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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
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FROM: Cindy Robinson
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SUBJECT: Certain Lined Paper Products ("CLPP") from the People's
Republic of China – Vera Bradley, Inc. Scope Ruling Request

Summary

On September 8, 2006, the Department of Commerce ("Department") published its final determination in the antidumping duty investigation of Certain Lined Paper Products ("CLPP") from the People's Republic of China ("PRC").¹ On September 28, 2006, the Department issued an antidumping duty order.² On March 16, 2009, Vera Bradley requested that the Department issue a scope ruling concerning the "Clip Notes" product (consisting of a clip board with a hinged metal clip at the top and a separately refillable single pad of paper) that it imports from the PRC ("Vera Bradley submission"). On April 16, 2009, the Department received comments from the Association of American School Paper Suppliers, the petitioner. This memorandum addresses issues raised by Vera Bradley, Inc. ("Vera Bradley") and the petitioner regarding the scope of the *CLPP Order*. For the reasons described below, we recommend finding that the product covered by this inquiry is outside the scope of the *CLPP Order*.

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) ("CLPP Order").



Scope of the Order

The scope of the *CLPP Order* includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper) 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 Atear-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 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: pre-printed 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 ("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), 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™ (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™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- 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 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1" wide elastic fabric band. This band is located 2-3/8" 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™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

- 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 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 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™ (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 4820.10.2050, 4810.22.5044, 4811.90.9090, 4820.10.2010, 4820.10.2020 of the Harmonized Tariff Schedule of the United States (“HTSUS”). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of this 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*.

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 Bond Street Ltd.'s writing cases are not included within the scope of the *CLPP Order*, and its two styles of writing tablets 2i and 2ii are included 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.'s padfolios (*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 within the *CLPP Order*.

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

Vera Bradley's Scope Ruling Request

Vera Bradley claims that its Clip Notes product (Clip Notes) which it imports from the PRC should be deemed to be outside the scope of the *CLPP Order* in accordance with the Department's prior scope rulings in *Avenues padfolios* and *Bond Street padfolios*. The Clip Notes is currently imported under HTS # 4820.10.2020. Vera Bradley claims that its Clip Notes has the following physical characteristics:

- 1) Vera Bradley's Clip Notes consists of a standard sized clipboard measuring 10" x 14" with a hinged metal clip at the top and a single pad of lined paper measuring 8 ½" by 11". The lined paper pad has three holes and a colorful binding strip across the top

edge that matches the design on the clipboard. The main component of Clip Notes is the clipboard. The hinged metal clip of the clipboard is used to secure loose paper, or other items (e.g., photographs, sheet music, recipes) to the clipboard. The lined paper pad is not permanently affixed to the clipboard. The lined paper pad is an accessory which can be replaced by non-subject merchandise.

- 2) The clipboard is not a backing or cover; “rather, it provides a writing surface more akin to a portable table or lap desk.” See Vera Bradley submission at 2.
- 3) The clipboard’s value and useful life far exceeds that of the lined paper pad.
- 4) The lined paper pad does not have any covers (whether permanent or removable).

See Vera Bradley submission at 1-3. See, also, *ITC Final Report*.³ Vera Bradley argues that its Clip Notes should be excluded from the scope of the *CLPP Order* for the same reasons used by the Department in its scope rulings with respect to *Avenues padfolios* and *Bond Street padfolios*. Specifically, Vera Bradley argues:

- 1) In *Avenues padfolios*, the Department ruled that Avenues’ padfolios are not permanently affixed to the pad and, as such, are not like notebook covers. Likewise, Vera Bradley argues, the lined paper pad included with the Clip Notes is not permanently affixed to the clipboard; rather, it can be removed or replaced with non-subject merchandise; but the Clip Notes retains its purpose and value. Vera Bradley submission at 3. Vera Bradley also notes that in the *ITC Final Report*, cited in *Avenues padfolios*, the binding process of notebooks includes the permanent affixing of the notebook cover or pad backing. Here, as in *Avenues padfolios*, the clip board or padfolio is not permanently affixed to the lined paper pad. Furthermore, like the merchandise at issue in *Avenues padfolios*, the clipboard in Clip Notes has a “useful life beyond the useful life of the pad.” Vera Bradley submission at 3.
- 2) In *Avenues padfolios*, the Department ruled that the single included pad of paper (or notebook) is not a substantial component of the padfolios in question, and found the merchandise under review to be outside the scope of the *CLPP Order*. Likewise, Vera Bradley argues, the single included pad of paper in its Clip Notes is a minor component, which only accounts for 25 percent of the value of the Clip Notes and therefore, it urges the Department to find the merchandise under review to be outside the scope of the *CLPP Order*.

See Vera Bradley submission at 1-3.

³ See *Certain Lined Paper School Supplies From China, India, and Indonesia, Investigation Nos. 701-TA-442-443 and 731-TA-1095-1097 (Final) (ITC Final Report)* at pages I3-I4, Publication 3884, September 2006.

In addition, Vera Bradley supports its argument for excluding its Clip Notes by elaborating on the expectations of ultimate purchases, the ultimate use of product, channels of trade in which product is sold, and manner in which the product is advertised and displayed. Regarding expectations of ultimate purchases, Vera Bradley argues that when a purchaser buys a Clip Notes, the purchaser expects to buy a stylish writing surface with an organizational component. According to Vera Bradley, the expectation of the purchasers of Clip Notes is to purchase a practical writing surface and to purchase a signature Vera Bradley patterned accessory. Further, Vera Bradley asserts that as in *Avenues padfolios*, there is no evidence that a buyer would obtain a Clip Notes product with the sole or principal expectation of acquiring a pad of paper; rather, the pad is placed in the clipboard for marketing purposes to allow the purchaser to envision the Clip Notes' use and function. *See* Vera Bradley submission at 4.

With respect to the ultimate use of product, citing the ruling of International Trade Commission ("ITC"),⁴ Vera Bradley counters that its Clip Notes, in theory, could be used in schools, but the target market is design-conscious women, not school children. In addition, Vera Bradley argues that although its Clip Notes aids in taking notes or performing class assignments, the Department did not intend that every surface that supports paper be included within the scope ruling. *See Id.* at 5.

Regarding channels of trade in which product is sold, Vera Bradley states that its Clip Notes are sold only in Vera Bradley stores, which is a different distribution channel than the big box store and office supply stores that most CLPP are distributed through. *See Id.* at 6.

With respect to manner in which the product is advertised and displayed, Vera Bradley indicates that its Clip Notes product is generally advertised and displayed as a stationery product and commonly displayed with items that fall outside the scope of the *CLPP Order*. According to Vera Bradley, its Clip Notes can be purchased at Vera Bradley stores, certain licensed Vera Bradley retailers, or on Vera Bradley's website under the "stationery" collection. Vera Bradley claims that its Clip Notes are advertised alongside other Vera Bradley products, such as purses, luggage, and eye-glass cases. In addition, Vera Bradley indicates that its Clip Notes are also promoted through gift trade shows alongside the fashion accessories that Vera Bradley sells. *See Id.* at 6-7.

On April 16, 2009, the Association of American School Paper Suppliers ("petitioner") submitted comments on Vera Bradley's scope ruling request. The petitioner states that it does not object to Vera Bradley's scope ruling request, provided that the scope ruling is strictly limited to Vera Bradley's specific product at issue, Clip Notes, and that the scope ruling is narrowly tailored such that it does not include similar products from other manufacturers.

⁴ The ITC ruling states that "the primary use for CLPP is to take notes, perform class assignments, and provide completed work to teachers for correction and grades." *See ITC Final Report* at I-10 and I-11.

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* criteria.⁵ 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.

In this case, we found it unnecessary to address the five additional factors contained in 19 CFR 351.225(k)(2) because the descriptions found in the petition, the Department's determinations, and ITC publications are dispositive with respect to Clip Notes.

Analysis

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 ITC when considering whether a particular product is included within the scope of an order. The scope of the *CLPP Order* includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets.

In providing a description of the physical characteristics of covered merchandise, the scope of the *CLPP Order* includes merchandise that 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. 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. In providing a description of the binding method, the *CLPP Order* states that subject lined paper may be loose, packaged or

⁵ *Diversified Products Corp. v. United States*, 6 CIT 155, 572 F. Supp. 883 (1983) ("*Diversified Products*").

bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). The discussion on binding in the *ITC Final Report* describes the binding process as one where the notebook cover or pad backing is permanently affixed to the paper which it contains. See *ITC Final Report* at I-12.

Vera Bradley's Clip Notes consists of two items: a clipboard which is decorated with Vera Bradley's pattern design, and a less-decorated, separately refillable single pad of paper. The clipboard is attached with a hinged metal clip at the top. We agree with Vera Bradley that its clipboard along with the attached hinged-metal clip is outside the scope of the *CLPP Order* because the clipboard does not fit in any description of the scope language of the *CLPP Order*. We also agree with Vera Bradley that the clipboard is neither a backing nor a cover; rather, it provides a writing surface. In addition, we agree with Vera Bradley that the clipboard is the major component and the essence of the Clip Notes, and that the clipboard has a useful life beyond the useful life of a pad of paper.

With respect to the single pad of paper included in Vera Bradley's Clip Notes, the Department finds that although the pad of paper, by itself, would be within the scope of the *CLPP Order*,⁶ the Department agrees with Vera Bradley that this single lined pad of paper is a minor component of the merchandise in question. In the current scope case, we find that the single pad of paper contained in Vera Bradley's Clip Notes, like the single pad of paper in *Avenues padfolio*, is not a substantial component of the Clip Notes itself for the same reasons set forth in our ruling on *Avenues padfolios*. With respect to the Department's scope ruling in *Bond Street padfolios*, Vera Bradley does not elaborate on this particular ruling in its request. Nonetheless, the Department finds that its July 17, 2007, scope ruling in *Bond Street padfolios*, similar to its ruling with respect to *Avenues padfolio*, supports the conclusion that Vera Bradley's Clip Notes are not within the scope of the order. As in the *Avenues padfolio* ruling, the Department found that the single pad of paper contained in *Bond Street padfolios* was not a substantial component of the padfolio and, citing to the reasoning in *Avenues padfolio*, found that *Bond Street's* padfolio was not within the scope of the order. Therefore, consistent with the Department's reasoning and decision in prior scope rulings including *Avenues padfolios* and *Bond Street padfolios*, we determine that Vera Bradley's Clip Notes is not within the scope of the *CLPP Order*.

⁶ The single pad of paper has three holes punched on the left side and has a dimension of 8 ½ x 11 inches and therefore, is within the scope of the *CLPP Order*. See *CLPP Order* above.

