

SEP 29 2004



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

A-570-82
Scope Ruling
Public Document
AD/CVD 08: PMS

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 "Crayola ® The Wave"

SUMMARY

On August 16, 2004, Target Corporation (Target) submitted a written request that the U.S. Department of Commerce (the Department) determine whether the "Crayola ® The Wave" (The Wave) art supply set, 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 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 The Wave from the PRC. In its submission, Target describes The Wave as "... a children's art supply set, which contains the following: eight broad line markers, eight metallic 'Twistables™' crayons, eight colored pencils, one sharpener, and three ministampers washable markers in a plastic storage case." Target included with its request a sample of The Wave.

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, although The Wave includes eight colored pencils, the merchandise subject to this scope inquiry is the entire art supply set, of which the colored pencils constitute only a small portion. Target argues that this scope ruling should be based on an evaluation of the components comprising The Wave collectively, as a set, and not of each individual item in the kit. 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 support of this approach.

Target argues that the language of the order does not contemplate "mixed media" sets, such as The Wave. 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. Target states that the Department should consider the factors under 19 CFR 351.225(k)(2) to determine whether The Wave is subject to the order.

APPLICABLE REGULATIONS

The regulations governing scope rulings 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 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 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 Wave is 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

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 ruling 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 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 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 at page I-6.

Target requested that, for purposes of this scope ruling, the Department evaluate The Wave as a set. This request was based on the assumption that the colored pencils included in The Wave are subject merchandise. However, none of the components of The Wave, including the colored pencils, considered individually, is subject merchandise, as explained below.

We inspected the sample of The Wave submitted with Target’s application for a scope ruling and observed that all of the items that comprise The Wave (except the plastic carrying case and sharpener) are writing/drawing instruments. Only two of the items included in The Wave, the Twistables™ and the colored pencils, are “writing instruments and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man-made materials.” We found that the colored pencils are not produced in the PRC and that the Twistables™ have essentially the same salient physical characteristics as a product found outside the scope of the order in a previous scope ruling. See the memorandum from Thomas F. Futtner to Holly A. Kuga dated May 22, 2003: 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” (Twist Crayons).

With respect to the colored pencils, we observed the following printed notation on the bottom of the exterior paperboard packaging in a section labeled “Product & Safety Information”: “Twistables™ made in China. Colored pencils and sharpener are made in Brazil.” In addition, we observed that the inner paperboard packing sleeve (placed inside the plastic carrying case) which contains the eight colored pencils also bears a printed notation indicating that the pencils are made in Brazil: “Pencils made in Brazil.” Because the colored pencils are made in Brazil, they are not subject to the order on pencils from the PRC.

With respect to the Twistables™, we found that they 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 is lodged into a receptacle in a small plastic cylinder located inside the barrel at the non-writing end of the barrel. The small plastic cylinder is male threaded, the barrel is female threaded. A narrow concave tongue of plastic extends the length of the barrel between the

cylinder and the barrel from the cap at the non-writing/drawing end of the barrel to the writing end of the barrel. (The cap and tongue assembly is a single molded plastic component.) When the cap is turned, it causes the tongue to revolve around the wax crayon core between the cylinder and the barrel. As it revolves, the tongue catches on the cylinder, turns the cylinder and causes the cylinder to advance along the barrel, 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.

In the Twist Crayons decision, we made the following observation:

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.

Furthermore, we found that:

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.

In addition, we commented that:

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.

Twistables™ are essentially identical to the product found outside the scope of the order in Twist Crayons with respect to their salient physical characteristics and the manner in which the writing/drawing point is restored. Therefore, the Department determines that Twistables™ are not covered by the scope of the order.

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 the record of this scope ruling support the conclusion that The Wave in question is outside the scope of the order. Based on these descriptions, the Department is issuing a final scope ruling in this case.

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.

RECOMMENDATION

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

✓ Agree

_____ Disagree

Jeffrey A. May
Jeffrey A. May
Deputy Assistant Secretary
for Import Administration

Jeffrey A. May
(Date)