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Scope Inquiry
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July 19, 2010

MEMORANDUM TO: Edward C. Yang
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

Eugene Degnan
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 Masterpiece Artist Canvas, Inc.

Summary

On March 22, 2010, the Department of Commerce ("Department") received a submission from Masterpiece Artist Canvas, Inc. ("Masterpiece") requesting a scope determination ("Masterpiece's Request") that its scrapbooking canvases are outside the scope of the antidumping order on certain artist canvas from the People's Republic of China ("PRC").¹ On May 11, 2010, Tara Materials, Inc. ("Tara"), the petitioner in the investigation, submitted its opposition to Masterpiece's Request ("Tara's Opposition"). On May 26, 2010, Masterpiece submitted its rebuttal to Tara's Opposition ("Masterpiece's Rebuttal").

On June 6, 2010, we invited interested parties to comment on Masterpiece's Request with respect to the description of the products and scope of the *Order*. On June 16, 2010, we received supplemental comments from Masterpiece ("Masterpiece's Supplemental") and Tara ("Tara's Supplemental").

In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that Masterpiece's scrapbooking canvases are within the scope of the *Order*.

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



Background

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

The products covered by this *Order* 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 *Order*.

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.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 *Order* 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.³

Masterpiece’s Request

Masterpiece describes their scrapbooking canvas as canvas that “allow {s} for traditional methods of scrapbooking to be displayed on walls, tables, mantels, desktops, dressers, end tables, etc.” and that “{t}hey are not used for painting or printing but instead permit the user to attach and display photographs, printer media, memorabilia, *etc.*”⁴ Masterpiece also describes scrapbooking as “a method for preserving family and/or personal history.”⁵ Masterpiece adds that their product allows the end-user to mount eyelets, screw multiple canvases together, and hinge them together.⁶

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.

³ See *Order*.

⁴ See Masterpiece Request at 1.

⁵ See *Id.*

⁶ See *Id.* at 4.

Masterpiece sells two versions of its scrapbook canvas, both of which are at issue. Both versions consist of canvas stretched and stapled over a four-piece wooden frame.⁷ The excess canvas is tucked and glued into a groove in the outer edge of the wooden base. Screw eyes, for hanging purposes, are included with the canvases. The two versions differ in the following manner.

The first version, the “natural” canvas, is primed on the back of the canvas but not on the front.⁸ That is, the side intended to be displayed retains its natural unprimed state. According to Masterpiece, this is done for two reasons. The first is to prevent the canvas’ fraying during the “cropping” process, *i.e.* application of items such as photos and other objects to the canvas.⁹ The second reason for priming the back of the canvas is for fire retardency in compliance with the Federal Hazardous Substances Act.¹⁰ Masterpiece provided a copy of its certification for fire retardancy issued by a private party, *i.e.* a non-governmental party.¹¹ On June 6, 2010, we invited interested parties to comment on whether the priming of the natural canvas, on the back of the canvas, is designed to promote the adherence of artist materials, such as paint or ink, to the fabric. The second version, the “white” canvas, is primed on the front/exposed side. We did not solicit comments regarding the white canvas.

Retail packaging for both the white and natural canvases advertise the products as “scrapbook décor canvas.”¹² The retail packaging also advertises the canvases as designed to be decorated with paint, paper, photos, and fabric.¹³ Masterpiece notes that there is no reference to the word “artist” on the retail packaging and that the retail packaging does not contain images of the scrapbook canvas being used in “traditional artist canvas applications.”¹⁴

Masterpiece argues that, pursuant to 19 CFR 351.225(k)(1) of the Department’s regulations, both the white and natural canvases are outside the scope of the *Order*.¹⁵ In particular, Masterpiece submits that, contrary to the scope of the Petition, the *Order*, and the determination of the United States International Trade Commission (“ITC”), neither the white nor natural canvases are intended to be used as artist canvas but, rather, are designed, marketed, and sold as scrapbooking canvases.¹⁶

Masterpiece concedes that the white canvas is both primed and may be painted prior to scrapbooking.¹⁷ However, Masterpiece emphasizes that the intended use of the white canvas is not for painting, and any painting is ancillary to the scrapbooking function. In addition, according to Masterpiece, any painting on the white canvas is done with non-traditional artist

⁷ Masterpiece did not provide this technical description of its products. Instead, Masterpiece provided a physical sample.

⁸ See Masterpiece Request at 2.

⁹ See *Id.* at 2.

¹⁰ See *Id.* The Federal Hazardous Substances Act requires, *inter alia*, the precautionary labeling of hazardous household products.

¹¹ See Masterpiece Request at 8.

¹² See *Id.* at 4.

¹³ See *Id.*

¹⁴ See *Id.* at 5.

¹⁵ See *Id.* at 6.

¹⁶ See *Id.*

¹⁷ See *Id.*

materials.¹⁸ Here, in interpreting the scope of the *Order*, Masterpiece argues that traditional artist materials include oil paints, acrylic paints, alkyd paints, and water-soluble oil paints.¹⁹ According to Masterpiece, these traditional artist materials have unique characteristics such as, the ability to blend in order to achieve the desired effect and these materials are of a higher quality and sold at a premium to “craft or home décor type wall paints”.²⁰

Masterpiece additionally notes the United States Customs and Border Protection (“CBP”) has classified scrapbooking canvases under HTSUS 6307.90.9889 or, “other made up textile articles, other”.²¹ According to the copy of the CBP letter provided by Masterpiece, Masterpiece described the product to CBP as “{t}raditional fabric mounts, 100% linen fabric mounted on a wooden frame... coated with a clear acrylic that allows materials such as photographs or other papers to adhere and also provides protection from mold, humidity, and pulling... used by tole masters, naturalists, and traditional art historians.”²² Masterpiece concedes, however, that reference to the HTSUS is not dispositive in the Department’s analysis.²³

Lastly, Masterpiece argues that scrapbooking canvas was a product readily available on the market and that, had the petitioner wanted the product included in the scope of the *Order*, the Petitioner could have framed the scope of the *Order* to accommodate this end.²⁴ According to Masterpiece, the Petitioner did not include scrapbooking canvas because the injury to the domestic industry was caused by artist canvas exclusively.²⁵

In the alternative, Masterpiece argues that both the white and natural canvas are outside the scope of the *Order* pursuant to section 351.225(k)(2) of the Department’s regulations by way of analysis of the following factors: (1) the physical characteristics of the merchandise; (2) expectation of the ultimate purchaser; (3) ultimate use of the product; (4) the channels of trade; and (5) the manner in which the product is advertised and displayed. First, with respect to the physical characteristics of the natural canvas, Masterpiece argues that it does not share the same physical characteristics as the subject merchandise because the natural canvas is not primed on the front/exposed side. Masterpiece notes that a primed surface prevents the caustic effects of traditional artist materials on the fabric fibers of the canvas and that, for this reason, the natural canvas is unsuitable for painting “fine works of art.” Masterpiece adds that the natural canvas is better suited for “distressing” which, according to Masterpiece, is the use of an ink pad to create “an interesting effect upon the bare natural canvas not possible with the white canvas.”²⁶ Masterpiece concedes that the white canvas “shares common physical characteristics of the products described in the *Order*”, but submits that the remainder of analysis pursuant to 19 CFR

¹⁸ *See Id.*

¹⁹ *See Id* at 7.

²⁰ *See Id.*

²¹ *See Id.* In Masterpiece’s Request, Masterpiece states that the CBP Ruling Letter N053541, dated March 20, 2009, was provided as an exhibit in Masterpiece’s Request. It was not provided in Masterpiece’s original scope request, however, it was provided by Masterpiece as an exhibit in Masterpiece’s Rebuttal.

²² *See Id.*

²³ *See Id.*

²⁴ *See Id* at 8.

²⁵ *See Id.*

²⁶ *See Id.*

351.225(k)(2) demonstrates that the white canvas is outside the scope of the *Order*.²⁷

With respect to the expectation of the ultimate purchaser, according to Masterpiece, the retail packaging, books on scrapbooking published by third parties (excerpts of which were provided to the Department by Masterpiece), and the physical samples provided to the Department, demonstrate that the expectation of the ultimate purchaser is for use in scrapbooking and not painting.²⁸ Masterpiece adds that it offers accessories for its scrapbooking canvas, such as connector clips (to hang multiple canvas from a single canvas affixed to a wall), hinges (to connect the canvas as a book), wall panel clips (two piercing pins on back and a swivel used to hang items), “transfer paper” (essentially photo-printing paper); and “grime guard” which is a UV-protective spray for attached photos which further narrow the expectation of the ultimate purchaser.²⁹ According to Masterpiece, these accessories are not used with traditional artist canvas and not typically available in “normal art supply retail market channels.”³⁰ Masterpiece has provided print-outs of customer testimonials (from Masterpiece’s website) in further attempts to demonstrate that the expectation of the ultimate purchaser is scrapbooking and not painting.³¹

In addressing the ultimate use of the product, Masterpiece reiterates that the books on scrapbooking demonstrate that the white canvas is designed to have three-dimensional objects affixed to it rather than to be painted on.³² Masterpiece also argues that typical procedures used on the white canvas (*e.g.*, putting nails or screws into the canvas/stretcher bars) would not likely be performed on traditional artist canvas due to the harm to the finished paint and the canvases’ value.³³ Masterpiece provided pictures of a craft and hobby workshop it taught in 2006 where participants learned various methods for using scrapbooking canvas.³⁴ Masterpiece notes that the pictures demonstrate that non-traditional artist tools (*e.g.*, hammers and screwdrivers) are readily used and traditional artist tools (*e.g.*, paint brushes) are not.³⁵

Regarding the channels of trade factor, Masterpiece argues that its scrapbooking canvas is sold through trade channels not conventionally used for traditional artist canvas. According to Masterpiece, this results from the fact that Masterpiece has created a new market for the scrapbooking consumer.³⁶ As evidence, Masterpiece notes that its scrapbooking canvas is marketed and sold under its subsidiary brand “Canvas Concepts.”³⁷ Masterpiece adds that its Canvas Concepts website is restricted to the scrapbook canvases and their accessories whereas Masterpiece’s main website concentrates exclusively on traditional artist materials, *e.g.*, stretcher bars and rolled canvas.³⁸ Further, Masterpiece argues that other scrapbooking retailers also

²⁷ *See Id* at 10.

²⁸ *See Id*.

²⁹ *See Id* at 11-13.

³⁰ *See Id* at 14.

³¹ *See Id* at 14-19.

³² *See Id* at 20.

³³ *See Id*.

³⁴ *See Id* at 21-24.

³⁵ *See Id* at 20.

³⁶ *See Id* at 25.

³⁷ *See Id*.

³⁸ *See Id*.

market scrapbooking canvas exclusively to “scrapbookers” and not traditional artists, and provided as examples webpage print outs of Scrapbooking Warehouse, Memory Villa, Ritz Camera, and Kmart in support.³⁹

Lastly, with respect to the manner in which the product is advertised and displayed, Masterpiece argues that the advertising of the scrapbooking canvas is focused on a distinct market. According to Masterpiece, scrapbooking canvases’ product labeling, magazine ads, brochures, sell sheets, project sheets, *etc.*, demonstrate that scrapbooking canvases are intended for scrapbooking and not painting.⁴⁰ Masterpiece submitted pictures from a craft and hobby tradeshow and retail stores comparing displays for the scrapbooking canvas and traditional artist products purporting to show a significant difference in the marketing of the products.⁴¹ Here, Masterpiece argues that scrapbooking canvases are normally displayed near, or along with, accessories exclusively produced for scrapbooking.⁴² Masterpiece adds that traditional artist canvases, on the other hand, are displayed alongside stretcher bars, panes, artist paints, and the like.⁴³

Masterpiece also argues that the marketing differs in that retailers of traditional artist canvases advertise information such as the type of gesso used and how many coats of gesso have been applied to the canvas.⁴⁴ However, as the scrapbookers’ concerns differ from those of the traditional artist, retailers of scrapbooking canvas will advertise characteristics important to scrapbookers, such as, whether the canvas is acid-free so as to not damage affixed photos.⁴⁵ Masterpiece has provided print-outs of various advertisements in support of their contention.⁴⁶

Tara’s Opposition

In Tara’s Opposition, Tara argues that Masterpiece’s assertion that the scope of the *Petition* and the *Order* require that the subject merchandise be used as artist canvas is misplaced.⁴⁷ Rather, Tara submits that there is no “use” requirement and that, because both the white and natural canvases meet the physical requirements of the *Order*, an analysis under 19 CFR 351.225(k)(2) is unwarranted.⁴⁸ Furthermore, Tara notes that both canvases are advertised as suitable for painting.⁴⁹

With respect to the scope of the *Order*, Tara argues that the language is unambiguous and that (1) primed/coated and pre-stretched artist canvases fall within the *Order*; (2) there is no requirement for the subject merchandise to be used for painting; and (3) scrapbook canvases are

³⁹ *See Id* at 27-30.

⁴⁰ *See Id* at 47.

⁴¹ *See Id* at 47-49.

⁴² *See Id* at 47.

⁴³ *See Id* at 49.

⁴⁴ *See Id* at 50.

⁴⁵ *See Id*.

⁴⁶ *See Id* at 51-64.

⁴⁷ *See* Tara’s Opposition at 2.

⁴⁸ *See Id*.

⁴⁹ *See Id* at 3 and Attachment A.

not explicitly excluded from the *Order*.⁵⁰

According to Tara, the scope of the Petition also does not require the subject merchandise to be used for painting or printing.⁵¹ In particular, Tara notes that Masterpiece's reference to the subject merchandise's "use" is under a section different from the scope language of the Petition which complements the scope of the *Order*.⁵² Tara has provided a photocopied print out of the Petition's (Public Version) relevant section.⁵³

In the alternative, Tara argues that, assuming *arguendo* that the *Order* requires a "use" element, Masterpiece fails to assert that either of its canvases cannot be used for painting.⁵⁴ Accordingly, because the canvases are physically identical to subject merchandise, Tara maintains that both canvases can be used for painting.⁵⁵

Lastly, Tara argues that a determination that Masterpiece's scrapbooking canvases are outside the scope of the *Order* has the potential for future circumvention of the *Order* by exporters declaring, for customs purposes, their artist canvas to be scrapbooking canvas. According to Tara, this would impose an undue hardship on CBP due to the difficulty of identifying subject merchandise and thus estimating the proper antidumping duties.⁵⁶

Masterpiece's Rebuttal

In Masterpiece's Rebuttal, Masterpiece refutes Tara's argument that there is no "use" requirement for merchandise to be subject to the *Order*. In particular, Masterpiece argues that painting or printing is implied as, for example, the scope of the *Order* calls for the subject merchandise to be primed or coated, suggesting that the subject merchandise will be used with inks, paints and the like.⁵⁷ Masterpiece again notes that the natural canvas lacks the priming/coating designed for the adherence of paints.⁵⁸

Masterpiece also rebuts Tara's argument that the scrapbooking canvas is subject merchandise because it can be painted on. With respect to the white canvas, Masterpiece concedes that the product is primed, but that it is not primed in order to promote the adherence of artist materials.⁵⁹ As discussed in their Request, Masterpiece reiterates that traditional artist materials (*e.g.*, oil paints, acrylic paints, and alkyd paints) are not applied to the white canvas. Masterpiece concedes that paint can be applied to its scrapbooking canvas but argues that paints can be added to a variety of surfaces such as glass, metals, and wood, and that application to these surfaces does not convert them to artist canvas.⁶⁰ Masterpiece also addresses Tara's observation that the

⁵⁰ See *Id* at 4-5.

⁵¹ See *Id* at 6.

⁵² See *Id* at 7.

⁵³ See *Id* at Attachment B.

⁵⁴ See *Id* at 7

⁵⁵ See *Id* at 8

⁵⁶ See *Id*.

⁵⁷ See Masterpiece Rebuttal at 2.

⁵⁸ See *Id*. at 3.

⁵⁹ See *Id*.

⁶⁰ See *Id*.

scrapbooking canvases' packaging which advertises the white and natural canvas as suitable for painting. Masterpiece argues that the various evidence submitted by Masterpiece demonstrates that end users will use the canvases in ways unlike traditional artist canvases, and that any painting on the scrapbooking canvas will be ancillary to the scrapbooking use.⁶¹

Lastly, Masterpiece rebuts Tara's contention that a determination that Masterpiece's scrapbooking canvas is outside the scope of the *Order* will encourage circumvention by exporters declaring their artist canvas as scrapbooking canvas. According to Masterpiece, importers, not exporters, are responsible for declarations made to CBP, and that these importers are obliged to exercise reasonable care in making their declarations, and that all potential scrapbooking importers will have to submit the necessary factual information to support their product's declaration.⁶² Finally, Masterpiece argues that CBP is not a passive participant where, for example, it can and regularly does request importers to supplement their imported products with identifying information, and by means of conducting regular importer audits.⁶³

Masterpiece's Supplemental

In Masterpiece's Supplemental, Masterpiece argues that the natural canvas' priming on the back (to prevent fraying) demonstrates that it is not designed to promote the adherence of artist materials.⁶⁴ Masterpiece adds that the natural canvas' priming on the back for the added purpose of fire retardancy serves as further evidence that it is not designed to promote the adherence of artist materials.⁶⁵

Masterpiece also argues that the Department should not determine that the natural canvas is subject merchandise because it can be used as subject merchandise, *i.e.*, be painted on.⁶⁶ According to Masterpiece, it is uncommon to purchase artist canvas for the purpose of painting on the back side of the canvas.⁶⁷ Here, Masterpiece submits that the "exposed wood and staples... is ugly and unsightly if one is creating art."⁶⁸ Masterpieces further comments that using the natural canvas as traditional artist canvas would damage fine artist brushes and the canvas' fibers, and require the use of significantly more artist paint.⁶⁹ Masterpiece cites three artist handbooks in support of these propositions.⁷⁰

Tara's Supplemental

Tara argues in its supplemental response that artist canvas does not have a front or back side, but rather only a primed or unprimed side, so it is incorrect to characterize Masterpiece's natural canvas as being primed on the back side. Tara submits that notwithstanding the natural canvas'

⁶¹ *See Id* at 4

⁶² *See Id* at 4

⁶³ *See Id.*

⁶⁴ *See* Masterpiece Supplemental at 2.

⁶⁵ *See Id.*

⁶⁶ *See Id.*

⁶⁷ *See Id.*

⁶⁸ *See Id.*

⁶⁹ *See Id.*

⁷⁰ *See Id* at 2-3.

inward-facing primed side, the natural canvas continues to be subject merchandise, *i.e.* primed artist canvas. As such, Tara concludes that the natural canvas' primed rolls would be included in the canvas rolls included in the language of the scope of the *Order*.⁷¹

Next, Tara notes that there is no evidence on the record indicating that the natural canvas' primer is characteristically distinguishable from primer designed to promote the adherence of artist materials.⁷² With respect to the alleged fraying and fire retardency functions of the natural canvas' primer, Tara argues that Masterpiece has not provided support of these contentions.⁷³ Regarding fire retardency, Tara argues that the natural canvas' labeling ought to display National Fire Protection Association compliance which it does not.⁷⁴ Tara adds that, even if the natural canvas' primer serves these functions, these benefits are at best incidental to the benefit of promoting the adherence of artist materials.⁷⁵ According to Tara, Masterpiece's asserted benefits of the natural canvas' primer do not negate the conclusion that the natural canvas is designed to promote the adherence of artist materials.⁷⁶

Tara asserts that the natural canvas' priming does exhibit a beneficial painting effect regardless of which side of the canvas is painted on. According to Tara, painting on the un-primed side yields a "taller" effect and color vibrancy enhancement.⁷⁷ This unique effect, adds Tara, is consistent with the natural canvas' advertisement as suitable for painting.⁷⁸ Tara adds that the natural canvas' priming also promotes the adherence of other artist materials such as photographs, decoupage, and mementoes.⁷⁹ Tara argues that Masterpiece's unsupported definition of artist materials (*e.g.*, higher quality paints) is overly narrow. Thus, according to Tara, the function of the natural canvas' primer of fray-prevention when stapling/pinning these alternative artist canvas materials illustrates how the natural canvas is designed to promote the adherence of artist materials.⁸⁰

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 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).

⁷¹ *See* Tara Supplemental at 3.

⁷² *See Id.*

⁷³ *See Id.*

⁷⁴ *See Id* at 4. Tara also argues that Masterpiece does not reference fire codes NFPA 1, NFPA 701, or E84.

⁷⁵ *See Id* at 3

⁷⁶ *See Id.*

⁷⁷ *See Id* at 4

⁷⁸ *See Id.*

⁷⁹ *See Id* at 4-5.

⁸⁰ *See Id* at 5.

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.

Analysis

The Department has evaluated Masterpiece's Request in accordance with 19 CFR 351.225(k)(1) because we find that the description of the subject merchandise 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 Masterpiece's white and natural scrapbooking canvases. Therefore, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2).

Record evidence (*i.e.*, Masterpiece's Request, accompanying exhibits, product sample, Masterpiece's Rebuttal, and supplemental responses) indicates that Masterpiece's white and natural canvases meet the physical requirements of the scope of the *Order*. That is, the white and natural canvases are pre-stretched canvases, designed to promote the adherence of artist materials. Further, neither the white nor the natural canvases are specifically excluded from the scope of the *Order*, *i.e.* they are not tracing cloths, "paint-by-number" or "paint-it-yourself" artist canvas.

Both the Petition in the initial investigation and the determination of the ITC are consistent with the description of subject merchandise in the scope of the *Order*. The suggested scope language in the Petition reads:

The products covered by this investigation are artist canvases regardless of dimension and/or size, whether assembled or unassembled (*i.e.*, kits that include artist canvas and other items, such as a wood frame), 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. 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 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 and stretcher strips, whether or not made from wood, which do not incorporate artist canvases. While the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.⁸¹

⁸¹ *See* Tara's Supplemental at Attachment B.

The language in the Petition specifies that subject merchandise is “primed/coated” without specifying that the priming/coating need be on a certain side. Both the white and natural canvases meet the description in the Petition.

In its determination, the ITC stated that, “Artists’ canvas is a surface for the graphic presentation of painted or printed images. Made from woven fabric that is primed and coated (“gessoed”) to accept paints or inks, it is sold in a variety of shapes, sizes, textures, and formats.”⁸² Thus, the ITC’s determination is also consistent with Masterpiece’s primed and natural canvases. Both of the canvases are primed and coated, and there is no indication that the priming on the back side of the natural canvas cannot “accept paints or inks.”

Lastly, none of our previous determinations for artist canvas, including scope determinations, have established or addressed whether there is a mandatory side for the priming of the canvas.

In addition, we agree with Tara that both the Petition and the *Order* are silent as to the subject merchandise’s intended use as artist canvas. By adopting Masterpiece’s argument that subject merchandise must be used exclusively as a painting/printing surface, any use of subject merchandise with so-called scrapbook canvas techniques, e.g., posting a three-dimensional photo on the canvas, would render subject merchandise as non-subject merchandise. Such a result would severely compromise the intended reach of the *Order*.

We further find unpersuasive Masterpiece’s contention that its scrapbooking canvases are not subject merchandise because any item that can be painted on is not necessarily subject merchandise. We find it relevant that the white and natural canvases can be painted on in conjunction with their meeting the remaining physical characteristics. That is, they are pre-stretched canvases, prepared for painting and/or printing, and designed to promote the adherence of artist materials.

With respect to the priming of the natural canvas’ back/unexposed side, we disagree with Masterpiece that the natural canvas is not designed to promote the adherence of artist materials, such as paint or ink, to the fabric. In addition, we agree with Tara that the function of the natural canvas’ primer of fray-prevention when stapling/pinning alternative artist canvas materials illustrates that the natural canvas is designed to promote the adherence of artist materials.

Lastly, as stated in the scope of the *Order* and acknowledged by Masterpiece, the Department’s description of the scope is dispositive. Accordingly, the Department is not bound by any CBP letter classifying Masterpiece’s scrapbook canvases under HTSUS 6307.90.9889. As we find that both the white and natural canvases are within the scope of the *Order*, we do not find it necessary to address Tara and Masterpiece’s argument regarding circumvention.

Therefore, we find that the record evidence, the description of the merchandise contained in the Petition of the initial investigation, prior scope rulings of the Secretary, the determination of the

⁸² See *Artist’ Canvas from China, Investigation No. 731-TA-1091 (Final)* at 3 and available at http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/2005/artists_canvas/final/PDF/Artists%20Canvas%20Pub.pdf. If you are citing, do you also have it placed on the record?

ITC, and Masterpiece's submission, demonstrate that Masterpiece's white and natural canvases are within the scope of the *Order*.

Recommendation

We recommend, based upon the foregoing analysis, that the Department find, pursuant to 19 CFR 351.225(k)(1), that Masterpiece's white and natural canvases are within the scope of the *Order* covering certain artist canvases from the PRC.

 V
Agree

Disagree

 Edward C. Yang
Edward C. Yang
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

 7/19/2010
Date