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Scope Ruling

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FOR PUBLIC FILE

**MEMORANDUM TO:** Susan H. Kuhbach  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**THROUGH:** Abdelali Elouaradia *AE*  
Director, Office 4  
AD/CVD Operations

Robert Bolling *RB*  
Program Manager, Office 4  
AD/CVD Operations

**FROM:** Maisha Cryor *MC*  
International Trade Compliance Analyst  
AD/CVD Operations, Office 4

**RE:** Narrow Woven Ribbons With Woven Selvedge: Scope Ruling on  
A-Plus Products, Inc.'s Heat Transfer Substrate Fabric

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Summary

Based on the analysis below, we recommend finding that the product subject to this scope request is within the scope of the antidumping and countervailing duty orders on narrow woven ribbon with woven selvedge ("NWR") from the People's Republic of China (the "PRC") and Taiwan. See Narrow Woven Ribbons With Woven Selvedge From Taiwan and the People's Republic of China: Amended Antidumping Duty Orders, 75 FR 56982 (September 17, 2008); and Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Countervailing Duty Order, 75 FR 53642 (September 1, 2010) (collectively, "NWR Orders").

Background

On October 5, 2010, A-Plus Products, Inc. ("A-Plus"), an importer of NWR, requested that the Department of Commerce (the "Department") determine whether its imports of certain narrow woven textile material are subject to the NWR Orders.<sup>1</sup> On October 27, 2010, Berwick

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<sup>1</sup> See Letter from A-Plus to Secretary of Commerce, "Request for Scope Ruling" (October 5, 2010) ("Scope Ruling Request") at 1-2.



Offray LLC (and its wholly-owned subsidiary Lion Ribbon Company, Inc.) (collectively, "Petitioner") submitted comments on this scope ruling request.<sup>2</sup> A-Plus submitted rebuttal comments on November 9, 2010.<sup>3</sup> Petitioner submitted rebuttal comments on November 17, 2010.<sup>4</sup>

### Description of Merchandise

A-Plus describes the product subject to the scope request as "one type of heat transfer substrate fabric ("substrate fabric"). See Scope Request at 2. A-Plus states that this fabric is: only available in the color white; wholly made from polyester material; and heat-shrunk for the purposes of capturing heat-transfer ink and images. *Id.* A-Plus asserts that, in its condition as imported, the product is packaged on spools, in widths of ½ inch and ¾ inch and in lengths, typically, of 1600 yards. *Id.* Further, A-Plus describes the fabric as being composed of 70 percent of fibers measuring 150 denier and of 30 percent of fibers measuring 275 denier. *Id.* A-Plus states that it imports this product solely for use in the creation of customized lanyards. *Id.*

### Scope of the Orders

The scope of the orders covers narrow woven ribbons with woven selvedge, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters, composed of, in whole or in part, man-made fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene terephthalate), metal threads and/or metalized yarns, or any combination thereof. Narrow woven ribbons subject to the orders may:

- also include natural or other non-man-made fibers;
- be of any color, style, pattern, or weave construction, including but not limited to single-faced satin, double-faced satin, grosgrain, sheer, taffeta, twill, jacquard, or a combination of two or more colors, styles, patterns, and/or weave constructions;
- have been subjected to, or composed of materials that have been subjected to, various treatments, including but not limited to dyeing, printing, foil stamping, embossing, flocking, coating, and/or sizing;
- have embellishments, including but not limited to appliqué, fringes, embroidery, buttons, glitter, sequins, laminates, and/or adhesive backing;
- have wire and/or monofilament in, on, or along the longitudinal edges of the ribbon;
- have ends of any shape or dimension, including but not limited to straight ends that are perpendicular to the longitudinal edges of the ribbon, tapered ends, flared ends or shaped ends, and the ends of such woven ribbons may or may not be hemmed;

<sup>2</sup> See Letter from Petitioner to Secretary of Commerce, "Opposition to Scope Application of A-Plus" (October 27, 2010) ("Petitioner's Comments").

<sup>3</sup> See Letter from A-Plus to Secretary of Commerce "Response to Opposition to Scope Application/Inquiry for Narrow Woven Fabric Substrates Used in Heat-Transfer Pressing" (November 9, 2010) ("Rebuttal Comments").

<sup>4</sup> See Letter from Petitioner to Secretary of Commerce, "Rebuttal Opposition to Scope Application of A-Plus Regarding The Orders on Narrow Woven Ribbons With Woven Selvedge from Taiwan and the People's Republic of China" (November 17, 2010) ("Petitioner's Rebuttal Comments").

- have longitudinal edges that are straight or of any shape, and the longitudinal edges of such woven ribbon may or may not be parallel to each other;
- consist of such ribbons affixed to like ribbon and/or cut-edge woven ribbon, a configuration also known as an “ornamental trimming;”
- be wound on spools; attached to a card; hanked (*i.e.*, coiled or bundled); packaged in boxes, trays or bags; or configured as skeins, balls, bateaus or folds; and/or
- be included within a kit or set such as when packaged with other products, including but not limited to gift bags, gift boxes and/or other types of ribbon.

Narrow woven ribbons subject to the orders include all narrow woven fabrics, tapes, and labels that fall within this written description of the scope of these antidumping duty orders.<sup>5</sup>

Excluded from the scope of the orders are the following:

- (1) formed bows composed of narrow woven ribbons with woven selvedge;
- (2) “pull-bows” (*i.e.*, an assemblage of ribbons connected to one another, folded flat and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage) composed of narrow woven ribbons;
- (3) narrow woven ribbons comprised at least 20 percent by weight of elastomeric yarn (*i.e.*, filament yarn, including monofilament, of synthetic textile material, other than textured yarn, which does not break on being extended to three times its original length and which returns, after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length as defined in the Harmonized Tariff Schedule of the United States (“HTSUS”), Section XI, Note 13) or rubber thread;
- (4) narrow woven ribbons of a kind used for the manufacture of typewriter or printer ribbons;
- (5) narrow woven labels and apparel tapes, cut-to-length or cut-to-shape, having a length (when measured across the longest edge-to-edge span) not exceeding eight centimeters;
- (6) narrow woven ribbons with woven selvedge attached to and forming the handle of a gift bag;
- (7) cut-edge narrow woven ribbons formed by cutting broad woven fabric into strips of ribbon, with or without treatments to prevent the longitudinal edges of the ribbon from fraying (such as by merrowing, lamination, sono-bonding, fusing, gumming or waxing), and with or without wire running lengthwise along the longitudinal edges of the ribbon;
- (8) narrow woven ribbons comprised at least 85 percent by weight of threads having a denier of 225 or higher;
- (9) narrow woven ribbons constructed from pile fabrics (*i.e.*, fabrics with a surface effect formed by tufts or loops of yarn that stand up from the body of the fabric);
- (10) narrow woven ribbon affixed (including by tying) as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non-subject

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<sup>5</sup> The Department notes that the CVD order states: “Narrow woven ribbons subject to the order include all narrow woven fabrics, tapes, and labels that fall within this written description of the scope of this order.”

merchandise;

(11) narrow woven ribbon that is (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where narrow woven ribbon comprises an apparel trimming, book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a "belly band" around a pair of pajamas, a pair of socks or a blanket;

(12) narrow woven ribbon(s) comprising a belt attached to and imported with an item of wearing apparel, whether or not such belt is removable from such item of wearing apparel; and

(13) narrow woven ribbon(s) included with non-subject merchandise in kits, such as a holiday ornament craft kit or a scrapbook kit, in which the individual lengths of narrow woven ribbon(s) included in the kit are each no greater than eight inches, the aggregate amount of narrow woven ribbon(s) included in the kit does not exceed 48 linear inches, none of the narrow woven ribbon(s) included in the kit is on a spool, and the narrow woven ribbon(s) is only one of multiple items included in the kit.

The merchandise subject to these orders is classifiable under the HTSUS statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise covered by these orders is dispositive.<sup>6</sup>

### Legal Framework

The Department examines scope requests in accordance with its regulations at 19 CFR 351.225. Under 19 CFR 351.225(k)(1), 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"). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether the merchandise is covered by the order.<sup>7</sup>

Where the descriptions of the merchandise are not dispositive, the Department will consider the following factors, as provided under section 351.225(k)(2) of the Department's regulations: 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

<sup>6</sup> See NWR Orders.

<sup>7</sup> See 19 CFR 351.225(d).

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 proceeding, the Department evaluated A-Plus' 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 and the ITC are, in fact, dispositive with respect to A-Plus' substrate fabric. Therefore, we find it unnecessary to consider the additional factors found in 19 CFR 351.225(k)(2).<sup>8</sup>

### Interested Party Comment and Analysis

#### A-Plus

A-Plus requests that the Department issue a determination that its substrate fabric, which it states it used exclusively for heat transfer printing, is outside of the scope of the NWR Orders. See Scope Ruling Request at 1. A-Plus contends that the substrate fabric is specially made and treated for heat-transfer technology and differs significantly from the ribbons that are subject to the NWR Orders. *Id.* A-Plus further contends that the substrate fabric and ribbons subject to the NWR Orders are not used for the same purposes. *Id.*

A-Plus notes that the scope of the NWR Orders was updated twice over the course of the investigation to broaden its exclusions. *Id.* at 7. A-Plus argues that these updates support the idea that the scope of the NWR Orders only covers decorative and embellishing ribbons, and that the scope "does not include narrow woven textile items which are to be connected to non-subject merchandise, such as the heat-shrunk transfer fabric at issue here." *Id.* at 8. A-Plus states that while the substrate fabric is wholly made from polyester, in which some fibers have a denier of less than 225, and is imported in widths of 12 centimeters or less, no other similarities exist between it and subject NWR.

A-Plus contends that the NWR Orders are only concerned with ribbons as finished products, used in wrapping, embellishing, or decorating in apparel or floral industries. *Id.* at 10. A-Plus argues that nothing in the language of the investigation, or NWR Orders states that the NWR Orders apply to fabrics which, in their condition as imported, are not finished articles, but which must undergo additional processing before being joined with non-subject merchandise. *Id.* at 11. A-Plus further states that the substrate fabric is distinguishable from subject NWR because it is only available in the color white, it is heat shrunk and it has a distinct feel, thickness and absorbency.

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<sup>8</sup> A-Plus also submitted comments and arguments pursuant to a 19 CFR 351.225(k)(2) analysis. See Scope Ruling Request at 12-14. However, we are not addressing those comments in this memorandum given our finding that only an analysis under 19 CFR 351.225(k)(1) is warranted.

## Petitioner

As an initial matter, Petitioner notes that A-Plus incorrectly characterized its filing as a “scope inquiry,” rather than as a “scope application.” See Petitioner’s Comments at 2. Petitioner alleges that this difference is important because it dictates which regulation the Department will use to render its decision. Id. Specifically, when a scope application is filed, Petitioner notes that the Department only considers the application in the context of 19 CFR 351.225(k)(1). Id. It is only if the Department cannot make a determination on the basis of the application under 19 CFR 351.225(k)(1) that it formally initiates a scope inquiry and considers the criteria set forth in 19 CFR 351.225(k)(2). Id.

Petitioner alleges that the express language of the scope of the NWR Orders is dispositive and shows that the product at issue is covered. Id. at 3. Petitioner contends that A-Plus itself does not dispute that its substrate fabric is, in fact, NWR. Id. Petitioner states that the “heat shrunk” nature of these products is not a distinguishing feature. Id. at 4. Petitioner notes that the scope of the NWR Orders states that merchandise is still covered even if treated. Id. Further, Petitioner claims that the ITC recognized that heat transfer printing of subject NWR is a common practice. Id. at 5.

## A-Plus’ Rebuttal Comments

A-Plus contends that the NWR Orders do not encompass the substrate fabric at issue in this instant matter. A-Plus states that its substrate fabric is neither, in its condition as imported, a “ribbon,” nor, after post-importation processing, does it become a ribbon of the type covered by the NWR Orders. See Rebuttal Comments at 2. A-Plus states that its substrate fabric is an intermediate material with no commercial or consumer utility and that is imported in an non-dyed and unembellished state. Id. at 3. Moreover, A-Plus argues that, unlike its substrate fabric, subject NWR have a stiff and rough consistency and cannot be comfortably worn against exposed skin for any particular length of time. Id. at 4. A-Plus contends that its substrate fabric is not used for trimming, tying, or finishing. Id. A-Plus maintains that the NWR Orders cover decorative and embellishing ribbon used for adorning and gift-wrapping, yet do not cover non-dyed white narrow woven textile items which are to be processed after importation and then connected to non-subject merchandise, i.e., its substrate fabric. Id. at 6-7. Further, A-Plus contends that it was not identified as an importer of subject merchandise in the Petition although it has been importing its substrate fabric for years. Id.

A-Plus contends that although Petitioner argued that the scope of the NWR Orders should be based on the width, composition and denier of the subject merchandise, these characteristics, taken alone, are not determinative of the scope of the NWR Orders. Id. A-Plus argues that, as several of the scope exclusions demonstrate, the physical condition and configuration of the merchandise at the time of importation, its uses, and the manner in which it is put up for sale are all material to a determination of whether a product is subject merchandise. Id. Further, A-Plus contends that its substrate fabric does not compete with Petitioner’s NWR. Id. at 8.

A-Plus argues that nothing in the language of the investigation or NWR Orders suggest that the NWR Orders apply to non-dyed fabrics which, in their condition as imported, are not finished articles and which must undergo additional processing before being joined with non-subject merchandise. Id. at 9. A-Plus maintains that there is language in the scope of the NWR Orders which excludes products that resemble its substrate fabric. Id. Specifically, this language excludes “narrow woven ribbon that is (a) affixed to non-subject merchandise as a working component of such non-subject merchandise such as a where narrow woven ribbon comprises an apparel trimming, book marker, bag cinch or part of an identity card holder.” Id.

A-Plus notes that in its Scope Ruling Request, it included an analysis pursuant to 19 CFR 315.225(k)(2) in case the Department determined that the scope of the NWR Orders did not expressly exclude its substrate fabric. Moreover, citing Vertex International, Inc. v. United States, 30 C.I.T. 73 (2006) (“Vertex”), A-Plus argues that the court has determined that the use of a product is relevant in determining scope coverage. Id. at 11. In addition, citing Sango International v. United States, 484 F.3d 1371, 1379 (Fed. Cir. 2007) (“Sango”), A-Plus argues that the court has looked at additional information, such as how products are sold and marketed and ultimate use, to determine coverage, even when the product’s physical description meets all parameters of the scope. Id.

#### Petitioner’s Rebuttal Comments

Petitioner argues that A-Plus’ substrate fabric, which A-Plus refers to as an intermediate product, is actually a “greige” ribbon.<sup>9</sup> Petitioner maintains that it discussed “greige” ribbons in the Petition as part of its own production process, where it described “greige” ribbons as ribbon that has been woven, but not yet dyed.<sup>10</sup> Moreover, Petitioner also notes that the ITC describes the production of “greige” ribbons in its discussion of the overall production process for NWR.<sup>11</sup> Further, Petitioner claims that the Department determined that “greige” ribbons are covered by the scope in the companion Taiwan investigation.<sup>12</sup>

#### Analysis

As explained above, when determining whether a specific product is within the scope of an antidumping and/or countervailing duty order, the Department reviews the descriptions of the subject merchandise contained in the petition, the investigation, and the determinations of the Secretary (such as prior scope rulings) and the ITC.<sup>13</sup> In discussing the interpretive process the

<sup>9</sup> See Petitioner’s Rebuttal Comments at 2.

<sup>10</sup> Id. at 2-3, see also Petitions for the Imposition of Antidumping and Countervailing Duties on Narrow Woven Ribbons with Woven Selvedge from the People’s Republic of China and Taiwan at Exhibit 27, dated July 9, 2009 (the “Petition”).

<sup>11</sup> See Petitioner’s Rebuttal Comments at 3, see also Narrow Woven Ribbons With Woven Selvedge From China and Taiwan, USITC Publication 4180, Investigation Nos. 701-TA-467 and 731-TA-1164-1165, at I-10 – I-12 (Final) (September 2010) (available on the ITC website at: [http://www.usitc.gov/publications/701\\_731/pub4180.pdf](http://www.usitc.gov/publications/701_731/pub4180.pdf)).

<sup>12</sup> See Rebuttal Comments at 3; see also Notice of Final Determination of Sales at Less Than Fair Value, 75 FR 41804 (July 19, 2010) at Comment 20 (“NWR Taiwan”).

<sup>13</sup> See 19 CFR 351.225(k)(1).

Department should follow in making scope rulings pursuant to 19 CFR 351.225(k)(1), the Court of Appeals for the Federal Circuit (“CAFC”) stated:

The critical question is not whether the petition covered the merchandise or whether it was at some point within the scope of the investigation. The purpose of the petition is to propose an investigation.... A purpose of the investigation is to determine what merchandise should be included in the final order. Commerce’s final determination reflects the decision that has been made as to which merchandise is within the final scope of the investigation and is subject to the order.... Thus, the question is whether the {final scope of the order} included the subject merchandise.<sup>14</sup>

The CAFC also stated that “a predicate for the interpretative process {in a scope inquiry} is language in the order that is subject to interpretation.”<sup>15</sup> Through these statements, the CAFC found that the appropriate place to begin the analysis as to whether a product is within the scope of an antidumping duty order is to review the scope language of the antidumping duty order itself. Furthermore, the CAFC stated that “{s}cope orders may be interpreted as including subject merchandise only if they contain language that specifically includes the subject merchandise or may be reasonably interpreted to include it.”<sup>16</sup>

In accordance with 19 CFR 351.225(k)(1) and Duferco, the Department will first analyze the language of the scope of the NWR Orders, including any exclusions, to determine whether A-Plus’s products are covered merchandise. Next, also using the above regulation and Duferco, we have analyzed A-Plus’ individual arguments regarding its request to have substrate fabric excluded from the scope of the NWR Orders.

In its request for a scope ruling,<sup>17</sup> A-Plus provides the following description of its substrate fabric: 1) wholly made from polyester; 2) heat-shrunk; 3) only available in the color white; 4) imported and packaged on spools in lengths, typically, of 1600 yards; 5) imported in widths of ½ inch and ¾ inch; and 6) composed of 70 percent of fibers measuring 150 denier and 30 percent of fibers measuring 275 denier. See Scope Ruling Request at 2.

First, the language of the scope of the NWR Orders specifically covers NWR that are “composed of, in whole or in part, man-made fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene terephthalate), metal

<sup>14</sup> See Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1096 (Fed. Cir. 2002) (“Duferco”).

<sup>15</sup> Id. at 1097 (internal citations omitted).

<sup>16</sup> Id. at 1089.

<sup>17</sup> We agree with Petitioner’s comments regarding A-Plus’ labeling of its request for a scope ruling as a “scope inquiry.” According to 19 CFR 351.225(e), a scope inquiry is only undertaken if the Department determines that it cannot make a ruling based on an interested party’s application for a scope ruling. In this case, A-Plus has only filed a request for the Department to make a scope ruling regarding its substrate fabric. See Scope Request at 1. Therefore, we note that the header of A-Plus’ October 5, 2010, filing should read “Scope Request,” rather than “Scope Inquiry.”



threads and/or metalized yarns, or any combination thereof.” (Emphasis added.) A-Plus’ depiction of its substrate fabric as being wholly made from polyester meets the plain language of the scope. Second, the scope of the NWR Orders states that subject NWR may “have been subjected to, or composed of materials that have been subjected to, various treatments” and may be “of any color, style, pattern, or weave construction.” A-Plus’ depiction of its substrate fabric as being subject to heat-shrinking treatments and white and meets the plain language of the scope. Third, the scope of the NWR Orders states that subject NWR may be “be wound on spools” and be “in any length.” A-Plus’ depiction of its substrate fabric as being imported and packaged on spools in lengths, typically, of 1600 yards meets the plain language of the scope. Fourth, the scope of the NWR Orders states that subject NWR has a “width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters.” A-Plus’ depiction of its imported substrate fabric as being imported in widths of ½ inch and ¾ inch, i.e., less than 12 centimeters, meets the plain language of the scope. Fifth, the scope of the NWR Orders excludes “narrow woven ribbons comprised at least 85 percent by weight of threads having a denier of 225 or higher.” Moreover, we note that A-Plus states that its substrate fabric is comprised of threads that 70 percent by weight measure 150 denier and threads that 30 percent by weight measure 275 denier, therefore, the denier content of A-Plus’ substrate fabric does not fall within this particular scope exclusion.

Therefore, based on a review of the scope language and a review of the record evidence mentioned above, we have determined that A-Plus substrate fabric falls within the plain language description of the NWR Orders.

Next, we have analyzed A-Plus’ arguments and rebuttal arguments pertaining to its substrate fabric. A-Plus argues that the exclusions laid out in the scope support the idea that the scope only covers decorative and embellishing ribbon, and that the scope does not cover ribbons that are to be connected to non-subject merchandise. In addition, A-Plus contends that aside from the polyester composition, the denier content and the width, no other similarities exist between its substrate fabric and subject NWR. We find these statements by A-Plus to be unpersuasive and inaccurate. First, regardless of the intended use of A-Plus’ substrate fabric after importation, the fact remains that the fabric, at the time of importation, falls within the plain language of the scope of the NWR Orders. Second, regarding the similarities between the substrate fabric and subject NWR, we find that the physical characteristics of the substrate fabric are unequivocally covered by the scope of the NWR Orders. We note that this finding is in stark contrast to A-Plus’ claim that no similarities exist between substrate fabric and subject NWR aside from the polyester composition, denier content and width.

A-Plus also contends that the NWR Orders require that that covered merchandise be used for a decorative purpose and that the ITC supports this conclusion. However, we disagree with this claim. First, nowhere in the scope of the NWR Orders is there language stating that products must be used for a particular purpose to be considered subject merchandise. Second, the ITC stated that NWR are “typically” used for “decorative purposes.” See Narrow Woven Ribbons With Woven Selvedge From China and Taiwan, USITC Publication 4180, Investigation Nos. 701-TA-467 and 731-TA-1164-1165, at II-1 (Final) (September 2010) (available on the ITC website at: [http://www.usitc.gov/publications/701\\_731/pub4180.pdf](http://www.usitc.gov/publications/701_731/pub4180.pdf)).

Thus, even if the substrate fabric is not used for decorative purposes, this does not demonstrate that it is not NWR, as the use of NWR for decorative purposes is “typical,” but not a requirement. Although, A-Plus states that its substrate fabric does not compete with Petitioner’s NWR, direct competition with Petitioner’s merchandise is not a requirement of the scope. Indeed, the Department has previously found that the statute does not require Petitioners to currently produce every type of product that is encompassed by a scope. See Light-Walled Rectangular Pipe and Tube from Mexico: Notice of Final Determination of Sales at Less than Fair Value, 69 FR 53677 (September 2, 2004) and the accompanying Issues and Decision Memorandum at Comment 5.

A-Plus also argues that the NWR Order excludes products that are similar to its substrate fabric. However, we note that scope exclusion number eleven, referenced by A-Plus, pertains to NWR that are attached to non-subject merchandise at the time of importation.<sup>18</sup> This exclusion is inapplicable to A-Plus’ substrate fabric because the fabric is not attached to non-subject merchandise at the time of importation.

A-Plus also contends that the physical characteristics of the substrate fabric, taken alone, are not determinative on whether it is covered by the scope of the NWR Orders. However, as we have stated above, the physical characteristics of A-Plus’ substrate fabric are unequivocally covered by the scope of the NWR Orders. We find such descriptive clarity to be dispositive with respect to scope coverage of A-Plus’ substrate fabric. We also disagree with A-Plus that Vertex and Sango require the Department to undertake further analysis in this instant case. First, regarding Vertex, the Court found that the Department failed to analyze and establish whether the product in that case, *i.e.*, garden carts, contained a physical characteristic that was required in order to be considered subject merchandise. See Vertex, 30 C.I.T. 73, 79. Specifically, the Court in Vertex found that while the scope required four physical characteristics to be present, the Department only established that garden carts contained three of the four required characteristics. *Id.* Therefore, the Court in Vertex determined that the Department had not established that garden carts were covered by that particular scope based solely upon their physical description. *Id.* at 30 C.I.T. 73, 81-82. However, unlike Vertex, the Department is able to demonstrate that every relevant physical characteristic of A-Plus’ substrate fabric is covered by the scope of the NWR Orders. Therefore, we find that no further analysis is required in this case because the descriptions of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary are dispositive of the matter.

In addition, we disagree with A-Plus that Sango requires the Department to conduct further analysis. In Sango, the CAFC remanded a scope determination to the Department because the appellate court found that the Department’s analysis under 19 CFR 351.225(k)(1) of its regulations failed to fully consider the relevance of technical specifications (*i.e.*, ASTM standards) and physical compatibilities (*i.e.*, whether the merchandise subject to the review was

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<sup>18</sup> Scope exclusion number eleven reads: (11) narrow woven ribbon that is (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where narrow woven ribbon comprises an apparel trimming, book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a “belly band” around a pair of pajamas, a pair of socks or a blanket;

manufactured such that it could be used as a pipe fitting). However, Sango is not controlling here because there are no relevant technical distinctions between A-Plus' merchandise and subject merchandise. Additionally, unlike the order on pipe fittings covered by the order at issue in Sango, the instant scope does not require that merchandise be used for a particular purpose for it to fall within the scope. Regardless of A-Plus' plans for its substrate fabric after importation, it is still the type of fabric that falls within the plain language of the scope of the NWR Orders upon importation. Therefore, as imported, the record evidence more than suggest that A-Plus' substrate fabric is the type of fabric covered by the NWR Orders.

Moreover, we note that A-Plus argues that its substrate fabric should be a considered an intermediate product, i.e., non-subject merchandise, because it is a non-dyed fabric.<sup>19</sup> However, the record of the investigation demonstrates that non-dyed ribbons are considered subject merchandise. First, the product characteristics in the investigation included a criterion for greige ribbons, i.e., non-dyed ribbons.<sup>20</sup> Second, the Department has previously found "greige" ribbons to be subject merchandise.<sup>21</sup> Specifically, the Department stated that "greige ribbon itself is in-scope merchandise..."<sup>22</sup> In addition, the ITC also characterized "greige" ribbons as subject NWR.<sup>23</sup>

Finally, we note that A-Plus refers to its product as a substrate fabric and states that it is not a ribbon of the type covered by the NWR Orders. However, we note that the scope of the NWR Orders states that subject NWR "include all narrow woven fabrics, tapes, and labels that fall within this written description of the scope of these antidumping duty orders." Therefore, regardless of the name of A-Plus' fabric, we find that it falls within the written description of the scope of the NWR Orders. Therefore, given the above, we find that A-Plus' substrate fabric is NWR and is included within the plain language of the scope of the NWR Orders.

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<sup>19</sup> See Rebuttal Comments at 3.

<sup>20</sup> See Letter from Robert Bolling, Program Manager, to Interested Parties, Regarding Revised Product Characteristics, dated September 24, 2010, at Attachment I.

<sup>21</sup> See NWR Taiwan at Comment 20.

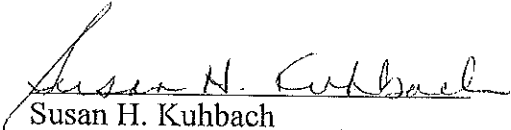
<sup>22</sup> Id.

<sup>23</sup> See Narrow Woven Ribbons With Woven Selvedge From China and Taiwan, USITC Publication 4180, Investigation Nos. 701-TA-467 and 731-TA-1164-1165, at I-10 – I-11 (Final) (September 2010) (available on the ITC website at: [http://www.usitc.gov/publications/701\\_731/pub4180.pdf](http://www.usitc.gov/publications/701_731/pub4180.pdf)).

**Recommendation**

In accordance with 19 CFR 351.225(k)(1), based upon the above analysis, we recommend that the Department find that the fabric subject to this request meets the description of merchandise covered by the scope of the NWR Orders and, therefore, is subject to the antidumping and countervailing duty orders on NWR from the PRC.

Agree  Disagree



Susan H. Kuhbach  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

November 19, 2010  
Date