



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

A-570-901

Scope

Public Document

O8: MAW

December 13, 2006

PublicFile

MEMORANDUM TO: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

THROUGH: Wendy J. Frankel *wjf*
Director
China/NME Group, Office 8

Charles Riggle *CR*
Program Manager
China/NME Group, Office 8

FROM: Marin Weaver *MW*
International Trade Compliance Analyst
China/NME Group, Office 8

SUBJECT: Certain Lined Paper Products from the People's Republic of China
- Bond Street Ltd. Scope Ruling Request

Background

This memorandum addresses issues raised by Bond Street Ltd. ("Bond Street") regarding the scope of the above-referenced order. The Department published its final determination on September 8, 2006.¹ On September 28, 2006, the Department issued an AD order in this case.² On October 27, 2006, Bond Street requested a scope ruling concerning specific products it imports from the PRC ("Bond Street submission").

¹ See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China, 71 FR 53079 (September 8, 2006) ("Final Determination").

² See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia, 71 FR 56949 (September 28, 2006) ("Order").



Legal Framework

The regulations governing the Department's antidumping scope rulings can be found at 19 CFR 351.225. On matters concerning the scope of an order, the Department first examines the descriptions of the merchandise contained in the petition, the determinations of the Secretary and the International Trade Commission ("ITC"), and the initial investigation. See 19 CFR 351.225(k)(1). This ruling 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)).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the following additional factors set forth at 19 CFR 351.225(k)(2): 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. These factors are known commonly as the *Diversified Products*³ criteria. The Department applies these factors when the product descriptions contained in the petition, the determinations of the Secretary (including prior scope rulings) and the ITC, and the initial investigation are not dispositive. 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.

Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies,⁴ composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets,⁵ including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8-3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or "tear-out" size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within

³ *Diversified Products Corp. v. United States*, 6 CIT 155, 572 F. Supp. 883 (1983) ("*Diversified Products*").

⁴ For purposes of this scope definition, the actual use or labeling of these products as school supplies or non-school supplies is not a defining characteristic.

⁵ There shall be no minimum page requirement for looseleaf filler paper.

the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- unlined copy machine paper;
- writing pads with a backing (including but not limited to products commonly known as “tablets,” “note pads,” “legal pads,” and “quadrille pads”), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- index cards;
- printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- newspapers;
- pictures and photographs;
- desk and wall calendars and organizers (including but not limited to such products generally known as “office planners,” “time books,” and “appointment books”);
- telephone logs;
- address books;
- columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- lined business or office forms, including but not limited to: preprinted business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- lined continuous computer paper;
- boxed or packaged writing stationery (including but not limited to products commonly known as “fine business paper,” “parchment paper,” and “letterhead”), whether or not containing a lined header or decorative lines;
- Stenographic pads (“steno pads”), Gregg ruled,⁶ measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™.⁷

⁶“Gregg ruling” consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.

⁷Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

- **Zwipes™:** A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™.⁸
- **FiveStar®Advance™:** A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1 inch wide elastic fabric band. This band is located 2-3/8 inches from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™.⁹
- **FiveStar Flex™:** A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™.¹⁰

⁸ Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

⁹ Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

¹⁰ Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

Merchandise subject to this order is typically imported under headings 4810.22.5044, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2050, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (HTSUS).¹¹ The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Bond Street Request

Bond Street requests that the Department confirm that the writing cases, writing portfolios, and portfolios (collectively "writing cases") which contain writing tablets (also known as writing pads) it imports from the PRC are excluded from the scope of the order. Bond Street argues that its writing cases include pads of paper which are representative of products such as writing pads with a backing (including but not limited to products commonly known as "tablets," "note pads," "legal pads," and "quadrille pads") "which are specifically excluded from the scope of petition." See Bond Street submission at 9. Bond Street states that it included writing tablets in order to make the products in question easily recognizable as writing cases and immediately usable upon purchase. However, Bond Street argues that the writing tablets are a minor component of the writing case. According to Bond Street, the writing tablets used in its writing cases do not contain holes. Bond Street states that, while some of the writing case pictures attached to its submission show writing pads with holes, these pictures are (a) outdated because they were taken in 1999 and (b) were taken to demonstrate that a writing pad was included in the product but are not intended to be representative of the exact tablet included in the product.

While acknowledging that labeling an item a school supply (or, conversely, not a school supply) is not a defining factor, Bond Street contends that its writing cases are unlikely to be used in the school supplies market and that its products are largely not affordable to students or teachers. According to Bond Street, it pays to have its products included in business-to-business catalogs and that its selling focus is on the office products industry.

Additionally, Bond Street asks the Department to determine if two types of writing tablets, which it identifies as "2i" and "2ii", would change the Department's determination of whether Bond Street's writing cases are covered by the scope of the order if the writing cases contained these tablets instead. Bond Street describes the first tablet, 2i, as having an unlined top sheet glued to the "black tape" and the second tablet, 2ii, as having a faint logo applied on the top sheet. Bond Street also states that these top sheets are "the same weight." Bond Street asserts that these top sheets can be used to take notes and do not elevate the writing tables to the level of "pads with covers." See Bond Street submission at 9.

Department's Position

The scope of the order specifically excludes "writing pads with a backing (including but not limited to products commonly known as 'tablets,' 'note pads,' 'legal pads,' and 'quadrille pads'),

¹¹ During the investigation additional HTSUS headings were identified.

provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper." See *Order*. Any writing cases which include writing tablets that do not have a front cover (whether permanent or removable) and/or do not consist of hole-punched or drilled filler paper meet the description of merchandise that is not covered by the scope of the order on CLPP from the PRC. Where Bond Street's writing cases contain writing tablets which do not contain covers, they are specifically excluded from the scope of the order. Therefore it is not necessary for the Department to address Bond Street's other arguments on this matter.

With regard to the two additional writing tablets with "top sheets" known as "2i" and "2ii", as stated in the scope of the order, writing tablets are excluded "provided that they do not have a front cover (whether permanent or removable)." We disagree with Bond Street's assertion that these two writing tablets do not constitute pads with covers. There is nothing in the scope of the order that defines the thickness or weight of a cover nor anything that specifically states that covers are something that cannot be written on. The blank sheet on top of writing tablet 2i and the top sheet with the logos on writing tablet 2ii differ from all the lined paper beneath them and in fact serve as a front cover to the writing tablet. The scope of the order specifically excludes "writing pads with a backing (including but not limited to products commonly known as "tablets," "note pads," "legal pads," and "quadrille pads"), **provided that they do not have a front cover (whether permanent or removable).**" See *Order* (emphasis added). Therefore, these tablets (2i and 2ii) meet the description of merchandise that is covered by the scope of the order on CLPP from the PRC.

Recommendation

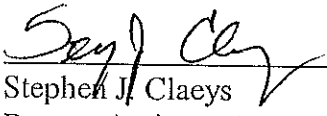
Based on the foregoing analysis, we recommend that the Department find that Bond Street's writing cases containing writing pads with a backing (including but not limited to products commonly known as "tablets," "note pads," "legal pads," and "quadrille pads"), provided that they do not have a front cover (whether permanent or removable) and/or they consist of hole-punched or drilled filler paper, meet the description of merchandise that is excluded from the scope of the order on CLPP from the PRC and, therefore, are not subject to the scope of the order.

Agree

Disagree

Based on the foregoing analysis, we recommend that the Department find that writing tablets 2i and 2ii meet the description of merchandise that is covered by the scope of the order on CLPP from the PRC and, therefore, are subject to the scope of the order.

Agree Disagree



Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

12/13/06
Date

