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

A-570-82
Scope Ruling
Public Domain
AD/CVD

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SEP 27 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 Memory Maker"

SUMMARY

On August 16, 2004, Target Corporation (Target) submitted a written request that the U.S. Department of Commerce (the Department) determine whether the Hello Kitty Memory Maker (Memory Maker), imported by Target, is 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 recommended 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 Memory Makers from the PRC. In its submission, Target describes the Memory Maker as "... a children's scrapbook kit, which contains the following: 50 page bound memory book, three mini colored pencils, three gel pens, three markers, four sticker sheets, paper cut-outs, glue stick, ink pad, four rubber stamps, scissors and instructions." Target included with its request a sample of the Memory Maker.

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 Memory Maker is a children's scrapbook set comprised of various articles. Target contends that this scope ruling should be based on an evaluation of the components comprising the Memory Maker scrapbook collectively, as a set, and not of each individual item in the kit. In support of this approach Target cites 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). In that scope ruling, the Department found a child's dress-up set that included two pencils to be outside the scope of the order on pencils.

Furthermore, Target argues that, because the Memory Maker is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) provision for ink pads, not as pencils, and because the pencils are such a small portion of the entire set, the entire set is not covered by the scope of the order on pencils. In addition, Target argues that the language of the order does not contemplate "mixed media" sets, such as the Memory Maker. Target claims that although the International Trade Commission (ITC) report on certain cased pencils from Thailand refers to the petitioners' and the ITC's concerns about imports of pencils in "school packets or office kits," the report does not state that there was concern about importing pencils as components of "mixed media" sets. Target cites Designs at page 4 which cites Certain Cased Pencils from Thailand, USITC Publication 2816 (October 1994) at I-15 n.82. Moreover, Target claims that the articles included in the Memory Maker kit are intended for use by children ages six and up to create a scrapbook. Target states that the Department should consider the factors under 19 CFR 351.225(k)(2) to determine whether the Memory Maker is 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 scopes) and the 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 following additional 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 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

In its application for a scope ruling, Target asks that the Department determine whether the Memory Maker is within the scope of the order on certain cased pencils from the PRC 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 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 state:

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

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.

the writing core...

See Petition at 8 - 15.

The scope of the 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 the order.

After citing the above scope language, the ITC made the following comment:

{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.

We inspected the product samples provided with Target's application for a scope ruling and observed that the Memory Maker includes three colored mini-pencils, which are covered by the scope of the order when considered separately from the other items in the set. The Memory Maker is a multimedia set which, in addition to the pencils, includes a 50-page bound memory book, three gel pens, three markers, four sticker sheets (228 individual stickers), two sheets of paper cut-outs (12 individual cut-outs), a glue stick, an ink pad, four rubber stamps, scissors and instructions. As Target asserts, the scope of the order does not contemplate mixed-media sets.

The Department has found in previous scope rulings that certain multimedia sets are outside the scope of the order based on an analysis of the Diversified Products criteria. See Designs and the memorandum from Tom Futtner to Holly A. Kuga dated April 5, 2001: "Final Scope Ruling--

Antidumping Duty order on Certain Cased Pencils from the People's Republic of China--Request by Dollar General Corporation" (Dollar).

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 an address book. In that scope ruling 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.

Dollar covered two different types of stationery desk sets comprised of a 3 ¼-inch and/or a 4 ½-inch pencil, a pencil cup, a rectangular box, an upright sleeve which holds a removeable address book, a tray for note paper, and a picture frame. In that scope ruling we stated that:

{b}ased on an examination of the physical characteristics of the product imported by Dollar, the Department determines that the pencil is only a minor component of the stationery sets. The sets are not comprised of writing instruments alone, or even writing instruments along with other components that are closely associated with only writing instruments. Dollar's stationery sets, unlike subject merchandise, are not writing instruments and/or drawing instruments. In addition, in Dollar, we stated that "... we find that the ultimate use of the merchandise is as a desk organization system and not a writing instrument. Although the various components may have individual uses, we conclude that the ultimate use of the stationery set is as a desk set."

Similarly, the merchandise subject to the instant scope inquiry is a multimedia set, the main purpose of which is not writing and/or drawing. Although the Memory Maker set includes three colored mini-pencils, other writing instruments and a component associated with writing instruments (the 50-page bound memory book), the purpose of all of the items in the set, collectively, is to make a scrapbook. The pencils are not an integral component of the set. The scrapbook can be made without using the pencils (or other writing/drawing instruments) included in the kit.

Therefore, based on an examination of the physical characteristics of the covered merchandise as stated in the order, our Designs and Dollar scope rulings, and an inspection of the Memory Maker imported by Target, we conclude that unlike subject merchandise, Target's product is not a writing and/or drawing instrument.

CONCLUSION

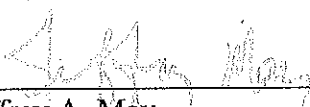
In accordance with 19 CFR 351.225(k)(1), the descriptions of the merchandise contained in the petition, the initial investigation, the determinations of the Department and the ITC, and on the record of this scope ruling support the conclusion that the Memory Maker in question is outside the scope of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

RECOMMENDATION

That the Department determine that the Memory Maker is outside the scope of the order on certain cased pencils from the PRC.

Agree

Disagree



Jeffrey A. May
Deputy Assistant Secretary
for Import Administration



(Date)