



A-570-827  
Scope Inquiry  
Pedestal Pets Sets  
**Public Document**  
IA/O1: JM

July 9, 2010

MEMORANDUM TO: Edward C. Yang  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

THROUGH: Susan Kuhbach  
Director  
AD/CVD Operations, Office 1

Nancy Decker  
Program Manager  
AD/CVD Operations, Office 1

FROM: Jesse Metcalf  
International Trade Compliance Intern  
AD/CVD Operations, Office 1

SUBJECT: Final Scope Ruling on the Antidumping Duty Order on Certain  
Cased Pencils from the People's Republic of China: Request by  
Inspired Design LLC (Pedestal Pets Sets with Pencils)

### Summary

On March 8, 2010, Inspired Design LLC ("Inspired Design") submitted a written request<sup>1</sup> that the Department of Commerce ("the Department") issue a scope ruling as to whether "Pedestal Pets" pencil toppers packaged with pencils and trading cards ("Pedestal Pets Sets") are within the scope of the antidumping duty order on Certain Cased Pencils from the People's Republic of China ("PRC Pencils Order").<sup>2</sup> On March 25, 2010, we initiated a scope inquiry of Pedestal Pets Sets saying that we could not make a determination based solely on the application and the descriptions of the merchandise referred to in 19 CFR 351.225(k)(1). After further consideration, as discussed below, we conclude that we can make a determination under 19 CFR

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<sup>1</sup> Inspired Design Scope Ruling Request on Pedestal Pets Sets Pencil Toppers Packaged with Pencils in Certain Cased Pencils from the People's Republic of China (A-570-827) (March 8, 2010) ("Inspired Design Scope Ruling Request").

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



351.225 (k)(1). Therefore, pursuant to 351.225(k)(1), we recommend that the Department determine that the pencils in Inspired Design's Pedestal Pets Sets are within the scope of the PRC Pencils Order.

## **Background**

On March 8, 2010, Inspired Design submitted a written request for a scope ruling with respect to Pedestal Pets Sets from the People's Republic of China ("PRC").

Inspired Design describes its product's primary component as "four animals, four pencils, and four fun fact educational trading cards."<sup>3</sup> Inspired Design likens this request to a mixed-media final scope ruling made on March 12, 2009, for Valentine's Card Sets with Pencils<sup>4</sup> in which the Department found that valentines card sets packaged with pencils are outside the scope of the PRC Pencils Order.

On March 25, 2010, the Department initiated a formal scope inquiry.<sup>5</sup> We explained that, pursuant to 19 CFR 351.225(d) and (e), we reviewed the scope request in light of descriptions of the merchandise subject to the order, as these descriptions are set forth in the petition, the initial investigation, and the determinations of the Secretary (including all prior scope determinations) and the International Trade Commission ("ITC"). Based on that review, we found that the issue of whether these Pedestal Pets Sets are within the scope of the order could not be determined solely upon the application and the descriptions of the merchandise referred to in 19 CFR 351.225(k)(1). In the initiation, we requested comments from interested parties on Inspired Design's scope ruling request. On March 30, 2010, Inspired Design submitted comments. No other party 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

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<sup>3</sup> See Inspired Design's Scope Request Comments (March 30, 2010).

<sup>4</sup> See 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) (A-570-827) (March 12, 2009) ("Valentine Card Sets with Pencils").

<sup>5</sup> See Letter to All Interested Parties, from Susan Kuhbach, Director, Office 1, Regarding Notice of Initiation of Scope Inquiry (March 25, 2010).

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.<sup>6</sup>

### **Regulatory Framework**

The regulations governing the Department's 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 description of the product contained in the petition, the initial investigation, and the determination of the Secretary (including prior scope determinations) and the 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 the descriptions of merchandise specified in 19 CFR 351.225(k)(1) 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) and 351.225(f)(5). 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. 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 nor placed by the Department on the record do not constitute part of the administrative record for this scope ruling.

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<sup>6</sup> See, e.g., 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).

## Department's Analysis

The issue presented in this scope determination is whether Pedestal Pets Sets imported by Inspired Design are within the scope of the PRC Pencils Order. The petition, the order, the subsequent partial revocation of the order,<sup>7</sup> and the ITC determination do not address whether a “mixed media set” (in this case, a set including pencils and other items) is the same class or kind of merchandise as that covered by the PRC Pencils Order. As noted above, in initiating a scope inquiry on Pedestal Pets Sets, we indicated that we could not make this determination based solely on the application and description set forth in 19 CFR 351.225(k)(1).

Since initiating a formal scope inquiry, we have identified a relevant scope ruling that enables us to reconsider our analysis under 19 CFR 351.225(k)(1). See Final Scope Ruling - Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China (PRC) - Request by Rich Frog Industries, Inc., (March 3, 2005) (“Rich Frog”) at Attachment 1. The Rich Frog scope request involved pencil toppers similar to Pedestal Pets Sets.<sup>8</sup> The pencils in the Rich Frog case were decorated with an attached wooden figurine, which Rich Frog claimed could not be removed from the pencil without breaking it. In the Rich Frog case, we found the pencils to be within the scope of the order on the basis of 19 CFR 351.225(k)(1). Specifically, the scope of the order includes pencils “whether or not decorated and whether or not tipped (e.g., with erasers, etc.).”<sup>9</sup> In addition, in the ITC Final Determination, the ITC noted that the scope included “decorated, imprinted or specialty pencils.”<sup>10</sup> Moreover, the ITC described specialty pencils as follows:

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 Determination at 7.

The Pedestal Pets Sets' pencils with toppers fit the description above. Two differences between Rich Frog's pencils and the Pedestal Pets Sets pencils are: 1) the pencil topper can be removed in the case of Pedestal Pets Sets; and 2) the pencils in Pedestal Pets Sets are part of a mixed media set. The fact the topper is not attached does not change the fact that the pencils in the Pedestal Pets Sets are to be tipped with a decorated novelty item, which the scope and the ITC Final Determination describe as being within the scope of the order. The only other items in the Pedestal Pets Sets, besides the pencils and the toppers, are the trading cards. The presence of

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<sup>7</sup> 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).

<sup>8</sup> See Attachment 2 containing Rich Frog Scope Request.

<sup>9</sup> See Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China, 59 FR 66909 (Dec. 28, 1994) (“PRC Pencils Order”).

<sup>10</sup> See Certain Cased Pencils from the People's Republic of China, Investigation No. 731-TA-639(Final), USITC Publication 2837, December 1994 (ITC Final Determination) at 6 and 7.

trading cards, a minor component, does not overcome the fact that the rest of the set (i.e., pencils and toppers) is almost identical to merchandise in the Rich Frog ruling.

Based upon the above descriptions of the products subject to the order and the product description and the Pedestal Pets Sets sample provided by Inspired Design, we find that pencils in the Pedestal Pets Sets are within the PRC Pencil Order. The decorated pencil has a core of graphite that is encased in wood and is packaged with a Pedestal Pet pencil topper. Thus, the decorated pencil is a writing instrument which matches the description of those products subject to the PRC Pencil Order. Inspired Design states that there is a hole in the bottom of the animal topper so that it can squeeze down on the pencil. While Inspired Design claims that children do not put the animals on the pencil and write with it, the topper does not prevent, or necessarily discourage consumers from using the pencils to form written images on a medium, such as paper. The ITC noted that the scope includes writing instruments with certain novel physical characteristics (e.g., pencils tipped with novelty items).<sup>11</sup> Thus, the Pedestal Pets Sets' pencil with topper is of a type specifically contemplated by the order.

### Conclusion

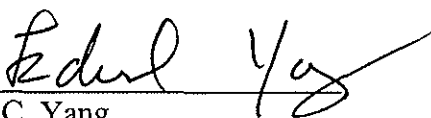
In summary, in accordance with 19 CFR 351.225(k)(1), our review of the record of this scope ruling and the factual representations made by Inspired Design support the conclusion that the pencils contained in the Pedestal Pets Sets in question are included within the scope of the order. Because the scope of the order specifically identifies writing instruments with physical characteristics matching those of the decorated pencils that are central to the Pedestal Pets Sets, we find that this scope inquiry does not present an issue of significant difficulty and recommend that the Department only issue a final scope determination in this case. See 19 CFR 351.225(f)(3),(4), and (5).

### Recommendation

That the Department determine that the pencils in the Pedestal Pets Sets are within the scope of the PRC Pencils Order.

        Agree

       Disagree

         
Edward C. Yang  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

       7/9/2010  
Date

<sup>11</sup> See ITC Final Determination at 6.

# **ATTACHMENT ONE**



03 MAR 2005

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 *CR*  
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 Products<sup>1</sup> 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

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<sup>1</sup> 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.

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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**

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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

*me* Acting Deputy Assistant Secretary  
for Import Administration

  2/18/05    
(Date)

# **ATTACHMENT TWO**



FOR OFFICIAL FILE

Secretary of Commerce  
Attention: Import Administration  
Central Records Unit  
Room 1870  
U.S. Department of Commerce  
14<sup>th</sup> St. and Constitution Ave. N.W.  
Washington, DC 20230

RECEIVED  
DEC 30 2004  
DEPT. OF COMMERCE  
ITA  
IMPORT ADMINISTRATION

1632

December 21, 2004

Subject: Request for Scope Ruling on A-570-827

Dear Madam/Sir,

The purpose of this letter is to formally request a Scope Ruling on certain decorated wooden gift pencils which my company imports from the People's Republic of China. It is our assertion that these pencils do not fall within the scope of anti-dumping ruling A-570-827.

The items in question are decorated pencils, currently classified under Tariff Classification number 9609.10.0000. A wooden figurine in the shape of an animal is permanently affixed to the pencil in the place where normally an eraser might be found. The pencils are made of wood and have a graphite core. The figurines are made of wood and string, and they are individually painted with non-toxic paints.

For your review, we are attaching an image showing the 8 items. As you can see, the items in question are small, handpainted wooden figurines in the image of a frog, a duck, a dog, a cat, a bee, a ladybug, a rabbit and a penguin, which sit atop a wooden pencil.

#### **Use of Pencils**

Whereas the ruling specifies that the subject pencils be writing and/or drawing instruments, it is our contention that the true use of these pencils is as a decorative item. 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. We assert that these items are being purchased as gifts to then be used as decorative items.

#### **Comparative Cost**

We have found that U.S.-made wooden pencils are considerably less expensive than these pencils which we are importing. Whereas U.S.-made pencils will sell for just over \$ 0.13 apiece (we recently purchased a box containing 1 dozen pencils for \$ 1.59), these

*.(continued ...)*



FOR OFFICIAL FILE

Secretary of Commerce  
Attention: Import Administration  
Central Records Unit  
Room 1870  
U.S. Department of Commerce  
14<sup>th</sup> St. and Constitution Ave. N.W.  
Washington, DC 20230

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(continued ...)



Secretary of Commerce  
Attention: Import Administration  
Washington, DC 20230  
December 21, 2004  
Page 2

(... continued from Page 1)

decorative gift pencils will sell at retail for *at least* \$ 1.00 apiece, which is *more than seven times* the price of U.S.-made pencils. We feel that this cannot be considered a case of dumping.

For these reasons, we hope that you will consider this matter, and that you will come to the conclusion that these pencils do not fall within the scope of anti-dumping ruling A-570-827. If you have any questions about this matter, please do not hesitate to contact me at the address, phone or fax number, or email address listed below.

Sincerely yours,

Maarten van Ryckevorsel  
President  
Rich Frog Industries, Inc.

Enclosed: Image

Rich Frog Industries, Inc.  
1 Mill Street, Suite 216  
Burlington, VT 05401  
Tel (802) 865-9225  
Fax (802) 865-2423  
Email [maarten@richfrog.com](mailto:maarten@richfrog.com)

