



A-570-899  
Scope Inquiry  
**Public Document**  
IA/08: SB

May 14, 2010

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

THROUGH: Wendy J. Frankel  
Director, Office 8

FROM: Eugene Degnan  
Program Manager, Office 8  
Sergio Balbontin  
Case Analyst, Office 8

RE: Certain Artist Canvas from the People's Republic of China: Final  
Scope Ruling for Wuxi Phoenix Artist Materials Co., Ltd.

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## Summary

On January 14, 2010, the Department of Commerce ("Department") received a submission from Wuxi Phoenix Artist Materials Co., Ltd. ("Wuxi Phoenix") requesting a scope determination ("Wuxi Phoenix's Request")<sup>1</sup> on whether its framed artist canvases that are woven and primed in Vietnam are outside the scope of the antidumping order on certain artist canvas from the People's Republic of China ("PRC").<sup>2</sup> No interested party, other than Wuxi Phoenix, has filed comments.

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

## Background

The Department published the *Order* on June 1, 2006. The scope of the *Order* states:

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<sup>1</sup> See Scope Ruling Request by Phoenix Enterprises, Inc., dated January 14, 2010.

<sup>2</sup> See *Notice of Antidumping Duty Order: Certain Artist Canvas from the People's Republic of China*, 71 FR 31154 (June 1, 2006) ("*Order*").



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.<sup>3</sup> 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.<sup>4</sup>

On January 14, 2010, Wuxi Phoenix 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), Wuxi Phoenix 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 Wuxi Phoenix’s Request.

In Wuxi Phoenix’s Request, Wuxi Phoenix explained that the artist canvases in question are woven by a company in Vietnam (“the Weaver”), with yarn purchased in Vietnam, and are then sold to a second company in Vietnam that primes the woven canvases (“the Primer”). Wuxi Phoenix then imports the woven and primed canvas into the PRC where Wuxi Phoenix cuts and frames the canvas. Upon export from Vietnam to the PRC, the woven and primed canvas is classified under the Harmonized Tariff Schedule subheading 5901.90. Upon export from the PRC to the United States, the framed artist canvas is classified under Harmonized Tariff Schedule subheading 5901.90.4000.<sup>5</sup>

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<sup>3</sup> 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.

<sup>4</sup> *See Order*.

<sup>5</sup> *Id.*

As evidence demonstrating that the framed artist canvases in question are woven and primed in Vietnam, in Wuxi Phoenix's Request, it provided the following exhibits:

- (a) An English translation of a declaration from the Weaver dated November 20, 2008 asserting that it sells "unprimed cotton duck", purchased and woven in Vietnam, to the Primer, *see* Exhibit 2;
- (b) five yarn receipt records from the Weaver, *see* Exhibit 3;
- (c) photographs of the Weaver's facilities and photographs depicting the weaving process, *see* Exhibit 4;
- (d) a purchase contract for unprimed cotton canvas issued by the Weaver for purchase by the Primer, *see* Exhibit 5;
- (e) four invoices, from the months of December 2007, and January 2008, issued by the Weaver to the Primer, *see* Exhibit 6;
- (f) a quality control report produced by the Primer regarding its receipt of unprimed cotton duck from the Weaver, *see* Exhibit 7;
- (g) an English translation of a declaration from the Primer dated April 30, 2009, asserting that it produces its painting fabrics "in-house", *see* Exhibit 8;
- (h) documents relating to the sale and shipment to Vietnam of primer material by Wuxi Phoenix to the Primer, *see* Exhibit 9;
- (i) records maintained by the Primer of its priming process, *see* Exhibit 10;
- (j) photographs of the Primer's priming equipment, *see* Exhibit 11;
- (k) two Chamber of Commerce & Industry of Vietnam-issued certificates of origin for "canvas rolls" shipments from the Primer to Wuxi Phoenix, *see* Exhibit 12; and
- (l) the bills of lading corresponding to Exhibit 12, *see* Exhibit 13.

On March 3, 2010, the Department requested that Wuxi Phoenix:

- (1) Provide an affidavit from the Primer affirming its part in the production process, specifically regarding the priming of the framed artist canvases in question because the certified translation of the affidavit in Exhibit 8 did not conform to Wuxi Phoenix's narrative explanation of Exhibit 8.<sup>6</sup>

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<sup>6</sup> Wuxi Phoenix's narrative explained that the affidavit confirmed that the Primer primes the cotton duck canvas purchased from the Weaver, *i.e.* the cotton duck canvas at issue. The certified translation of Exhibit 8's affidavit, however, only identified the Primer's business scope and internal operations. Accordingly, Exhibit 8's affidavit did not present evidence of the Primer's, or the Weaver's roles and locations in the production of the framed artist

- (2) Provide an affirmation of the accuracy of Exhibit 2's affidavit or another English translation of Exhibit 2's affidavit as the affidavit did not appear to conform to the corresponding uncertified translation.
- (3) Provide an explanation on how the items listed in the certificates of origin in Exhibit 12 can be identified as "primed canvas" as the items were not identified as "primed canvas".<sup>7</sup>

On March 30, 2010, Wuxi Phoenix provided the Department with a declaration from the Primer attesting that it purchases cotton duck canvas from the Weaver, that it applies the gesso primer at its Vietnam facility, and that it sells the primed cotton duck canvas to Wuxi Phoenix.<sup>8</sup> Wuxi Phoenix also provided the Department with a new certified translation of Exhibit 2 which is consistent with the narrative provided in Wuxi Phoenix's Request.<sup>9</sup> Lastly, Wuxi Phoenix provided the Department with two purchase orders and sales receipts, identifying the items as "primed canvas" and which tie to the certificates of origin in Exhibit 12 of Wuxi Phoenix's Request via quantity, purchase order number, and date.<sup>10</sup>

Citing both the scope language of the *Order* and previous Department determinations, Wuxi Phoenix argues that its framed artist canvases are excluded from the *Order* as, consistent with the Department's substantial transformation analysis, Wuxi Phoenix's framed artist canvases are products of Vietnam and not the PRC.<sup>11</sup> Specifically, Wuxi Phoenix argues that: (1) the woven and primed canvas from Vietnam 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; (3) the processing in the PRC is restricted to cutting and stretching the canvas onto the frame; and (4) all of the weaving and priming, the most extensive processing, is conducted in Vietnam.<sup>12</sup> Wuxi Phoenix also argued that these facts are identical to the fact pattern in the Department's scope determination in *Certain Artist Canvas from the People's Republic of China: Final Scope Ruling for Art Supply Enterprises, Inc.* (July 9, 2009). Wuxi Phoenix provided a copy of this determination as an exhibit. *See* Exhibit 1.

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canvas at issue.

<sup>7</sup> *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 March 3, 2010.

<sup>8</sup> *See* Wuxi Phoenix's March 30, 2010, Submission of Additional Information Requested by the Department's March 3, 2010, letter at Exhibit 1.

<sup>9</sup> *Id.* at Exhibit 2.

<sup>10</sup> *Id.* at Exhibit 3.

<sup>11</sup> *See* Wuxi Phoenix's Request at 5 and 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 8-9.

<sup>12</sup> *Id.*

## 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 Wuxi Phoenix's Request 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 Wuxi Phoenix's framed artists 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 Wuxi Phoenix'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."<sup>13</sup>

## Analysis

With respect to Wuxi Phoenix's Request, we find that for the reasons outlined below, Wuxi Phoenix's framed artist canvases are not within the scope of the *Order*.

In previous scope decisions concerning framed artist canvases where fact patterns were similar to the fact pattern in the instant case, the Department determined that the merchandise in question was not within the scope of the *Order*.

1. In a February 17, 2006, decision, the Department addressed whether framed artist canvases made from primed canvas of Indian origin, but subsequently cut and stretched

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<sup>13</sup> *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, the Department will identify the country of origin by considering whether the essential component is substantially transformed in the country of exportation).

in the PRC, and then exported from the PRC, were products of India or the PRC.<sup>14</sup> 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.<sup>15</sup> Accordingly, we determined that India was the country of origin and thus these artist canvases were ruled outside the scope of the *Order*.<sup>16</sup>

2. 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*.<sup>17</sup> Tara’s framed artist canvases were cut and framed in the PRC, subsequent to being primed and woven in the United States.<sup>18</sup> 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.<sup>19</sup>
3. 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*.<sup>20</sup> C2F’s framed artist canvases were cut and framed in the PRC, subsequent to being primed and woven in South Korea.<sup>21</sup> 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.<sup>22</sup>

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<sup>14</sup> 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”).

<sup>15</sup> 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. See also Artist Canvas Memorandum at 10.

<sup>16</sup> See Artist Canvas Memorandum at 12.

<sup>17</sup> See Certain Artist Canvas from the People’s Republic of China, Final Scope Ruling: Tara Materials Inc, dated April 10, 2008 (“Tara Ruling”).

<sup>18</sup> See Tara Ruling at 2.

<sup>19</sup> *Id.* at 4 and 5.

<sup>20</sup> See Certain Artist Canvas from the People’s Republic of China: Final Scope Ruling for C2F, Inc., dated May 29, 2009 (“C2F Ruling”).

<sup>21</sup> *Id.* at 5.

<sup>22</sup> *Id.* at 5 and 6.

4. On December 22, 2008, Art Supply Enterprises, Inc. dba MacPherson's ("Art Supply") filed a scope request seeking a determination that its framed artist canvases were outside the scope of the *Order*.<sup>23</sup> Art Supply's framed artist canvases were cut and framed in the PRC, subsequent to being primed and woven in Vietnam.<sup>24</sup> 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.<sup>25</sup> Art Supply filed an additional scope request on August 8, 2009, seeking a determination that its framed artist canvases, woven and primed in India and then cut and stretched in the PRC, were outside the scope of the *Order*.<sup>26</sup> Here again, the Department ruled that Art Supply's framed artist canvases were outside the scope of the *Order*.

Record evidence (*i.e.*, Wuxi Phoenix's Request and accompanying exhibits, described above) indicates that Wuxi Phoenix's framed artist canvas production is similar to the production process analyzed in the Artist Canvas Memorandum, the Tara Ruling, the C2F Ruling, the Art Supply Ruling (Vietnam), the Art Supply Ruling (India), and comports with the exclusionary language in the scope of the *Order*. Applying the same analysis as in the Artist Canvas Memorandum, we find that the merchandise described by Wuxi Phoenix is not within the scope of the *Order* for the following reasons:

1. Record evidence demonstrates the weaving and priming of Wuxi Phoenix's framed artist canvases, completed in Vietnam by the Weaver and Primer, respectively, imparts the framed artist canvases' essential character. Consistent with the Department's past determinations, we agree with Wuxi Phoenix 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* Wuxi Phoenix's Request at 2. 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 Wuxi Phoenix's canvases in Vietnam rather than the PRC and the activities occurring in the PRC do not alter the essential qualities of the product. *See* Wuxi Phoenix Request at 6.
3. As the most extensive portion of the work, *i.e.* the weaving and priming, occurs in Vietnam, we find that the remaining processes of cutting and weaving, performed in the PRC, do not substantially alter the value of Wuxi Phoenix's artist canvases.

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<sup>23</sup> *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)").

<sup>24</sup> *Id.* as 2.

<sup>25</sup> *Id.* at 5 and 6.


<sup>26</sup> *See* Certain Artist Canvas from the People's Republic of China: Final Scope Ruling for Art Supply Enterprises, Inc., dated August 8, 2009 ("Art Supply Ruling (India)").

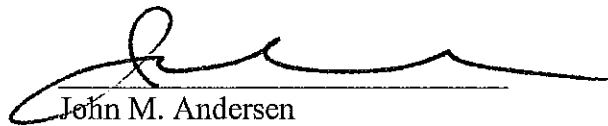
Accordingly, we find that the weaving and priming of the canvases takes place in a third country and that Wuxi Phoenix's framed artist canvases are not substantially transformed in the PRC.

Therefore, based on record evidence, the description of the merchandise in the initial investigation, prior scope rulings of the Secretary, and Wuxi Phoenix's submission, we have determined that Wuxi Phoenix's framed artist canvases are outside the scope of the *Order* because their essential character is imparted in Vietnam (*i.e.*, outside the country subject to the *Order*), they are not substantially transformed in the PRC and, thus, remain of Vietnamese origin.

### Recommendation

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

  
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Agree                                      Disagree

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

5/13/10  
\_\_\_\_\_  
Date