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International Trade Administration
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Scope Inquiry
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September 19, 2008

MEMORANDUM FOR: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

FROM: James C. Doyle
Director, Office 9
Import Administration

SUBJECT: Final Scope Ruling: Antidumping Duty Order on Certain Tissue
Paper from the People's Republic of China

Summary

On February 5, 2008, the Department of Commerce ("Department") received a request from Walgreen Co. of Deerfield, Illinois ("Walgreens") for a scope ruling regarding whether the "Gift Bag to Go" gift bag sets imported with tissue paper are covered by the antidumping duty order on certain tissue paper from the People's Republic of China ("PRC"). See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China, 70 FR 16223 (March 30, 2005) ("Order"). On April 29, 2008, the Department received a request from QVC Corporation ("QVC") for a scope ruling on whether imports of tissue paper contained in gift wrap kits are covered under the Order. In accordance with 19 CFR 351.225(d), the Department finds that tissue paper packaged in a gift bag set/gift wrap kit is within the scope of the Order.

Background

On February 5, 2008, the Department received a letter from Walgreens requesting a scope ruling on whether "gift bags, which include a limited number of tissue paper sheets," imported by Walgreens from the PRC is covered by the Order. On February 11, 2008, Seaman Paper Company of Massachusetts, Inc. ("Petitioner") submitted comments on the Walgreens Scope Request. On March 18, 2008, the Department extended the deadline for issuing the ruling on the scope request by 45 days to May 8, 2008. On May 1, 2008, the Department extended the deadline for issuing the ruling on the scope request by 14 days to May 22, 2008. On May 21, 2008, the Department extended the deadline for issuing the ruling on the scope request by 22 days to June 13, 2008. On June 5, 2008, the Department allowed both parties to submit additional comments and extended the ruling on the scope request by 24 days to July 7, 2008.



On June 6, 2008, the Department received surrebuttal comments from Walgreens and from Petitioner on June 16, 2008. On July 1, 2008, the Department extended the deadline for issuing the ruling on the scope request by 30 days until August 6, 2008. On July 30, 2008, the Department extended the time frame to issue a scope ruling or initiate a scope inquiry by an additional 30 days until September 5, 2008. On September 5, 2008, the Department extended the time frame to issue a scope ruling or initiate a scope inquiry by an additional 14 days until September 19, 2008.

On April 29, 2008, the Department received a letter from QVC requesting a scope ruling on whether tissue paper contained in gift wrap kits imported by QVC from the PRC, is covered by the Order. On May 30, 2008, the Department extended the time frame to issue a scope ruling or initiate a formal scope inquiry by an additional 24 days until July 7, 2008. On June 9, 2008, Petitioner submitted opposition comments on the QVC Scope Request. On June 27, 2008, the Department extended the time frame to issue a scope ruling or initiate a formal scope inquiry by an additional 30 days until August 6, 2008. The Department received rebuttal comments from QVC on July 1, 2008. The Department received surrebuttal comments from Petitioner on July 10, 2008, and from QVC on July 21, 2008. On July 30, 2008, the Department extended the time frame to issue a scope ruling or initiate a formal scope inquiry by an additional 30 days until September 5, 2008. On September 5, 2008, the Department extended the time frame to issue a scope ruling or initiate a scope inquiry by an additional 14 days until September 19, 2008.

Walgreens' Scope Request

Walgreens describes the merchandise in its request as a gift bag set, comprised of one gift bag, one crinkle bow, and between one and six sheets of colored tissue paper, in which tissue paper constitutes 6 percent to 11 percent of each gift bag set's total cost. See Scope Ruling Request for Walgreen Co. Certain Tissue Paper Products from the People's Republic of China (February 5, 2008) ("Walgreens Scope Request") at 2.

Walgreens argues that the language of the scope for tissue paper does not make any reference to tissue paper packaged in sets with unrelated merchandise. Walgreens asserts that, during the investigation, while Petitioner claimed cognizance of the mixed package issue, Petitioner did not seek meaningful recourse to modify the petition nor seek modification of the Order to specifically include tissue paper packaged with non-subject merchandise. See Walgreens Scope Request at 6-7.

Moreover, Walgreens cites the Department's previous Avenues Ruling, Fiskars Ruling, Clip N' Color Ruling, and Naturally Pretty Ruling in which subject merchandise was packaged and sold in a mixed set.¹ In each of these rulings, Walgreens claims that the Department considered each

¹ See Walgreens Scope Request at 9-10; see also Scope Ruling Reply for Walgreen Co. Certain Tissue Paper Products from the People's Republic of China (June 6, 2008) ("Walgreens Surrebuttal Comments") at 2,4 citing Final Scope Ruling: Antidumping Duty Order on Certain Lined Paper Products from the People's Republic of China (PRC) – Request by Avenues in Leather, Inc. (May 8, 2007) ("Avenues Ruling"), Final Scope Ruling – Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China (PRC) – Request by Fiskars Brands, Inc. (June 3, 2005) ("Fiskars Ruling"), Final Scope Ruling – Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China (PRC) – Request by the Target Corporation (March 4, 2005) ("Clip 'N Color Ruling"), and Final Scope Ruling – Antidumping Duty Order on Certain Cased Pencils from the People's

set to be outside the scope even though they included subject merchandise because the merchandise at issue were minor components of a set. See Scope Request at 9-10; see also Walgreens Surrebuttal Comments at 2-4. Walgreens cites the Texsport Ruling for porcelain-on-steel cooking ware in which the Department found subject merchandise packaged with non-subject merchandise distinguishable from the instant scope review because the items subject to the order were the most significant components of the retail set.²

For this scope ruling, Walgreens contends that the Department is required to consider the five additional factors set forth in 19 CFR 351.225 (k)(2) of the Department's regulations, otherwise known as the *Diversified Products* criteria set forth in Diversified Products Corp. v. U.S. 6 CIT 155, 162, 575 F. Supp. 883, 889 (1983). Moreover, Walgreens argues that mixed media sets in which the minor components are subject to antidumping duty orders have consistently been evaluated using a *Diversified Products* analysis. See Walgreens Surrebuttal Comments at 13. Walgreens claims that the physical characteristics of the gift bag sets differ from those of the subject merchandise because the majority of the sets' components are not subject to the Order, whereas the tissue paper represents a minor component of the set at 6 percent to 11 percent of total cost. With respect to the expectations of ultimate purchasers, Walgreens argues that the ultimate purchasers take into consideration the product qualities of the size, color, and ornamentation of the gift bag and not the tissue paper. Moreover, Walgreens contends that the ultimate use of the merchandise at issue is to act as a container or holder for a gift, as opposed to tissue paper which is used as ornamental packaging material. However, Walgreens does note that the gift bag sets and subject merchandise are sold through similar channels of trade. Finally, Walgreens contends that while the gift bag sets and subject merchandise are sold in the same aisles, the sets are shelved more closely to gift bags than tissue paper. See Scope Request at 11-13.

QVC's Scope Request

In its scope request, QVC requests that the Department find that tissue paper contained in gift wrap kits is outside the scope of the Order. QVC describes the merchandise in its request as several different gift wrap kits, each containing different amounts and combinations of some or all of the following components: gift bags, gift tins, gift boxes, bows, wrapping paper, tissue paper, gift tags, gift cards, gift card pouches, ribbon and stickers. QVC states that tissue paper accounts for up to 2.25 percent of the total cost of QVC's gift wrap kits. See Tissue Paper Products from the People's Republic of China Scope Ruling Request Regarding Gift Wrap Sets (April 29, 2008) ("QVC Scope Request") at 8.

QVC argues that the tissue paper contained in QVC's gift wrap kits is distinguishable from products covered under the scope of the Order because the tissue paper included in QVC gift wrap kits is a minor component of a unique product. QVC claims that its gift wrap kits are

Republic of China (PRC) – Request by Creative Designs International, Ltd. (February 9, 1998) ("Naturally Pretty Ruling").

² See Scope Request at 7-8 citing Recommendation Memo – Final Scope Ruling on the Request by Texsport for Clarification of the Scope of the Antidumping Duty Order on Porcelain-on-Steel Cooking Ware From the People's Republic of China (Aug. 8, 1990) ("Texsport Ruling").

unique products and should be classified as so by the Department and U.S. Customs and Border Protection (“CBP”). QVC argues that its gift bag kits should be categorized under the Harmonized Tariff Schedule of the United States (“HTSUS”) heading 4819.40.0040 for “Other sacks and bags (of paper or paperboard): Other (than certain specified kinds)”, and therefore not broken down into a collection of numerous individual items with different corresponding duties. QVC contends that its kits should be classified under this heading pursuant to the General Rule of Interpretation 3(b) that requires that goods “be classified as if they consisted of the material or component which gives them their essential character.” See QVC Scope Request at 4; see also QVC Scope Review Request, Response to Petitioner’s Opposition Comments (July 1, 2008) (“QVC July 1 Response”) at 9.

QVC argues that its gift wrap kits are a unique product, distinct from the subject merchandise, and that even though these contain tissue paper that, when on a stand-alone basis, would be considered subject merchandise, the tissue paper is outside the scope when imported as a minor component in a kit. QVC claims that the Department established the precedent and practice of finding minor components of subject merchandise contained in non-subject kits outside the scope of the order in numerous previous decisions.³ QVC contends that it is the Department’s practice to find merchandise outside the scope of an order where it is a minor component regardless of whether the Department conducts its analysis pursuant to 19 CFR § 351.225 (k)(1) or 19 CFR § 351.225 (k)(2). See QVC July 1 Response at 11. QVC argues that because the scope of the Order does not cover mixed-media sets, such as QVC’s gift wrap kits, which based on the Department’s practice must be considered as a whole, these must be found outside the Order’s scope. See QVC July 1 Response at 6; see also Creative Designs Ruling at 5.

QVC also contends that the fact that Petitioner filed a scope request on whether tissue paper imported as part of a kit or set of goods that includes non-subject items is subject to the Order demonstrates that Petitioner believed that the record was unclear on this issue, and not “addressed and settled explicitly” in the original investigation as Petitioner argued. See Petitioner’s QVC Rebuttal Comments (July 10, 2008) (“Petitioner QVC Rebuttal”) at 6. QVC also rebuts Petitioner’s application of the Department’s ruling outlined in the I&D Memo because the findings were rendered moot by the Department’s decision to apply total adverse facts available to the respondent being investigated, “...we are not using any of China National’s data for mixed packages. Therefore the precise nature of the adjustment is moot.”⁴

³ See QVC Scope Request at 10; see also QVC July 1 Response at 10. See also: Final Scope Ruling – Antidumping Duty Order on Certain Faced Paper Products from the People’s Republic of China – Request by Davis Group of Companies Corp. (February 21, 2008) (“Davis Padfolios Ruling”); Final Scope Ruling: Antidumping Duty Order on Certain Cased Pencils from the People’s Republic of China – Request by Target Corporation regarding “Hello Kitty Memory Maker” (September 29, 2004) (“Hello Kitty Memory Maker Ruling”); Final Scope Ruling – Antidumping Duty Order on Certain Cased Pencils from the People’s Republic of China – Request by Target Corporation Regarding “Hello Kitty Fashion Totes” (September 29, 2004) (“Hello Kitty Tote Ruling”); Final Scope Ruling Antidumping Duty Order on Certain Cased Pencils from the People’s Republic of China – Request by Creative Designs International, Ltd. (February 9, 1998) (“Creative Designs Ruling”); *et. al.*

⁴ See Memorandum from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration to Joseph A. Spetrini Acting Assistant Secretary for Import Administration, regarding “Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Tissue Paper Products from the People’s Republic of China (February 3, 2005) (“I&D Memo”).

Additionally, QVC contends that tissue paper is a minor component of QVC gift wrap kits while it was a substantial component in China National's mixed packages.

Therefore, QVC argues that the criteria outlined in 19 CFR § 351.225(k)(1) are not dispositive when applied to tissue paper included in QVC gift wrap kits and the Department must perform a detailed analysis along the criteria of Diversified Products⁵ consistent with 19 CFR § 351.225(k)(2). QVC maintains that merchandise subject to the order that is combined with other materials in a retail set have been consistently evaluated under the Diversified Products criteria, citing the Department's decisions in the Clip N' Color Ruling, Hello Kitty Tote Ruling, Davis Padfolios Ruling, and the Creative Designs Ruling. See QVC Scope Request at 10; see also QVC July 1 Response at 15. QVC argues that a Diversified Products analysis would find its gift wrap kits outside the scope of the Order because the kits should be considered as a whole, and are therefore unique and distinct products composed of numerous components which cause them to be different from subject tissue paper in all manners of this analysis.

Petitioners' Comments Regarding Walgreens' Request

On February 11, 2008, Petitioner filed a submission opposing Walgreens' request that the Department find tissue paper in a gift bag set outside the scope of the antidumping Order. Petitioner argues that the merchandise at issue is cut-to-length sheets of paper, which is within scope regardless of whether they are packaged alone or with non-subject merchandise. See Opposition of Scaman Paper company of Massachusetts, Inc. to Walgreen Co.'s Application for Scope Ruling (February 11, 2008) ("Petitioner Walgreens Rebuttal") at 1.

Petitioner rebuts Walgreens' contention that the gift bag sets should be excluded from the scope of the Order because the language does not explicitly include imports of subject merchandise sold in retail sets. Petitioner rebuts and argues that the scope language covers the product form at issue as cut-to-length sheets of paper. See Petitioner Walgreens Rebuttal at 4. Moreover, the scope lists specific exclusions, which Petitioner notes tissue paper packaged with non-subject merchandise is not included. See Petitioner Walgreens Rebuttal at 5. Instead, Petitioner notes that petitioners did not intend for the scope description to be an exhaustive list of how the subject merchandise can be imported. See Petitioner Walgreens Rebuttal at 16.

Petitioner argues that the Department examined tissue paper packaged with non-subject merchandise in the Preliminary Determination and subsequently in the I&D Memo and found that "packaging the subject merchandise with non-subject merchandise does not transform the subject merchandise into merchandise outside the scope of the investigation."⁶

⁵ See Diversified Products v. United States, 572 F. Supp. 883 (CIT 1983), in which the Court of International Trade first outlined criteria for analysis as: "(i) The physical characteristics of the product; (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."

⁶ See Petitioner Walgreens Rebuttal at 7 and 9 citing Certain Tissue Paper Products and Certain Crepe Paper Products from the People's Republic of China: Notice of Preliminary Determinations of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination for Certain Tissue Paper Products, 69 FR 56407 (September 21, 2004) ("Preliminary Determination") and Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of

Petitioner contends that the criteria identified in section 19 CFR 351.225(k)(1) are dispositive and that a Diversified Products analysis should not be considered. Moreover, Petitioner argues that the Diversified Products analysis performed by Walgreens is flawed because the analysis was based on the gift bag set as opposed to the tissue paper packaged with the non-subject merchandise. See Petitioner Walgreens Rebuttal at 23.

Petitioner argues that the Clip 'N Color Ruling, Fiskars Ruling, Avenues Ruling, and Naturally Pretty Ruling as cited by Walgreens each proceed from fundamentally different starting points and could not be determined through an analysis using 19 CFR 351.225(k)(1). See Petitioner Walgreens Surrebuttal Comments, June 16, 2008, ("Petitioner Walgreens Surrebuttal") at 4. Therefore, Petitioner contends that the scope rulings cited by Walgreens are altogether distinguishable from this instant scope ruling. Further, Petitioner disagrees with Walgreens' claim that the sets remained in-scope as the result of a subordinate component test. Additionally, Petitioner disagrees with Walgreens' argument that the Texsport Ruling was determined through a subordinate component test. Rather, Petitioner argues the Department found that the descriptions in the petition, Commerce determinations, and ITC publications applied to the components in the Texsport Ruling and made the scope determination accordingly. Petitioner argues that the Texsport Ruling is consistent with the instant review. See Petitioner Walgreens Rebuttal at 17-18.

In the event that the Department determines that an analysis under 19 CFR 351.225(k)(1) is not determinative, Petitioner argues that an analysis of the five factors identified in 19 CFR 352.225(k)(2) also supports the finding that the "Gift Bags to Go" sets are within the scope of the Order. Petitioner argues that the Diversified Products analysis should be performed on the cut-to-length sheets of tissue paper and not the gift bag sets. With respect to the physical characteristic of the product, Petitioner claims the merchandise at issue is identical to all other forms of tissue paper that are subject to the Order. Petitioner also maintains that the expectations of the ultimate purchasers of the gift bags are exactly the same as the subject tissue paper because they are both used as decorative and gift wrapping tissue to decorate, display, and protect something put into a container. Petitioner argues that the ultimate use of the product is the same as the subject merchandise since the tissue paper is used to provide protection and decoration for a gift enclosed in a container, specifically a gift bag in this instance. Petitioner agrees with Walgreens that the channels of trade in which the product is sold are similar to those of the subject merchandise. Finally, Petitioner notes that, although the gift bag sets are displayed in additional locations, the merchandise at issue are displayed in the same location as the subject merchandise. See Petitioner Walgreens Rebuttal at 23-27.

Petitioners' Comments Regarding QVC's Request

Petitioner argues that the Department examined tissue paper packaged with non-subject merchandise in the original investigation's preliminary determination and found that "packaging the subject merchandise with non-subject merchandise does not transform the subject merchandise into merchandise outside the scope of the investigation." Petitioner states that the Department went further in the original investigation's final determination, when it specifically

China, 70 FR 7475 (February 14, 2005) ("Final Determination").

stated that “we stress that all subject merchandise – cut-to-length tissue paper – is subject to this proceeding, whether or not it is sold or shipped with non-subject merchandise.” See I&D Memo at 5. Thus, Petitioner contends that the Department addressed and settled explicitly in the original tissue paper investigation that sheets of tissue paper packaged or sold with non-subject merchandise remain in-scope and subject to duty assessment.⁷

Petitioner rebuts QVC’s claims that its filing of a scope request demonstrates that Petitioner did not believe the record was clear on the issue of tissue paper packaged in kits of non-subject merchandise. Instead, Petitioner argues that the actual motivation for Petitioner’s scope request was to bring the issue before the Department to confirm what Petitioner already knew – that tissue paper packaged within sets remains dutiable subject merchandise – and to prevent importers from improperly declaring and identifying the tissue paper portion to CBP for purposes of antidumping duty assessment and collection. See Petitioner QVC Rebuttal at 6. Petitioner also rebuts QVC’s argument that the Department’s findings in the initial investigation were rendered moot by referring to the fact that the Department only rendered “issues pertaining to ... margin calculations” as moot and that the issue of whether subject tissue packaged with non-subject articles was principally a scope issue and, therefore, not moot. See Petitioner QVC Rebuttal at 11.

Petitioner rebuts QVC’s contentions that the tissue paper included in its gift wrap kits is a minor component because at 2.25 percent of the total kit’s value it exceeds the Department’s statutory threshold of 2 percent for an antidumping margin to be *de minimus* and exceeds the 2 percent standard for determining that an affiliated party’s transactions are at an arms-length. See Petitioner QVC Rebuttal at 2-3.

Petitioner argues that the rulings cited by QVC proceed from fundamentally different starting points and are not applicable to the current scope reviews because those scope rulings cited by the respondents could not be determined through an analysis via 19 CFR §351.225(k)(1), which is not the case in the current scope reviews. Based on the information in QVC’s scope application, Petitioner argues that the Department should issue a determination, in accordance with 19 CFR 351.225(d), that subject tissue paper contained in gift wrap kits is within the scope of the Order. See Petitioner QVC Rebuttal at 8.

In the event that the Department determines that QVC’s scope application and the descriptions of the merchandise referred to in 19 CFR 351.225(k)(1) are not dispositive, Petitioner argues that an analysis of the five factors identified in 19 CFR 351.225(k)(2) also supports a finding that the tissue paper contained in gift wrap kits is within the scope of the Order. Petitioner contends that whether reviewing only the tissue paper component or QVC’s gift wrap kits as a whole, the results still exhibit a high degree of commonality with subject merchandise through the lens of the Diversified Products criteria. See Petitioner QVC Rebuttal at 13.

⁷ See Certain Tissue Paper Products from the People’s Republic of China – Opposition of Seaman Paper Company of Massachusetts, Inc. to QVC Corporation’s Application for Scope Ruling (June 9, 2008) (“Petitioner QVC Opposition”) at 9.

The Department's Position

Legal Framework

The regulations governing the Department's antidumping scope determinations are found at 19 CFR 351.225. On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the U.S. International Trade Commission ("ITC"). See 19 CFR 351.225(k)(1). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether 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 five additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: (1) the physical characteristics of the merchandise; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of trade in which the product is sold; and (5) the manner in which the product is advertised and displayed. 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 evidence before the Department.

Documents and parts thereof from the underlying investigation that the Department deemed relevant to these scope rulings were made part of the record of this determination and are referenced herein. Documents that neither the Department nor the parties placed on the record do not constitute part of the administrative record for this scope determination.

The Text of the Scope of the Investigation and the Order

In its petition of February 17, 2004, the domestic industry described the merchandise it proposed to be covered by the less-than-fair value investigation as follows:

The tissue paper products subject to investigation are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this investigation may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this investigation is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this investigation may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The tissue paper products {and crepe paper} subject to this investigation do not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States ("HTSUS") and appear to be imported under one or more of several

different "basket" categories, including but not necessarily limited to the following subheadings: HTSUS 4802.30; HTSUS 4802.54; HTSUS 4802.61; HTSUS 4802.62; HTSUS 4802.69; HTSUS 4804.39; HTSUS 4806.40; HTSUS 4808.30; HTSUS 4808.90; HTSUS 4811.90; HTSUS 4823.90; HTSUS 9505.90.40.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Excluded from the scope of this investigation are the following tissue paper products: (1) tissue paper products that are coated in wax paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTS 4803.00.20.00 and 4803.00.40.00).⁸

The Department defined the scope of the investigation in its Initiation Notice the same as was provided in the Petition.⁹

The scope was modified from the Initiation Notice to the Preliminary Determination in which three HTSUS classifications were added and the second and third paragraphs were combined into one paragraph, as follows:

The merchandise subject to this investigation does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may be under one or more of several different subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.39; 4806.40; 4808.30; 4808.90; 4811.90; 4823.90; 4820.50.00; 4802.90.00; 4805.91.90; 9505.90.40. The tariff classifications are provided for convenience and U.S. Customs and Border Protection ("CBP") purposes; however, the written description of the scope of these investigations is dispositive.

See Preliminary Determination. This scope description of the merchandise subject to the investigation remained the same in the Final Determination and became the language of the scope of the Order itself.

The notice of initiation published by the International Trade Commission ("ITC") referenced the scope of the investigation as that which was published by the Department, being:

⁸ See Antidumping Duty Petition – Certain Tissue Paper Products and Crepe Paper Products From the People's Republic of China, (February 17, 2004) ("Petition").

⁹ See Notice of Initiation of Antidumping Duty Investigations: Certain Tissue Paper Products and Certain Crepe Paper Products From the People's Republic of China, 69 FR 12128, 12129 (March 15, 2004) ("Initiation Notice").

The tissue paper products subject to investigation are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this investigation may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this investigation is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this investigation may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

Excluded from the scope of the investigation are the following tissue paper products: (1) tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, i.e., disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTS 4803.00.20.00 and 4803.00.40.00).¹⁰

The ITC's final determination in this case provided the following definition of the subject merchandise:

Subject tissue paper products are produced from rolls of flat tissue paper (i.e., jumbo rolls) and are cut-to-length sheets that are either white, colored, decorated, or customized in a variety of ways. They are sold either flat or folded and are typically used by businesses as a wrap to protect customer purchases or by consumers to wrap objects, often in conjunction with gift bags. Key performance characteristics include appearance, strength, and durability.¹¹

Analysis

For the reasons discussed below, we find that tissue paper contained in Walgreens' gift bag sets and QVC's gift wrap kits is subject merchandise within the scope of the Order.

Walgreens requested that the Department exclude the tissue paper contained in Walgreens' gift bag sets from the scope of the Order on the basis that the tissue paper is a minor component of a set. QVC also requested that the Department exclude the tissue paper contained in QVC's gift wrap kits from the scope of the Order on the basis that the tissue paper is a minor component of a unique product. The Department has evaluated Walgreens' and QVC's requests in accordance with section 351.225(k)(1) of the Department's regulations, and we find that the descriptions of

¹⁰ See Certain Tissue Paper Products and Crepe Paper Products From China – U.S. International Trade Commission – Investigation No. 731-TA-1070 (Preliminary), Publication 3682 (April 2004) at I-2 and I-3.

¹¹ See Certain Tissue Paper Products From China, USITC Pub. No. 3758 (March 2005) at 3.

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 351.225 (k)(1) analysis and does not find it necessary to examine the merchandise in question through the lens of a 351.225 (k)(2), Diversified Products, analysis.

With regard to Walgreens' contention that the issue of tissue paper imported as part of a set was not addressed during the investigation, we note that the Department considered tissue paper packaged with non-subject merchandise in the Preliminary Determination and subsequently in the I&D Memo. The Department disagrees with QVC's argument that the tissue paper imported as a component of its gift wrap kits is part of a unique product and that this should render the merchandise outside the scope of the Order. The Department examined tissue paper packaged with non-subject merchandise in the original investigation and stated in the I&D Memo that "packaging the subject merchandise with non-subject merchandise does not transform the subject merchandise into merchandise outside the scope of the investigation." Consistent with the Department's prior decisions in this case, we find that the tissue paper packaged in Walgreens' gift bag sets and QVC gift wrap kits fits the description of tissue paper subject to the Order, regardless of its inclusion with the other components of the gift bag sets or gift wrap kits.

Additionally, the Department does not consider Walgreens' gift bag sets to be sets in the same sense as those sets found in the Clip 'N Color Ruling, Fiskars Ruling, Naturally Pretty Ruling, and Avenues Ruling,¹² nor does the Department consider QVC gift wrap kits to be a set in the same terms as those sets found in the Clip N' Color Ruling, Hello Kitty Tote Ruling, Davis Padfolios Ruling, or the Creative Designs Ruling. In these rulings, the Department viewed the sets at issue as a unique item composed of different component pieces, and performed a Diversified Products analysis with respect to the entire set. However, in the current cases, the Department determines that tissue paper packaged together with other gift bags and gift wrap items is not a component of a unique set but merely subject merchandise packaged with non-subject merchandise.

Similar to the scope ruling analysis performed in the Texsport Ruling porcelain-on-steel cooking ware case, where the Department determined that certain components imported and packaged within a set of items were dutiable separate from other items within the same set for which no duty was to be applied, we consider the items included in Walgreens gift bag sets and QVC gift wrap kits to be individual items simply packaged together. We determine, consistent with the Texsport Ruling case, that the materials included in the Walgreens gift bag sets and QVC gift wrap items could be used independently of one another and at different times. The Department, therefore, evaluated the tissue paper separately from all other components included in the Walgreens gift bag sets and QVC gift wrap items and, consistent with the Texsport Ruling case, concluded that this tissue paper was a separate dutiable component, not a piece of an otherwise unique set. Because the tissue paper at issue included in these sets can be used independently,

¹² The Avenues Ruling concluded that both the padfolios and pads of lined paper in consideration were outside the scope, whether packaged as an individual item or as a set. This is distinguishable from the instant case in which Walgreens contends that the merchandise at issue is not subject to the Order only because it is an insignificant component of a set.

the question of whether or not the tissue paper is "significant" with regard to the other products in the gift bag sets and gift wrap kit is irrelevant to the Department's analysis in this case.

With regard to the other materials included in the package of Walgreens gift bag sets of gift bags and crinkle bows, and QVC gift wrap items of gift bags, gift tins, gift boxes, bows, wrapping paper, gift tags, gift cards, gift card pouches, ribbon and stickers, we note that these items are of a fundamentally different kind of merchandise from the subject tissue paper addressed in the scope. Therefore, no antidumping duties should be imposed on these items in reference to this decision, which applies only to imports of subject tissue paper, by the Department.

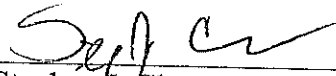
The Order, and subsequent decisions by the Department, clearly demonstrate that the tissue paper component of packages of Walgreens gift bag sets and QVC gift wrap kits is subject merchandise within the scope of the Order. In these specific cases, we have evaluated Walgreens' and QVC's requests in accordance with section 351.225(k)(1) of the Department's regulations and find that the descriptions of the products contained in the petition, the original investigation, and the determinations of the Secretary (including prior scope determinations) and of the ITC are dispositive in these cases. Therefore, the Department has based its decision in these cases on the criteria of a 351.225(k)(1) analysis and need not examine the merchandise in question through the lens of a 351.225(k)(2), Diversified Products, analysis.

Recommendation

Based on the preceding analysis, we recommend the Department find that the tissue paper contained in packages of Walgreens gift bag sets and QVC gift wrap kits is subject merchandise within the scope of the Order. If you agree, we will send the attached letter to the interested parties, and will notify CBP of our determination.

Agree

Disagree



Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

9/19/06

Date