

UNITED STATES DEPARTMENT OF COMMERCE

International Trade Administration

Washington, D.C. 20230

FOR PUBLIC FILE

A-570-901 Scope Public Document

AD/CVD O3: JZ

April 2, 2009

MEMORANDUM TO:

John M. Andersen

Acting Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations

THROUGH:

Melissa Skinner

Director

AD/CVD, Office 3

James Terpstra Program Manager AD/CVD, Office 3

FROM:

Joy Zhang

International Trade Compliance Analyst

AD/CVD, Office 3

SUBJECT:

Certain Lined Paper Products ("CLPP") from the People's

Republic of China ("PRC") - PlanAhead LLC Scope Ruling

Request

Background

This memorandum addresses issues raised by PlanAhead LLC ("PlanAhead") regarding the scope of the above-referenced order. The Department of Commerce (the "Department") published its final determination on September 8, 2006. On September 28, 2006, the Department issued an antidumping duty order in this case. On November 17, 2008, PlanAhead requested a scope ruling concerning specific products it imports from the PRC ("PlanAhead submission"). Upon the Department's request, PlanAhead provided additional information to supplement its November 17 scope ruling request on December 16, and 17, 2008.

³ See Conversations with John Politis, Counsel for PlanAhead LLC, Memo from the Team to the File, dated December 12, and 16, 2008.



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 Products⁴ 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,5 composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets,6 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 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

⁴ Diversified Products Corp. v. United States, 6 CIT 155, 572 F. Supp. 883 (1983) ("Diversified

Products").

5 For purposes of this scope definition, the actual use or labeling of these products as school supplies or

There shall be no minimum page requirement for loose leaf 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 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; and
- Stenographic pads ("steno pads"), Gregg ruled, measuring 6 inches by 9 inches;

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

• FlyTM 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 FlyTM pen-top computer. The product must bear the valid trademark FlyTM.

⁷ "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.

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

- ZwipesTM: 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 ZwipesTM 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 ZwipesTM.
- FiveStar®AdvanceTM: 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 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 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®AdvanceTM 10
- FiveStar FlexTM: 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 FlexTM.

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"). The tariff classifications are provided for

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.

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

During the investigation additional HTSUS headings were identified.

convenience and customs purposes; however, the written description of the scope of the order is dispositive.

On October 19, 2006, the Department found that 8-1/2" x 6-7/8" composition book imported by SchoolMax LLC is outside the scope of the order.

On October 19, 2006, the Department found that the Encompass Journal Book, the Notable Journal Book, and the Project Manager's Kit imported by GEM Group, Incorporated are outside the scope of the order.

On October 19, 2006, the Department found that the following products series, S300 Series, W74100 Series, WS65 Series, WS200 Series, WS149 Series, WS295 Series, WS490, WS491, WS495, WS293RA, and WS100-3RA imported by ACCO Brands Corporation are outside the scope of the order.

On October 19, 2006, the Department found that 8"x 10" composition book imported by SchoolMax LLC is inside the scope of the order.

On December 13, 2006, the Department found that 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 imported by Bond Street Ltd. are outside the scope of the order.

On December 13, 2006, the Department found that Bond Street Ltd.'s writing cases are not included within the scope of the antidumping duty order, and its two styles of writing tablets 2i and 2ii are included within the scope of the antidumping duty order.

On May 7, 2007, the Department found that the following printed educational materials imported by Lakeshore Learning Materials: product numbers GG823 (Blank Writing Journal); RR801ML2 (Writing Journal); AA953ML3 (Diario para Escribir); GG528JNL (Vacation Journal); G381JRN (Science Journal); RR969 and RR968 (My Math Journal); GG145 and GG146 (Math Journal, Grades 4 - 6); EE372 (Poetry Journal); GG154 and GG155 (Improve Your Writing Word Blank 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); and AA555 (Uppercase Printing Letters Practice Book), are not within the scope of the antidumping duty order.

On May 8, 2007, the Department found that Avenues in Leather, Inc. (Avenues)'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 within the scope of the antidumping duty order.

On July 16, 2007, the Department found that Bond Street Ltd.'s padfolios containing one writing tablet (or pad of paper) with a cover are not within the scope of the antidumping duty order.

On May 22, 2008, the Department found that padfolios typically manufactured and bound in leather or simulated leather, including 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 imported by Davis Group of Companies Corp. are not within the scope of the antidumping duty order.

PlanAhead Request

PlanAhead imports from the PRC the following styles of padfolio: (1) 70314 Professional Padfolio; (2) 70689 Contour Padfolio; (3) 72055 Urban Padfolio; and (4) 72537 Fashion Padfolio. PlanAhead states that each of these padfolio products (writing cases) contains writing tablets (writing pads). PlanAhead requests that the Department confirm that the padfolios which it imports from the PRC are excluded from the scope of the order. PlanAhead defines its products as writing cases which contain pads of lined paper commonly known as "tablets," "note pads," "legal pads," and "quadrille pads" that do not have front covers (whether permanent or removable). PlanAhead states that its pads of lined paper in the writing cases do not have any holes punched in them and they are not drilled filler paper. See PlanAhead submission at 2 and 7. According to PlanAhead, the writing tablets are included in the writing cases to make them easily recognizable as writing cases and immediately useable upon purchase, and that the writing tablets are a minor component of the writing cases. PlanAhead states that it markets its writing cases in business-to-business catalogs and its marketing focuses on the office supply industry.

PlanAhead asserts that its writing cases should be excluded from the scope of the antidumping order for the same reasons that the Department in its prior scope rulings excluded the products imported by Davis Group of Companies Corporation ("Davis"), Avenues in Leather, Inc. ("Avenues"), and Bond Street Ltd. ("Bond Street") (U.S. Customs and Border Protection Message Numbers 8071201, 7180216 and 7200203, respectively) from the scope of antidumping order. PlanAhead lists these reasons as follows:

- 1. Each padfolio (writing case) contains lined writing pads with backing;
- 2. The writing pads do not have any covers (whether permanent or removable);
- 3. The writing pads do not have holes punched in them;
- 4. The writing pads are minor components of the padfolios;
- 5. The writing pads are in the padfolios to make them recognizable as writing cases that can be used as such immediately after their purchase; and
- 6. The padfolios are marketed to the office supply segment of the industry.

See PlanAhead submission at 8.

No other parties commented on PlanAhead's submission.

Department's Position

Pursuant to 19 CFR 351.225(k)(1), the Department will take into account 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 when considering whether a particular product is included within the scope of an order. 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). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper." We find that writing pads contained in PlanAhead's writing cases are representative of products which are specifically excluded from the scope of the order. In particular, the writing cases contain writing pads with backing; the writing pads do not have covers (permanent or removable); the writing pads do not have holes punched in them; and the writing pads are minor components of the writing cases. In this respect the writing cases imported by PlanAhead are similar to those products examined in the Davis, Avenues and Bond Street scope decisions, which the Department found to be outside the scope of the order. Therefore, based on the Department's findings of the descriptions of the merchandise, including the Davis, Avenues and Bond Street scope decisions, we find that the PlanAhead writing cases do not meet the description of merchandise subject to the scope of the order on CLPP from the PRC.

Recommendation

Based on the foregoing analysis, we recommend that the Department find that the following PlanAhead's writing padfolios -- 70314 Professional Padfolio; 70689 Contour Padfolio; 72055 Urban Padfolio; 72537 Fashion Padfolio -- 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 Disa	gree
& auch	
John M. Andersen	
Acting Deputy Assistant Secretary	
for Antidumping and Countervailing Duty Operations 4/2/05	
Date	