

A-570-827
Scope Inquiry
Valentine's Card Sets with Pencils
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MEMORANDUM TO: John M. Andersen
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for Antidumping and Countervailing Duty Operations

THROUGH: Susan Kuhbach
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SUBJECT: Final Scope Ruling on the Antidumping Duty Order on Certain
Cased Pencils from the People's Republic of China: Request by
The Paper Magic Group, Inc. (Children's Valentine's Card Sets
with Pencils)

Summary

On October 6, 2008, the Department of Commerce ("Department") received a scope ruling request from Paper Magic Group, Inc. ("PMG")¹ concerning whether children's Valentine's cards sets with pencils imported by PMG 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

¹ See Scope Ruling Request for The Paper Magic Group, Inc.: Certain Cased Pencils from the People's Republic of China (A-570-827), October 6, 2008 ("PMG's 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").

accordance with 19 CFR 351.225(f)(4), we recommend that the Department determine that the children's Valentine's cards sets with pencils described in PMG's scope ruling request are outside the scope of the PRC Pencils Order.

Background

On October 6, 2008, the Department received a request from PMG for a scope ruling, arguing that children's Valentine's cards sets with pencils, which consist of a quantity of Valentine's cards with Valentine's messages and pencils as an enhancement feature, are outside the scope of the PRC Pencils Order. On November 20, 2008, the Department initiated a formal scope inquiry under the PRC Pencils Order, pursuant to 19 CFR 351.225(e). In the initiation, we requested comments from interested parties on PMG's scope ruling request. On December 10, 2008, only PMG submitted comments.

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 the order are currently classifiable 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, chalks, 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 the order is dispositive.³

³ See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of

Scope Ruling Request

In its initial scope ruling request, as well as in its December 10, 2008 comments, PMG describes children's Valentine's cards sets with pencils as a distinct subset of greeting cards, designed for children to exchange with classmates on Valentine's Day.⁴ PMG explains that children's Valentine's cards are typically sold in boxed sets with multiple cards in a single package, typically 12 to 48 cards per box. PMG explains that it offers three tiers of children's Valentine's cards sets. The first level contains cards with generic or cartoon-type images attractive to children. The middle tier consists of cards which are more expensive and typically feature licensed "pop culture" images familiar to and popular with school-age children. The highest tier is more expensive than the middle tier and includes not only popular licensed images but also enhancement features. According to PMG, examples of enhancement features are 3-D lenticular images, pieces of candy, temporary tattoos, stickers, or pencils. PMG notes that if the enhancement feature consists of additional items intended to be included with the card when it is given away, the quantity of additional items in the set is equal to the quantity of Valentine's Day cards in the set. PMG asserts that the common, most essential, and defining element present in all of PMG's children's Valentine's cards sets is the card itself. PMG describes the cards as simple and fairly small and which usually require some assembly by the purchaser to prepare for delivery. PMG notes that children's Valentine's cards sets with enhancement features may require different assembly steps. Finally, PMG notes that consumer demand for children's Valentine's cards sets is highly seasonal, with sales taking place only in the three to four weeks before Valentine's Day, and any remaining children's Valentine's cards sets are sold at significant markdowns after Valentine's Day.

PMG asserts that neither the petition, nor the scope of the antidumping duty order, nor the ITC investigation discusses the treatment of cased pencils that are imported as a component of a retail set that contains materials other than cased pencils, *i.e.*, a "mixed media set". PMG argues that the Department has reviewed several such sets and has consistently applied the Diversified Products⁵ criteria.⁶ PMG contends that the Department has consistently analyzed the scope inquiries regarding "mixed media" sets based on the criteria set forth in 19 CFR 351.225(k)(2). As described in the Arguments and Analysis section below, PMG addressed each of the Diversified Products criteria.

Antidumping Duty Administrative Review, 71 FR 38366 (July 6, 2006).

⁴ See PMG's scope ruling request, at 2 and 6.

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

⁶ See, e.g., "Final Scope Ruling - Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China (PRC) - Request by Walgreen Co." (October 8, 2008) and "Final Scope Ruling - Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China (PRC) - Request by Fiskars Brands, Inc." (June 3, 2005).

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 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).

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 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 that were not presented to the Department nor placed by the Department on the record do not constitute part of the administrative record for this scope ruling.

In the instant inquiry, the issue presented in PMG's scope ruling request is whether children's Valentine's cards sets with pencils are within the scope of the order. The petition, the order, PRC Order Revoked in Part,⁷ the ITC determination, and past scope rulings are not dispositive of this precise issue because these records do not address whether a "mixed media" set, such as children's Valentine's cards sets with pencils, are the same class or kind of merchandise as that covered by the PRC Pencils Order.⁸ Therefore, the Department finds it necessary to consider the additional factors set forth in 19 CFR 351.225(k)(2).

Argument and Analysis

1. The Physical Characteristics

PMG states that when examining the physical characteristics of a "mixed media" set, the Department has established a practice of looking at the set as a whole, rather than making

⁷ 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, 71 FR 13352 (March 15, 2006) ("PRC Pencils Order Revoked in Part").

⁸ See "Final Scope Ruling: Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China (PRC) - Request by Creative Designs International, Ltd." (February 9, 1998) ("Vanity Set Scope Ruling").

separate determinations for the various component parts.⁹ PMG argues that children's Valentine's cards sets with pencils, considered as a whole, are different from the merchandise subject to the order because the key component of such sets are the cards, which do not fall within the scope of the order.

As shown in the photos and samples submitted to the Department,¹⁰ PMG's children's Valentine's cards sets are packaged in a box printed with thematic images. There are 16 cards imprinted with similar thematic images and messages, and they are accompanied by 16 pencils also with similar thematic images. The other photos and samples of children's Valentine's cards submitted¹¹ show that the sets may be sold with cards only or with a variety of enhancement features, such as specialty cards (such as lenticular or art-in-motion cards) or other items besides cards that are included in equal numbers to the cards. Other enhancement features include candy, temporary tattoos, and stickers. The cards are printed on perforated card stocks, with multiple cards on each piece. The individual cards must be separated before giving the cards away. For sets with pencils, the giver of the card must complete assembly of the card by sliding the pencils through two slots that are die-cut into each card. The enhancement features, such as pencils, are intended to accompany the card when the cards are given to the recipients.

Based on our observations of the physical characteristics of the product, we have found that children's Valentine's cards sets with pencils are collections of cards for children to exchange on Valentine's Day. Although included in equal numbers as the cards in the set, the pencils in each set are incidental components of the set, as the cards are the main and most important components of the set. Therefore, we have determined that the physical characteristics of children's Valentine's cards sets with pencils are not akin to cased pencils subject to the PRC Pencils Order.

2. The Expectations of the Ultimate Purchasers

PMG notes that the ultimate purchaser of children's Valentine's cards sets is a child, or the parent of such a child, who is looking for cards to exchange with friends and classmates on Valentine's Day. According to PMG, the purchasers expect to find cards in the set with images that would be appealing to the recipients (school-age children who are their friends and classmates). PMG included a document entitled "Children's Valentine Category Overview," which, according to PMG, included the results of a consumer survey conducted by PMG. PMG notes that this survey indicates that the main considerations in determining whether to buy a particular children's Valentine's cards set are the images on the card and whether or not the sets

⁹ See, e.g., Vanity Set Scope Ruling and "Final Scope Ruling: Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China (PRC) - Request by Target Corporation Regarding 'Hello Kitty Fashion Totes'" (September 29, 2004).

¹⁰ See PMG's scope ruling request.

¹¹ Id.

come with candy.¹² PMG asserts that purchasers of children's Valentine's cards sets with pencils are concerned with the attractiveness and design of the card, and they are not primarily purchasing the set for the pencils. The purchaser expects to give the whole set away. On the other hand, PMG notes, the ultimate purchaser of cased pencils normally purchases pencils for their utility as writing instruments.

In addition, PMG states that purchasers of children's Valentine's cards sets with pencils expect the sets to be available only for a limited time before Valentine's Day, while cased pencils purchasers expect the pencils to be available all year long.

Based on our observations of the packaging of children's Valentine's cards sets with pencils and PMG's descriptions, we conclude that the ultimate purchaser of children's Valentine's cards sets with pencils expects to obtain cards to exchange with friends, not the pencils in the set, or does not primarily acquire the set for the pencils. On the other hand, the ultimate purchaser of subject cased pencils expects to acquire a writing instrument. Thus, we have determined that the expectations of the ultimate purchasers of children's Valentine's cards sets with pencils and expectations of the ultimate purchasers of cased pencils are dissimilar.

3. The Ultimate Use of the Product

PMG asserts that ultimate use of subject cased pencils is to draw or write, whereas the ultimate use of children's Valentine's cards sets with pencils is to give away the card together with the pencil, as a set, as part of the Valentine's Day ritual.

As noted by PMG, the ultimate use of cased pencils subject to the order is to draw or write. Children's Valentine's cards sets with pencils, on the other hand, are used by the purchaser as a gift/greeting for a friend or classmate. While the pencil included in the set, meant to accompany the card, is ultimately intended to be used as a writing instrument, the pencil can easily be replaced in the set with candy, tattoos, stickers or other enhancements, and the Valentine's card set would still retain its identity as a Valentine's cards set. Based on this, we have determined that the ultimate use of children's Valentine's cards sets with pencils and that of subject cased pencils are dissimilar.

4. The Channels of Trade in which the Product is Sold

PMG states that children's Valentine's cards sets are sold primarily through mass market retailers, supermarkets, and drug stores. According to PMG, subject pencils may also be sold through similar retailers, but they are also sold through office supply stores, which typically do not carry children's Valentine's cards sets. In addition, as noted above, children's Valentine's cards sets are offered only on a limited seasonal basis, only in the month or so before Valentine's Day. Subject pencils on the other hand are available year round. Finally, PMG explains due to the importance of aesthetics in children's Valentine's cards sets, the sets change significantly from year to year. PMG notes that, in contrast, most subject pencils remain the same from year

¹² See Exhibit 2 of PMG's scope ruling request.

to year.

Since both the children's Valentine's cards sets with pencils and cased pencils are sold through many similar stores, but the cards sets are available only in limited months, we have concluded that there is evidence of limited overlap in the channels of trade between the children's Valentine's cards sets with pencils and subject cased pencils.

5. The Manner in which the Product is Advertised and Displayed

As noted above, PMG explains that children's Valentine's cards sets with pencils are typically only available for a short period in January and February. In addition, PMG asserts that these cards sets are typically displayed in the section of stores that displays seasonal merchandise. According to PMG, subject pencils, on the other hand, are typically displayed in the stationery section of stores along with other writing products. PMG argues that its product catalogue reflects that children's Valentine's cards sets are supplied to retailers pre-packaged in counter or floor display boxes. PMG notes that these boxes are not designed to display cased pencils, which are typically sold off the shelf. Finally, PMG argues that Valentine's cards sets are sold only in boxed sets, whereas subject cased pencils may be sold singularly or as multiples in packages.

Because the children's Valentine's cards sets with pencils are displayed separately from subject cased pencils at various retailer stores, and because children's Valentine's cards sets with pencils are available only seasonally, we have determined that the children's Valentine's cards sets with pencils and subject cased pencils are not advertised and displayed in the same manner.


Conclusion

In summary, in accordance with 19 CFR 351.225(k)(2), based on our review of the record of this scope inquiry, we have found that the physical characteristics of the children's Valentine's cards sets with pencils, the expectations of the ultimate purchasers, the ultimate use, and the manner in which the children's Valentine's cards sets with pencils are advertised and displayed are dissimilar to cased pencils subject to the PRC Pencils Order.

Recommendation

Based on the foregoing analysis, we recommend that the Department find that the children's Valentine's cards sets with pencils do not meet the description of cased pencils, therefore, are outside the scope of the order on certain cased pencils from the PRC.

Agree Disagree



John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

3/12/09
(Date)