



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

A-570-866
Scope Ruling
Public Document
IA/08: SB

March 16, 2009

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

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

FROM: Sergio Balbontin
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RE: Folding Gift Boxes from the People's Republic of China:
"FunZip" Final Scope Ruling

Summary

On June 1, 2007, the Department of Commerce ("Department") received a submission from Hallmark Cards, Inc. ("Hallmark") requesting a scope ruling¹ on whether a certain gift box to be marketed under the trade name "FunZip" is outside the scope of the antidumping order on folding gift boxes from the People's Republic of China ("PRC"). See Notice of Antidumping Duty Order: Certain Folding Gift Boxes from the People's Republic of China, 67 FR 864 (January 8, 2002) ("Order"). On November 1, 2007, the petitioner, Harvard Folding Box Company ("Harvard"), submitted a response in opposition to the Hallmark Request.² In accordance with 19 CFR 351.225(k)(1), we recommend the Department determine that Hallmark's FunZip is within the scope of the Order.

Background

On June 1, 2007, Hallmark submitted a request seeking a determination that its FunZip gift box is outside the scope of the Order. See Hallmark Request. In its submission, Hallmark states that the FunZip is a gift box designed to be "permanently" sealed and that the gift recipient tears a "rip strip," incorporated into the sides of the lid of the box, allowing the top to be opened and the gift revealed. See Hallmark Request at 3. Hallmark explains that the "rip strip" is visually integrated into the design of the box. For example, in the case of an alligator head, the "rip strip" simulates the alligator's mouth. See Hallmark Request at 3.

¹ See Scope Ruling Request Hallmark Cards, Inc., dated June 1, 2007 ("Hallmark Request").

² See Scope Ruling Request Response submitted by Harvard Folding Box Company, dated November 1, 2007 ("Harvard Response").



The FunZip is constructed of 350 G/M² laminated board box stock which has a thickness of 0.508 millimeters. The outside of the box has a matte finish, and is printed in color on the top, bottom, and sides. In the case of Hallmark's specific product example, the "Alligator Design," the outside of the box depicts the head of an alligator. See Hallmark Request at 3. The box is designed as a single piece of board stock where the lid of the box has die cut flaps which can be raised above the surface of the lid to give a three-dimensional appearance to the eyes and nostrils or other motif-specific characteristics. See Hallmark Request at 3. Here, two 40 mm "google eyes" are attached to the die cut flaps and contain small black movable plastic pupils that randomly rotate within a clear plastic housing. See Hallmark Request at 3. The FunZip is shipped, packaged, and sold in a knocked-down flattened state. See Hallmark Request at 3 and 4. In a fully opened state, the FunZip measures 20 3/8"x39" and in a folded state, it measures 9"x13"x4". See Hallmark Request at 4.

Hallmark adds that the FunZip is classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 4819.20.0040 and is intended for retail sale in single-unit packages. See Hallmark Request at 4. The FunZip is packaged in a clear plastic wrap with a label to show the box as assembled and includes assembly instructions. See Hallmark Request at 4. A 0.01" vinyl tab will be attached to the plastic wrap allowing the FunZip to be displayed within stores on racks. See Hallmark Request at 4.

Hallmark argues that the Department should rule that the FunZip is outside the scope of Order as the FunZip is designed with an "irreversible assembly," is "asymmetrical" in design as far as its use of the "rip strip" is concerned, possesses three-dimensional characteristics such as protruding facial features in its animal motifs, and has a self-sealing feature. See Hallmark Request at 6 and 7.

In response, Harvard argues that none of the exclusions listed in the Order are applicable to the FunZip. First, the FunZip's stock material has a thickness of .508 millimeters whereas the Order excludes gift boxes with material of a thickness of 0.8 millimeters or more. See Harvard Response at 1 and 2. Second, Harvard asserts that the FunZip's measurements, as assembled, are 9"x13"x4" and the Order excludes only those gift boxes whose sides "when assembled, {are} at least nine inches in length." See Harvard Response at 2. Third, the Order excludes so called "not-for-sale" or "give-away" gift boxes which display the "retailer's name, logo, trademark or similar company information" but the FunZip is sold at the retail level. See Harvard Response at 2. Lastly, Harvard argues that the Order excludes "gift boxes where both the outside of the box is a single color and the box is not packaged in shrink-wrap, cellophane, other resin-based packaging films, or paperboard," whereas the FunZip is printed on single piece die-cut board shipped in clear plastic wrap in a knocked-down flattened state. See Harvard Response at 2.

Harvard additionally argues that while the Order speaks of "holiday motif" gift boxes, the scope of the Order does not explicitly exclude other non-holiday motif design/ornamentations. See Harvard Response at 2 and 3. Accordingly, Harvard argues that the FunZip is not excluded despite its holiday-neutral animal motif. See Harvard Response at 3. Furthermore, Harvard maintains that the FunZip should be included in the scope of the Order despite its holiday neutral and/or unique features (e.g., protruding animal features) as future exporters will otherwise be allowed to design around scope restrictions (e.g., a Santa Clause as opposed to an

alligator face). See Harvard Response at 3. Harvard also notes that the FunZip is classifiable under item 4819.20.0040 of the HTSUS which is one of two tariff classifications listed as applicable in the scope of the Order.

The Scope of the Order states:

The products covered by this order are certain folding gift boxes. Folding gift boxes are a type of folding or knock-down carton manufactured from paper or paperboard. Folding gift boxes are produced from a variety of recycled and virgin paper or paperboard materials, including, but not limited to, clay-coated paper or paperboard and kraft (bleached or unbleached) paper or paperboard. The scope of the order excludes gift boxes manufactured from paper or paperboard of a thickness of more than 0.8 millimeters, corrugated paperboard, or paper mache. The scope also excludes those gift boxes for which no side of the box, when assembled, is at least nine inches in length.

Folding gift boxes included in this scope are typically decorated with a holiday motif using various processes, including printing, embossing, debossing, and foil stamping, but may also be plain white or printed with a single color. The subject merchandise includes folding gift boxes, with or without handles, whether finished or unfinished, and whether in one-piece or multi-piece configuration. One-piece gift boxes are die-cut or otherwise formed so that the top, bottom, and sides form a single, contiguous unit. Two-piece gift boxes are those with a folded bottom and a folded top as separate pieces. Folding gift boxes are generally packaged in shrink-wrap, cellophane, or other packaging materials, in single or multi-box packs for sale to the retail customer. The scope excludes folding gift boxes that have a retailer's name, logo, trademark or similar company information printed prominently on the box's top exterior (such folding gift boxes are often known as "not-for-resale" gift boxes or "give-away" gift boxes and may be provided by department and specialty stores at no charge to their retail customers). The scope of the order also excludes folding gift boxes where both the outside of the box is a single color and the box is not packaged in shrink-wrap, cellophane, other resin-based packaging films, or paperboard.

Imports of the subject merchandise are classified under Harmonized Tariff Schedules of the United States (HTSUS) subheadings 4819.20.0040 and 4819.50.4060. These subheadings also cover products that are outside the scope of this order. Furthermore, although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

See Order.

Legal Framework

The Department examines scope requests in accordance with the Department's scope regulations. See 19 CFR 351.225. On matters concerning the scope of an antidumping duty order, the Department first examines the description of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope

determinations) and the International Trade Commission (“ITC”). See 19 CFR 351.225(k)(1). This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. See 19 CFR 351.225(d).

Where the descriptions of the merchandise are not dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: i) the physical characteristics of the merchandise; 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. See 19 CFR 351.225(k)(2). 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 evidence before the Department.

For this inquiry, the Department evaluated Hallmark’s Request in accordance with 19 CFR 351.225(k)(1) and finds that the description of the product(s) contained in the scope of the Order and any determinations by the Secretary (including prior scope determinations) and the ITC are, in fact, dispositive with respect to Hallmark’s FunZip. Therefore, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2).

Analysis

As outlined above, record evidence (*i.e.*, photographs and Hallmark’s submitted description of the FunZip) indicates that the FunZip construction material has a 0.508mm thickness which is less than the 0.8mm thickness that would otherwise cause the FunZip to be excluded by the scope’s language. Record evidence also indicates that the FunZip, when assembled, has at least one side measuring more than nine inches in length (*i.e.*, 9”x13”x4”). Additionally, record evidence does not indicate that the FunZip “prominently” displays a retailer’s name, logo, trademark, etc. which, again, would exclude the FunZip pursuant the scope language. Moreover, Hallmark has reported that the FunZip will be sold at the retail level and thus cannot be considered a “not-for-resale” or “give-away” box as designated by the scope language. Finally, record evidence does not indicate that the FunZip will be a single color and packaged in a mode other than “shrink-wrap, cellophane, other resin-based packaging films or paperboard.” To the contrary, record evidence indicates that the FunZip will be multi-colored to accommodate its animated animal motifs and packaged in clear plastic wrap.

While the FunZip is designed with an “irreversible assembly,” is “asymmetrical” in design, and possesses three-dimensional characteristics, based on the analysis above, we have determined that Hallmark’s FunZip does not meet any of the exclusionary language criteria in the scope of the Order as discussed above. Rather, it clearly meets the description of covered merchandise in that it is a one-piece gift box, made from paper or paperboard of a thickness that is covered by the scope. Finally, the fact that the FunZip is not holiday-marketed is not dispositive because the scope language specifically states that the “[f]olding gift boxes included in this scope are typically decorated with a holiday motif.” The language does not require that the gift box have a holiday motif to be covered by the Order.

