christmas holiday season. Their use is clearly indicated by Christmas scenes and symbols depicted in the candle design. For example, each candle's design contains identifiable features commonly associated with the Christmas season, including Santa Claus and reindeer.

The first candle, the white wax version of style number 9540237, displays a raised holiday scene consisting of angels, wreaths on doorways, Santa Claus and reindeer in the street. Similarly, the blue version of style number 9540237 has a raised holiday scene with Santa Claus, reindeer in the sky above, and people gathered outside a church. The red version of style number 9540237, consists of a raised holiday scene including a man pulling a Christmas tree and pine trees decorated for Christmas. The fourth candle, a green version of style number 9540237, also has a raised holiday scene featuring a train car with Christmas presents and pine trees decorated for Christmas. Therefore, we conclude that these candles clearly meet the description of Christmas Novelty Candles, merchandise specifically excluded from the scope of the order on petroleum wax candles from the PRC.

As in the case of the four above-mentioned candles, Enesco argues that style number 9180966, a blue pillar with a gold angel permanently attached to the candle, is a novelty candle. A similar candle with an attached angel was subject to a previous scope ruling. See Letter from the Department to Two's Company, Inc. January 13, 1995. The Two's Company candle was excluded from the scope of the order because of its status as a figurine novelty candle. In fact, the Department specifically noted that it did not exclude the Two's Company candle on the basis of its festive or religious use: "we have not addressed that issue here." Ibid. p.4

In the Two's Company ruling, the Department cited the C.E. N-212/85 to the Customs Service which included figurine candles within the definition of novelty candles excluded from the scope from the order. Moreover, the Department noted that an earlier ruling clearly determined that such figurine candles are outside the scope of the order when the physical removal of the figurine would cause damage to the taper. See Letter from the Department to Global Marketing Service, October 30, 1986. After physical inspection of the Two's Company candle, the Department determined that the angel figurine on the candle could not be removed without damage to the taper. Thus, the Department concluded that this candle met the description of a figurine novelty candle, merchandise specifically excluded from the scope of the order on petroleum wax candles from the PRC. After conducting a similar physical inspection of the Enesco candle, we conclude that the angel figurine on the candle cannot be removed without damage to the pillar. Finally, we conclude that the Enesco candle, style number 9180966, meets the description of a figurine Novelty Candle, merchandise specifically excluded from the scope of the order on petroleum wax candles from the PRC.

The Disc Candle, style number 9540717, consists of a disk-shaped candle with one portion of the circumference flattened to form a base approximately 6 1/2 inches in diameter. The candle's design features a smiling moon and star decorations, and gold

glitter. Enesco argues that the disc-shaped candle is not a "round" i.e. a shape listed in the scope of the order. In previous scope rulings, Enesco noted that the Department had clarified the industry term "rounds" as referring to round-shaped columns or pillars and not spherical or ball-shaped candles. See Letter from the Department to the San Francisco Candle Company, June 10, 1993. We agree with Enesco and its assertion that the disk-shaped candle cannot be considered a "round" as clarified in the San Francisco ruling. Therefore, we conclude that the Disc Candle, style number 9540717, is not a shape listed in the scope of the order and thus, does not meet the description of merchandise covered by the scope of the order on petroleum wax candles from the PRC

#### RECOMMENDATION

Because the product description provides a sufficient basis for making a determination, and the issue can be resolved by reference to the descriptions of the product contained in the petition, the final determinations of the Secretary and the ITC, and subsequent scope rulings, we recommend that no formal inquiry is warranted. Based on the analysis above, we further recommend that the Department find the four Holiday Novelty Candles, the figurine novelty candle and the Disk Candle are outside the scope of the antidumping duty order on petroleum wax candles from the PRC.

\_\_\_\_\_a \_\_\_\_\_Agree \_\_\_\_\_Disagree

If you agree, we will send a letter enclosing this memorandum to the interested parties, and will notify the U.S. Customs Service of our determination.

Jeffrey P. Bialos  
Principal Deputy Assistant Secretary  
for Import Administration  
October 30, 1996

Date