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MEMORANDUM TO: Stephen J. Claeys  
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for Import Administration

THROUGH: Wendy J. Frankel  
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SUBJECT: Certain Lined Paper Products from the People's Republic of China -  
Davis Group of Companies Corp. Scope Ruling Request

Background

This memorandum addresses the scope ruling request submitted by Davis Group of Companies Corp. ("Davis") on January 4, 2008, regarding the scope of the above-referenced order. The Department of Commerce ("the Department") published its final determination of certain lined paper products ("CLPP") from the People's Republic of China ("PRC") on September 8, 2006.<sup>1</sup> On September 28, 2006, the Department issued an antidumping duty order in this case.<sup>2</sup> On January 4, 2008, Davis requested a scope ruling concerning specific products it imports from the PRC ("Davis submission").

<sup>1</sup> 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").

<sup>2</sup> 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<sup>3</sup> 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 CLPP, typically school supplies,<sup>4</sup> composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets,<sup>5</sup> 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 the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise

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

<sup>4</sup> 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.

<sup>5</sup> There shall be no minimum page requirement for looseleaf filler paper.

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,<sup>6</sup> 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™.<sup>7</sup>

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<sup>6</sup>"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.

<sup>7</sup>Products 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™.<sup>8</sup>
- 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™.<sup>9</sup>
- 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™.<sup>10</sup>

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

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

<sup>10</sup> 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, 4820.30.0040, 4820.10.2050, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (HTSUS).<sup>11</sup> The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

### Davis Request

Davis requests that the Department find its line of padfolios, imported from the PRC, which contain a paper writing pad, to be outside the scope of the order. According to Davis, its padfolios, classified under HTS number 4820.10.2020, are typically manufactured and bound in leather or simulated leather and include features such as business card holders, ID windows, paper files, pockets and pen holders in addition to the inclusion of a single, paper writing pad. Davis states that the writing pad measures 8 1/2" x 11" (or 5 1/2" x 9 3/4"), has a cardboard backing, is stapled at the top similar to a legal pad, and includes 25 pages of lined paper. It is not, Davis explains, wirebound or 3 hole-punched. According to Davis, the first page of the writing pad bears the brand name Buxton® and a grid mark design. Davis asserts that this lead-in page was added for advertising purposes only. The overall product measures approximately 10 1/4" x 13" (or 7" x 9 3/4") closed.

Citing past precedent, Davis argues that padfolios similar to those in its product line have been found by the Department to be outside the scope of the order.<sup>12</sup> Accordingly, Davis contends that the Department should consider its padfolios virtually identical to those imported by Avenues in Leather, Inc. ("Avenues") and Bond Street Ltd. ("Bond Street") and exclude the padfolios from the scope of the order.

Next, Davis asserts that the single writing pad included in each of its padfolios is, as the Department found in the Avenues and Bond Street scope rulings, a minor component of the merchandise. The pad of paper in its padfolios, Davis argues, is similarly consumable and can be replaced with merchandise not subject to the scope of the order. Davis concludes that its padfolios are primarily organizational tools which also facilitate note-taking and have features that go beyond that of a writing pad.

The Davis submission does not address the Diversified Products criteria under 19 CFR 351.225(k)(2) because, it argues, previous scope rulings on requests by Avenues and Bond Street provide sufficient information for the Department to consider pursuant to 19 CFR 351.225 (k)(1). No other party has commented on this request.

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<sup>11</sup> During the investigation additional HTSUS headings were identified.

<sup>12</sup> Davis cites "Final Scope Ruling-Antidumping Duty Order on Certain Lined Paper Products from the People's Republic of China, Request by Avenues in Leather, Inc." (May 8, 2007) ("Avenues Scope Ruling") and "Certain Lined Paper Products from the People's Republic of China - Bond Street Ltd. Scope Ruling Request" (December 13, 2006) ("Bond Street Scope Ruling")

## Department's Position

The Department examined padfolios imported by Avenues in a separate, formal scope ruling.<sup>13</sup> Those padfolios 1) measured approximately 13 ½" x 11 ½" when closed; 2) included features such as zippered pockets, pen loops, card slots and a calculator; 3) were constructed of paperboard covered with plastic foam and a vinyl/plastic exterior and interior; and 4) included a single, 50 page, cardboard backed, 3 hole punched, lined pad of paper that measured 8 ½" x 11". In that ruling, the Department determined, pursuant to 19 CFR 351.225(k)(2), that while Avenues' padfolios shared some characteristics with CLPP, they were not the same as merchandise covered by the scope of the order. See Avenues Scope Ruling<sup>14</sup> at 9-18. Avenues' padfolios were found to be organizational tools that also facilitate note-taking.<sup>15</sup> The writing pad in Avenues' padfolios was determined to be both a minor component of the overall product and, unlike the padfolio itself, consumable.<sup>16</sup> In the past, the Department has found items that contain subject merchandise to be outside the scope of an order when the subject merchandise is 1) a minor component of the item, 2) consumable, and 3) can be replaced with merchandise not subject to the scope of the order.<sup>17</sup> Accordingly, on May 8, 2007, the Department ruled that, "based on the criteria, taken together, we find that Avenue's 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."<sup>18</sup>

In the instant case, we find that the single pad of paper contained in Davis' padfolio, like the single pad of paper in Avenues' padfolio, is not a substantial component of the overall product for the same reasons set forth in our ruling on Avenues' padfolios. Specifically, the writing pad can be removed from the padfolio without causing any change in the padfolio's physical characteristics.<sup>19</sup> The pad can be replaced with a different notebook or other paper. In other words, the writing pad is the accessory to the padfolio, not the other way around.<sup>20</sup> In this respect the padfolios imported by Davis are similar to those examined in the Avenues and Bond Street scope rulings, which the Department found to be outside the scope of the order. Pursuant to 19 CFR 351.225(k)(1), the Department will take into account, among other things, prior scope determinations when considering whether a particular product is included within the scope of an order. Accordingly, based on the Department's findings in the Avenues Scope Ruling, and the fact that Davis padfolios likewise contain one pad of paper that constitutes only a minor portion of the padfolio, we find that

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<sup>13</sup> See Avenues Scope Ruling.

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

<sup>15</sup> See Avenues Scope Ruling at 11.

<sup>16</sup> See Avenues Scope Ruling at 11.

<sup>17</sup> See e.g., "Final Scope Ruling - Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China-Request by Fiskar Brands, Inc." (June 3, 2005); See also "Final Scope Ruling-Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China (PRC) - Request by Target Corporation" (March 4, 2005).

<sup>18</sup> See Avenues Scope Ruling at 18.

<sup>19</sup> See Avenues Scope Ruling at 10.

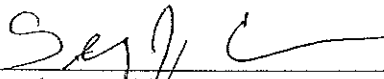
<sup>20</sup> See Bond Street Scope Ruling at 6.

the Davis padfolios do not meet the description of merchandise 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 that contain only one pad of paper that constitutes only a minor portion of the padfolio, thus meeting the description above, including those imported by Davis, are outside the scope of the order on CLPP from the PRC.

Agree  \_\_\_\_\_ Disagree  \_\_\_\_\_

  
\_\_\_\_\_  
Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

2/21/08  
\_\_\_\_\_  
Date

