

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-899]

Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 28, 2005.

FOR FURTHER INFORMATION CONTACT: Jon Freed or Michael Holton, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3818 and (202) 482-1324, respectively.

Initiation of Investigation*The Petition*

On March 31, 2005, the Department of Commerce ("Department") received a Petition on imports of certain artist canvas from the People's Republic of China ("PRC") ("Petition") filed in proper form by Tara Materials Inc. ("Tara" or "Petitioner") on behalf of the domestic industry and workers producing certain artist canvas. On April 7, 2005, the Department clarified that the official filing date for the Petition was April 1, 2005, and that the proper period of investigation ("POI") is July 1, 2004, through December 31, 2004. *See Memorandum from Edward Yang to Barbara Tillman: Decision Memo Concerning Petition Filing Date and Period of Investigation*, April 7, 2005. On April 7, 2005, and April 14, 2005, the Department requested clarification of certain areas of the Petition and received responses to those requests on April 12, 2005, April 15, 2005, and April 18, 2005.

In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), Petitioner alleged that imports of certain artist canvas from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to injure an industry in the United States.

Scope of Investigation

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. 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 canvases subject to this investigation 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 this investigation are tracing cloths and 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. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with Petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27323 (1997). The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this initiation notice.

Comments should be addressed to Import Administration's Central Records Unit in Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230—Attn: Michael Holton. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a Petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum

percentage of the relevant industry supports the Petition. A Petition meets this requirement if the domestic producers or workers who support the Petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the Petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the Petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a Petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642-44 (Ct. Int'l Trade 1988).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition.

With regard to the domestic like product, Petitioner does not offer a

definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted in the Petition, we have determined there is a single domestic like product, certain artist canvas, which is defined further in the "Scope of the Investigation" section above, and we have analyzed industry support in terms of that domestic like product.

Our review of the data provided in the petition and other information readily available to the Department indicates that Petitioner has established industry support representing at least 25 percent of the total production of the domestic like product; and more than 50 percent of the production of the domestic like product produced by that portion of the industry, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. In addition, the Department received no opposition to the petition from domestic producers of the like product. Therefore, the domestic producers (or workers) who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See Import Administration: Antidumping Duty Investigation Initiation Checklist of Certain Artist Canvas from the PRC ("Initiation Checklist")*, dated April 21, 2005, at Attachment II (Industry Support).

The Department finds that Petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(G) of the Act and it has demonstrated sufficient industry support with respect to the antidumping investigation that it is requesting the Department initiate. *See Initiation Checklist at Attachment II (Industry Support)*.

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to the U.S.

price and the factors of production are also discussed in the *Initiation Checklist*. Petitioner submits that the particular export prices and normal values chosen represent equivalent forms of artist canvas. Petitioner identified the proper products for comparison by matching the dimensions of the artist canvas, the type and depth of stretcher strip, the weight of the cotton canvas, the number of coating applications, and the number and locations of staples in the artist canvas. *See* Petition Exhibit 34, April 12, 2005, Supplement to the Petition at pages 19–20, and April 15, 2005, Supplement to Petition at Exhibit 4. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may reexamine the information and revise the margin calculations, if appropriate.

Export Price

Petitioner based export price on a price list for artist canvas offered for sale by a producer and exporter of artist canvas located in the PRC. *See* Petition at page 26 and Exhibit 34. Petitioner also submitted promotional materials. Petitioner made no adjustments or deductions to the export price. Because, for the reasons discussed in the *Initiation Checklist*, this resulted in a conservative estimate of the export price, we relied on the data in the Petition.

Using the product codes contained in the price list provided to the U.S. buyer, Petitioner chose four of the most common types of artist canvas sold in the U.S. to be used for the dumping margin calculation. *See* Petition Exhibit 34, April 12, 2005, Supplement to the Petition at pages 19–20, and April 15, 2005, Supplement to Petition at Exhibit 4.

Normal Value

Petitioner asserted that the PRC is a non-market economy country ("NME") and no determination to the contrary has yet been made by the Department. In previous investigations, the Department has determined that the PRC is an NME. *See Notice of Final Determination of Sales at Less Than Fair Value: Magnesium Metal from the People's Republic of China*, 70 FR 9037 (February 24, 2005), *Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products From the People's Republic of China*, 70 FR 7475 (February 14, 2005), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China*, 69

FR 70997 (December 8, 2004). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value of the product is appropriately based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioner selected India as the surrogate country. *See* Petition at pages 14–16. Petitioner explained that India was selected as the appropriate surrogate for purposes of this Petition because India is economically comparable to the PRC and is a significant producer of comparable merchandise. *See* Petition at page 14. Petitioner identified three Indian companies that produce artist canvas. *See* Petition at page 15, April 12, 2005, Supplement to the Petition at page 13, and April 15, 2005, Supplement to the Petition at page 2 and Exhibit 1. In addition, Petitioner submitted import statistics indicating that India exported about 555,000 square meters of artist canvas to the United States in 2004. *See* Petition at page 15.

Petitioner provided a dumping margin calculation using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C). *See* Petition Exhibits 12–15, *see also*, April 15, 2005, Supplement to the Petition, at Exhibits 6A–7D. To determine the quantities of inputs used by the PRC producers to produce each of the selected artist canvases, Petitioner relied on the production experience and actual consumption rates of Tara during 2004. Petitioner stated that the products selected were chosen because they are representative of the U.S. production of artist canvas and the artist canvas imported from the PRC. *See* Petition at page 17. For each product selected for comparison to export price, Petitioner provided two sets of normal value calculations. One set of normal value calculations reported consumption based on total material inventory withdrawals and did not account for scrap materials that were recovered and used for other production purposes. *See* April 15, 2005, Supplement to the Petition at Exhibits 6A–6D and Exhibits 7A–7D, respectively. Petitioner contends that the consumption rates

that are based on actual inventory withdrawals are the more appropriate basis for calculating normal value because the scrap is a "dead loss" with no further application in the manufacturing process. Notwithstanding this argument, an employee of Petitioner provided an affidavit that indicates that Tara's re-use of scrap material reduces its manufacturing costs. See April 15, 2005, Supplement to the Petition at Exhibit 2. However, Petitioner did not incorporate an offset for recovered scrap in its normal value calculations. As a result, Petitioner's calculation of normal value could be overstated because it did not account for scrap materials that are recovered and used for other production purposes. Therefore, for the purposes of initiation, the Department has conservatively determined to analyze the normal value calculations submitted by Petitioner that accounted for materials consumed (net of scrap). See April 15, 2005, Supplement to the Petition at Exhibits 6A–6D.

For the normal value calculation, Petitioner valued the factors of production for artist canvas using surrogate values derived from official Indian government import statistics. See Petition at Exhibits 16–31, *see also* April 15, 2005, Supplement to the Petition at Exhibit 3. Petitioner explained that, when surrogate values were not contemporaneous, it calculated the surrogate values using the best data available and relied on wholesale price indices in India as published in the International Financial Statistics of the International Monetary Fund to determine the appropriate adjustments for inflation. See Petition at Exhibit 32 and the April 12, 2005, Supplement to the Petition at Exhibit 32. Using the foreign currency exchange rates posted on the Department's Web site, Petitioner converted the surrogate values from rupees to U.S. dollars based on the average exchange rate for the POI. See April 12, 2005, Supplement to the Petition at Exhibit K. Additionally, in calculating the surrogate values, Petitioner excluded those values reflecting imports from countries previously determined by the Department to be NME countries and imports into India from Indonesia, Korea and Thailand, because the Department has previously excluded prices from these countries because they maintain broadly-available, non-industry specific export subsidies. See *Automotive Replacement Glass Windshields From the People's Republic of China: Final Results of Administrative Review*, 69 FR 61790

(October 21, 2004), and accompanying Issues and Decision Memorandum at Comment 5.

For each of the inputs detailed in the normal value calculations, Petitioner provided surrogate values based on Indian Import Statistics. See April 15, 2005, Supplement to the Petition at Exhibit 3. The surrogate values submitted for the material and packing inputs consist of information reasonably available, and are therefore acceptable for purposes of initiation. However, the Department has recalculated the surrogate value for raw canvas and expressed it in U.S. dollars per square yard to be consistent with the unit of measure in which the consumption of raw canvas is reported. See *Initiation Checklist* at Attachment V.

The Department calculates and publishes the surrogate values for labor to be used in NME cases. Therefore, to value labor, Petitioner used a labor rate of \$0.93 per hour, in accordance with the Department's regulations. See 19 CFR 351.408(c)(3) and Petition at Exhibits 6A–6D.

Petitioner did not include amounts for energy consumption as a separate factor of production in its calculation of normal value. Since Petitioner did not directly value energy consumption in its normal value calculation and because the Department does not normally include energy costs in the numerator of its factory overhead ratio, the Department has not included an amount for energy in its recalculation of Petitioner's normal values. See *Initiation Checklist* at pages 7–8.

Factory overhead, selling, general and administrative expenses, interest, and profit were derived from the 2003–2004 financial statements of Arvind Mills Limited, an Indian fabric producer. See Petition at pages 15–16, and Exhibit 33. Petitioner stated it was unable to obtain financial data from any Indian producers that specifically produce artist canvas. See Petition at page 15. The Department agrees with Petitioner's contention that, in the absence of surrogate financial data for the specific subject merchandise, the Department may consider financial data for surrogate companies with similar characteristics and production processes. See Petition at page 16, *see also*, *Notice of Initiation of Antidumping Duty Investigations: 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) and Stilbenic Fluorescent Whitening Agents (SFWA) from Germany, India, and the People's Republic of China*, 68 FR 34579, 34581 (June 10, 2003). In this case, the Department has accepted the financial information for the Indian fabric

producer for the purposes of initiation, because these data appear to be the best information on such expenses currently available to Petitioner. Petitioner submitted calculations of the surrogate financial ratios in Exhibit 33 of the Petition and revised calculations in Exhibit 8 of the April 15, 2005, Supplement to the Petition. However, the Department has recalculated the surrogate financial ratios to be consistent with its normal practice with regard to the treatment of energy, purchase of traded goods, taxes, duties, and movement expenses. See *Initiation Checklist* at Attachment VII.

In addition to the changes discussed above, the Department has adjusted Petitioner's normal value calculations with regard to how amounts for packing materials are incorporated into the normal value calculation. Petitioner stated that it had excluded the packing material amounts from the components of the normal value calculation to which the surrogate financial ratios were applied in the normal value calculations. However, Petitioner's calculation of normal value for the 16x20 stretched canvas and the 18x24 stretched canvas applied the surrogate financial ratios to the packing materials as well as to the material and labor amounts, which Petitioner valued directly. As a result, Petitioner's calculation overstated normal value to a certain extent for those two products. In light of this, the Department has recalculated the normal values for the 16x20 stretched canvas and the 18x24 stretched canvas so that packing costs are added to normal value after application of the surrogate financial ratios to the cost of manufacturing. See *Initiation Checklist* at Attachment VI.

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of certain artist canvas from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based upon comparisons of export price to the normal value, calculated in accordance with section 773(c) of the Act, the estimated recalculated dumping margins for certain artist canvas range from 242.09 percent to 264.09 percent.

Allegations and Evidence of Material Injury and Causation

The Petition alleges that the U.S. industry producing the domestic like product is being materially injured and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value. The petitioner contends that the

industry's injured condition is evident in: (1) Declining market share; (2) declining domestic prices and lost sales; (3) declining production and sales; (4) reductions in employment levels; and (5) declining profitability. *See Initiation Checklist* at Attachment IV (Injury).

The Department has assessed the allegations and supporting evidence (e.g., import statistics, etc) regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation.

Separate Rates and Quantity and Value Questionnaire

The Department recently modified the process by which exporters and producers may obtain separate-rate status in NME investigations. This change is described in *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries*, (April 5, 2005), ("Policy Bulletin 05.1") available at <http://ia.ita.doc.gov/>. Although the process has changed, now requiring submission of a separate-rate status application, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities) has not changed.

The specific requirements for submitting a separate-rates application are outlined in detail in the application itself, and in *Policy Bulletin 05.1*, which is also available on the Department's Web site at <http://ia.ita.doc.gov/policy/bull05-1.pdf>. Regarding deadlines, *Policy Bulletin 05.1* explains that "[a]ll applications are due sixty calendar days after publication of the initiation notice. This deadline applies equally to NME-owned and wholly foreign-owned firms for completing the applicable provisions of the application and for submitting the required supporting documentation." *See Policy Bulletin 05.1* at page 5.

The deadline for submitting a separate-rates application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase the subject merchandise and export it to the United States. Therefore, this notice constitutes public notification to all firms eligible to seek separate-rate status in the investigation of artist canvas from the PRC that they must submit a separate-rates application within 60 calendar days of the date of publication of this initiation notice in the **Federal Register**. All potential respondents should also bear in mind that firms to which the Department

issues a Quantity and Value ("Q&V") questionnaire must respond both to this questionnaire and to the separate-rates application by the respective deadlines in order to receive consideration for a separate-rate status. In other words, the Department will not give consideration to any separate rate-status application made by parties that were issued a Q&V questionnaire by the Department but failed to respond to that questionnaire within the established deadline. The particular separate-rate status application for this investigation is available on the Department's Web site <http://ia.ita.doc.gov/ia-highlights-and-news.html>.

Combination Rates

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *The Separate Rates and Combination Rates Bulletin*, states:

[w]hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

Separate Rates and Combination Rates Bulletin, at page 6.

Initiation of Antidumping Investigation

Based upon our examination of the Petition on certain artist canvas from the PRC, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of certain artist canvas from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless it is postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to the Government of the PRC.

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination By the ITC

The ITC will preliminarily determine, no later than May 16, 2005, whether there is a reasonable indication that imports of certain artist canvas from the PRC are causing material injury, or are threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in this investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 21, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5-2047 Filed 4-27-05; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-831]

Notice of Rescission of Antidumping Duty Administrative Review: Prestressed Concrete Steel Wire Strand From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 24, 2005, the Department of Commerce (the Department) published in the **Federal Register** a notice announcing the initiation of an administrative review of the antidumping duty order on prestressed concrete steel wire strand from Mexico, covering the period July 17, 2003, to December 31, 2004. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Mexico: Prestressed Concrete Steel Wire Strand*, 70 FR 9035 (February 24, 2005). The review covers Cablesa S.A. de C.V. (Cablesa). We are now rescinding this review as a result of Cablesa's timely withdrawal of its request for an administrative review.

DATES: *Effective Date:* April 28, 2005.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Saliha Loucif, at (202) 482-0631 or (202) 482-1779, respectively, AD/CVD Enforcement, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th