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UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-827

Scope Ruling
Public Document
OIV: PMS

5/22/03

MEMORANDUM FOR: Holly A. Kuga
Acting Deputy Assistant Secretary
for Import Administration, Group II

FROM: Thomas F. Futtner
Acting Director,
AD/CVD Enforcement
Group II, Office 4

SUBJECT: Final Scope Ruling--Antidumping Duty Order on Certain Cased
Pencils from the People's Republic of China (PRC)--Request by
Barthco Trade Consultants Regarding "Twist Crayons"

SUMMARY

On April 7, 2003, Barthco Trade Consultants (BTC) submitted a written request that the U.S. Department of Commerce (the Department) determine whether twist crayons, imported by Big Lots Stores, are within the scope of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC)(59 FR 66909, December 28, 1994). In accordance with 19 CFR 351.225(d) and 351.225 (k)(1), it is recommended that the Department determine that the merchandise in question is not within the scope of the above-referenced order.

BACKGROUND

On April 7, 2003, BTC submitted a written request for a scope ruling with respect to twist crayons from the PRC. In its submission, BTC describes the crayons as "{s}imilar to mechanical pencils. The bottom of the crayon is twisted to allow the wax to move out of the plastic sheath for coloring or drawing." BTC included with its request 10 twist crayons and a copy of a binding ruling issued by the U.S. Bureau of Customs & Border Protection (BCBP) which states that the crayons will be classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9609.10.0000. Pencils subject to the order on certain cased pencils from the PRC are classified under this HTSUS subheading.

The Writing Instrument Manufacturers Association, the petitioners in this proceeding, did not submit comments regarding BTC's request for a scope ruling.



ARGUMENT

BTC argues that since the antidumping duty order is on pencils from the PRC, it should not apply to twist crayons. BTC also maintains that since mechanical pencils are excluded from the antidumping duty order on pencils from the PRC, twist crayons, which are similar to mechanical pencils, should be excluded from the order.

APPLICABLE REGULATIONS

The regulations governing scope determinations can be found at 19 CFR 351.225. These regulations instruct the Department to issue a final scope ruling if it can determine whether the product is within the scope of an order based solely upon the information provided in the application for a ruling and the descriptions of the product contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (ITC). See 19 CFR 351.225(d) and 351.225(k)(1). Conversely, when the descriptions of the merchandise are not dispositive, the Department will consider the additional criteria set forth at 19 CFR 351.225(k)(2). These criteria are: i) the physical characteristics of the product; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; iv) the channels of trade in which the product is sold; and v) the manner in which the product is advertised and displayed. These factors are commonly known as the Diversified Products¹ criteria. 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 the record evidence before the Department.

ANALYSIS²

BTC requests that the Department determine whether twist crayons are within the scope of the antidumping duty order on certain cased pencils from the PRC. As noted above, our initial basis for determining whether a product is included within the scope of an order is the descriptions of the product contained in the petition, the initial investigation, and the determinations of the Secretary and the ITC.

In its petition, filed on November 9, 1993, the petitioner describes certain cased pencils as follows:

¹ Diversified Product Corp. v. United States, 6 CIT 155, 572 F. Supp. 883 (1983).

² Documents and portions thereof from the underlying investigation deemed by the Department to be relevant to this ruling will be 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 ruling.

Cased pencils are writing and drawing instruments... Cased pencils are manufactured in varying dimensions... The sheath may be round or may be milled to create multiple-sided surfaces... The term "cased Pencils" should be understood to describe pencils cased in wood and/or man-made materials, with cores of graphite or other materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened... The class or kind of merchandise that is the subject of this petition does not include mechanical pencils, pens, or any other such writing instruments. All pencils share the characteristic of having their length reduced, through sharpening, as a result of use. The reduction in size attributable to sharpening, and relatively inexpensive cost, means that they readily are disposable.

With respect to the domestic like product, the petitioner states:

Regardless of the materials used... cased pencils retain in common the physical characteristics of having a rigid sheath bonded to a writing core. Cased pencils are rendered usable by means of paring away the rigid bonded sheath to expose the writing core...

See Petition at 8 - 15.

The scope of the Department's antidumping duty order adopted the language of the petition:

{t}he products covered by this investigation are certain cased pencils of any shape or dimension which are writing instruments and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man made materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks.

See Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China, 59 FR 66909 (December 28, 1994).

After citing the above scope language, the ITC noted that:

{t}he scope of imported articles includes a variety of cased pencils including commodity or standard yellow pencils, colored pencils ("cased crayons"), decorated, imprinted or specialty pencils, drafting pencils, pencil blanks, and

raw pencils. Commerce determined that these imported items constitute a single class or kind of merchandise.

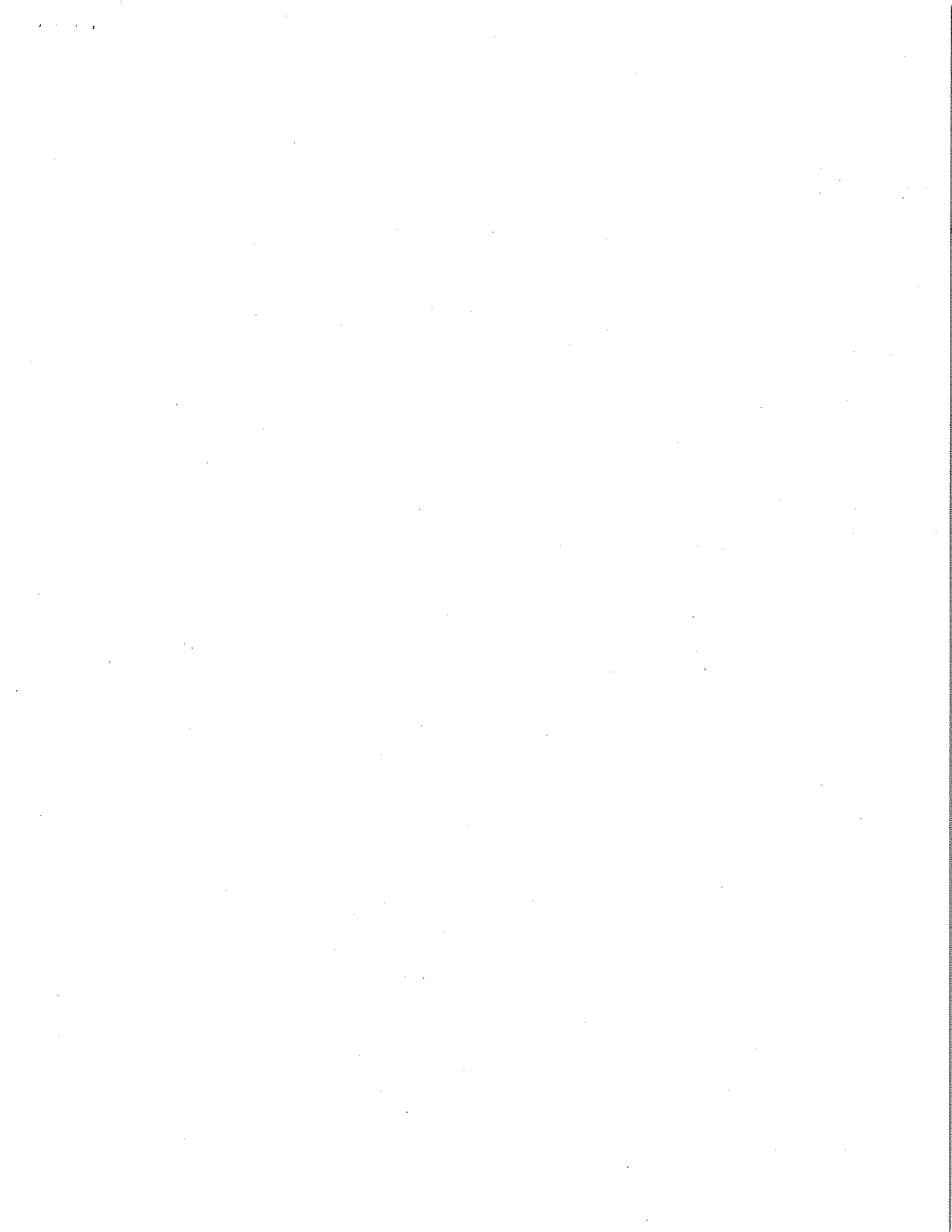
See Certain Cased Pencils from the People's Republic of China, Investigation No. 731-TA-669 (Final), USITC Publication 2837, December 1994 (ITC Final) at page I- 6.

An examination of the product samples provided in the application for a scope ruling reveals that the twist crayons have a wax crayon core that is encased in a rigid hollow sheath (barrel) of man-made material (plastic). The non-writing/drawing end of the crayon core has been inserted into a small plastic cylinder. A wire spiral in the barrel surrounds the crayon core and the plastic cylinder. Turning the cap at the non-writing/drawing end of the barrel causes the wire spiral to revolve, advancing the small plastic cylinder through the barrel and pushing the crayon core out from the writing/drawing end of the barrel. This mechanism is used to restore the wax point used for writing/drawing.

While it is clear that twist crayons are drawing instruments that feature a core encased in a man made material, they differ from the cased pencils described in the petition. Unlike cased pencils subject to the order, the core of twist crayons is not bonded to the sheath. Because the core is not bonded to the sheath, twist crayons are not rendered usable by means of paring away the sheath to expose the writing core. In fact, the means of advancing the core through the sheath involves a mechanical action, an action that is consistent with that used to advance the core in mechanical pencils (which are excluded from the order). Thus, the length of the twist crayon's sheath is not reduced through sharpening. Furthermore, twist crayons may be considered non-disposable. Cores may easily be removed and replaced.

A rigid sheath bonded to a writing core, reduction in length through sharpening, and being readily disposable are characteristics common to all cased pencils subject to the order. Products lacking these characteristics have been found outside the scope of the order in previous scope rulings. Specifically, the Department found Bensia pencils³ "outside the scope of the antidumping duty order because their length is not reduced through sharpening, the sheath is not bonded (glued) to the writing core and they are not rendered usable by means of paring away the rigid bonded sheath to expose the writing core." See the memorandum from Holly A. Kuga to Jeffrey P. Bialos dated September 15, 1997: "Final Scope Ruling—Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China—Request by Nadel Trading Corporation for a Ruling on the Bensia Pencil" at page 6.

³ Bensia pencils come with a sharpened point at the writing end of the sheath. When the point becomes worn, it is removed and pushed into the non-writing end of the instrument which causes a new sharpened cartridge to be dispensed.



We note that BCBP classified this product as a crayon with a rigid sheath under an HTSUS item number specifically referenced in the scope of the pencils' order. However, it is the Department's responsibility to clarify the scope of antidumping duty orders and findings. In this case, BCBP's decision is not inconsistent with a decision to treat twist crayons as outside the scope of the pencils' order as the HTSUS item number in question covers more than subject merchandise. Moreover, while BCBP's treatment of a product can be instructive, it is the written scope description, not HTSUS classification, that is dispositive. BCBP makes its classification decision based on the imported merchandise and its interpretation of relevant sections of the HTSUS. The Department, on the other hand, makes its determination regarding product coverage on the basis of the narrative product description contained in record documents of the relevant proceeding, such as the antidumping duty petition, determinations of the Department and the ITC in the original antidumping duty investigation and the facts or comments submitted by interested parties participating in the scope inquiry.

CONCLUSION

In accordance with 19 CFR 351.225(k)(1), the descriptions of the merchandise contained in the petition, the initial investigation, the determinations of the Department and the ITC, and on the record of this scope ruling support the conclusion that the twist crayons in question are outside the scope of the order. Based on these descriptions, the Department is only issuing a final scope ruling in this case.

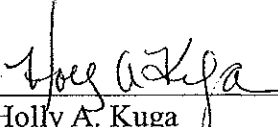
RECOMMENDATION

That the Department determine that the twist crayons are outside the scope of the antidumping duty order on certain cased pencils from the PRC.

✓

Agree

Disagree



Holly A. Kuga
Acting Deputy Assistant Secretary,
for Import Administration, Group II

5/22/03

(Date)