



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

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A-570-886
Scope Inquiry
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AD/CVD 5: JNK

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MEMORANDUM FOR: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

FROM: Laurie Parkhill *LP*
Office Director
AD/CVD Operations, Office 5

SUBJECT: Final Scope Ruling in Part and Initiation of Formal Scope Inquiry
of the Antidumping Duty Order on Polyethylene Retail Carrier
Bags from the People's Republic of China; Consolidated
Packaging, LLC

SUMMARY

On April 19, 2006, the Department of Commerce (the Department) received a request from Consolidated Packaging, LLC (Consolidated), that the Department determine that certain plastic bags which Consolidated imports from the People's Republic of China (PRC) are not within the scope of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from the PRC¹. See Antidumping Duty Order: Polyethylene Retail Carrier Bags from the People's Republic of China, 69 FR 48201 (August 9, 2004) (Order). Consolidated requests that this determination be made because, it asserts, the plastic bags it imports from the PRC are not the type of merchandise intended to be within the scope of the antidumping duty order.

We have not received any comments from the petitioners (the Polyethylene Retail Carrier Bag Committee).

PROCEDURE

The regulations governing the Department's antidumping scope determinations are found at 19 CFR 351.225. Upon receipt of an application filed in accordance with section 351.225(c) of the regulations, the Department has forty-five days to take action on the application.

¹ Consolidated filed its original scope request on March 29, 2006. On April 13, 2006, we notified Consolidated that portions of its scope-ruling request were filed incorrectly. On April 19, 2006, we received Consolidated's resubmitted request which included substantially more information including an expanded list of merchandise for which Consolidated requested that the Department provide a scope ruling. Therefore, we are treating Consolidated's March 26 and April 19, 2006, submissions as one all-encompassing scope application and using the April 19, 2006, date as the beginning of the 45-day period for the Department to issue its final scope ruling or to initiate a scope inquiry. See Memorandum for Janis Kalnins to Laurie Parkhill dated April 27, 2006.



See 19 CFR 351.225(c)(2). If the Department finds that, based on the application, the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (ITC), it can determine whether a product is included within the scope of an antidumping duty order, it will issue a scope ruling. See 19 CFR 351.225(d) and (k)(1). If the Department finds that it cannot make a determination based on the application and the descriptions of the merchandise referred to in paragraph (k)(1) of the regulations, the Department will initiate a scope inquiry. See 19 CFR 351.225(e).

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

The scope request submitted by Consolidated covers 58 different types of plastic bags. In the instant case, in accordance with 19 CFR 351.225(d) and 351.225(k)(1), we find that the description of the product contained in the petition, the initial investigation, and the determinations of the ITC, are, in fact, dispositive in determining that 35 types of plastic bags imported by Consolidated are outside the scope of the antidumping duty order on PRCBs from the PRC.

We find that, for 23 types of plastic bags included in this scope request, we cannot determine based solely upon Consolidated's application and the descriptions of the merchandise in 351.225(k)(1), whether the remaining 23 types of plastic bags are within the scope of the order. As such, we recommend, pursuant to 19 CFR 351.225(e), that we initiate a scope inquiry for the items in question.

SCOPE OF THE ORDER

The merchandise subject to the order are 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 order 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 3923.21.0085² of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers products that are outside the scope of the order. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive. See Order.

BACKGROUND

In its scope inquiry, Consolidated provided sample photographs for each of the 58 types of plastic bags it imports. Consolidated argues that the plastic bags are not within the scope of the order because they are not sold into the retail trade and they contain certain features which explicitly exclude them from the scope of the order. For example, Consolidated argues that the order excludes bags that are (1) sealable, (2) without handles, (3) with integral extruded closures, (4) with a length or width shorter than 6 inches or longer than 40 inches, (5) that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film, and (6) 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). Consolidated provides a chart at exhibit 4 of its April 19, 2006, submission that identifies which exclusion (listed above except for exclusion 6) it believes is applicable to each type of bag imported by Consolidated.

With regard to exclusion 6, Consolidated argues that many of the products it ships to its customer are in packaging that is labeled specifically for medical use. Consolidated argues that its customer understands that the bags are not intended for transporting items purchased from a retail establishment. It asserts further that, because its customer is the ultimate end-user of the product and its customer purchases the bags on a retail basis, the bags are in fact packaged and labeled for the end-user in many instances. Further, Consolidated asserts that, because all the bags were ultimately returned to its customer for destruction at the conclusion of their use, Consolidated's customer is the ultimate consumer of all of the bags.

Although the Department has issued two scope rulings in response to scope inquiries from interested parties to clarify further the merchandise subject to the order since the imposition of the antidumping duty order on PRCBs, the decisions the Department made in those rulings do not relate to the issues Consolidated raises in its scope application.³

² This 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

³ See Final Scope Ruling; Polyethylene Retail Carrier Bags from the People's Republic of China, November 23, 2005 (PAK 2000-bags with molded handles and a snapping closure); see also Final Scope Ruling; Polyethylene Retail Carrier Bags from the People's Republic of China, May 10, 2005 (Dimensions Trading Inc.-sample bags).

ANALYSIS

We have analyzed the information Consolidated submitted in its March 26 and April 19, 2006, submissions. Each submission includes descriptions and/or photographs of the bags in question. Based on the provisions of 351.225(k)(1), we have been able to determine that, based on Consolidated's application and the descriptions of the merchandise, the plastic bags identified below are outside the scope of the order because they contain one or more of the following characteristics which excludes them from the scope of the order: (1) sealable, (2) without handles, (3) with integral extruded closures, (4) with a length or width shorter than 6 inches or longer than 40 inches, (5) not printed with logos or store names and closeable with drawstrings made of polyethylene film.

Item Number	Description	Exclusion
1. 102116-ACL	6.5"x10" Zip Lock Closure	1,2,3
2. 102116-LAB	6.5"x10" Zip Lock Closure	1,2,3
3. 1618YEL-DR	16"x18" Plastic Draw Tape	5
4. 20x15FROZEN	20"x15" Adhesive Tape Closure	1,2
5. 20x15REFRIG	20"x15" Adhesive Tape Closure	1,2
6. 20x15RMTMP	20"x15" Adhesive Tape Closure	1,2
7. 2587A	24"x72"x10" Open Ended	4
8. 28-4-470H	10"x12" Open Ended	2
9. 28-4-470L	10"x12" Open Ended	2
10. 39769	16"x18" Plastic Draw Tape	5
11. 46500-BIOPBAG	9"x13" Zip Lock Closure	1,2,3
12. 62-10	4"x6" Zip Lock Closure	1,2,3
13. 64-3-69	12"x24"x8" Open Ended	2
14. 64-6-52	12"x24"x8" Open Ended	2
15. 671100	6.5"x10" Zip Lock Closure	1,2,3
16. 675000TL	6.5"x10" Zip Lock Closure	1,2,3
17. 70-37	10"x12" Zip Lock Closure	1,2,3
18. 99-950-0	20"x26" Open Ended	2

19. 9x14FROZEN	9"x14" Adhesive Tape Closure	1,2
20. 9x14REFRIG	9"x14" Adhesive Tape Closure	1,2
21. 9x14RMTMP	9"x14" Adhesive Tape Closure	1,2
22. BG975-124	9.5"x12" Zip Lock Closure	1,2,3
23. DLOSPECBAG	7"x12" Zip Lock Closure	1,2,3
24. DLOSTATBAG	7"x12" Zip Lock Closure	1,2,3
25. EDB (of all colors)	16"x18"x3" Plastic Draw Tape	5
26. MLED (of all colors)	16"x18"x3" Plastic Draw Tape	5
27. QD-06CLP	9"x24" Open Ended	2
28. QD-104C	11.5"x18.5" Open Ended	2
29. QD-16 (of all colors)	14"x24" Open Ended	2
30. SB-899-C	18"x24" Open Ended	2
31. SB-900-C	19"x18" Open Ended	2
32. SB-902-C	8"x10" Zip Lock Closure	1,2,3
33. SB-905-C	23"x18"x9" Open Ended	2
34. SB-913-C	18"x20" Zip Lock Closure	1,2,3
35. SB-911-C	12"x24"x8" Zip Lock Closure	1,2,3

With regard to the remaining 23 types of plastic bags covered by Consolidated's scope request, we are unable to determine under 351.225(k)(1), based solely upon Consolidated's application and the description of the merchandise, whether these bags are within the scope of the order. Specifically, the bags for which we cannot make a determination are as follows:

Item Number	Description
1. 14x18x6IRA	14"x18"x6" Cotton Draw String
2. 16x16x3BLGR	16"x16"x3" Plastic Draw Tape
3. 16x16x3 (of all colors)	16"x16"x3" Plastic Draw Tape
4. 17806	14"x17"x3" Cotton Draw String

5. 2120 ANTOX	21"x20"x5" Plastic Draw Tape
6. 3058	20"x26" Cotton Draw String
7. 485MLED CH	12.5"x16"x4" Plastic Draw Tape
8. 721261	14"x16" Cotton Draw String
9. 99-828-0	13"x16"x4" Cotton Draw String
10. 99-829-0	21"x21"x5" Cotton Draw String
11. 99-834-2	20"x25" Cotton Draw String
12. 99-835-0	20"x26" Cotton Draw String
13. 99-850-0	20"x26" Cotton Draw String
14. 99-850-HOS	20"x26" Cotton Draw String
15. 9x12YELLOW	9"x12" Plastic Draw Tape
16. BLUE BAG	20"x26" Cotton Draw String
17. CB-14	16"x15"x3" Cotton Draw String
18. CB-14URO	16"x15"x3" Cotton Draw String
19. DLO-DRAWBAG	14"x16" Cotton Draw String
20. DLOBC1212	12"x12" Cotton Draw String
21. DLOEC79	7"x10" Cotton Draw String
22. GREENBAG	20"x26" Cotton Draw String
23. QD-16YEL-QHOA	20"x26" Cotton Draw String

