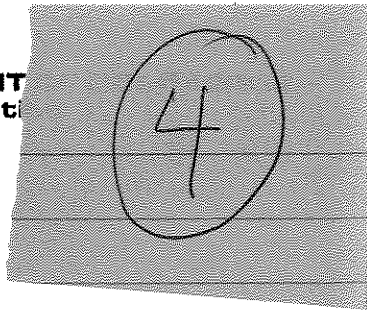




UNITED STATES DEPARTMENT
International Trade Administration
Washington, D.C. 20230



A-570-827

Scope Review
Smencils
Public Document
IA/NME 8: KGH

OFFICIAL FILE

August 21, 2008

2291

RE: Certain Cased Pencils from the People's Republic of China: The Smencils Company
Scope Inquiry

To All Interested Parties:

On July 5, 2007, the Department of Commerce ("the Department") received a scope ruling request from the Smencils Company ("Smencils") concerning whether not-yet scented newspaper pencils imported from the People's Republic of China ("PRC") are within the scope of the antidumping duty order on Certain Cased Pencils from the People's Republic of China. *See Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China*, 59 FR 66909 (December 28, 1994) ("*PRC Pencils Order*").

In accordance with 19 CFR 351.225(k)(1), and with the antidumping duty order in effect for this merchandise, the Department has determined that the not-yet scented pencils in Home Kit and Mini Kit produced and imported by Smencils from the PRC are within the scope of the *PRC Pencils Order*. The scope language of exclusion states that the pencils produced under U.S. patent No. 6,217,242 are made from paper infused with scents. The Home Kit and Mini Kit pencils are not produced from paper infused with scents, therefore, they do not have odors distinct from other pencils similarly lacking the scent infusion.

Enclosed is a memorandum containing the Department's analysis. We will notify U.S. Customs and Border Protection of this decision. If you have any questions, please contact Katharine Huang at (202) 482-1271 or Charles Riggle at (202) 482-0650.

Sincerely,

Wendy Frankel
Director
AD/CVD Operations, Office 8

Enclosure





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

A-570-827
Scope Inquiry
Scented Pencils
Public Document
IA/NME 08: KGH

MEMORANDUM TO: Edward Yang
Acting Deputy Assistant Secretary
for Import Administration

THROUGH: Wendy J. Frankel *WJF*
Director
AD/CVD Operations, Office 8

Charles Riggle *CR*
Program Manager
AD/CVD Operations, Office 8

FROM: Katharine G. Huang *KGH*
International Trade Compliance Analyst
AD/CVD Operations, Office 8

SUBJECT: Final Scope Ruling on the Antidumping Duty Order on Certain
Cased Pencils from the People's Republic of China: Request by
the Smencil Company (Scented Pencils)

Summary

On May 8, 2007, the Department of Commerce ("Department") received a request from the Smencil Company ("Smencils")¹ for a scope ruling concerning whether pencils made from recycled newspaper packaged in plastic cylinders along with scent applicators, imported by Smencils from the People's Republic of China ("PRC"), are within the scope of the antidumping duty order on certain cased pencils from the PRC.² In accordance with 19 CFR 351.225(d) and 351.225(k)(1), we recommend that the Department determine that the pencils in "Smencils Home Kit" and "Smencils Mini Kit" ("Home Kit" and "Mini Kit") described in Smencils' May 8, 2007, scope ruling request and submitted as product samples, and classified under Harmonized Tariff Schedule of the United States ("HTSUS") subheading 9609.10.00, do not

1 See Scope Ruling Request: Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China, received on May 8, 2007 ("Smencils' 2007 Scope Ruling Request").

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



match the description of scented pencils excluded from the order. Therefore, they are within the scope of the *PRC Pencils Order*.

Background

On May 8, 2007, the Department received a request from Smencils for a scope ruling concerning whether pencils claimed to be produced under U.S. patent number 6,217,242 in the PRC for Smencils and imported by Smencils from the PRC, are within the scope of the antidumping duty order on certain cased pencils from the PRC. However, Smencils failed to properly provide the Certificate of Service and Certificate of Accuracy. On June 18, 2007, the Department received Smencils' Certificate of Service. On July 5, 2007, the Department received Smencils' Certificate of Accuracy. The Department's final extension of the time period for issuing a scope ruling or initiating a formal scope inquiry is to no later than August 22, 2008.

Sanford LLP, General Pencil Company, Inc., Moon Products, Inc. and Musgrave Pencil Company ("Petitioners"), the petitioners in the antidumping investigation, did not submit comments regarding Smencils' request for a scope ruling on "Home Kit" and "Mini Kit" pencils.

No other interested party commented on this scope request.

The Scope of the *PRC Pencils Order*

Imports covered by this order are shipments of certain cased pencils of any shape or dimension except as noted below) 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 the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chinks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: 1) length; 13.5 or more inches; 2) sheath diameter: not less than one-and-one quarter inches at any point (before sharpening); and 3) core length: not more than 15 percent of the length of the pencil.

In addition, pencils with all of the following physical characteristics are excluded from the scope of the order: Novelty jumbo pencils that are octagonal in shape, approximately ten inches long, one inch in diameter before sharpening, and three-and-one eighth inches in circumference, composed of turned wood encasing

one-and-one half inches of sharpened lead on one end and a rubber eraser on the other end.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 38366 (July 6, 2006).

The scope language specifically related to the exclusion of pencils produced under U.S. patent number 6,217,242 was adopted based on a changed circumstances review in 2003.³

Scope Ruling Request

In its submission, Smencils describes the pencils in its "Home Kit" and "Mini Kit" as products that are made from rolled sheets of recycled newspaper, and packaged in plastic cylinders along with scent applicators for consumers to apply various liquid scents to the bodies of the pencils; thus, creating scented pencils in accordance with U.S. patent number 6,217,241, which Smencils holds. Smencils states that in 2003, the Department ruled that scented pencils produced under U.S. patent number 6,217,241 are excluded from the *PRC Pencils Order*.⁴ Smencils maintains that the packaging for "Home Kit" and "Mini Kit" pencils list the patent's registration number 6,217,241 because the products are designed to create a scented pencil of customers' own choices in accordance with the aforementioned U.S. patent. The differences between these two kinds of pencils are the timing of applying liquid scents to the pencils' bodies. The scented pencils that the Department ruled out of the scope of the *PRC Pencils Order* are already scented. The pencils in "Home Kit" and "Mini Kit" products are not yet scented, but are designed to be scented by customers. Also, Smencils states that the plastic tubes in "Home Kit" and "Mini Kit" products are to prevent the cross contamination of scents between scented pencils. Additionally, Smencils argues that the manufacturing process of pencils from recycled newspaper and the corresponding plastic tubes for storing scented pencils differ greatly from the manufacturing of cased pencils subject to the *PRC Pencils Order*. Therefore, Smencils requests the Department to determine that its "Home Kit" and "Mini Kit" paper pencils are outside the scope of the *PRC Pencils Order*.

Regulatory Framework

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

³ See *Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination To Revoke Order in Part: Certain Cased Pencils from the People's Republic of China*, 68 FR 14942 (March 27, 2003) ("*PRC Pencils Changed Circumstances Review*").

⁴ See Smencils' Scented Pencils Scope Ruling Request, at 3.

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 an 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 Products*⁵ 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 from the investigation and changed circumstances review deemed relevant by the Department to this scope ruling have been made part of the record of this determination and are referenced below. Documents that were not presented to the Department or placed by the Department on the record do not constitute part of the administrative record for this scope ruling.

Analysis

The Department has evaluated Smencils' scope request in accordance with 19 CFR 351.225(k)(1), taking into account the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Department (including prior scope determinations) and the ITC. The Department finds that the descriptions of the products contained in the petition, the initial investigation, and the determinations of the Department (including prior scope determinations) and the ITC are, in fact, dispositive. Therefore, we do not consider the additional factors set forth in 19 CFR 351.225(k)(2).

Smencils maintains that the pencils in its "Home Kit" and "Mini Kit" products are not yet scented and are designed to be scented by customers at their own choice in accordance with U.S. patent number 6,217,241.

The Smencils' "Home Kit" product, which is subject to this instant scope request, is a clear plastic cylinder containing a bag of eight pencils, eight clear plastic tubes, eight labels, and four liquid scent applicators of various flavors. The packaging indicates that the pencils are made from 100 percent recycled newspaper under U.S. patent number 6,217,242. Each pencil has a grey-colored round sheath with a sharpened top and an eraser end. However, the pencils do not have fragrant odors.

⁵ See *Diversified Product Corp. v. United States*, 572 F. Supp. 883, 889 (Ct. Int'l Trade 1983).

The Smencils "Mini Kit" product, which is also subject to this instant scope inquiry, is a clear plastic tube containing one scent applicator and two pencils. The packaging indicates that the pencils are made from 100 percent recycled newspaper under U.S. patent number 6,217,242. Each pencil has a grey-colored round sheath with a sharpened top and an eraser end. We note that each pencil has been labeled, and the label matches the flavor of the scent applicator. However, the pencils do not have fragrant odors.

By contrast, the scope language explains that the *PRC Pencils Order* excludes "pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion."⁶ Smencils submitted samples of the scented pencils that were subject to the 2003 changed circumstances review. The sample consists of 10 clear plastic tubes, each containing one pencil. The packaging indicates that the products are named "Gourmet Scented Pencils" made from 100 percent recycled newspaper under U.S. patent number 6,217,242. The pencil has a sharpened top, a grey-colored round sheath, a red eraser end, and a label near the eraser end. The pencil has a fragrant odor, which matches the label of the flavor of the scent. These are the products that the Department determined to be excluded from the scope of the *PRC Pencils Order* based on the 2003 changed circumstances review.

Based on reviews of the "Home Kit" and the "Mini Kit" sample products, we find that the pencils in the "Home Kit" and the "Mini Kit" products are not made from paper infused with scents. Therefore, they are distinguishable from Gourmet Scented Pencils because they do not have odors distinct from other pencils similarly lacking the scent infusion.

⁶ See *PRC Pencils Changed Circumstances Review*.

Recommendation

Base on the above analysis, we recommend that pursuant to 19 CFR 351.225(d) and 351.225(k)(1), the Department determine that the not-yet scented pencils contained in the "Home Kit" and "Mini Kit" do not meet the descriptions of scented pencils excluded from the *PRC Pencils Order* because they are not produced from paper infused with scents and do not have odors distinct from other pencils that similarly lack an infused scent. Therefore, we recommend finding that the "Home Kit" and "Mini Kit" pencils are covered by the scope of the order on certain cased pencils from the PRC.

Agree Disagree

Edward Yang

Edward Yang
Acting Deputy Assistant Secretary
for Import Administration

8/21/08
Date



U.S. DEPARTMENT OF COMMERCE
INTERNATIONAL TRADE ADMINISTRATION

CONCURRENCE RECORD
(PRESCRIBED BY ITA A.1. 8-1)

DATE

July 14, 2008

ROUTING PURPOSE SYMBOLS
(RPS)
C- CONCURRENCE
S- SIGNATURE

SUBJECT OF DOCUMENT: **Certain Cased Pencils from the People's Republic of China: Final Scope Ruling Requested by Smencil Co. (Scented Pencils) A-570-827**

NAME AND OFFICE OF ORIGINATOR

TELEPHONE NUMBER/ROOM

DEADLINE DATE

Case Analyst: Katharine Huang *KH 7/14*
Staff Attorney: Ahran Kang *AK 8/7/08*

482-1271 4413

August 8, 2008 *new deadline*
August 22, 2008

SUBMITTED TO:	RPS	INITIALS	DATE	SUBMITTED TO:	RPS	INITIALS	DATE
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OFFICE: OFFICE DIRECTOR <i>WFF 8/13</i>		<i>CK</i> <i>WFF</i>	<i>8/14/08</i>	OFFICE:			

ADDITIONAL INFORMATION OR SPECIAL INSTRUCTIONS: (CONTINUE ON REVERSE SIDE IF NECESSARY)

