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

A-570-827

Scope Ruling  
Public Document  
AD/CVD Order

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SEP 29 2004

MEMORANDUM FOR: Jeffrey A. May  
Deputy Assistant Secretary  
for Import Administration

FROM: Laurie Parkhill *LP*  
Director, Office 8  
AD/CVD Enforcement

SUBJECT: Final Scope Ruling--Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China--Request by Target Corporation Regarding "Hello Kitty Fashion Totes"

### SUMMARY

On August 16, 2004, Target Corporation (Target) submitted a written request that the U.S. Department of Commerce (the Department) determine whether Hello Kitty Fashion Totes (Totes), which Target imports, are within the scope of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC). See Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China, 59 FR 66909 (December 28, 1994) (the order). In accordance with 19 CFR 351.225(d) and 351.225 (k)(1), we recommend that we determine that the merchandise in question is not within the scope of the above-referenced order.

### BACKGROUND

On August 16, 2004, Target submitted a written request for a scope ruling with respect to Totes from the PRC. In its submission, Target describes the Totes as "... a kit that contains the following: five mini lipsticks, perfume ring, bubbles, three ponytail holders, glitter gel, all in a zippered plastic pouch with a pencil attached on the outside." Target included with its request a sample of the Totes.

Sanford LLP, General Pencil Co., Inc., Moon Products, Inc., and Musgrave Pencil Co., the petitioners in this proceeding, did not submit comments regarding Target's request for a scope ruling.

### ARGUMENT

Target argues that the language of the order does not contemplate "mixed media" sets, such as the Totes. Furthermore, Target claims that the only item in the kit that may be subject to the order is the pencil and that the remaining items in the kit should be outside the order. Moreover, Target claims that the Tote is intended for girls to play dress-up. Target states that the



Department should consider the factors under 19 CFR 351.225(k)(2) to determine whether Totes are subject to 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 rulings) 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 following criteria set forth at 19 CFR 351.225(k)(2): 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; v) the manner in which the product is advertised and displayed. These factors are known commonly as the Diversified Products<sup>1</sup> 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.

### ANALYSIS<sup>2</sup>

In its application for a scope inquiry, Target asks that the Department determine whether Totes are within the scope of the order on the basis of the provisions of 19 CFR 351.225(k)(2). As discussed above, however, in accordance with the provisions of 19 CFR 351.225(d) and 351.225(k)(1), 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 petitioners described certain cased pencils as follows:

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

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

<sup>2</sup> 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.

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 petitioners stated that:

{r}egardless 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 order adopted the language of the petition as follows:

{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 the order.

After citing the above scope language, the ITC commented 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 at page I- 6.

We inspected the product samples Target provided in the application for a scope ruling and observed that the Totes include a single pencil which, considered individually, is covered by the scope of the order. The Totes are multimedia sets, however, which in addition to a pencil, include five mini-lipsticks, a perfume ring, a bubble-blower and bubble solution, three ponytail holders and glitter gel packaged in a zippered plastic pouch. The pencil is attached to the outside of the zippered plastic pouch by a small chain that could be used as a key chain. As Target observes, the scope of the order does not contemplate mixed-media sets.

The Department has issued a scope ruling with respect to a similar multimedia set in which it found the merchandise in question to be outside the scope of the order based on an analysis of the Diversified Products criteria. See the memorandum from Holly A. Kuga to Richard W. Moreland dated February 9, 1998: "Final Scope Ruling--Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China--Request by Creative Designs International, Ltd. (Designs). Designs covered "Naturally Pretty", a young girl's 10-piece dress-up vanity set which included two three-inch pencils, a shoulder bag, a small snap pouch of plastic sheeting, a plastic comb, a brush and mirror, sunglasses with plastic frames, a note pad, and address book. In Designs we made the following determination:

{t}he merchandise subject to this scope inquiry is the 10-piece vanity set, and not the two pencils which are only minor components of the set. The various components contained in CDI's vanity set including the comb, brush, mirror, and sunglasses, demonstrate that it is a set of items, similar to those found in a grown woman's purse, that allows a little girl to play/act like her mother. The set is not comprised of writing instruments alone, or even writing instruments along with other components that are closely associated with writing instruments only. Therefore, based on examination of the physical characteristics of the covered merchandise as stated in the order and an inspection of the 10-piece vanity set imported by CDI, we conclude that CDI's product, unlike subject merchandise, is not a writing instrument and/or drawing instrument.

Similarly, the merchandise subject to the instant scope inquiry is a 14-item vanity makeup/play-set, which includes only one pencil (a minor component) and various other items such as five mini-lipsticks, a perfume ring, a bubble-blower and bubble solution, three ponytail holders, and glitter gel packaged in a zippered plastic pouch, with the pencil attached to the outside of the pouch by a small chain that could be used as a key chain. In addition, as with the "Naturally Pretty" set in the Designs determination, the Tote set is neither intended to be nor is comprised of writing instruments alone or with other components closely associated with writing instruments only.

Therefore, based on examination of the physical characteristics of the covered merchandise as stated in the order, our scope ruling with respect to "Naturally Pretty," and an inspection of the 14-item tote set imported by Target, we conclude that Target's product, unlike subject merchandise, is not a writing instrument and/or drawing instrument.

**CONCLUSION**

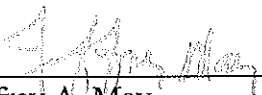
In accordance with 19 CFR 351.225(k)(1), the descriptions of the merchandise contained in the petition, the initial investigation, the determinations of the Department and the ITC, and on the record of this scope ruling support the conclusion that the Totes in question are outside the scope of the order.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


**RECOMMENDATION**

That the Department determine that the Totes are outside the scope of the order on certain cased pencils from the PRC.

Agree

Disagree

  
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Jeffrey A. May  
Deputy Assistant Secretary  
for Import Administration

  
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(Date)