



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

A-570-827  
Scope Inquiry  
Public Document  
AD/CVD 1: WHL

June 23, 2009

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

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

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FROM: Wright Lewis *W.L.*  
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SUBJECT: Scope Inquiry – Antidumping Duty Order on Certain Cased Pencils from the People’s Republic of China – Request by It’s Academic, Inc. (“Compasses II”)

**SUMMARY**

On May 12, 2009, It’s Academic, Inc. (“It’s Academic”), submitted a written request<sup>1</sup> that the U.S. Department of Commerce (“Department”) issue a ruling as to whether five individual compasses imported by It’s Academic 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> It’s Academic asks the Department to find that the five compasses in question—the “Bow Compass” (item number 01350), “Metal Compass” (item number 01341), “Retractable Point Compass” (item number 01330), “Compass’ made of recycled products” (item number 41360), and “regular ‘Compass’” (item number 01302) (collectively, “It’s Academic compasses”)—are not included within the scope of the PRC Pencils Order because, among other reasons, “{t}he Department has previously determined that ‘Bow Compasses’ and similar compasses are excluded from the order.”<sup>3</sup> In accordance with 19 C.F.R. § 351.225(d) and (k)(1), we

<sup>1</sup> It’s Academic Scope Ruling Request on Compasses with Pencils in Cased Pencils from the People’s Republic of China (A-570-827), (May 12, 2009) (“It’s Academic 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”).

<sup>3</sup> It’s Academic Scope Ruling Request at 1-2.



recommend that the Department determine that the compasses in question are not within the scope of the PRC Pencils Order.

## **BACKGROUND**

On May 12, 2009, It's Academic requested that the Department issue a scope ruling on whether certain compasses are covered by the PRC Pencils Order.<sup>4</sup> It's Academic states its compasses are "constructed in relatively the same way...have the same purpose" and "all use practically identical pencils."<sup>5</sup> All of the compasses "have two legs: one leg has a point which is used as the center of the circle and the other leg contains a pencil which is used to draw the circle."<sup>6</sup> It's Academic included samples and pictures of the compasses with its request.<sup>7</sup> No interested party submitted comments in response to the It's Academic Scope Ruling Request.

## **ANALYSIS**

### **Regulatory Framework**

The process of determining whether a product is included within the scope of an antidumping duty order is governed by the regulations found at 19 C.F.R. § 351.225. In conducting a scope determination, the Department first looks to "the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission."<sup>8</sup> If the Department can make its determination based solely on the (k)(1) criteria, the Department may issue a final scope ruling.<sup>9</sup> However, if the (k)(1) criteria are not dispositive the Department must initiate a scope inquiry.<sup>10</sup> The Department then considers the Diversified Products factors: "(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."<sup>11</sup>

### **Scope of the PRC Pencils Order**

The PRC Pencils Order states:

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

<sup>4</sup> It's Academic Scope Ruling Request at 1-2.

<sup>5</sup> It's Academic Scope Ruling Request at 2-3.

<sup>6</sup> It's Academic Scope Ruling Request at 2.

<sup>7</sup> See It's Academic Scope Ruling Request, Attachment 1.

<sup>8</sup> 19 C.F.R. § 351.225(k)(1).

<sup>9</sup> 19 C.F.R. § 351.225(d).

<sup>10</sup> 19 C.F.R. § 351.225(e).

<sup>11</sup> 19 C.F.R. § 351.225(k)(2); Diversified Products Corp. v. U.S., 572 F. Supp. 883, 889 (Ct. Int'l. Trade 1983).

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 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>12</sup>

### Department’s Analysis

The issue presented in this scope determination is whether five compasses imported by It’s Academic are within the scope of the PRC Pencils Order. The petition, the order, the subsequent partial revocation of the order,<sup>13</sup> and the International Trade Commission determination do not address whether a “mixed media set,” such as compasses with pencils, are the same class or kind of merchandise as that covered by the PRC Pencils Order.<sup>14</sup> However, the Department has issued a scope ruling on a mixed media set similar to the It’s Academic Compasses.

On June 3, 2005 the Department issued its final scope ruling on the Fiskars Brands, Inc. (“Fiskars”) scope request regarding the applicability of the PRC Pencils Order to certain

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<sup>12</sup> Certain Cased Pencils from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 38366, 38367 (July 6, 2006).

<sup>13</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>14</sup> See, e.g., “Final Scope Ruling: Antidumping Duty Order on Certain Cased Pencils from the People’s Republic of China - Request by Creative Designs International, Ltd” (February 9, 1998).

compasses (“Compasses I”).<sup>15</sup> The Department determined that the Fiskars compasses, which were packaged with a pencil set into the drawing leg of the compass, were not within the scope of the PRC Pencils Order.<sup>16</sup> The Department reasoned that the compasses were “the significant item” whereas the pencils were only “a minor component of the compasses.”<sup>17</sup>

The merchandise in question essentially mirrors the merchandise from Compasses I.<sup>18</sup> The It’s Academic sets consist of a compass and a pencil like the sets in Compasses I. The compasses are also similar to the compasses from Compasses I. In fact, one of the compasses in Compasses I—the “Bow Compass”—has the same name as one of the It’s Academic compasses and employs a similar locking mechanism.<sup>19</sup> The other It’s Academic compasses are also similar in design, serve the same purpose, and are packaged with a similar three-and-a-half inch pencil with no eraser like the Fiskars compasses in Compasses I. Furthermore, Fiskars’ description of its compasses—which was adopted by the Department in its final scope ruling—accurately describes the It’s Academic compasses and vice-versa.<sup>20</sup> Fiskars described its compasses as

{A} plastic or metal device with two legs, one with a sharp metal point or a rubber tip and the other with a holder for a pencil or any other marking device. The metal and/or rubber tipped leg are set on a spot and the leg with the pencil or other marking device is rotated around the axis of the point...<sup>21</sup>

It’s Academic describes its compasses similarly as “all hav{ing} two legs: one leg has a point which is used as the center of the circle and the other leg contains a pencil which is used to draw the circle.”<sup>22</sup> Our examination of the samples provided by It’s Academic and the Attachment with pictures of the It’s Academic compasses confirm the compasses’ similarities.<sup>23</sup> Thus, the It’s Academic compasses are essentially the same as the compasses previously determined to be outside the scope of the PRC Pencils Order in Compasses I.

## CONCLUSION

In accordance with 19 C.F.R. § 351.225(d) and (k)(1), based on the descriptions of the merchandise contained in the petition, our examination of the It’s Academic compasses in the scope ruling request, and prior determinations by the Department and the International Trade Commission, particularly the Compasses I scope ruling, we conclude that the It’s Academic compasses do not meet the description of cased pencils subject to the PRC Pencils Order. Therefore, the Department is issuing a final scope ruling in this case.

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<sup>15</sup> “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) (“Compasses I”).

<sup>16</sup> Compasses I at 12.

<sup>17</sup> Compasses I at 6.

<sup>18</sup> See It’s Academic Scope Ruling Request at Attachment 1 and Scope Inquiry, Cased Pencils from the People’s Republic of China (A-570-827) at Exhibit A (Sept. 10, 2004) (“Fiskars Scope Ruling Request”).

<sup>19</sup> See It’s Academic Scope Ruling Request at Attachment 1 and Fiskars Scope Ruling Request at Exhibit A.

<sup>20</sup> Compasses I at 1.

<sup>21</sup> Fiskars Scope Ruling Request at 2.


<sup>22</sup> It’s Academic Scope Ruling Request at 2.

<sup>23</sup> See It’s Academic Scope Ruling Request at Attachment 1.

**RECOMMENDATION**

Based on the above analysis, we recommend that the Department determine that the “Bow Compass” (item number 01350), “Metal Compass” (item number 01341), “Retractable Point Compass” (item number 01330), “Compass’ made of recycled products” (item number 41360), and “regular ‘Compass’” (item number 01302) imported by It’s Academic are not within the scope of the PRC Pencils Order.

Agree  Disagree

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

8/23/09  
(Date)