

DEC 16 1994

A-570-504
Scope Review
Public Document
OADC : JFR

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On August 11, 1994, Lew-Mark Baking Co., Inc. (Lew-Mark) requested that the Department of Commerce (the Department) issue a scope ruling on whether the Pansy candle tin imported by Lew-Mark is covered by the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

In accordance with 19 CER 353.29(b) of the Department's regulations, the Department has determined that no formal inquiry is warranted. Further, under 19 CFR 353.29(i)(1), the Department has determined that Lew-Mark's Pansy candle tins are covered by the scope of the order on petroleum wax candles from the PRC. The enclosed memorandum contains the Department's analysis.

We will notify the U.S. Customs Service of this decision.

If you have any questions, please contact Jay Field at (202) 482-5222 or Wendy Frankel at (202) 482-5253.

Sincerely,

Laurie A. Lucksinger
Director, Division I
Office of Antidumping Compliance

Enclosure

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MEMORANDUM Joseph A. Spetrini
FOR: Deputy Assistant Secretary for Compliance
FROM: Holly A. Kuga, Director
 Office of Antidumping Compliance
SUBJECT: Final Scope Ruling -- Antidumping Duty Order on Petroleum Wax Candles From
 the People's Republic of China (A-570-504) -- Request of Lew-Mark Baking
 Co., Inc.

SUMMARY

On August 11, 1994, Lew-Mark Baking Co., Inc. (Lew-Mark), requested that the Department of Commerce (the Department) issue a scope ruling finding that its Pansy tin candle is outside the scope of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) (51 FR 30686, August 28, 1986). In accordance with 19 CFR 353.29(b) (1994), we recommend that the Department determine that no formal scope inquiry is required. Further, under 19 CFR 353.29(i)(1), we recommend that the Department determine that Lew-Mark's Pansy candle tin is within the scope of the antidumping duty order.

BACKGROUND

In its August 11, 1994, request for a scope ruling on petroleum wax candles from the PRC (Lew-Mark Request), Lew-Mark asserts that its Pansy candle tin does not meet the established criteria for candles from the PRC, and is therefore not within the scope of the order. Lew-Mark submitted a sample of the product with the request.

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, our normal bases for determining whether a product is included within the scope of the order are the descriptions of the product contained in the petition, the initial investigation, and the determinations of the Secretary and the International Trade Commission (ITC) (see 19 CFR 353.29(i)(1)). This determination may take place with or without a formal inquiry (see 19 CFR 353.29(b)).

In accordance with 19 CFR 353.29(b) of the Department's regulations, the Department has determined that no formal inquiry is warranted to determine whether Lew-Mark's Pansy candle tin is covered by the scope of the order. We have evaluated this request in accordance with 19 CFR 353.29(i)(1) because the product descriptions contained in the petition and the final determinations of the Secretary and the ITC are 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.

Lew-Mark's Pansy tin candle is a circular metal container lithographed with a pansy flower design, measures three-and three-sixteenths inches in diameter, is one-inch tall, is filled with white petroleum wax, and has two wicks. According to Lew-Mark, the metal container and the wax are manufactured in the PRC.

The Department defined the scope of the original order as:

[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.

Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986) (emphasis added).

Also relevant to the present scope issue is a notice issued by the Department to the United States Customs Service in connection with a July 1987 scope determination, 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 CIE N-212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987.

Lew-Mark claims that the Pansy tin candles are "considered to be Christmas gifts," and therefore outside the scope of the order, because they are sold only through fundraising groups via Christmas catalogs and are not available through retail stores (see Lew-Mark Request at 1).

Although we agree with Lew-Mark that Christmas novelty candles are not within the scope of the order, as clearly stated in our July 13, 1987, Letter from the Director, Office of Compliance, we do not agree that the Pansy tin candle meets the criteria laid out in that letter for such an exclusion. That letter clearly stated that "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" Op. Cit. (emphasis added). Lew-Mark's Pansy tin candle does not depict any Christmas scenes or symbols in its design, and therefore cannot be considered a candle specially designed for use only in connection with the Christmas, or any other, holiday season.

Because the Pansy tin candle does not meet the definition of a Christmas or other holiday candle, and does not have any other exclusionary characteristics, we can conclude that it is a "wax-filled container" of the type covered by the antidumping duty 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 making reference to the descriptions of the product contained in the petition, the final determinations of the Secretary and the ITC, and subsequent scope determinations, we recommend determining that no formal inquiry is warranted.

_____√_____ Agree _____ Disagree

We recommend the Department find the Pansy tin candle within the scope of the antidumping duty order on petroleum wax candles, as they meet the description of merchandise included in the scope of the order.

_____√_____ Agree _____ Disagree

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

Joseph A. Spetrini
Deputy Assistant Secretary for Compliance
12/16/94

Date

Attachment