



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

A-570-899

Scope Inquiry

Public Document

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April 10, 2008

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

THROUGH: Wendy J. Frankel
Director
AD/CVD Enforcement, Office 8

Robert Bolling
Program Manager
AD/CVD Enforcement, Office 8

FROM: Hua Lu
Case Analyst
AD/CVD Enforcement, Office 8

RE: Certain Artist Canvas from the People's Republic of China

SUBJECT: Final Scope Ruling: Tara Materials, Inc.

Summary

On July 10, 2007, the Department of Commerce ("the Department") received a scope ruling request from the Tara Materials, Inc. ("Tara"). See Tara's July 10, 2007, Scope Inquiry – Certain Artist Canvas from the People's Republic of China ("Scope Request"). Tara requests a scope ruling that certain artist canvas that is assembled in the People's Republic of China ("PRC") from canvas that has been woven, primed with gesso, and cut to size in the United States and shipped to the PRC, and thereafter imported into the United States, is not subject to antidumping duties. See Scope Request. No other interested parties submitted comments regarding the Scope Request from Tara.

Background

On June 1, 2006, the Department published the antidumping duty order on certain artist canvas from the PRC. See Notice of Antidumping Duty Order: Certain Artist Canvas From the People's Republic of China, 71 FR 31154 (June 1, 2006) ("Order").

The Department defined the scope of the order on certain artist canvas from the PRC as including:



artist canvases regardless of dimension and/or size, whether assembled or unassembled, that have been primed/coated, whether or not made from cotton, whether or not archival, whether bleached or unbleached, and whether or not containing an ink receptive top coat.

Priming/coating includes the application of a solution, designed to promote the adherence of artist materials, such as paint or ink, to the fabric. Artist canvases (*i.e.*, pre-stretched canvases, canvas panels, canvas pads, canvas rolls (including bulk rolls that have been primed), printable canvases, floor cloths, and placemats) are tightly woven prepared painting and/or printing surfaces. Artist canvas and stretcher strips (whether or not made of wood and whether or not assembled) included within a kit or set are covered by this proceeding.

Artist canvases subject to the order are currently classifiable under subheadings 5901.90.20.00 and 5901.90.40.00 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Specifically excluded from the scope of the order are tracing cloths, “paint-by-number” or “paint-it-yourself” artist canvases with a copyrighted preprinted outline, pattern, or design, whether or not included in a painting set or kit. Also excluded are stretcher strips, whether or not made from wood, so long as they are not incorporated into artist canvases or sold as part of an artist canvas kit or set. While the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Additionally, we have determined that canvas woven and primed in India but cut and stretched in the PRC and exported from the PRC is not subject to the order covering artist canvas from the PRC.

Summary of the Scope Request

Tara describes its product as artist canvas in the form of pre-stretched canvas attached to wooden stretcher bars. See Scope Request at 2. Tara states that the production process is as follows: Tara purchases raw woven canvas of U.S.-origin; coats or primes that canvas with a gesso or primer; inspects and cuts the coated canvas to size in the United States; then exports the coated, cut canvas to the PRC. Id. In the PRC, according to Tara, the canvas is wrapped, stapled, trimmed, labeled and exported to the United States. Id. Further, Tara asserts that it has not yet determined the value to be added in the PRC relative to the exported U.S.-origin canvas. Id.

Tara contends that the Department previously has determined that artist canvas which is woven and coated in India and sent to the PRC for cutting and stretching (*i.e.*, attachment to stretched bars) is outside the scope of the order. See Scope Request at 4. See also Order, 71 FR at 31154. Tara states that the four factors relied upon by the Department to determine that the India canvas was not within the scope weigh in favor of a similar finding in this case. Specifically, the four factors are: 1) whether the processed downstream product falls into a different class or kind of product when compared to the upstream product; 2) whether the essential component of the merchandise is substantially transformed in the country of exportation; 3) the extent of processing; and 4) the value added to the product. See Scope Request at 6, see also Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People’s Republic of China, 71 FR 16116 (March 30, 2006), and accompanying Issues and Decision Memorandum at Comment 1 (“Canvas Final”). First, Tara contends that the U.S.-

origin canvas exported from the U.S. to the PRC is the same class or kind as the downstream product that is processed in the PRC (i.e., unassembled artist canvas sent to the PRC; and assembled artist canvas returning to the United States). See Scope Request at 8. Second, Tara asserts that there is no substantial transformation of the essential component of the unassembled artist canvas as a result of the Chinese processing, and that the essential character of the artist canvas is the coating which takes place in the United States. See id. at 9. Third, Tara states the most extensive processing (i.e., weaving the fabric, coating it with gesso and cutting it to size) occurs in the United States. The process performed in the PRC merely attaches the canvas to stretcher bars and packages the product. See id. at 9. Finally, Tara argues that although the value that will be added in the PRC has not been determined, the product's coverage in the same class or kind of merchandise throughout the process outweighs the value added consideration in importance. Id. Therefore, Tara requests that the Department conclude that artist canvas assembled in the PRC from canvas woven, primed with gesso, and cut to size in the United States, shipped to the PRC and, thereafter exported to the United States, is outside the scope of the Order. See Scope Request at 10.

Legal Framework

The Department examines scope requests in accordance with the Department's scope regulations. See 19 CFR 351.225. On matters concerning the scope of an antidumping duty order, the Department first examines the description of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations) and the International Trade Commission ("ITC"). See 19 CFR 351.225(k)(1). This determination 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).

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: 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. 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.

For this inquiry, the Department evaluated Tara's request in accordance with 19 CFR 351.225(k)(1) because it finds that the description of the product contained in the petition, the initial investigation, the determinations by the Secretary (including prior scope determinations) and the ITC are, in fact, dispositive with respect to Tara's artist canvas. Therefore, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2). Upon review, it is apparent that the issue in this inquiry is the country of origin of Tara's artist canvas.

The substantial transformation rule provides guidance for determining "whether the processes performed on merchandise in a country are of such significance as to require the resulting merchandise to be considered the product of the country in which the transformation occurred." E.I. Dupont De Nemours & Company v. United States, 8 F. Supp. 2d 854, 858 (CIT 1998) (citing Smith Corona Corp. v. United States, 811 F. Supp. 692, 695 (CIT 1993)) ("noting that in determining if merchandise exported from an intermediate country is covered by an antidumping

order, Commerce identified the country of origin by considering whether the essential component is substantially transformed in the country of exportation”).

Analysis

In a previous scope decision concerning artist canvas in the less than fair value (“LTFV”) phase of this proceeding, with a similar fact pattern, we determined that the merchandise in question is not within the scope of the order. Specifically, the Department determined that artist canvas woven and primed in India, then cut, stretched, and framed in the PRC is not within the scope of the investigation. See Preliminary Decision Regarding the Country of Origin of Artist Canvas Exported by Hangzhou Foreign Economic Relations & Trade Service Co., Ltd – Certain Artist Canvas from the People’s Republic of China, dated on February 17, 2006 (“Country Origin”) (unchanged in Canvas Final at Comment 1); Canvas Final at Comment 1. The Department noted that the artist canvas is not substantially transformed in the PRC through stretching and framing because the weaving and priming of the canvas in India impart the essential character to the stretched artist canvas. Id. The Department concluded the stretched artist canvas is the same class or kind as the bulk, primed canvas exported from India, and the assembly process in the PRC does not alter the essential qualities of the primed artist canvas. Id. Accordingly, the Department determined that India is the country of origin for artist canvas produced using primed canvas from India and subsequently cut and stretched in the PRC and exported from the PRC, and thus such canvas is not covered by the scope of the investigation/order. Id.

In our previous scope determination, we based our analysis on the following factors: 1) Whether the processed downstream product falls into a different class or kind of product when compared to the upstream product; 2) whether the essential component of the merchandise is substantially transformed in the country of exportation; 3) the extent of processing; and 4) the value added to the product. See Country Origin; Canvas Final at Comment 1. We have used the same factors noted above to analyze the facts as presented on the record of the instant scope ruling request.

With respect to Tara’s request, we find a fact pattern similar to that found in the scope decision regarding Indian canvas in the LTFV phase, although in this case the input product is U.S.-origin coated and primed artist canvas which is assembled in the PRC and then re-exported to the United States. Using the same criteria as the LTFV, as detailed below, we find that the merchandise as described by Tara in the instant scope ruling request is not within the scope of the order:

- (1) Whether the processed downstream product falls into a different class or kind of product compared to the upstream product. Based on record evidence, Tara stated that the coating of the fabric, thus the essential character of the artist canvas, is imparted in the United States. See Scope Request at 2. Additionally, Tara stated that the canvas is cut in the United States. See Scope Request at 2. We agree that the processing performed in the PRC does not change the class or kind of the primed, coated and cut artist canvas.
- (2) Whether the essential component of the merchandise is substantially transformed. Record evidence indicates that the artist canvas is not substantially transformed in the PRC. According to evidence, the only processing taking place in the PRC is wrapping, stapling and labeling. See

Scope Request at 2. The essential quality or characteristic of any type of artist canvas is the artist canvas itself and the essential function of an artist canvas is to provide a painting surface. The fact that the scope of the order covers artist canvas "whether assembled or unassembled" and excludes stretcher strips sold separately from artist canvas indicates that the frame or panel on which an artist canvas may be mounted or stretched does not impart the essential character to artist canvas.

- (3) The extent of processing. Record evidence indicates that the most extensive processing (i.e., weaving, coating and cutting to size) occurs in the United States. See Scope Request at 2. The process of wrapping, stapling and labeling in the PRC does not substantially alter the inherent nature of the primed and cut canvas from the United States. The extent of processing in the PRC does not change the essential physical characteristics and qualities of the canvas.
- (4) The value added of the product. Tara stated that the value added of the product has not been determined. See Scope Request at 2. While the Department's strong preference is to address all factors normally considered in reaching issues of substantial transformation/country of origin, we find that in this case the absence of information regarding value added does not substantially impair our analysis because of the weight of the other evidence detailed above.

As a result, based on record evidence, we find that the artist canvas produced in the United States and further processed in the PRC, as described by Tara in the immediate scope ruling request, and subsequently re-exported to the United States is not substantially transformed in the PRC, and thus remains of U.S. origin.

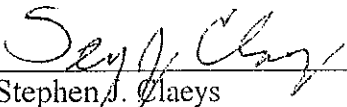
Recommendation

Based upon the above analysis, we recommend the Department find that Tara's U.S.-origin coated and primed artist canvas assembled in the PRC is not substantially transformed in the PRC and therefore continues to be U.S.-origin canvas. Consequently, Tara's U.S.-origin artist canvas is not within the scope of the antidumping duty order on artist canvas from the PRC.

✓

Agree

Disagree



Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

4/10/08

Date