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

A-570-899
Sunset Review
Public Document
AD/CVD OIII: PS

DATE: January 24, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of Expedited Second Sunset Review of the Antidumping Duty Order on Certain Artist Canvas from the People's Republic of China

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I. SUMMARY

We have analyzed the substantive response of Tara Materials, Inc., ("Tara Materials"),[1] BF Inkjet Digital Inc., IJ Technologies, Inc. and Permalite Inc. (collectively, "Domestic Interested Parties"), domestic interested parties in this sunset review of the antidumping ("AD") duty order on certain artist canvas from the People's Republic of China ("PRC").[2] As discussed below, no respondent party or other interested party submitted a substantive response with respect to the instant sunset review. Accordingly, we conducted an expedited (120-day) sunset review of the *Order*. Below is a complete list of the issues in this sunset review for which we received substantive responses:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margin likely to prevail

We recommend that you approve the positions described in the "Discussion of Issues" section of this memorandum.

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[1] Tara Materials was the petitioner in the underlying investigation.
[2] *See Notice of Antidumping Duty Order: Certain Artist Canvas from the People's Republic of China,* 71 FR 31154 (June 1, 2006) (*"Order").*

II. BACKGROUND

On October 3, 2016, the Department of Commerce ("Department") published a notice of initiation of the second sunset review of the *Order* on certain artist canvas from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act").[3] On October 17, 2016, Domestic Interested Parties notified the Department of their intent to participate within the 15-day period specified in section 351.218(d)(1)(i) of the Department's regulations. In accordance with 19 CFR 351.218(d)(1)(ii)(A), Domestic Interested Parties claimed interested party status under section 771(9)(C) of the Act as producers of the domestic-like product.

On November 2, 2016, the Department received a complete substantive response to the *Sunset Initiation*, with respect to the *Order*, from Domestic Interested Parties within the 30-day period specified in 19 CFR 351.218(d)(3)(i).[4] As noted above, the Department did not receive a substantive response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting an expedited (120-day) sunset review of the *Order*.

III. SCOPE OF THE ORDER

The products covered by the 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 the order. Artist canvases subject to the order are currently classifiable under subheadings 5901.90.20.00, 5901.90.40.00, 5903.90.2500, 5903.90.2000, 5903.90.1000, 5907.00.8090, 5907.00.8010, and 5907.00.6000 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.[5] 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 the order is dispositive.

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[3] *See Initiation of Five-Year ("Sunset") Review*, 81 FR 67967 (October 3, 2016) ("*Sunset Initiation*"); *see also* the *Order*.

[4] *See* Domestic Interested Parties' submission, "§751(c) Five-Year Sunset Review of the Antidumping Duty Order Against Artist Canvas from the People's Republic of China; Substantive Response of Domestic Interested Parties," dated November 2, 2016 ("Substantive Response").

[5] 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.

IV. HISTORY OF THE ORDER

1) Final Determination of Sales at Less-than-Fair-Value and *Order*

On March 30, 2006, the Department published in the *Federal Register* its final affirmative determination of sales at less than fair value ("LTFV") with respect to the antidumping duty investigation of imports of certain artist canvas from the PRC.[6] The Department found the following dumping margins:

Exporter	Producer	Weighted–Average Deposit
Ningbo Conda Import & Export Co., Ltd.	Jinhua Universal Canvas Manufacturing Co., Ltd.	264.09
Ningbo Conda Import & Export Co., Ltd.	Wuxi Silver Eagle Cultural Goods Co. Ltd.	264.09
Conda (Ningbo) Painting Material Mfg.	Wuxi Pegasus Cultural Goods Co. Ltd.	264.09
Jinhua Universal Canvas Manufacturing Co., Ltd.	Jinhua Universal Canvas Manufacturing Co., Ltd.	264.09
Wuxi Phoenix Artist Materials Co., Ltd.	Wuxi Phoenix Artist Materials Co., Ltd.	77.9
Wuxi Phoenix Artist Materials Co., Ltd.	Wuxi Phoenix Stationary Co. Ltd	77.9
Wuxi Phoenix Artist Materials Co., Ltd.	Shuyang Phoenix Artist Materials Co. Ltd.	77.9
Wuxi Phoenix Stationary Co. Ltd	Wuxi Phoenix Artist Materials Co., Ltd.	77.9
Wuxi Phoenix Stationary Co. Ltd	Wuxi Phoenix Stationary Co. Ltd	77.9
Wuxi Phoenix Stationary Co. Ltd.	Shuyang Phoenix Artist Materials Co. Ltd.	77.9
Jiangsu Animal By–products Import & Export Group Corp.	Wuxi Yinying Stationery and Sports Products Co. Ltd. Corp.	77.9
Jiangsu By–products Su Yang	Yinying Stationery and Sports Products Co. Ltd. Corp.	77.9
China–Wide Rate		264.09

On June 1, 2006, the Department published the *Order* covering imports of certain artist canvas from PRC, and applying the above-listed antidumping rates.

[6] *See Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 19116 (March 30, 2006) ("*LTFV Final Determination*").

2) Subsequent Administrative Reviews

The Department has not conducted any administrative reviews with respect to certain artist canvas from the PRC since the issuance of the *Order*.

The *Order* remains in effect for all manufacturers and exporters of certain artist canvas from the PRC. Deposit rates remain in effect for imports of certain artist canvas from the PRC.

3) Duty-Absorption Findings, Changed-Circumstances Reviews, Scope Inquiries

There have been no duty-absorption findings or changed-circumstances reviews with respect to the *Order*.

There have been 11 scope rulings with respect to the *Order*. *See* Attachment 1 for a list of scope rulings with respect to the *Order.*

4) Prior Sunset Reviews

The Department published its notice of initiation of the first sunset review of the *Order* on May 2, 2011, pursuant to section 751(c) of the Act.[7] As a result of that review, the Department found that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping.[8] On October 31, 2011, the International Trade Commission ("ITC") determined, pursuant to section 751(c) of the Act, that revocation of the *Order* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[9] On November 9, 2011, the Department published the notice of continuation of the *Order*.[10]

V. <u>LEGAL FRAMEWORK</u>

In accordance with section 751(c) of the Act, the Department is conducting this sunset review to determine whether revocation of the order would be likely to lead to the continuation or recurrence of dumping. Sections 752(c)(1)(A)-(B) of the Act provide that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews, as well as the volume of imports of the subject merchandise for the period before and after the issuance of the order.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action,[11] the House

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[7] *See Initiation of Five-Year ("Sunset") Review*, 76 FR 24459 (May 2, 2011).
[8] *See Artist Canvas from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order*, 76 FR 55351 (September 7, 2011) ("*First Sunset Review*").
[9] *See Artists' Canvas From China*, 76 FR 67208 (October 31, 2011) and USITC Pub. 4273, Inv. No. 731- TA-1091 (Review) (October 2011).
[10] *See Artist Canvas From the People's Republic of China: Continuation of the Antidumping Duty Order*, 76 FR 69704.
[11] *See* HR Doc. 103-316, vol. 1 (1994) ("SAA"), reprinted in 1994 U.S.C.C.A.N. 4040 (1994).

Report,[12] and the Senate Report,[13] the Department's determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.[14] In addition, the Department normally determines that revocation of an AD duty order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the order; (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.[15] Alternatively, the Department may determine that revocation of an AD duty order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.[16]

Furthermore, as a base period of import volume comparison, it is the Department's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of the investigation may dampen import volumes and, thus, skew the comparison.[17] When analyzing import volumes for second and subsequent sunset reviews, the Department's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.[18]

In addition, section 752(c)(3) of the Act states that the magnitude of the dumping margin likely to prevail if the order was revoked shall be provided by the Department to the ITC. Generally, the Department selects the dumping margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.[19] In certain circumstances, however, a more recently calculated rate may be more appropriate (*e.g.*, "if dumping margins have declined over the life of an order and imports have remained steady or increased, {the Department} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review").[20] Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of "zero or *de minimis* shall not by itself require" the Department to determine that revocation of an AD duty order would not be likely to lead to a continuation or recurrence of sales at LTFV.[21]

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[12] *See* H. Rep. No. 103-826, pt. 1 (1994) ("House Report"), reprinted in 1994 U.S.C.C.A.N. 3773 (1994).
[13] *See* S. Rep. No. 103-412 (1994) ("Senate Report").
[14] *See* SAA at 879; *see also* House Report at 56.
[15] *See* SAA at 889-890; *see also* House Report at 63-64; Senate Report at 52; *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) ("*Sunset Policy*").
[16] *See* SAA at 889-890; *see also* House Report at 63.
[17] *See, e.g., Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order,* 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.
[18] *See Ferrovanadium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014), and accompanying Issues and Decision Memorandum.
[19] *See* SAA at 890; *see also Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2.
[20] *See* SAA at 890-91.
[21] *See Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

On February 14, 2012, the Department announced it was modifying its practice in sunset reviews, such that it would not rely on weighted-average dumping margins calculated using the "zeroing" methodology found to be inconsistent with World Trade Organization ("WTO") obligations.[22] In the *Final Modification for Reviews,* the Department stated that "only in the most extraordinary circumstances" would it rely on margins other than those calculated and published in prior determinations.[23] The Department further stated that, apart from the "most extraordinary circumstances," it would "limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent" and that it "may also rely on past dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive."[24]

VI. <u>DISCUSSION OF THE ISSUES</u>

1. Likelihood of Continuation or Recurrence of Dumping

<u>Domestic Interested Parties' Comments</u>

Domestic Interested Parties argue that revocation of the *Order* will result in continuation or recurrence of dumping. Because no administrative reviews have been requested, the rates found by the Department in the original investigation remain unchanged. The fact that greater than *de minimis* margins have applied since 2006 is indicative that dumping of the subject merchandise continues.[25]

In addition, Domestic Interested Parties argue that the trends in import volumes since the *Order*'s issuance, and in the period 2011-2016, also weigh in favor of an affirmative determination. In the *First Sunset Review*, the Department determined that the decline in import volume in the immediate aftermath of the *Order*'s imposition supported the conclusion that Chinese exporters could not sell certain artist canvas to the United States without dumping. The uptick in import volumes in the later years covered by the first sunset review did not change this outcome, "since the existence of above-*de minimis* margins demonstrate that if the order was revoked, it is likely that PRC producers/exporters of certain artist canvas would continue dumping at significant levels."[26] Furthermore, Domestic Interested Parties note that the HTSUS subheadings used to calculate import volumes of certain artist canvas from the PRC are basket categories that include import data for non-subject artist canvas and subject artist canvas and that there is no way to distinguish subject print canvas from any of the other merchandise within the HTSUS subheadings.

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[22] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) ("*Final Modification for Reviews*").
[23] *Id.*
[24] *Id.*, at 8109.
[25] *See* Substantive Response at 6.
[26] *Id.*, at 8-9 quoting "Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Antidumping Duty Order on Certain Artist Canvas from the People's Republic of China," dated August 30, 2011 ("First Sunset Memorandum").

Department's Position: As explained in the Legal Framework section above, the Department's determinations of likelihood of continuation or recurrence of dumping will be made on an order-wide basis.[27] In addition, the Department normally will determine that revocation of an AD duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.[28] In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the AD duty order.

Pursuant to section 752(c)(1)(A) of the Act, the Department first considered the weighted-average dumping margins determined in the investigation and any subsequent reviews. As discussed above and in the *Final Modification for Reviews*, the Department has modified its practice in sunset reviews, such that it does not rely on weighted-average dumping margins that are calculated using the "zeroing" methodology found to be WTO-inconsistent. In the *LTFV Final Determination*, the Department assigned a margin of 264.09 percent based on total adverse facts available ("AFA") to several of respondents and to the PRC-wide entity. As this margin was established in the investigation and did not rely on a methodology that employed zeroing, it is WTO-consistent and reflective of the level of dumping without the discipline of an order in place. Further, this (and other) WTO-consistent margins are above *de minimis* and have remained in effect since the LTFV. These margins provide the best evidence of dumping behavior and there is no evidence on the record of this segment of the proceeding that indicates dumping has ceased. Accordingly, it is reasonable to conclude that dumping would continue if the *Order* were revoked.

In addition, the Department examined the import statistics provided by Domestic Interested Parties for the relevant periods. In the *Final Modification for Reviews*, the Department noted that "if there are no dumping margins during the five-year sunset period, decreased volumes may provide another basis to determine that dumping is likely to continue or recur if the discipline of the order is removed."[29]

As noted by Domestic Interested Parties, as described above, the HTSUS subheadings used to calculate import volumes of certain artist canvas from the PRC are basket categories that include import data for non-subject artist canvas and subject artist canvas, and it is not possible to ascertain, from the data, the import volume for each. Therefore, the import volumes reflected in these categories are not dispositive with respect to import volume trends of subject merchandise. Therefore, import data for the relevant HTSUS subheadings cannot be relied upon to determine whether dumping would likely continue or recur if the *Order* is revoked, pursuant to section 752(c)(1) of the Act. Regardless of the lack of a discrete dataset specific to imports of subject merchandise, we find that existence of above-*de minimis* margins demonstrates that if the order was revoked, it is likely that PRC producers/exporters of certain artist canvas would continue dumping at significant levels.

[27] *See* SAA at 879 and House Report at 56.
[28] *See* SAA at 889 and 890, House Report at 63-64, and Senate Report at 52.
[29] *See Final Modification for Reviews*, 77 FR at 8103.

2. Magnitude of the Margin Likely to Prevail

Domestic Interested Parties' Comments

Domestic Interested Parties assert that under section 752(c)(3) of the Act, the Department must provide the ITC with information as to the dumping margins that are likely to prevail if the *Order* is revoked and that in most cases, these will be the margins determined in the final determination in the original LTFV investigation.[30] Domestic Interested Parties note that the margin found during the original investigation for the China-wide entity and one of the mandatory respondents was 264.09 percent. The Department should follow its practice of identifying the rates determined in the initial investigation as the dumping margins that are likely to prevail.

Department's Position: Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. The Department's preference is to select a rate from the investigation because it is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.[31] As indicated in the "Legal Framework" section above, the Department's current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology found to be WTO-inconsistent, in accordance with the *Final Modification for Reviews*.

The Department agrees with Domestic Interested Parties that it is appropriate to report to the ITC the margins found in the AD investigation of certain artist canvas from the PRC as the margin likely to prevail if the *Order* were revoked, as such rates reflect the behavior of exporters without the discipline of an order, and there are no more recently calculated dumping margins. This margin is an AFA rate and, thus, was not calculated using a zeroing methodology and is WTO-consistent. Therefore, pursuant to section 752(c)(3) of the Act, we will report to the ITC the 264.09 percent PRC-wide investigation rate for all PRC manufacturers and exporters as the margin likely to prevail, as indicated in the "Final Results of Review" section of this memorandum.

VII. FINAL RESULTS OF REVIEW

The Department determines that revocation of the *Order* would likely lead to a continuation or recurrence of dumping and that the magnitude of the dumping margins likely to prevail would be weighted-average margins up to 264.09 percent.

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[30] Domestic Interested Parties cite the SAA at 890; *Sunset Policy*, 63 FR 18871-18873, and First Sunset Memorandum at 5-6.

[31] *See* SAA at 890 and *Sunset Policy*, at section II.B.1; *see also, e.g., Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 80 FR 43063 (July 21, 2015), and accompanying Issues and Decision Memorandum at Issue 2.

VIII. <u>RECOMMENDATION</u>

Based on our analysis of the responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of these reviews in the *Federal Register* and notify the ITC of our determination.

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Agree	Disagree

1/24/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

ATTACHMENT 1

List of Scope Rulings

Subsequent to the issuance of the Order, we issued the following scope rulings:

On April 10, 2008, in response to an inquiry from Tara Materials, Inc., the Department ruled that artist canvas that has been woven, primed with gesso, and cut to size in the United States and shipped to the PRC, is excluded from the scope. *See Notice of Scope Rulings*, 73 FR 49418 (August 21, 2008).

On May 29, 2009, in response to an inquiry from C2F, Inc., the Department ruled that artist canvas that has been woven and primed in South Korea, then cut to size and framed in the PRC, and thereafter imported into the United States, is excluded from the scope. *See Notice of Scope Rulings*, 74 FR 49859 (September 29, 2009).

On July 10, 2009, in response to an inquiry from Art Supplies Enterprises, Inc., the Department ruled that artist canvas that has been woven and primed in Vietnam, then cut to size and framed in the PRC, is excluded from the scope. *See Notice of Scope Rulings,* 75 FR 14138 (March 24, 2010).

On August 8, 2009, in response to an inquiry from Art Supplies Enterprises, Inc., the Department ruled that artist canvas that has been woven and primed in India, then cut and framed in the PRC, is excluded from the scope. *See Notice of Scope Rulings,* 75 FR 14138 (March 24, 2010).

On May 13, 2010, in response to an inquiry from Wuxi Phoenix Artist Materials Co, Inc., the Department ruled that artist canvas that is coated and primed in Vietnam, then cut and framed in the PRC, is excluded from the scope. *See Notice of Scope Rulings*, 75 FR 79339 (December 20, 2010).

On July 19, 2010, in response to an inquiry from Masterpiece Artist Canvas, Inc., the Department ruled that scrapbooking canvas, which is artist canvas used for scrapbooking purposes, is included in the scope. *See Notice of Scope Rulings*, 76 FR 10558 (February 25, 2011).

On July 6, 2012, in response to an inquiry from Ningbo Conda Imp & Exp Co., Ltd, the Department ruled that artist canvas that is woven and primed in India, is excluded from the scope. *See Notice of Scope Rulings*, 78 FR 9370 (February 8, 2013).

On July 23, 2014, in response to an inquiry from Jiangsu Animal By-Products Import & Export Group Corp., the Department ruled that artist canvas it exported that is woven and primed in India is excluded from the scope. *See Notice of Scope Rulings,* 79 FR 73552 (December 11, 2014).

On November 18, 2014, in response to an inquiry from Alex Toys, Inc., the Department ruled that Alex Toys, Inc.'s "Paint A Canvas"/"Color A Canvas" preprinted, paint-it-yourself artist canvases, which Alex Toys, Inc. imports, are not within the scope. *See Notice of Scope Rulings,* 80 FR 22969 (April 24, 2015).

On May 26, 2015, in response to an inquiry from Suqian Langer International Trade Co., Ltd. ("Suqian Langer"), the Department ruled that that artist canvases woven and primed in India which Suqian Langer exports are not within the scope. *See Notice of Scope Rulings,* 80 FR 57339 (September 23, 2015).

On July 14, 2015, in response to a request by Tara, Inc., a domestic producer of certain artist canvas, the Department ruled that that print canvas is within the scope.