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July 16, 2007

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

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

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FROM: Marin Weaver *MW*
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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 of Commerce ("the Department") published its final determination on September 8, 2006.¹ On September 28, 2006, the Department issued an antidumping duty order in this case.² On December 22, 2006, Bond Street requested a scope ruling concerning specific products it imports from the PRC ("Bond Street submission"). On January 9, 2007, Avenues in Leather, Inc. ("Avenues") submitted a letter in support of Bond Street's 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 initial investigation, and the determinations of the Secretary (including prior scope determinations) and the International Trade Commission ("ITC"). 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 ("CLPP"), 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

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.

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 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:

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

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

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

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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

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 rule that padfolios,¹² imported from the PRC, which contain lined tablets with a cover, are excluded from the scope of the order. These writing tablets contain either a blank cover or a cover with a logo printed on it. Bond Street asserts that its padfolios are excluded from the scope of the order regardless of whether the tablet contained therein has a cover similar to that of tablet 2ii.¹³ Further, Bond Streets contends it is not a tablet importer but, rather, an importer of padfolios, and that the writing tablet in the padfolio is inconsequential to the overall padfolio other than to be provided as a convenience to the end user.

Next, Bond Street asserts that the writing tablet has a very minor value compared to the value of the padfolio. Specifically, Bond Street claims that padfolio 541060 is imported at a cost of 10.58 U.S. dollars, but that the writing tablet only constitutes 20 cents of that total cost. Bond Street argues that if the Department does not exclude its padfolios which contain writing tablets with covers that anti-dumping duties should only be levied against the cost of the pad, not against the padfolio itself.

We have not summarized Bond Street's arguments that address the *Diversified Products* criteria under 19 CFR 351.225(k)(2) because the Department is considering this request pursuant to 19 CFR 351.225 (k)(1).

Avenues supports Bond Street's scope request. In its comments, Avenues argues that padfolios, which sometimes include a hole-punched lined pad, should be considered outside the scope of

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 Bond Street uses the terms "writing case" and "writing portfolio" interchangeably in its submission. Avenues uses the term "padfolio" in its submission. For ease of reference and consistency we will refer to these items as "padfolios" in this memorandum.

¹³ It an October 27, 2006, scope ruling request Bond Street requested a ruling on two writing tablets (also known as writing pads) it identified as 2i and 2ii, whose top page was either blank or marked with a logo. The Department determined that the these top pages constituted covers and, as such, the writing tablets were subject to the scope of the order. See Memorandum to: Stephen J. Claeys Re: Certain Lined Paper Products from the People's Republic of China - Bond Street Ltd. Scope Ruling Request (December 13, 2006).

the order. According to Avenues, at issue is whether padfolios containing writing tablets are “controlled by the description of the merchandise,” as contemplated under section 351.225(k)(1) of the Department’s regulations. Avenues says that the Department has already ruled as to whether incidentally ‘related’ articles are within the scope of an order, in finding various mixed media sets and compasses containing pencils were not within the scope of the order on certain cased pencils from the PRC. Avenues asserts that the same rationale should apply here, in that the description of Bond Street’s padfolio likewise represents merchandise containing incidentally related articles (*i.e.*, the writing tablet). Avenues quotes from the scope of the order on CLPP, emphasizing the section that says “subject merchandise may contain accessory or informational items.” Avenues argues that a padfolio is clearly not an informational article nor is it an accessory to the writing tablet because the case is not a subordinate, supplementary, adjunct item. According to Avenues, the padfolio is the essential item and the writing tablet is easily replaceable with non-subject merchandise or could be entirely removed from the padfolio. In other words, Avenues argues, the writing tablet is the accessory to the padfolio, not the other way around.

No other party has commented on this request.

Department’s Position

On December 13, 2006, the Department ruled that Bond Street’s 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. *See* Memorandum to: Stephen J. Claeys Certain Lined Paper Products from the People’s Republic of China - Bond Street Ltd. Scope Ruling Request (December 13, 2006). Subsequent to that decision the Department examined padfolios imported by Avenues in a separate, formal, scope ruling. In that ruling, the Department determined, pursuant to 19 CFR 351.225(k)(2), that while padfolios shared some characteristics with CLPP they were different in multiple ways. *See* Memorandum to: Stephen J. Claeys Re: Final Scope Ruling – Antidumping Duty Order on Certain Lined Paper Products from the People’s Republic of China, Request by Avenues in Leather, Inc. (“Avenues Scope Ruling”)¹⁴ (May 8, 2007) at 9-18. Therefore, on May 8, 2007, the Department ruled that, “{b}ased on the criteria, taken together, we find that Avenues [sic] padfolios which contain one pad of paper (whether or not the pad of paper meets the description of merchandise covered by the scope of the order) are not subject to the scope of the order on CLPP from the PRC”. *See* Avenues Scope Ruling at 18.

In the current scope case, we find that the single pad of paper contained in Bond Street’s padfolio, like the single pad of paper in Avenues’ padfolio, is not a substantial component of the padfolio itself for the same reasons set forth in our ruling on Avenue’s padfolios. That reasoning is incorporated here by reference to the Avenue’s padfolio scope ruling. In this respect the

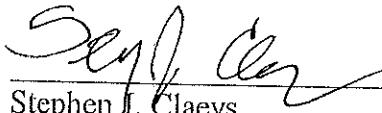
¹⁴ The Avenues Scope Ruling was attached to the Bond Street scope record in a Certain Lined Paper Products from the People’s Republic of China: Bond Street II Scope: Placing Avenues Scope Ruling on Record (June 20, 2007).

padfolios imported by Bond Street are similar to those that Avenues imports, and which the Department found to be outside the scope of the order. For a full explanation see the Avenues Scope Ruling. Pursuant to 19 CFR 351.225(k)(1), in considering whether a particular product is included within the scope of an order, the Department will take into account prior scope determinations. Accordingly, based on the Department's findings in the Avenues Scope Ruling, we find that Bond Street's padfolios containing one writing tablet (or pad of paper) with a cover likewise do not meet the description of merchandised subject to the scope of the order on CLPP from the PRC.

Recommendation

Based on the above analysis, we recommend that the Department determine that padfolios containing one writing tablet (or pad of paper) with a cover, imported by Bond Street, are outside the scope of the order on CLPP from the PRC.

Agree Disagree



Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

7/16/07
Date

