



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
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Scope Inquiry

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MEMORANDUM FOR: Barbara Tillman
Acting Deputy Assistant Secretary
for Import Administration

PUBLIC FILE

FROM: Wendy J. Frankel *wjf*
Director
AD/CVD Operations, Office 8
Import Administration

SUBJECT: Final Scope Ruling of the Antidumping Duty Orders on
Polyethylene Retail Carrier Bags from the People's Republic of
China, Malaysia, and Thailand; PAK 2000

Summary

On August 5, 2005, the Department of Commerce (the Department) received a request from Barnes, Richardson & Colburn on behalf of PAK 2000 that the Department determine that the plastic bags PAK 2000 imports from China, Malaysia, and Thailand are not subject to the respective antidumping duty orders on polyethylene retail carrier bags (PRCBs) from the People's Republic of China (China), Malaysia, and Thailand. See Antidumping Duty Order: Polyethylene Retail Carrier Bags from the People's Republic of China, 69 FR 48201, 40202 (August 9, 2004); Antidumping Duty Order: Polyethylene Retail Carrier Bags from Malaysia, 69 FR 48203 (August 9, 2004); and Antidumping Duty Order: Polyethylene Retail Carrier Bags from Thailand, 69 FR 48204 (August 9, 2004) (AD Orders). In accordance with 19 CFR 351.225(d) and 351.225(k)(1), we recommend that the Department determine that the PRCBs imported by PAK 2000, as described in its request, are within the scope of the antidumping duty orders on PRCBs from China, Malaysia, and Thailand and the initiation of a scope inquiry is not warranted.

Scope of the Orders

The merchandise subject to these orders is PRCBs which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than .035 inch (0.889 mm) and no less than .00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).



PRCBs are typically provided without any consumer packaging and free of charge by retail establishments (e.g., grocery, drug, convenience, department, specialty retail, discount stores, and restaurants) to their customers to package and carry their purchased products. The scope of the orders excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments (e.g., garbage bags, lawn bags, trash-can liners).

Imports of the subject merchandise are classified under statistical category 3923.21.0085¹ of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers products that are outside the scope of these orders. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of these orders is dispositive. See AD Orders.

Background

Subsequent to PAK 2000's August 5, 2005, request, on August 25, 2005, we issued a "mini-questionnaire" to PAK 2000. PAK 2000 responded to the "mini-questionnaire" on August 30, 2005. The Polyethylene Retail Carrier Bag Committee (Committee), petitioners, submitted comments on September 2, 2005.

Argument

PAK 2000's scope inquiry request covers three types of PRCBs which are comprised of four styles. PAK 2000 provided a sample of each type of PRCB to the Department. PAK 2000 describes style 1134 as a clear bag with no printing or logos, with molded handles and a snapping closure. According to PAK 2000, the closure system is attached to the bag by a process requiring further manufacture of the bag at the manufacturing plant in China. PAK 2000 asserts that its "sealable closure system" stretches the length of the entire opening of the bag and completely closes the bag so that it secures the contents within it. Style 1134, according to PAK 2000, has four snaps in the opening and three snaps in the handle. PAK 2000 states that, according to the U.S. Customs and Border Protection (CBP) Laboratory Report, the bag measures 59.1 cm in width, 56.5 cm in length and 0.125mm in thickness. It is composed of approximately 70 percent polyethylene and 30 percent polypropylene. PAK 2000 claims these bags are sold to schools and used for holding school books and materials. According to PAK 2000, they are not for retail use, are not used by retail establishments, and are not used to carry purchased products.

According to PAK 2000, styles 1282 and 1283, which constitute a single type of PRCBs, are colored plastic bags with pre-printed logos on both sides with molded handles and a snapping closure. The closure system is attached to the bag by a process requiring further manufacture of the bag at the manufacturing plant in China. PAK 2000 maintains that its "sealable closure system" stretches the length of the entire opening of the bag and completely closes the bag so that

¹This HTS number was changed effective July 1, 2005. Prior to July 1, 2005, imports of the subject merchandise were classified under statistical category 3923.21.0090 of the Harmonized Tariff Schedule of the United States.

it secures the contents within. Styles 1282 and 1283 have two snaps in the openings and four snaps in the handle. PAK 2000 states that, according to the CBP Laboratory Report, the bag measures 41 cm in width, 45.5 cm in length and 0.092 mm in thickness. It is composed of approximately 74 percent polyethylene and 26 percent polypropylene. PAK 2000 states that these bags are used to hold marketing materials at trade shows and claims they are not for retail use, are not used by retail establishments, and are not used to carry purchased products.

According to PAK 2000, style 1088 is a colored plastic bag with pre-printed logos on both sides with molded handles and a snapping closure. The closure system is attached to the bag by a process requiring further manufacture of the bag at the manufacturing plant in China. PAK 2000 states that its "sealable closure system" stretches the length of the entire opening of the bag and completely closes the bag so that it secures the contents within. Style 1088 has two snaps in the openings and four snaps in the handle. PAK 2000 states that, according to the CBP Laboratory Report, the bag measures 40.5 cm in width, 45.8 cm in length and 0.096 mm in thickness. It is composed of approximately 77 percent polyethylene and 23 percent polypropylene. PAK 2000 maintains that these bags are used to hold marketing materials at trade shows and claims they are not for retail use, are not used by retail establishments, and are not used to carry purchased products.

PAK 2000 asserts that, although the details of the bags vary slightly, the critical characteristic of the bags that should cause them to be outside the scope of the AD orders is their sealable closure system. PAK 2000 cites a dictionary definition of "sealable" as "anything that tightly or completely closes or secures a thing, as closures...", and claims that a CBP Laboratory Report states that the certain samples at issue were "three reclosable plastic bags with snaps in the handles and openings..." PAK 2000 also contends that the CBP Laboratory Report "concluded that the samples are excluded from the scope of the order because they are sealable."

Furthermore, PAK 2000 argues that the bags it imports are outside the scope of the AD orders because they are not sold to retail establishments for use in carrying purchased products. PAK 2000 acknowledges that the Department has already refused to restrict the term "retail" to specific "retail use" yet PAK 2000 claims that the non-retail use of the products is indicative of the way sealable bags are functionally different from non-sealable bags. PAK 2000 contends that the primary function of these sealable bags is to ensure the goods it contains are properly sealed and secured.

The Committee argues that the PRCBs at issue are "closeable" but not "sealable" and are therefore explicitly within the scope of the orders. Moreover, the Committee argues, the International Trade Commission listed a variety of illustrative bag types intended to fall within the scope of the AD orders with "closeable" PRCBs such as "drawstring bags" and "drawtape bags," as well as "rigid handle bags." The Committee states that the scope language in the petition includes these items and, moreover, that the model-match criteria the Department used in the investigations included bags "with rigid handles."

Furthermore, it argues, the surrogate value of “snap handles” was a major issue in the less-than-fair-value investigation.²

In addition, the Committee argues that “use in retail” is not a requirement for inclusion within the scope of the AD orders. It maintains that rigid handle bags are commonly sold and marketed for retail uses and that the Department has already made clear that the scope of the AD orders on PRCBs is not limited to PRCBs used in retail.

Applicable Regulations

The regulations governing the Department’s antidumping scope determinations can be found at 19 CFR 351.225. On matters concerning the scope of an order, the Department’s initial basis for determining whether a product is included within the scope of an order is the descriptions of the product contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the International Trade Commission. See 19 CFR 351.225 (d) and 351.225 (k)(1). Such scope determinations may take place with or without a formal inquiry. See 19 CFR 351.225(d) and 351.225(e). If the Department determines that these descriptions are dispositive of the matter, it will issue a final scope ruling as to whether or not the merchandise is covered by the order. See 19 CFR 351.225(d).

Conversely, when the descriptions of the merchandise are not dispositive, the Department will consider the following additional criteria set forth at 19 CFR 351.225(k)(2): i) the physical characteristics of the product; 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. These factors are known commonly as the Diversified Products³ criteria. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all record evidence before the Department.

Documents and parts thereof from the underlying investigation deemed relevant by the Department to the scope of the outstanding orders will be made part of the record of this determination and are referenced herein. Documents that were not presented to the Department or placed by it on the record do not constitute part of the administrative record for this scope ruling.

Analysis

The Department considers the descriptions of the merchandise to be dispositive and finds the plastic bags imported from China, Malaysia, and Thailand by PAK 2000 to be within the scope

²See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China, 69 FR 34125 (June 18, 2004), and the accompanying Issues and Decision Memorandum (the investigation) as cited by the Committee in its September 2, 2005, submission at page 9.

³ Diversified Product Corp. v. United States, 6 CIT 155, 572 F. Supp. 883 (1983).

of the respective AD orders. Irrespective of the arguments made above as to whether the bags are “sealable” or “closeable,” PAK 2000’s PRCBs are specifically of a type considered to be subject merchandise in these proceedings, i.e., a normal value was calculated for bags with snaps and handles in the investigation. The list of material inputs used to calculate normal value in the investigation factors-valuation memo includes a surrogate value for “Plastic Snap Lock Handles.” See the public Memorandum from Jeff Frank to Richard Rimlinger dated June 9, 2004: “Surrogate-Country Selection and Factors Valuation Memorandum for the Final Determination” at page five (copy attached). In addition, one of the major surrogate-value issues in the investigation with respect to PRCBs from China was whether “snap handles”, like those described by PAK 2000 and purchased by a respondent, had been purchased from a market-economy country. See the investigation and the accompanying issues and decision memorandum at comment 4, relevant portion attached hereto.

With respect to PAK 2000’s claims that its PRCBs are not intended for use by customers of retail establishments to carry their purchased goods, the Department has stated that the language in the scope of the AD orders regarding the use of PRCBs by retailers is illustrative of the use of a type of bag subject to the AD orders but is not restrictive to that use:

We find that, in defining the scope of the Orders, the petitioners chose to illustrate the types of polyethylene bags that are captured within the technical description contained in the first paragraph of the scope rather than provide an exhaustive list. The phrase “...**typically** provided without any consumer packaging and free of charge by retail establishments, e.g., grocery, drug, convenience, department, speciality retail, discount stores, and restaurants...” is illustrative, and serves as a characteristic example of representative bags (emphasis added). See AD Order at 48201, 48202. Furthermore, in describing other “names” of polyethylene bags covered by the Orders, the scope language indicates such bags “may” also be referred to as “t-shirt sacks, merchandise bags, grocery bags, or checkout bags.” Thus, the term “retail” describes a general kind or type of bag, but is not necessarily restricted to specific retail use.

See the Memorandum from Steve Williams to Barbara Tillman: “Final Scope Ruling on Whether Polyethylene Sample Bags Are Covered By the Scope of the Antidumping Duty Order on Polyethylene Retail Carrier Bags from the People’s Republic of China” (May 9, 2005), at page 9 (emphasis added).

Based on the preceding analysis, the Department finds that the PRCBs in question meet the description of merchandise covered by the orders.

Recommendation

We recommend that the Department determine, pursuant to 19 CFR 351.225(d), that the PAK 2000 PRCBs in question are within the scope of the antidumping duty orders on PRCBs from China, Malaysia, and Thailand.

Agree Disagree

Barbara E. Tillman

Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

September 29, 2005

Date

Attachments