



UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington, D.C. 20230

A-570-901

Investigation

Public Document

IA08: MAW

May 7, 2007

MEMORANDUM TO:

Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

Public file

THROUGH:

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FROM:

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SUBJECT:

Certain Lined Paper Products from the People's Republic of China
- Lakeshore Learning Materials Scope Ruling Request

Background:

This memorandum addresses issues raised by Lakeshore Learning Materials ("Lakeshore") regarding the scope of the above-referenced order. The Department of Commerce ("the Department") published its final determination in the less-than-fair-value investigation on September 8, 2006.¹ On September 28, 2006, the Department issued an antidumping duty order in this case.² On December 7, 2006, Lakeshore requested a scope ruling concerning specific products it imports from the People's Republic of China ("PRC") ("Lakeshore submission"). On January 22, 2007, in accordance with 19 C.F.R. 351.302(b), the Department extended by 45 days, until March 8, 2007, the time period for issuing its scope ruling or initiating a formal scope inquiry. On March 1, 2007, the Association of American School Paper Suppliers ("Petitioner") filed comments ("Petitioner Submission") on the Lakeshore submission. On March 7, 2007, the

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").



Department further extended by 60 days, until May 7, 2007, the time period for issuing its scope ruling or initiating a formal scope inquiry. On March 7, 2007, Lakeshore submitted a letter in response to the Petitioner's March 1, 2007, letter.

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,

³ *Diversified Products Corp. v. United States*, 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.

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 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 stationary (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:

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.

- 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
- 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.

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

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.

The product must bear the valid trademark FiveStar Flex™.¹⁰

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.

Summary of Arguments

Lakeshore argues that its printed educational materials are not certain lined paper products (“CLPP”) and, therefore, are not subject to the scope of the order. The 55 products in question are RR973 and RR974 (Reader’s Book Log), GG185 and GG 186 (Reader’s Response Notebook), GG181 and GG182 (The Writer’s Notebook), RR673 and RR674 (My Word Journal), AA185 and AA186 (Mi Diario de Palabras), RR630 and RR631 (Draw & Write Journal), AA786 and AA787 (My First Draw & Write Journal), AA181 and AA182 (My Picture Word Journal), GG324 and GG325 (Writing Prompts Journal), JJ537 and JJ538 (My First Writing Prompts Journal), JJ342 and JJ343 (Writing Prompt Journal), JJ225 and JJ256 (Rhyming Journal), GG823 (Blank Writing Journal), RR801ML2 (Writing Journal), AA953ML3 (Diario para Escribir), GG528JNL (Vacation Journal), GG381JRN (Science Journal), RR969 and RR968 (My Math Journal), GG145 and GG146 (Math Journal 4-6), EE372 (Poetry Journal), GG154 and GG155 (Improve Your Writing Word Bank Journal), LA125 (Stamp, Draw & Write Story Center), EE419 (Letter Writing Supply Kit), GG241JNL (Reading Journal), AA559 (Cursive Writing Letter Practice Book), AA558 (1 to 30 Printing Numbers Practice Book), AA565 (Lowercase Printing Letters Practice Book), AA555 (Uppercase Printing Letters Practice Book), EE441 and EE442 (Daily Math Practice Journal Grades 1 - 3), EE443 and EE444 (Daily Math Practice Journal Grades 4 - 6), EE651 and EE652 (Daily Language Practice, Grades 1-3), EE653 and EE654 (Daily Language Practice Journal, Grades 4 - 6), JJ2206 and JJ207 (Sight-Word Journal), and JJ255 and JJ258 (Early Skills Language Journal) (collectively, “Lakeshore’s products”).

Lakeshore asserts that the above-listed products are educational materials with a specific focus (*e.g.*, instruction in math, writing, *etc.*) whose predominant features (including lines and picture boxes) are focused on a specialized educational objective. As such, Lakeshore feels its products are dissimilar from CLPP. Lakeshore acknowledges that most of these items are classified under HTSUS subheading 4820.10.2050. However, Lakeshore points out that, while this is one of the HTSUS numbers listed in the scope of the order, the Department recognizes that this list is for convenience and the description is dispositive.

Lakeshore further argues that the scope of the order is “specifically directed toward the types of general purpose lined paper products” students use for note-taking and assignments.¹² Citing to a letter written by Petitioner, Lakeshore asserts that Petitioner stated that CLPP comes in two main

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

¹¹ During the investigation additional HTSUS headings were identified.

¹² See Lakeshore submission at page 5.

forms, loose leaf and bound (*e.g.*, notebooks, composition books, *etc.*)¹³ and that these two forms are what the scope of the order intends to cover. Further, Lakeshore argues that Petitioner stated, in an October 19, 2005, letter, that CLPP is made from a specific type of paper, “tablet grade.” Citing to the August 30, 2006, Issues and Decision Memorandum for the Less-Than-Fair-Value Investigation of Certain Lined Paper Products from the People’s Republic of China, Lakeshore claims that it is well known that tablets made of tablet grade paper are primarily for writing, and that this type of paper is normally classified as “uncoated freesheet” which contains less than 10 percent wood pulp.

Then, Lakeshore argues that, as Petitioner has always known, there is a unique category of printed education materials which incorporates various amounts of lines and is not for general assignments or classwork. Lakeshore maintains that these items are distinct from the general CLPP which was investigated by the Department. Additionally, Lakeshore asserts that nothing in the investigation suggests educational products were considered or included in the investigation. According to Lakeshore, Petitioner passed on the opportunity to include educational material in the scope.

Next, Lakeshore argues that, while the Department has a great deal of discretion in conducting scope inquiries, the Department may not interpret a scope in a way that changes it or is contrary to the terms of the scope.¹⁴ Lakeshore then contends that, based on the face of the scope language, its products are not subject merchandise. Specifically, Lakeshore claims that a “common sense” reading of the scope of the order shows it was only meant to cover general purpose CLPP. Lakeshore asserts that this reading is consistent with the list of specifically excluded products, many of which have a substantial number of lines. According to Lakeshore, just having lines does not make an item a lined paper product subject to the order. Lakeshore reiterates that its products are specifically made and used for educational and/or instructional purposes. It points out that some of its products have boxes for students to draw pictures while others have text and images to illustrate usage of certain letters or words. Additionally, Lakeshore states that some of its items include “substantial” narratives while others have math or vocabulary narratives with lines in the form of a space to provide an answer. Lakeshore asserts that even its products with the most lines are focused on writing, sometimes associated with reading, and are distinct from CLPP.

Lakeshore argues that some of its products are specifically excluded from the scope of the order based on size or other physical characteristics. First, Lakeshore points out that the scope of the order only includes products “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).” Lakeshore states that the dimensions of the following product codes render them outside the scope of the order: GG823 (Blank Writing Journal), which measures 16 by 20 inches; LA125 (Stamp, Draw, & Write Story Center), which measures 11 by 17 inches;

¹³ See Letter from Petitioner to the Department of Commerce dated October 19, 2006, at 3 as cited in Lakeshore submission at page 5.

¹⁴ See *e.g.*, *Wheatland Tube Co. v. United States*, 161 F. 3d 1365, 1370 (Fed. Cir. 1998), *Ericsson GE Mobile Communications, Inc. v. United States*, 60 F. 3d 778, 782 (Fed. Cir. 1995), and *Duferco Steel, Inc. v. United States* 296 F. Ed 1087, 1097 (Fed. Cir. 2002), as cited in Lakeshore submission at page 8.

RR801M12 (Writing Journal), which measures 5 ½ by 8 inches; AA953ML3 (Diario para Escribir), which measures 5 ½ by 8 inches; GG528JNL (Vacation Journal) which measures 5 ½ by 8 inches; GG381JRN (Science Journal), which measures 5 ½ by 8 inches; RR969 and RR968 (My Math Journal), which measure 6 ¾ by 8 ½ inches; GG145 and GG146 (Math Journal, Grades 4 - 6), which measure 6 ¾ by 8 ½ inches; EE372 (Poetry Journal), which measures 6 ¾ by 8 ½ inches; and GG154 and GG155 (Improve Your Writing Word Blank Journal), which measure 6 ¾ by 8 ½ inches. Second, Lakeshore points out that the scope of the order specifically excludes “boxed or packaged writing stationary (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.” Therefore, Lakeshore asserts, product code EE419 (Letter Writing Supply Kit), which contains letter sheets, envelopes, post cards and play stamps, is specifically excluded from the scope of the order.

Third, Lakeshore argues that its products whose pages are made up of material other than uncoated writing paper are outside the scope of the order. These products are: GG241JNL (Reading Journal), AA559 (Cursive Writing Letter Practice Book), AA558 (1 to 30 Printing Numbers Practice Book), AA565 (Lowercase Printing Letters Practice Book), and AA555 (Uppercase Printing Letters Practice Book). According to Lakeshore, while the scope of the order does not define the term “paper,” “in the context of the antidumping proceeding that term is reasonably understood to mean tablet grade lined composition book paper, or looseleaf or filler paper of a certain weight or type”¹⁵ that accommodate such writing utensils as pens and pencils. Lakeshore claims that the type of products described in the scope of the order consists of this type of paper. Lakeshore asserts that, in contrast, these five products consist of thick (260 grams per square meter (“GSM”)) artcard that has been coated with “UV varnish” for use with “write and wipe” markers and crayons.

Finally, Lakeshore argues that some of its products are excluded from the scope of the order because they contain minimal lined content. These products are: EE441 and EE442 (Daily Math Practice Journal Grades 1 - 3); EE443 and EE444 (Daily Math Practice Journal Grades 4 - 6); EE651 and EE652 (Daily Language Practice, Grades 1-3); EE653 and EE654 (Daily Language Practice Journal, Grades 4 - 6). In addition, Lakeshore argues that its “incidentally lined” products are excluded from the scope of the order because they contain a small amount of lined content. These products are: JJ2206 and JJ207 (Sight-Word Journal) and JJ255 and JJ258 (Early Skills Language Journal). According to Lakeshore, the language in the scope of the order that states “paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets” means pages “generally composed of wide- or college- ruled paper with blue and/or red ink.”¹⁶ Lakeshore argues that, in contrast, some of its “educational materials” are practice workbooks that have only a small amount of lined content, usually of short lines for completing a problem, on each page. According to Lakeshore, these lines are really more likely to be considered blanks or spaces than lines:

While Petitioner agrees that some of Lakeshore’s products are outside the scope of the order, it

¹⁵ See Lakeshore submission at page 25.

¹⁶ See Lakeshore submission at page 26.

disagrees with Lakeshore's general premise that all of its products should be deemed outside the scope of the order. Petitioner contends that certain Lakeshore products are in the scope of the order or ineligible for a scope ruling. According to Petitioner, Lakeshore has mis-characterized the scope of the order. Specifically, Petitioner asserts that the scope of the order "covers more than commodity grade notebooks." Petitioner points out that the scope language describing CLPP as "typically school supplies" means that the products are not exclusively school supplies. Furthermore, Petitioner maintains that the Department does not favor determining scope based on end use. Petitioner states that it "explicitly avoided" using language related to end-use to limit the scope of the order to a certain class of merchandise and that the scope contains no end-use requirements. It also notes that the second footnote in the scope specifically states "{f}or 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." Petitioner argues that Lakeshore pieced together statements from the Department's and the ITC investigations to support its assertions that the scope of the order refers exclusively to items used in the academic setting.

Next, Petitioner asserts that it did not limit the scope of the order when it described the two primary forms of CLPP (filler paper and bound paper). According to Petitioner, Lakeshore's argument does not recognize the context of this quote, which was how to differentiate the primary forms of CLPP for the Department's model match. Petitioner maintains that Lakeshore's products which are bound notebooks fall under the definition of "bound paper products." Additionally, Petitioner contends that Lakeshore will be unable to cite any evidence from the record of the investigation or petition that states this case focused exclusively on "academic notebooks and excluded non-general use notebooks." Petitioner points out that even the ITC said that, while the items under review are primarily for student use, they may also be used for business reasons. Petitioner states that the order encompasses a broad range of products that can be more than just note-taking/assignment aids for use in many environments.

Petitioner asserts that the only requirements of the scope of the order are that subject merchandise contain lined paper, be a certain size, not have certain listed physical features, and not be specifically excluded. According to Petitioner, assuming these criteria are met, a "standard notebook" is subject to the scope of the order regardless of what it is used for or who uses it. Petitioner asserts that, contrary to Lakeshore's claims that its products are specifically educational, Lakeshore's items are used for identical or similar reasons as the notebooks covered by the scope of the order. For instance, Petitioner cites to specific Lakeshore products such as RR631 and GG324 to emphasize that these notebooks have double-sided horizontal lines on 75 percent of their pages. Petitioner argues that these items are only different from "standard" notebooks because they contain things like blank boxes or introductory sentences. Next, Petitioner argues that the "My Word Journals," items RR673 and AA185, contain lines on 50 percent of their pages and, moreover, a standard notebook can be used for the same purpose as My Word Journals, that is, to keep word lists. Petitioner declares that the existence of graphically printed letters, images, instructions, prompts, basic images or dashed lines does not make a product very different from subject merchandise. Furthermore, Petitioner maintains that while some Lakeshore products, like GG185, GG186, GG181, and GG182, have some specialized lines (*e.g.*, for dates or author name) they especially contained lined paper for writing anything just like many of the notebooks the Petitioner's individual members sell. According to

Petitioner “these products, to the extent they are made in subject countries, are subject to the antidumping and countervailing duty orders.” Furthermore, Petitioner asserts that to exclude items with a small number of non-lined information from the scope of the order would permit massive circumvention of the order.

Petitioner agrees that some of Lakeshore’s products fall outside the scope of the order due to “clearly discernable factors” such as an item’s physical characteristics. Specifically, Petitioner states that based on their size (that is, one or more of the page dimensions is either too large or too small to meet the specifications in the scope of the order) the following items are outside the scope of the order: LA125 (Stamp, Draw, & Write Story Center), RR801M12 (Writing Journal), AA953ML3 (Diario para Escribir), GG528JNL (Vacation Journal), GG381JRN (Science Journal), EE372 (Poetry Journal), RR968 and RR969 (My Math Journal, 1-3), GG145 and GG146 (Math Journal 4-6), GG154 and GG155 (Improve Your Writing Word Bank Journal) and GG823 (Blank Writing Journal). Petitioner also concurs that EE419 (Letter Writing Supply Kit) is outside the scope of the order because it is packaged writing stationary and, therefore, specifically excluded. Finally, Petitioner states that GG241JNL (Reading Journal), AA559 (Cursive Writing Letter Practice Book), AA558 (1 to 30 Printing Numbers Practice Book), AA565 (Lowercase Printing Letters Practice Book), and AA555 (Uppercase Printing Letters Practice Book) are outside the scope of the order because the pages in these notebooks are made out of “C2S coated artcard.”

With regard to the Lakeshore products that are under development (*i.e.*, EE651 and EE652 (Daily Language Practice, Grades 1-3), EE653 and EE654 (Daily Language Practice Journal, Grades 4 - 6), JJ2206 and JJ207 (Sight-Word Journal), and JJ255 and JJ258 (Early Skills Language Journal)), Petitioner contends that the Department does not make rulings on products that have not yet been produced. To support this statement, Petitioner cites to two letters from the Department, one dated March 7, 2005, to the Olympus Group Inc. and the other dated September 22, 2005, to the ESM Group Inc.¹⁷ According to Petitioner, the fact that these products are still under development clearly means that they have not been produced and the Department cannot determine how valid Lakeshore’s claims are regarding the items’ physical structure and content.

Department’s Position

We have not summarized the parties’ arguments regarding the 19 CFR 351.225(k)(2) *Diversified Products* criteria because at this point in the proceeding we are analyzing Lakeshore’s products under 19 CFR 351.225(k)(1). For any Lakeshore products where the criteria considered pursuant to 19 CFR 351.225(k)(1) are not dispositive, the Department will make a separate ruling after consideration of the *Diversified Products* criteria articulated under 19 CFR 351.225(k)(2).

First, the scope of the order includes only products which meet certain size criteria. Specifically, it includes those items “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

¹⁷ See Petitioner Submission at attachments 1 and 2.

(inclusive).” Based on these criteria, we find that the following 13 Lakeshore products do not fit the description of subject merchandise because the dimension of one or both sides of the paper in the product does not fall within the dimension specified in the scope of the order. Specifically, Lakeshore products GG823 (Blank Writing Journal) and LA125 (Stamp, Draw, & Write Story Center) are both larger than merchandise covered by the scope of the order. Lakeshore products RR801MI2 (Writing Journal), AA953ML3 (Diario para Escribir), GG528JNL (Vacation Journal), GG381JRN (Science Journal), RR969 and RR968 (My Math Journal), GG145 and GG146 (Math Journal, Grades 4 - 6), EE372 (Poetry Journal), and GG154 and GG155 (Improve Your Writing Word Blank Journal) are smaller than merchandise covered by the scope of the order.

We find that one Lakeshore product, EE419 (Letter Writing Supply Kit), which contains letter sheets, envelopes, post cards and play stamps, does not fit the description of subject merchandise because the scope of the order specifically excludes “boxed or packaged writing stationary (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.”

Second, Lakeshore has argued, and Petitioner concurs, that the five notebooks which fall within the description of subject merchandise based on their size, but which are made out of C2S coated artboard are outside the scope of the order based on paper type. The scope of the order does not define which types of paper may or may not be used to make subject merchandise. We disagree with Lakeshore that “paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets” means pages “generally composed of wide- or college-ruled paper with blue and/or red ink,” because nothing in the scope states this. However, as stated above, on matters concerning the scope of an order, 19 CFR 351.225(k)(1) instructs the Department to examine the descriptions of the merchandise contained in the petition, the determinations of the Secretary and the ITC, and the initial investigation. According to language in the *ITC Final Report*, “{m}ost paper used in the production of {Certain Lined Paper School Supplies (“CLPSS”)} has a basis weight of 56 {grams per square meter (“GSM”)}. ”¹⁸ The pages of the five products in question have a basis weight of 260 GSM. The *ITC Final Report* also states that “the most important performance specification {of the paper} is a smooth surface suitable for writing with either a pen or pencil.”¹⁹ The Department tested the C2S coated artboard in Lakeshore’s products and found that while it may be written on with a pen, it could not be easily written on with a pencil. Rather, the five products in question are designed to be written on with an erasable marker. By virtue of the description of the paper utilized in the subject merchandise as articulated in the *ITC Final Report*, the Department finds that the scope of the order was not intended to cover notebooks made of coated art paper. Therefore, the following Lakeshore products whose pages are made from C2S coated artboard do not meet the description of merchandise that is covered by the scope of the order: GG241JNL (Reading Journal), AA559 (Cursive Writing Letter Practice Book), AA558 (1 to 30 Printing Numbers Practice Book), AA565 (Lowercase Printing Letters Practice Book), and AA555 (Uppercase Printing Letters Practice Book).

¹⁸ See *Certain Lined Paper School Supplies (“CLPSS”) From China, India, and Indonesia Investigation Nos. 701-TA-442-443 and 731-TA-1095-1097 (Final)*, ITC Publication 3884 (September 2006)(“*ITC Final Report*”).

¹⁹ *Id.*

Third, it is not the Department's practice to make scope rulings on products that are in development and have not yet been produced. *See, e.g.,* Letter to the Olympus Group Inc. Re: Scope Review: Heavy Forged Hand Tools from the People's Republic of China (Prysbars) (March 7, 2005) and Letter to the ESM Group Inc. Re: Scope Review Request: Pure Magnesium in Granular Form from the People's Republic of China (September 22, 2005). Therefore, we find that the following 10 items are not eligible for a scope ruling because they are in development and have not yet been produced: JJ537 and JJ538 (My First Writing Prompts Journal), JJ342 and JJ343 (Writing Prompt Journal), JJ225 and JJ226 (Rhyming Journal), JJ2206 and JJ207 (Sight-Word Journal), and JJ255 and JJ258 (Early Skills Language Journal).

Finally, Lakeshore's 26 remaining products²⁰ all appear to meet the physical description of merchandise covered by the scope of the order. As previously noted, the Department's regulations instruct us to consider the descriptions of the merchandise contained in the petition, the determinations of the Secretary and the ITC, and the initial investigation. *See* 19 CFR 351.225(k)(1). The *ITC Final Report* states that "the primary use for CLPSS is to take notes, perform class assignments, and provide completed work to teachers for correction and grades."²¹ It is unclear whether the primary purpose of these 26 Lakeshore products is to take notes, perform class assignments, and provide completed work to teachers for correction and grades. Therefore, the Department will initiate a scope inquiry to analyze the criteria laid out under 19 CFR 351.225(k)(2) with regard to the following 26 Lakeshore's products: RR973 and RR974 (Reader's Book Log), GG185 and GG 186 (Reader's Response Notebook), GG181 and GG182 (The Writer's Notebook), RR673 and RR674 (My Word Journal), AA185 and AA186 (Mi Diario de Palabras), RR630 and RR631 (Draw & Write Journal), AA786 and AA787 (My First Draw & Write Journal), AA181 and AA182 (My Picture Word Journal), GG324 and GG325 (Writing Prompts Journal), EE441 and EE442 (Daily Math Practice Journal Grades 1 - 3), EE443 and EE444 (Daily Math Practice Journal Grades 4 - 6), EE651 and EE652 (Daily Language Practice, Grades 1-3), and EE653 and EE654 (Daily Language Practice Journal, Grades 4 - 6). *See* Letter from Wendy Frankel Re: Certain Lined Paper Products from the People's Republic of China: Initiation of Formal Scope Inquiry for Lakeshore Learning Materials, dated concurrently with this memorandum.

Recommendation

Based on the foregoing analysis, we recommend that the Department find that the following 13 Lakeshore notebooks, GG823 (Blank Writing Journal) and LA125 (Stamp, Draw, & Write Story Center) are both larger than merchandise covered by the scope of the order; Lakeshore products

²⁰ RR973 and RR974 (Reader's Book Log), GG185 and GG 186 (Reader's Response Notebook), GG181 and GG182 (The Writer's Notebook), RR673 and RR674 (My Word Journal), AA185 and AA186 (Mi Diario de Palabras), RR630 and RR631 (Draw & Write Journal), AA786 and AA787 (My First Draw & Write Journal), AA181 and AA182 (My Picture Word Journal), GG324 and GG325 (Writing Prompts Journal; EE441 and EE442 (Daily Math Practice Journal Grades 1 - 3), EE443 and EE444 (Daily Math Practice Journal Grades 4 - 6), EE651 and EE652 (Daily Language Practice, Grades 1-3), and EE653 and EE654 (Daily Language Practice Journal, Grades 4 - 6).

²¹ *See ITC Final Report* at I-10 and II.

RR801MI2 (Writing Journal), AA953ML3 (Diario para Escribir), GG528JNL (Vacation Journal), GG381JRN (Science Journal), RR969 and RR968 (My Math Journal), GG145 and GG146 (Math Journal, Grades 4 - 6), EE372 (Poetry Journal), and GG154 and GG155 (Improve Your Writing Word Blank Journal) have page dimensions in which the smaller dimension of the paper does not measure 6 to 15 inches (inclusive) and/or the larger dimension of the paper does not measure 8-3/4 to 15 inches (inclusive) and so do not meet the description of merchandise that is covered by the scope of the order on CLPP from the PRC. Therefore, they are excluded from the scope of the order.

Agree Disagree

Based on the foregoing analysis, we recommend that the Department find that the following five Lakeshore products whose pages are made from C2S coated artboard do not meet the description of merchandise that is included the scope of the order on CLPP from the PRC and, therefore, are not subject to the scope of the order: GG241JNL (Reading Journal), AA559 (Cursive Writing Letter Practice Book), AA558 (1 to 30 Printing Numbers Practice Book), AA565 (Lowercase Printing Letters Practice Book), and AA555 (Uppercase Printing Letters Practice Book).

Agree Disagree

Based on the foregoing analysis, we recommend that the Department find that Lakeshore's EE419 (Letter Writing Supply Kit), which contains letter sheets, envelopes, post cards and play stamps, are excluded from the scope of the order on CLPP from the PRC because the scope of the order specifically excludes "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."

Agree Disagree


Based on the foregoing analysis, we recommend that the Department find that the following 10 Lakeshore items are not eligible for a scope ruling because they are in development and have not yet been produced: JJ537 and JJ538 (My First Writing Prompts Journal), JJ342 and JJ343 (Writing Prompt Journal), JJ225 and JJ226 (Rhyming Journal), JJ2206 and JJ207 (Sight-Word Journal), and JJ255 and JJ258 (Early Skills Language Journal).

Agree Disagree

Further, based on the foregoing analysis, we recommend the Department initiate a formal scope inquiry on the following 26 Lakeshore products: RR973 and RR974 (Reader's Book Log),

GG185 and GG 186 (Reader's Response Notebook), GG181 and GG182 (The Writer's Notebook), RR673 and RR674 (My Word Journal), AA185 and AA186 (Mi Diario de Palabras), RR630 and RR631 (Draw & Write Journal), AA786 and AA787 (My First Draw & Write Journal), AA181 and AA182 (My Picture Word Journal), GG324 and GG325 (Writing Prompts Journal), EE441 and EE442 (Daily Math Practice Journal Grades 1 - 3), EE443 and EE444 (Daily Math Practice Journal Grades 4 - 6), EE651 and EE652 (Daily Language Practice, Grades 1-3), and EE653 and EE654 (Daily Language Practice Journal, Grades 4 - 6).

Agree Disagree



Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

5/7/07
Date

