



**UNITED STATES DEPARTMENT OF COMMERCE**  
**International Trade Administration**  
Washington, D.C. 20230

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Scope Inquiry  
Public Document  
AD/CVD Operations  
Office 3: VC

DATE: February 26, 2010

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

THROUGH: Melissa Skinner  
Office Director  
AD/CVD Operations, Office 3

James Terpstra  
Program Manager  
AD/CVD Operations, Office 3

FROM: Victoria Cho  
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AD/CVD Operations, Office 3

RE: Final Scope Ruling – Antidumping Duty Order on Certain Lined Paper Products from the People’s Republic of China, Request by Livescribe, Inc.

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**BACKGROUND**

On October 27, 2008, and July 15, 2009, Livescribe, Inc. (“Livescribe”) an importer of lined paper from People’s Republic of China (“PRC”), requested that the U.S. Department of Commerce (“the Department”) issue a ruling finding that the patented dot-patterned paper it imports from the PRC is outside the scope of the antidumping duty order<sup>1</sup> on certain lined paper products (“CLPP”) from the PRC, and provided supplementary information regarding its products at the request of the Department. On October 22, 2009, we initiated a formal scope inquiry of Livescribe. The Department at initiation sought clarification on whether Livescribe’s patented dot pattern featured

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<sup>1</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”).



on its products is “merely ‘images or graphics’ or ‘accessory of informational items,’” and whether the “directions” or “controls” that are printed on each page, should be considered “images or graphics” or “accessory or informational items.”

On November 23, 2009, Livescribe submitted additional information responding to issues raised by the Department in its initiation of a scope inquiry. The Association of American School Paper Suppliers (“the petitioner”) commented on this matter on December 14, 2009.

## **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 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>2</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 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 “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,

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<sup>2</sup> *Diversified Products Corp. v. United States*, 6 CIT 155, 572 F. Supp. 883 (1983) (“*Diversified Products*”)

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 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 (“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.

Since the issuance of the CLPP Order, the Department has responded to numerous scope inquiries, including the following:

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 February 21, 2008, the Department found that Davis Group of Companies' padfolios (*Davis Group 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 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.

On July 17, 2009, the Department found that the notebook component of Wal-Mart's Cars Stationery Set is within the scope of the CLPP Order.

On July 29, 2009, the Department found that the Clip Notes which contain a standard sized, decorated clipboard with a hinged metal clip at the top and a single pad of lined paper and imported by Vera Bradley are not within the CLPP Order.

## **LIVESCRIBE'S COMMENTS**

Livescribe requests that the Department determine that the patented dot-patterned paper products it imports from the PRC are excluded from the scope of the Order. Livescribe argues that its dot-patterned paper utilizes ink technology developed for paper products bearing a validly licensed and used trademark which differs from lined paper that is subject to the CLPP Order.

Livescribe describes its paper products as being identical in all aspects to the Fly™ lined paper products, which are excluded from the scope of the Order. Fly™ is a product owned by LeapFrog. Livescribe states that both Livescribe and Leapfrog entered into separate license agreements with Anoto™ for unique dot patterning that is specific to each product.

Livescribe states that its products currently include a single subject notebook that has 100 college-ruled perforated sheets sold in 4-packs and a light-weight hardbound journal with an elastic closure sold in 2-packs. In both its single subject notebook and hardbound journal, Livescribe states that the paper uses a patent-protected “circular mark” or “dot-pattern” licensed from Anoto™ which is printed onto the paper. The patent-protected dot-pattern then creates a grid of XY coordinates that when written or drawn upon are interpreted and displayed on a computer as pen strokes. Livescribe explains that its Pulse Smartpen, which has a high-speed infrared camera at the tip of the pen, traces everything that is written, tapped, or drawn on the Livescribe dot paper through what Livescribe describes as its Dot Positioning System.

Livescribe comments that the printed dot-pattern is almost invisible to the naked eye and is printed with two different inks to allow the pen to distinguish between 1) the dot pattern and 2) the lines and other “artwork” on the paper. When writing with the Livescribe Pulse Smartpen, Livescribe explains that the Smartpen takes digital snapshots of the dots that are printed in a specific pattern on paper. Livescribe claims that the Smartpen’s unique functions will not work with standard notebook paper. Furthermore, Livescribe argues that a consumer would not purchase the Livescribe paper products unless the consumer had a Livescribe Smartpen, given the significantly higher costs for the Livescribe paper.

Livescribe states that the infrared ink, and the directions and controls included on its paper, are not “images and graphics” or “accessory or informational items” such as those which may be included in paper subject to the Order. Livescribe emphasizes that the dot-pattern is patented, which would not be the case for mere images or graphics. Moreover, Livescribe states that the dot-patterned paper and directions/controls allow the user to invoke a command, which the Smartpen is able to store for later use, in contrast to images, graphics, or accessory and informational items.

## **THE PETITIONER’S COMMENTS**

The petitioner comments that Livescribe’s products are different from the products subject to the Order and it is not necessary to consider the issue of trademark in order to determine whether Livescribe’s products are within the scope of the Order. The petitioner agrees with Livescribe that the dot-patterning or imbedded controls contained in Livescribe’s paper are not the types of “images or graphics or accessory information or items” mentioned in the order’s scope language which are insufficient to exclude a product from the scope of the Order, but rather are “a fundamental component of the product that makes it unlike the products subject to the antidumping duty order.” *See* Comments on Livescribe’s Response to the Department’s Initiation of a Formal Scope Inquiry, dated December 14, 2009 (“the petitioner’s December 14, 2009, response”). Overall, pursuant to 19 CFR 351.225(k), the petitioner argues that Livescribe’s products are distinguishable from the in-scope merchandise due to the physical characteristics, expectations of customers, ultimate use and the manner in which they are advertised and displayed.

## ANALYSIS

When the descriptions of the merchandise are not dispositive, the Department will consider the following 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. We have applied these factors to Livescribe's products, as set forth below.

### I) The physical characteristics of the merchandise:

Throughout its request, Livescribe compares its products to the Fly<sup>TM</sup> notebook products and notes that its products and the Fly<sup>TM</sup> products both use the same infrared reflective ink technology and both use the same license from Anoto<sup>TM</sup>, though the Fly<sup>TM</sup> products are specifically excluded from the scope of the Order.

Livescribe describes its dot patterned paper as a unique grid of dots that serves as a non-repeating series of codes, which works in conjunction with the Smartpen on each page of its paper. Livescribe explains that the Smartpen captures, records, and links audio to what is written or drawn on each page of its paper. Livescribe states that it uses a carbon-based ink to print on its paper, and it is the carbon in the black ink that makes the ink infrared reflective ink. After printing, the Smartpen controls or directs the essential codes which can be transferred to a computer.

Livescribe describes that the term "accessory or informational items" is a term included within the scope of the investigation as "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..." Livescribe claims that the infrared, reflective ink dot-patterning is clearly not an "image or graphic" or an "accessory or an informational" item. Livescribe argues that the dot-patterning or code is only useful with the use of the infrared reflective ink, which then makes the dot pattern useful to the Smartpen.

Livescribe comments that in order for the Livescribe product to operate, both the infrared reflective ink and the dot-pattern is required. Furthermore, Livescribe asserts that the infrared, reflective ink dot patterning is a patented process which clearly distinguishes it from images, graphics, accessory, or informational items, which may be copyrightable, but would not be patented. Moreover, Livescribe states that while the bottom of each sheet of Livescribe paper have certain "directions or controls," they should not be considered "images or graphics" or "accessory or informational" items. Livescribe asserts that the "directions or controls" serve as a visual aid of visual prompt that is recognizable to the user. Livescribe adds that digital files, which includes the lines on the paper, the "directions and controls" and page numbers at the



bottom of each sheet of paper, are necessary for content functionality; *i.e.*, for transferring notes to a computer, or playing or recording audio.

The petitioner states that Livescribe's products are physically different from the in-scope merchandise. The petitioner asserts that Livescribe's paper is printed with infrared inks that enable the user to transfer notes to a digital format for output and display by a word processing or similar program. The petitioner claims that Livescribe's patterns and controls are inherent and necessary to the product's complete functionality. The petitioner argues that, unlike in-scope merchandise, which is printed only with visible lines that assist the user to write in a level and even manner, the physical characteristics of Livescribe's product enable the user to transfer and store what they write.

The Department's Position:

The Department agrees that Livescribe's products are physically different from merchandise which is subject to the Order in key respects. Although Livescribe's products consist of paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets like merchandise subject to the Order, Livescribe's products are considerably different from CLPP. Livescribe's paper has technological capabilities that the merchandise subject to the Order do not possess. First, Livescribe's dot pattern, and its directions and controls are not images or graphics (as those terms are commonly interpreted) nor should they be considered accessory or informational items. Unlike traditional images or graphics which may serve as illustrations and do not allow for interaction with the product, the dot pattern enables the user to record what they are writing, and to store such information for later retrieval and use. Similarly, the directions allow the user to "command" the Smartpen to undertake a certain function. While the directions may include "information," unlike pockets, writing implements, or reference materials, in the scope of the Order, the directions on the Livescribe paper allow the user to "command and control" the product's functions and interact with the product. *See* Livescribe's November 23, 2009, submission at 12. In other words, Livescribe's dot patterns and controls are inherent and necessary to the functions of its products. The Department also agrees that Livescribe and Fly<sup>TM</sup> products are identical in all physical aspects, including the use of "smart" infrared-operated pens and infrared reflective ink for use on the patented paper.

II/III) The expectations of the ultimate purchasers/Ultimate use of the product:

Livescribe explains that its consumers purchase its Smartpen to use in conjunction with the Livescribe paper products. Livescribe describes that its users purchase Livescribe's products with the specific intent to take notes that can simultaneously record and link the audio so that both the written information and the audio is captured. Moreover, Livescribe claims that its users can take notes and link audio that can be transferred to a digital format, which then can be transferred to a computer.

Livescribe asserts that CLPP products subject to the Order are not capable of recording audio or transferring notes to a computer. Livescribe explains that the expectations of the user of

Livescribe's products are significantly different from those paper products covered by the Order, because purchasers of Livescribe's products expect that it perform the additional functions.

The petitioner comments that Livescribe customers' expectations and end-use are different from the merchandise subject to the Order. The petitioner claims that in-scope products are suited for use by school-age children in preparing class assignments and homework. Additionally, petitioner argues that pages of the notebooks can be easily torn out or written out of order without damaging the overall functionality of the notebook or other in-scope item, while Livescribe's products are not suited for this use. The petitioner also asserts that Livescribe's products are different because the technology ensures that the user's notes will be retained in a "permanent and digitally transferable state." See the petitioner's December 14, 2009, response at 4. The petitioner also states that Livescribe's notebooks are more expensive than the in-scope products.

#### The Department's Position:

The Department agrees that the ultimate use of Livescribe's products, and the expectations of its purchasers are different from the uses of merchandise subject to the Order, and the expectations of purchasers of such merchandise. According to the ITC, "the primary use for {certain lined paper school supplies ("CLPSS")} is to take notes, perform class assignments, and provide completed work to teachers for correction and grades." See *Certain Lined Paper School Supplies From China, India, and Indonesia Investigation*, Nos. 701-TA-442-443 and 731-TA-1095-1097 (Final) ITC Publication 3884 (September 2006) ("ITC Final Report"). The use of Livescribe's products goes beyond general note-taking because the products allow the purchaser's notes to be transferred to a digital format, and to control the functions of the Smartpen through the directions and controls on the paper itself. Lined paper products subject to the Order cannot be used for this purpose.

The Department agrees with the petitioner and Livescribe that the consumer purchasing this product will use it for its special technological capabilities and the use of the product is significantly different than those paper products covered by the Order.

As to the expectations of the ultimate purchaser, the Department agrees that Livescribe's users are expecting to capture notes while also recording and linking audio to notes and to be able to transfer such written notes, which is different than the expectations of a purchaser of merchandise subject to the Order, who expect to simply write or draw. The Department concludes that the expectations of the purchaser of Livescribe's products, and the ultimate use of Livescribe's products, are different from merchandise subject to the Order.

#### IV) The channels of trade in which the product is sold:

Livescribe states that its products are not sold where products subject to the Order are sold, such as discount, grocery, or drug stores. Livescribe comments that its products are sold through its website and certain retail stores. Livescribe contends that, where its products are sold by mass retailers, it explains that its products are marketed, advertised or promoted as part of the

Electronics Department, unlike products subject to the Order. Livescribe notes that its products do not compete with products which are subject to the Order.

The petitioner did not comment on this issue.

The Department's Position:

According to the ITC Final Report, “{a}ll lined paper products and subject imports of {certain lined paper} are sold through common channels of distribution. These products are primarily sold directly by foreign or domestic producers to retailers, which include general merchandise superstores, drug stores, grocers, and office supply stores.” See ITC Final Report at 23. Products subject to the Order are sold via websites, retail stores, as well as discount, grocery, and drug stores. See Livescribe's July 15, 2009, submission at 8. Livescribe's products are primarily sold through its website and certain retail stores, such as Amazon and Target. See Livescribe's October 27, 2008, submission at 20 and Exhibit 6. Livescribe's products are not sold through discount stores, grocery stores, or drug stores, while the channels of trade of merchandise subject to the Order and Livescribe's products overlap, in that they are both sold at certain retail stores. However, Livescribe's products are marketed and sold through an electronics department, as discussed below, rather than with lined paper products. While some of the channels of trade are the same, Livescribe's products are primarily sold through its website or as an electronics item when sold by mass retailers.

V) The manner in which the product is advertised and displayed:

Livescribe asserts that its paper products are advertised, promoted, and displayed differently from CLPP. Livescribe comments that products subject to the Order are generally advertised on mass retailer websites and in the stores in the office supply areas, but Livescribe's products have been reviewed and featured by electronic, digital, computer, and technology websites, and science and technological magazines. Livescribe asserts that its products “are clearly viewed and understood by users to be a technological product and not a general paper product.” See Livescribe's July 15, 2009, submission at 9.

The petitioner claims that Livescribe's products and the in-scope products are displayed and advertised differently. The petitioner asserts that CLPP products are sold as writing paper or note taking supplies but that Livescribe's products are sold by the retailer Staples as “presentation accessories.”<sup>3</sup> In addition, the petitioner claims that in-scope products are heavily promoted during the “Back- to-School” season, and Livescribe's products are not specially promoted during this season, but are promoted among professionals and adults that use electronic and computer equipment.

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<sup>3</sup>See the petitioner's December 14, 2009, submission at Exhibit 1.

The Department's Position:

The Department agrees with the petitioner and Livescribe. Livescribe's paper and merchandise subject to the CLPP Order are advertised and displayed differently. Livescribe's products are advertised and promoted as an electronic tool, while products subject to the Order are sold as school or office supplies. *See, e.g.*, the petitioner's December 14, 2009, response at Exhibit 1. Moreover, the Department agrees with the petitioner and Livescribe that the manner in which the two products are advertised and displayed are significantly different. Petitioner's December 14, 2009, response includes a page from the retailer Staples' website, which advertises merchandise subject to the Order as "Notebooks and Filler Paper," while Livescribe's products are advertised as "Presentation Accessories." *See* the petitioner's December 14, 2009, response at Exhibit 1.

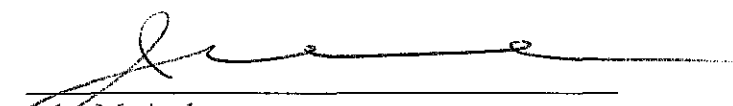
Conclusion:

In accordance with 19 CFR 351.225(k)(2), based on our review of the record of this scope inquiry, we find that the physical characteristics of the merchandise at issue are different from merchandise covered by the scope of the Order on CLPP. We find that the expectations of the ultimate purchasers and the ultimate use of Livescribe's patented paper are different than products subject to the Order. We also determine that the manner in which Livescribe's products are advertised and displayed differs from merchandise subject to the Order. Based on the criteria, taken together, we find that Livescribe's patented paper products are not subject to the scope of the Order.

**RECOMMENDATION**

Based on the foregoing analysis, we recommend that the Department finds that Livescribe's patented dot-patterned paper products are outside the scope of the CLPP Order.

Agree ✓ Disagree \_\_\_\_\_

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

3/2/10  
Date