



July 20, 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") – Wal-Mart Stores, Inc. Scope Ruling

Summary

On March 6, 2009, Wal-Mart Stores, Inc. ("Wal-Mart") requested a scope ruling concerning the notebook component of Wal-Mart's Cars Stationery Set it imported from the People's Republic of China ("PRC") ("Wal-Mart scope request"). In accordance with 19 CFR 351.225 (k)(1), we find that the notebook component of Wal-Mart's Cars Stationery Set is within the scope of the antidumping duty on certain lined paper products from the PRC.

Background

On September 8, 2006, the Department of Commerce (the "Department") published its final determination in the antidumping duty investigation of certain lined paper products ("CLPP") from the PRC.¹ On September 28, 2006, the Department issued an antidumping order in this case.² On March 6, 2009, Wal-Mart requested a scope ruling concerning the notebook

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).

² See *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper*



component of Wal-Mart's Cars Stationery Set it imported from the PRC. Upon the Department's request,³ on March 27, 2009, Wal-Mart provided additional information regarding the current U.S. tariff classification numbers under which Wal-Mart's Cars Stationery Set was classified when it entered the United States to supplement its March 6 scope ruling request. On April 3, 2009, the Department received comments from the Association of American School Paper Suppliers ("Petitioner"). On April 9, 2009, Wal-Mart filed a reply to Petitioner's comments. Petitioner filed additional comments on April 29, 2009. This memorandum addresses issues raised by Wal-Mart and Petitioner regarding the scope of the *CLPP Order*.

Scope of the Order

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

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) ("*CLPP Order*").

³ See Conversation with John Burke, Counsel for Wal-Mart, Memo from the Team to the File, dated March 24, 2009.

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 loose leaf filler 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 the order are the following trademarked products:

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

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.

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.

joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1 inch wide elastic fabric band. This band is located 2-3/8 inches from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™.⁹

• FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™.¹⁰

Merchandise subject to the order is typically imported under headings 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, 4810.22.5044, 4811.90.9090, 4820.10.2010 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.

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 *CLPP Order*.

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.

¹¹ During the investigation additional HTSUS headings were identified.

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 *CLPP 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 *CLPP Order*.

On October 19, 2006, the Department found that 8"x 10" composition book imported by SchoolMax LLC is within the scope of the *CLPP 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 *CLPP Order*.

On December 13, 2006, the Department found that writing tablets 2i and 2ii imported by Bond Street Ltd. are within the scope of the *CLPP 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 *CLPP 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 *CLPP 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 *CLPP 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 *CLPP Order*.

On April 2, 2009, the Department found that the writing padfolios -- 70314 Professional Padfolio; 70689 Contour Padfolio; 72055 Urban Padfolio; 72537 Fashion Padfolio, where the writing

cases contain a minor component, writing pad, which has backing but no covers (permanent or removable) or holes punched in it -- imported by PlanAhead LLC ("*PlanAhead padfolios*"), are not within the scope of the *CLPP Order*.

Wal-Mart Request

Wal-Mart states that it imported the Cars Stationery Set (UPC# 724328233345) from the PRC, but discontinued the importation and sale of this item in 2007 because U.S. Customs and Border Protection ("CBP") required Wal-Mart to make antidumping cash deposits on the notebook content of the stationery set. Wal-Mart requests that the Department find that the notebook component, when imported as part of the complete stationery set, is outside the scope of the *CLPP Order*. According to Wal-Mart, it is seeking this scope ruling so that it can claim a refund of existing cash deposits, but does not anticipate further imports of this particular product. *See* Wal-Mart scope request at 2.

Wal-Mart describes the Cars Stationery Set as a nineteen piece boxed ensemble that was packaged, imported and sold as a single unit, and which contained the following items: three roller stampers; a two pocket portfolio case; a spiral notebook; a 3 inches by 5 inches notepad; two 5 inches by 7 inches poster coloring sheets; four markers; a 5 inches by 7 inches sticker sheet; two decorated pencils; a 6 inch ruler; a pencil sharpener; and two erasers. According to Wal-Mart, the spiral notebook, which is included in the set, contains 70 sheets of lined paper measuring 10.5 inches by 8 inches.

Wal-Mart requests that the Department determine that its notebook component, when imported as part of the complete stationery set, is outside the scope of the *CLPP Order* on the basis that the notebook contained in the Cars Stationery Set is a minor component of a set. Wal-Mart cites the Department's previous ruling on *Avenues*, in which the Department determined that "*Avenues* 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."¹² *See* Wal-Mart scope request at 5. Wal-Mart argues that just like the pads in *Avenues* padfolios, the notebook component of the Cars Stationery Set is an accessory item to the full set. *Id.* Wal-Mart contends that the notebook was a minor and insubstantial component of the stationery set because the notebook represents only 13% of the wholesale value of the complete stationery set. *Id.* at 6. Wal-Mart argues that the notebook was included "so that a child could begin using the set immediately upon removing the packaging" but that the notebook, once the paper was used, would be replaced so as to continue using the other components of the set. *Id.* at 6-7. According to Wal-Mart, "no reasonable consumer would have spent almost \$10 on the Cars Stationery Set to obtain the included notebook when an equivalent notebook for school use could have been purchased separately for only \$1.94." *See* Wal-Mart scope request at 9. Wal-Mart further argues that the International Trade Commission ("ITC") described subject merchandise as "school supplies" and the Cars Stationery Set is not functional as school supplies.

¹² *See* Memorandum from Wendy J. Frankel 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.* (May 8, 2007) at 18.

Id. at 8. While Wal-Mart asserts that the language of the *CLPP Order*, prior determinations by the Secretary and the ITC, and the administrative record demonstrate that the Cars Stationery Set, including the notebook, is outside the scope of the *CLPP Order*, Wal-Mart contends that an analysis under the *Diversified Products* criteria also demonstrate that their product is outside the scope of the *CLPP Order*. *See id.* at 9-12.

Petitioner states that the notebook component of the Cars Stationery Set is clearly in-scope because notebooks containing lined paper of the dimensions of the notebook component are expressly included within the language of the *CLPP Order*, and that in-scope merchandise shipped with accessory items is not removed from the scope of the order. Petitioner argues that CBP correctly identified the in-scope component of the Cars Stationery Set and required Wal-Mart to pay duties only on the merchandise that is clearly within scope.

Wal-Mart rebuts the Petitioner's "accessory items" argument, and argues that the language of the *CLPP Order* covers the inclusion of non-scope items that are accessory to the in-scope items, such as pocket dividers on a notebook, not where the notebook itself is the accessory item. Wal-Mart contends that the Department's prior scope rulings, *e.g.*, *Avenues*, establish that when an item, which by itself would be subject to the *CLPP Order*, is imported and sold as an insubstantial component of a larger item otherwise outside the scope, neither the larger item, nor its incorporated components, is subject to the *CLPP Order*. *See* Wal-Mart's April 9, 2009 submission at 3-4.

Petitioner contends that the Department's padfolio ruling cited by Wal-Mart is distinguishable from this instant scope request. According to Petitioner, *Avenues'* padfolio involved a two-item set consisting of a leather binder/organizer and a memorandum pad. Petitioner argues that the Department found that the memorandum pad, although in-scope according to its dimensions and description, was an accessory to the binder/organizer because the leather binder/organizer could be used far longer than the pad and was more expensive than the pad. Furthermore, consumers purchase the padfolio for its organizational capacities, so that the binder/organizer was the reason behind the purchase of the product, not the memorandum pad. Petitioner contends that unlike pads in the padfolio, the components of the Car Stationery Set, including the notebook, pencils, erasers, memo pad, stickers, and coloring sheets, are likely to be "used up" by the consumer and then discarded. Petitioner argues that the notebook is crucial to the set because the potential end-uses of the Cars Stationery Set rely heavily on paper. *See* Petitioner's April 29 submission at 4. Therefore, Petitioner argues that the notebook component of the Cars Stationery Set is within the scope of the *CLPP 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 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*¹³ 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.

Analysis

For the reasons discussed below, we find that the notebook component of the Cars Stationery Set is subject merchandise within the scope of the *CLPP Order*.

Wal-Mart requested that the Department exclude the notebook contained in Wal-Mart's Cars Stationery Set from the scope of the *CLPP Order* on the basis that the notebook is a minor component of a stationery set. The Department has evaluated Wal-Mart's request in accordance with 19 CFR 351.225(k)(1), and we find that the descriptions of the products contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and of the ITC are dispositive in this case.

Therefore, the Department has based its decision in these cases on the criteria of a 19 CFR 351.225 (k)(1) analysis and does not find it necessary to examine the merchandise in question through the lens of a 19 CFR 351.225 (k)(2) analysis.

Pursuant to 19 CFR 351.225(k)(1), we find that the scope of the CLPP order clearly covers single- and multi-subject notebooks with dimensions of 8 inches by 10.5 inches. We find that the notebook that was contained in Wal-Mart's Cars Stationery Set meets the description of the merchandise subject to the order.

We disagree with Wal-Mart's contention that the notebook component of the Cars Stationery Set is a minor component and an accessory item to the full, therefore, should be outside the scope of the *CLPP Order*. Wal-Mart's argument was based on the Department's scope ruling on *Avenues*. However, we do not consider Wal-Mart's notebook in the stationery set in the same sense as the pad in *Avenues* padfolio. Specifically, we do not find the notebook component as an accessory item to the stationery set. The Department determined that the *Avenues*' leather padfolio was outside of the *CLPP Order* because the pad of paper is a minor component and, unlike the padfolio cases, is consumable and can be replaced with merchandise not subject to the scope of the order. *See Avenues* at 19. In other words, the leather padfolio can be used far

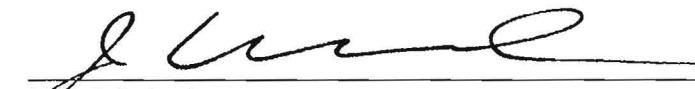
¹³ *Diversified Products Corp. v. United States*, 6 CIT 155, 572 F. Supp. 883 (1983) ("*Diversified Products*").

longer than the pad, and is more expensive than the pad. The value and the durability of the notebook in Wal-Mart's Cars Stationery Set, however, is at least on par with the other items included in the Cars Stationery Set. Therefore, the Department disagrees with Wal-Mart that the Department should apply the minor component argument as it did in the *Avenues* scope ruling to determine the notebook component of the Cars Stationery Set out-of-scope. Furthermore, the *CLPP Order* states that "subject merchandise may contain accessory or informational items including... writing implements... or printed items such as sticker sheets" and still be within the scope of the order. In other words, the mere inclusion of other items, including markers, pencils and stickers, as in this case, do not remove the notebook, the description and dimensions of which are expressly included in the language of the *CLPP Order*, from the scope of the order. Accordingly, the Department finds that the notebook component of Wal-Mart's Cars Stationery Set is within the scope of the *CLPP Order*.

Recommendation

Based on the foregoing analysis, we recommend that the Department find that the notebook component of Wal-Mart's Cars Stationery Set is within the scope of the *CLPP Order*. Further, we recommend that the Department advise CBP to continue to require antidumping duty deposits only on the value of the notebook component, which is contained in Wal-Mart's Cars Stationery Set.

Agree Disagree



John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

7/17/09

Date