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

A-570-899 ✓

Scope Inquiry

~~Proprietary Document~~

IA/08: SB

PUBLIC VERSION

August 8, 2009

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

THROUGH: Wendy J. Frankel
Director, Office 8
Antidumping and Countervailing Duty Operations

Eugene Degnan
Acting Program Manager, Office 8
Antidumping and Countervailing Duty Operations

FROM: Sergio Balbontin
Case Analyst, Office 8
Antidumping and Countervailing Duty Operations

RE: Certain Artist Canvas from the People's Republic of China: Final
Scope Ruling for Art Supply Enterprises, Inc.

Summary

On May 20, 2009, the Department of Commerce ("Department") received a submission from Art Supply Enterprises, Inc. dba MacPherson's ("Art Supply") requesting a scope determination ("Art Supply's Request (India)")¹ on whether its framed artist canvases are outside the scope of the antidumping order on certain artist canvas from the People's Republic of China ("PRC"). See Notice of Antidumping Duty Order: Certain Artist Canvas from the People's Republic of China, 71 FR 31154 (June 1, 2006) ("Order"). No interested party has filed comments.

In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that Art Supply's framed artist canvases are not within the scope of the Order.

¹ See Scope Ruling Request by Art Supply Enterprises, Inc., dated May 20, 2009.



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Summary

On May 20, 2009, the Department of Commerce ("Department") received a submission from Art Supply Enterprises, Inc. dba MacPherson's ("Art Supply") requesting a scope determination ("Art Supply's Request (India)")¹ on whether its framed artist canvases are outside the scope of the antidumping order on certain artist canvas from the People's Republic of China ("PRC"). See Notice of Antidumping Duty Order: Certain Artist Canvas from the People's Republic of China, 71 FR 31154 (June 1, 2006) ("Order"). No interested party has filed comments.

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Background

On June 1, 2006, the Department published the antidumping duty Order on certain artist canvas from the PRC. The scope of the Order states:

The products covered by this investigation are 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 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.² 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.

See Order.

On May 20, 2009, Art Supply submitted a request seeking a determination on whether its framed artist canvases were outside the scope of the Order. Pursuant to the requirements of 19 CFR 351.225(c), Art Supply provided a description of its framed artist canvases and an explanation of why it believed they were outside the scope of the Order. No interested party filed comments regarding Art Supply's Request (India).

In its scope request, Art Supply explained that the artist canvases in question are woven and primed by [] in the Republic of India ("India"). See Art Supply Request (India) at 1. [] purchases the spun yarn for weaving from [] who spins the yarn in []. See Art Supply Request (India) at 2. After weaving the canvas, [] primes the canvas by stretching and straightening the canvas, evenly

² Artist canvases with a non-copyrighted preprinted outline, pattern, or design are included in the scope, whether or not included in a painting set or kit.

pouring the primer on the canvas, heating the primer until dry, re-priming and drying the canvas a second time, and then rolling, inspecting, and packaging the canvas for shipment. Id. [] arranges for [] and [], both PRC companies, to purchase the woven and primed canvas from []. Id. Art Supply provided copies of sales invoices from [] to []. See Art Supply Request (India) at Exhibit 1. [] and [] then cut the rolled canvas and stretch them over frames in the PRC. See Art Supply's Request (India) at 3. Art Supply reports that the primed canvas is exported from India under Harmonized Tariff Schedule subheading 5901.90 and imported, by Art Supply, under 5901.90.4000. Id.

Citing both the scope language of the Order and previous Department determinations, Art Supply argues that its framed artist canvases are excluded from the Order as, consistent with the Department's substantial transformation analysis, Art Supply's framed artist canvases are products of India and not the PRC. See Art Supply's Request (India) at 6; see also Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China and accompanying Issues and Decision Memorandum at 8-9. Specifically, Art Supply argues that: (1) the woven and primed canvas from India is in the same class or kind as the downstream product exported from the PRC; (2) the primed canvas is not substantially transformed in the PRC; and (3) the processing in the PRC is restricted to cutting and stretching the canvas onto the frame. Id.

On June 24, 2009, the Department requested that Art Supply provide an affidavit from [] affirming its part in the production process of the framed artist canvases in question and evidence demonstrating that the framed artist canvases in question are in fact woven and primed in India. See letter titled "Certain Artist Canvas from the People's Republic of China, Scope Ruling Request: Request for More Information," from Eugene Degnan to R. Kevin Williams, dated June 24, 2009.

On July 14, 2009, the Department received Art Supply's response to the Department's June 24, 2009, request ("Art Supply's Response (India)").³ Art Supply provided a signed declaration from [] stating that [] produces the woven and primed canvas, from yarn purchased from [], and that it sells the woven and primed canvas to [] and []. See Art Supply's Response (India) at Exhibit 1. []'s affidavit additionally states that it weaves and primes the canvas in its factory located in India. Id. []'s affidavit additionally reiterates the priming process as described above and includes photographs from []'s factory depicting the process. See Id. and Exhibit 2.

As evidence demonstrating that the framed artist canvases in question are woven and primed in India, Art Supply provided, in Art Supply's Response (India), a purchase order from [] to [] for yarn, related shipping entries, and a value-added tax invoice. See Art Supply's Response (India) at Exhibit 4. Art Supply also provided copies of bills of lading for canvas shipments from [] to [] via the former's import/export division, [], which correspond to the copies of sales invoices from [] to [] in Art

³ See Art Supply Enterprises, Inc.'s July 14, 2009, Submission of Additional Information Requested by the Department's June 24, 2009, Letter.

Supply's Request (India), Exhibit 1. See Art Supply's Response (India) at Exhibit 5. Indian-issued certificates of origin corresponding to Art Supply's Response (India), Exhibit 5 were also provided by Art Supply. See Art Supply's Response (India) at Exhibit 6. Lastly, Art Supply provided a copy of a shipment order from [] to []. See Art Supply's Response (India) at Exhibit 7.

Art Supply's Art Supply Response (India) additionally includes signed separate declarations from [] and [] affirming their respective roles in purchasing woven primed canvas from []. See Art Supply's Response (India) at Exhibits 5 and 7.

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. See 19 CFR 351.225(k)(2). 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 the evidence before the Department.

For this inquiry, the Department evaluated Art Supply's Request (India) and Art Supply's Response (India) in accordance with 19 CFR 351.225(k)(1) and 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 Art Supply's framed artist canvases. Therefore, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2).

The issue in this inquiry is the country of origin of Art Supply's framed artist canvases. 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

With respect to Art Supply's Request (India), we find that for the reasons outlined below, Art Supply's framed artist canvases are not within the scope of the Order.

In a previous scope decision concerning framed artist canvases we determined, under a similar fact pattern to the instant case, that the merchandise was not within the scope of the Order. In that case, the Department addressed whether framed artist canvases made from primed canvas of Indian origin, but subsequently cut and stretched in, and exported from, the PRC, were products of India or the PRC. 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 from John Freed to Wendy Frankel, dated February 17, 2006 (“Artist Canvas Memorandum”)⁴. Citing the substantial transformation rule, the Department concluded that the framed artist canvases were not substantially transformed in the PRC through mere stretching and framing because the weaving and priming of the canvases in India imparted the essential character to the stretched framed artist canvases.⁵ See Artist Canvas Memorandum at 10. Accordingly, we determined that India was the country of origin and thus these artist canvases were ruled outside the scope of the Order. See Artist Canvas Memorandum at 12.

On July 10, 2007, Tara Materials Inc. (“Tara”) filed a scope request seeking a determination that its framed artist canvases were outside the scope of the Order. See Certain Artist Canvas from the People's Republic of China, Final Scope Ruling: Tara Materials Inc., dated April 10, 2008 (“Tara Ruling”). Tara's framed artist canvases were cut and framed in the PRC, subsequent to being primed and woven in the United States. See Tara Ruling at 2. Citing the Department's Artist Canvas Memorandum, the Department ruled that Tara's framed artist canvases were outside the scope of the Order as the framed artist canvases, produced in the United States and further processed in the PRC, were not substantially transformed in the PRC. See Tara Ruling at 4 and 5.

On September 4, 2008, C2F, Inc. (“C2F”) filed a scope request seeking a determination that its framed artist canvases were outside the scope of the Order. See Certain Artist Canvas from the People's Republic of China: Final Scope Ruling for C2F, Inc., dated May 29, 2009 (“C2F Ruling”). C2F's framed artist canvases were cut and framed in the PRC, subsequent to being primed and woven in South Korea. See C2F Ruling at 5. As in the Tara Ruling, the Department ruled that C2F's framed artist canvases were outside the scope of the Order as the framed artist canvases, produced in South Korea and further processed in the PRC, were not substantially transformed in the PRC. See C2F Ruling at 5 and 6.

⁴ Unchanged in 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.

⁵ Substantial transformation analysis may be based on any combination of the following factors: (1) whether processed downstream products fall into a different class or kind of product when compared to the upstream product; (2) whether the essential merchandise component is transformed in the country of exportation; (3) the extent of processing; and (4) the value added to the product. See Artist Canvas Memorandum.

On December 22, 2008, Art Supply filed another scope request seeking a determination that its framed artist canvases were outside the scope of the Order. See Certain Artist Canvas from the People's Republic of China: Final Scope Ruling for Art Supply Enterprises, Inc., dated July 9, 2009 ("Art Supply Ruling (Vietnam)"). Art Supply's framed artist canvases were cut and framed in the PRC, subsequent to being primed and woven in Vietnam. See Art Supply Ruling (Vietnam) at 2. As in the Tara Ruling and C2F Ruling, the Department ruled that Art Supply's framed artist canvases were outside the scope of the Order as the framed artist canvases, produced in Vietnam and further processed in the PRC, were not substantially transformed in the PRC. See Art Supply Ruling (Vietnam) at 5 and 6.

In the instant case, record evidence, i.e., Art Supply's Request (India) and Art Supply's Response (India), indicates that Art Supply's framed artist canvas production is similar to the production process in the Artist Canvas Memorandum, the Tara Ruling, the C2F Ruling, Art Supply Ruling (Vietnam), and the language of the scope of the Order. Applying the same analysis as in the Artist Canvas Memorandum, we find that the merchandise described by Art Supply is not within the scope of the Order for the following reasons:

1. Record evidence demonstrates that the weaving and priming of Art Supply's framed artist canvases, completed in India by [], imparts the framed artist canvases' essential character. Consistent with the Department's past determinations, we agree with Art Supply that the processing performed in the PRC does not change the class or kind of the woven and primed artist canvases.
2. Record evidence also indicates that artist canvases are not transformed in the PRC as the only activity which occurs in the PRC is the frame production and preparing the canvases for sale. See Art Supply's Response (India) at Exhibit 5 and 7. The essential quality or characteristic of an artist canvas is the artist canvas itself and the essential function of an artist canvas is to provide a surface for painting. See Artist Canvas Memorandum at 10. These essential qualities are imparted to Art Supply's canvases in India rather than the PRC and the activities occurring in the PRC do not alter the essential qualities of the product. See Art Supply's Request (India) at 2 and Art Supply's Response (India) at Exhibits 1 and 2.
3. Art Supply did not address the value added to the product. While the Department's preference is to address all factors normally considered in reaching issues of substantial transformation, we find that in the instant case the absence of information regarding value added does not substantially impair our analysis because of the weight of other evidence detailed above.

Accordingly, in conjunction with Art Supply's submitted evidence, we find that the weaving and priming of the canvases takes place in a third country and that Art Supply's framed artist canvases are not substantially transformed in the PRC.

Therefore, based on record evidence, the description of the merchandise in the initial investigation, prior scope rulings of the Secretary, and Art Supply's collective submissions, we have determined that Art Supply's framed artist canvases are outside the scope of the Order


because their essential character is imparted in India (i.e., outside the country subject to the Order), they are not substantially transformed in the PRC and thus remain of Indian origin.

Recommendation

We recommend, based upon the foregoing analysis, that the Department find, pursuant to 19 CFR 351.225(k)(1), that Art Supply's framed artist canvases are outside the scope of the Order covering certain artist canvases from the PRC as Art Supply's Indian-origin coated and primed artist canvases, assembled in the PRC, are not substantially transformed in the PRC and therefore continue to be of Indian origin.


_____ Agree

_____ Disagree


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

8/5/09

Date