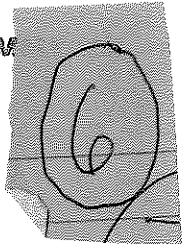




FOR OFFICIAL FILE
UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230



18 JAN 2005

2/18/05

A-570-827
Scope Inquiry
Public Document
IA08: PMS

1682

MEMORANDUM FOR: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

FROM: Wendy Frankel *CF*
Director, Office 8 *for WF*

SUBJECT: Final Scope Ruling – Antidumping Duty Order on Certain Cased Pencils from the People’s Republic of China (PRC) – Request by Rich Frog Industries, Inc.

SUMMARY

On December 30, 2004, Rich Frog Industries, Inc. (Rich Frog) submitted a written request that the U.S. Department of Commerce (the Department) determine whether certain decorated wooden gift pencils, imported by Rich Frog, 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) (the order). In accordance with 19 CFR 351.225(d) and 351.225 (k)(1), we recommend that the Department determine that the merchandise in question is within the scope of the order.

BACKGROUND

On December 30, 2004, Rich Frog submitted a written request for a scope ruling with respect to certain decorated wooden gift pencils from the PRC. In its submission, Rich Frog described the pencils as “decorated pencils” that have “{A} wooden figurine in the shape of an animal . . . permanently affixed to the pencil in the place where normally an eraser might be found.” In addition Rich Frog states that “The pencils are made of wood and have a graphite core.” Rich Frog submitted a picture of approximately 13 of the pencils in question resting in a painted pencil box bearing the Rich Frog logo and decorated with an attached wooden figurine of the sort attached to the pencils shown in the picture.

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



ARGUMENT

Rich Frog argues that the true use of the pencils in question is as decorative items. Rich Frog claims that the “. . . figurine cannot be removed from the top of the pencil without breaking it, so in fact, the pencil is not intended to be sharpened and used up, or the remaining figurine would need to be disposed of along with the pencil stub.” In addition, Rich Frog argues that the pencils in question sell at retail for more than seven times the price of U.S.-made pencils.

APPLICABLE REGULATIONS

The regulations governing the Department’s antidumping scope determinations can be found at 19 CFR 351.225. On matters concerning the scope of an order, the Department’s 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 (including prior scope determinations) and the International Trade Commission (ITC). See 19 CFR 351.225 (d) and 351.225 (k)(1). Such scope determinations may take place with or without a formal inquiry. See 19 CFR 351.225(d) and 351.225(e). If the Department determines that these descriptions are dispositive of the matter, it will issue a final scope ruling as to whether or not the merchandise is covered by the order. See 19 CFR 351.225(d).

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; and 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 record evidence before the Department.

Documents and parts thereof from the underlying investigation deemed relevant by the Department to the scope of the outstanding order 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.

ANALYSIS

The issue presented in Rich Frog’s request for a scope ruling is whether the decorated pencils are within the scope of the 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

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

descriptions of the product contained in the petition, the initial investigation, and the determinations of the Secretary and the ITC.

We have reviewed the language in the order. In the order the Department adopted the language of the petition in providing a description of the physical characteristics of covered merchandise:

{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”).

See the order.

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 pages 6 and 7.

Moreover, regarding specialty pencils the ITC stated that:

These pencils are specially imprinted, decorated with characters, designs, and shapes, such as having a “Beavis and Butthead” caricature embossed on the pencil, or are tipped with a novelty item, such as a “troll head.”

See ITC Final at page 7.

Based upon the above descriptions of the products subject to the order and the product description and the photograph of the decorated pencils provided by Rich Frog, we find that Rich Frog’s decorated pencils are within the scope of the order on certain cased pencils from the PRC. The decorated pencil has a core of graphite that is encased in wood and is tipped with a topper. Thus, the decorated pencil is a writing instrument which matches the description of those products subject to the antidumping duty order on pencils from the PRC. Although Rich Frog believes that the decorated pencil is not subject to the order because it states that the pencil is not intended to be sharpened and used up, the topper does not prevent, or necessarily discourage

consumers from using it to form written images on a medium, such as paper. Thus, the decorated pencil is a writing instrument. In any event, while Rich Frog may consider the decorated pencil to be a decorative item, the ITC noted that the scope of the order includes writing instruments with certain novel physical characteristics (e.g., pencils tipped with novelty items). Thus, the Rich Frog pencil is of the type specifically contemplated by the order.


CONCLUSION

In summary, in accordance with 19 CFR 351.225(k)(1), our review of the record of this scope ruling and the factual representations made by Rich Frog support the conclusion that the decorated pencil in question is included within the scope of the order. Because the scope of the order specifically identifies writing instruments with physical characteristics matching those of the decorated pencil, we recommend that the Department issue only a final scope determination in this case.

RECOMMENDATION

That the Department determine that the Rich Frog decorated pencil is within the scope of the order on certain cased pencils from the PRC.

Agree Disagree



Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration



(Date)