

OCT 02 2006



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration -570-886
Washington, D.C. 20230

Scope Inquiry
~~Proprietary Document~~
AD/CVD 5: JNK
Public Version

FOR PUBLIC FILE

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

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

SUBJECT: Final Scope Ruling of the Antidumping Duty Order on
Polyethylene Retail Carrier Bags from the People's Republic of
China; Based on a Request Filed by Consolidated Packaging, LLC.

SUMMARY

On June 5, 2006, the Department of Commerce (the Department) initiated a scope inquiry for polyethylene retail carrier bags (PRCBs) from the People's Republic of China (PRC) in response to a request from Consolidated Packaging, LLC (Consolidated), an importer of plastic bags from the PRC. See Final Scope Ruling in Part and Initiation of Formal Scope Inquiry Memorandum from Laurie Parkhill to Stephen J. Claeys (June 5, 2006) (Scope Memorandum), available in the Central Records Unit (CRU), main building, room B-099.

After a thorough analysis of the comments received from the parties, as well as a review of the record, we recommend that we determine that the specific plastic bags imported by Consolidated, and identified herein, are outside the scope of the antidumping duty order on PRCBs from the PRC¹.

LEGAL FRAMEWORK

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 351.225. On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the determinations of the Secretary and the International Trade Commission (ITC), and the initial investigation. See 19 CFR 351.225 (k)(1). This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order (see 19 CFR 351.225(d)).

¹ See Antidumping Duty Order: Polyethylene Retail Carrier Bags from the People's Republic of China, 69 FR 48201 (August 9, 2004) (Order).



Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: 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. These factors are commonly known as the Diversified Products² criteria. The Department applies these factors when the product descriptions contained in the petition, the determinations of the Secretary (including prior scope determinations) and the ITC, and the initial investigation are not dispositive. 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 that were not presented to the Department, or placed by it on the record, do not constitute part of the record for this scope determination.

BACKGROUND

The April 19, 2006, scope request submitted by Consolidated covered 58 different types of plastic bags. In the Scope Memorandum, in accordance with 19 CFR 351.225(d) and 351.225(k)(1), we found that the descriptions of the product contained in the petition, the initial investigation, and the determinations of the ITC were, 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 found that, for the remaining 23 types of plastic bags included in this scope request, we could not determine based solely upon Consolidated's application and the descriptions of the merchandise whether the 23 types of plastic bags are within the scope of the order. Further, we found that the term "consumer packaging," with respect to the second criterion for exclusion from the scope of the order (see Scope of the Order below), is not clearly defined in the sources outlined in 19 CFR 351.225(k)(1). As such, we are addressing the Diversified Products criteria set forth in 19 CFR 351.225(k)(2).

On June 29, 2006, we requested that interested parties provide comments on whether (based on the information on the record) the remaining 23 bag types satisfy the criteria in the second exclusion from the scope of the order. Specifically, the scope excludes 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). Further, we asked interested parties to comment on whether the term "consumer packaging" is defined clearly in the sources outlined in 19 CFR 351.225(k)(1). Finally, we asked interested parties to comment on whether the language in the scope of the order, specifically the term "consumer packaging," is dispositive as to whether Consolidated's 23 plastic bags are within the scope or, if not dispositive, whether based on the Diversified Products criteria set forth in 19 CFR 351.225(k)(2) Consolidated's plastic bags are within the scope of the order. On July 18,

² Diversified Product Corp. v. United States, 572 F. Supp. 883 (CIT 1983).

2006, we received comments from Consolidated. We did not receive comments from the Polyethylene Retail Carrier Bag Committee and its individual members, PCL Packaging, Inc., Hilex Poly Co. LLC, Superbag Corp., Vanguard Plastics Inc., and Interplast Group, Ltd. (the Petitioners).

We have analyzed the information submitted by Consolidated³ addressing the Diversified Products criteria with respect to the medical-specimen bags it imports. Based upon our analysis, as described below, we recommend finding that the medical-specimen bags imported by Consolidated are outside the scope of the order because they satisfy the criteria for the second exclusion from the scope of the order.

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 3923.21.0085⁴ 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.

INTERESTED-PARTY COMMENTS

With respect to whether the remaining 23 bag types satisfy the criteria for exclusion from the

³ Consolidated addressed the Diversified Products criteria in its April 19 and June 23, 2006, submissions; therefore, we did not need to request this information.

⁴ 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.

scope of the order, Consolidated argues that the medical-specimen bags it imports satisfy the criteria for the second exclusion from the scope of the order because the bags are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments. Specifically: 1) the bags as they enter into the United States and are delivered to the consumer are packaged in cartons labeled “medical use only,” 2) the ultimate consumer, [], is clearly labeled on the packaging as it enters the United States, 3) the ultimate disposition of the bags rests entirely on the consumer, [], as it purchases the bags and provides them to doctor’s offices and patient centers to send specimens back to [] for diagnostic testing which then destroys the bags.

With respect to whether the term “consumer packaging” is defined clearly in the sources outlined in 19 CFR 351.225(k)(1), Consolidated argues that the petition, the initial investigation, prior scope determination, and the ITC determination do not fully address the issue of what is defined as “consumer packaging.” Consolidated comments that the Petitioners were not obligated to clarify what was meant by the term “consumer packaging” when it was clear that it was exempting “bags imported for specific end-uses other than packaging and carrying of merchandise from retail establishments.” Consolidated asserts that, when these terms are examined alone and out of context of other provisions of the statement of the scope, they can create some confusion. Consolidated argues that, when the entire scope provision is read as a whole, one gets a clear picture of the class of goods pursued by the Petitioners. Consolidated argues that the scope of the order intended to include only those PRCBs given to consumers who purchase at the retail level. Consolidated argues that the medical-specimen bags it imports are not used for retail purposes.

ANALYSIS

The Department initiated this scope inquiry because it could not determine based solely upon Consolidated’s application and the descriptions of the merchandise in 19 CFR 351.225(k)(1) (*i.e.*, the petition, the initial investigation, prior scope determination, and the ITC determination) whether the 23 types of plastic bags are within the scope of the order. Further, we find that the term “consumer packaging,” with respect to the second criterion for exclusion from the scope of the order, is ambiguous. Therefore, in accordance with 19 CFR 351.225(k)(2), we have analyzed this issue based on the Diversified Products criteria.

A. Physical Characteristics

Consolidated argues that there is a distinction between the physical specifications of the product covered by the order and its products. Consolidated argues that the medical-specimen bags it imports have characteristics that are so unique as to distinguish them from products covered by the scope of the order. For instance:

- The bags are not attractive nor are they intended to be attractive.
- The bags are designed to communicate specific items of information such as:
 - ▶ a warning that the contents are biohazardous;
 - ▶ the identity of either the source of or the destination of the specimens;

- ▶ the manner in which the specimens are stored;
- ▶ the chain of custody of the contents of the bag.
- The commercial logo is used to identify the destination to which the specimen will be directed rather than as a promotion of the identity of the owner of the bag.
- The bags are packaged in boxes labeled “specimen transport bags” for “medical use only” with a clear indication of the ultimate consumer.

Based on an examination of the physical specifications of the 23 products imported by Consolidated, we have determined that the bags contain physical specifications that fit the criteria identified in the scope of order (*i.e.*, dimensions, thickness, handles, etc.).

B. Expectations of the Ultimate User

According to Consolidated, the ultimate purchaser of products covered by the scope of the order is buying retail carrier bags to be used exclusively in the retail-goods industry (and dispensed to a customer without charge). Consolidated argues that the expectations of the ultimate user of the bags it imports are not for use in the retail industry, are packaged in cartons that are clearly labeled for “medical use” only, and have a specific use (*i.e.*, the transport of medical specimens) entirely different from what was intended to be covered by the scope of the order. Further, the physical characteristics of the bags (*e.g.*, biohazard symbols, logos identifying the contents as a urine sample, etc.) distinguish them as having the specific purpose of transporting medical specimens. In addition, Consolidated argues that the ultimate consumer of the medical-specimen bags is [] (a prominent provider of diagnostic testing, information, and health services in the United States) because it delivers the bags to the doctors’ offices and the patient centers but then receives them back when the specimen is returned for diagnostic testing and eventual destruction.

The petition states:

Producers, retail establishments, and retail customers view PRCBs as separate and distinct from other types of plastic bags. The primary “customer” for a PRCB is a retail establishment that purchases the bags to provide free of charge to its shoppers. The primary “customer” for other types of polyethylene bags is a shopper who typically purchases the bag from a retail establishment for a specific purpose. Retail establishments and retail consumers have entirely distinct views of products provided free of charge as a service to customers (PRCBs) and products offered for sale (other types of plastic bags).

See Petition, June 20, 2003, at 18 (Public Version).

Based on our review of the packaging and sample products, it would appear that the purchaser expects to receive the bags for the specific and sole purpose of transporting medical specimens. Further, given the unique chain of distribution where the bags are ultimately returned to [] for destruction at the conclusion of the sampling process, we find that [] is the ultimate consumer or customer. Based on the manner in which

these bags are used, [] does not fit the petition's description of the primary customer of PRCBs, specifically, "a retail establishment that purchases the bags to provide free of charge to its shoppers."

Consolidated's medical-specimen bags are packaged and sold to [], the ultimate consumer, in packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments. Accordingly, we find that the packaging in which [] receives the bags is "consumer packaging" as identified in the second exclusion and that its expectations for use of the bags are different from the expectations of those customers purchasing PRCBs covered by the order.

C. Ultimate Use of the Product

Consolidated argues that the ultimate use of the product is for the transportation of medical specimens only. It argues that the bags are not given by doctors to patients nor are they given by [] for marketing or advertising purposes. Consolidated asserts that, once a vial or any medical specimen has been placed in the plastic bag, it becomes biohazardous and, upon the delivery of the specimen to the laboratory, the bag is destroyed.

The scope of the order states that "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 Petitioners have stated in a prior scope determination⁵ that "the illustrative second paragraph of the scope of the order provides the only two expressly specified exclusions, including: 1) bags not printed with logos or store names and which are closeable with polyethylene drawstrings and, 2) bags sold in consumer packaging and which are *printed with instruction for use.*"⁶

In the petition, the Petitioners referred to polyethylene bags that were not intended to be covered by the scope of the order as serving the functional purpose for which they were designed. Consolidated's bags serve the specific purpose of transporting medical specimens only.

Based on our review of the products imported by Consolidated, we find that, given the unique packaging that identifies the product for "medical use only" and the eventual destruction of the bags by the ultimate customer, it is clear that these bags are used for the transportation of medical specimens only and were not intended to be covered by the scope of the order. The ultimate use of Consolidated's medical-specimen bags is different from those intended to be within the scope

⁵ Final Scope Ruling: Polyethylene Retail Carrier Bags from the People's Republic of China, May 10, 2005 (Dimensions Trading Inc.-sample bags).

⁶ Petitioners' November 18, 2004, comments regarding Dimension's Trading, Inc.'s October 12, 2004, application for scope ruling at page 7 (emphasis added).

of the order. Therefore, we have determined that the packaging used to transport Consolidated's medical-specimen bags is considered "consumer packaging" with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments.

D. Channels of Trade

Consolidated argues that the channel of trade is strictly commercial and would never be used for retail purposes. Consolidated asserts that the bags it imports are shipped directly from the manufacturer ([]) to a single distributor of medical supplies. The distributor sells the bags exclusively to []. [] delivers the bags to doctors' offices and patient centers but then receives them back when the specimen is returned for diagnostic testing and eventual destruction.

The petition states:

All PRCBs are sold through the same channels of distribution, either directly to retail establishments or indirectly to retail establishments through distributors. PRCBs are not resold by the retail establishments, but are offered free of charge as a service to their customers and to advertise the retail establishment's names and logos. Conversely, polyethylene bags other than retail carrier bags are resold as retail items and serve the functional purpose for which they are designed (e.g., garbage bags, lawn bags, food storage). Thus PRCBs are distributed in a completely different manner other than other types of polyethylene bags.

See Petition, June 20, 2003, at 17 (Public Version).

Based on our review, we find the medical-specimen bags imported by Consolidated are distributed in a manner completely different from that of PRCBs covered by the scope of this order, specifically: 1) the bags are not provided free of charge to its customers, 2) the bags are sold exclusively to [] which is not a retail establishment, 3) the bags are returned to [] and destroyed after use.

E. The Manner in which the Product is Advertised or Displayed

Consolidated asserts that it has no advertising budget. It does no marketing and it has no sales staff. Consolidated contends that it sells the medical-specimen bags to a single customer for use in the transport of medical specimens. Consolidated asserts that it has no trade association to represent its interest. In addition, Consolidated argues that logos imprinted on the bags are not intended to advertise the establishment's name but to designate the chain of custody of the contents.

The petition states:

Producers, retail establishments, and retail consumers view all PRCBs as within the same product category, because they are all made from polyethylene film and are all used for

the same purpose. Producers make a broad array of PRCBs to satisfy the needs of various types of retail establishments. Retail establishments select the quality, size, dimensions, and features of the PRCBs that will best serve their individual marketing objectives and their customers' needs. Retail customers view all PRCBs as serving the same need - to package and carry purchased goods from retail establishments.

See Petition, June 20, 2003, at 18 (Public Version)

Based on our review of the record, we find that the medical-specimen bags imported by Consolidated are not advertised or displayed in the same manner as the merchandise subject to the order.

CONCLUSION

In summary, in accordance with 19 CFR 351.225(k)(2), based on our review of the record of this scope inquiry, we find that the expectations of the ultimate purchasers, the ultimate use, the channels of trade, and the manner in which the plastic bags are advertised and displayed are not the same as merchandise covered by the scope of the order on PRCBs from the PRC. In particular, we find that the bags at issue satisfy the second exclusion in that they are "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."

RECOMMENDATION

Based on the above analysis, we recommend that the Department determine that the medical-specimen bags identified in the table below and imported by Consolidated are outside the scope of the antidumping duty order on PRCBs from the PRC:

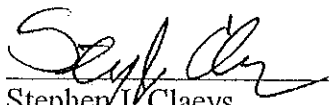
Item Number	Description
1. 14x18x6IRA	14"x18"x6" Cotton Draw String
2. 16x16x3BLGR	16"x16"x3" Plastic Draw Tape
3. 16x16x3 (of all colors)	16"x16"x3" Plastic Draw Tape
4. 17806	14"x17"x3" Cotton Draw String
5. 2120 ANTOX	21"x20"x5" Plastic Draw Tape
6. 3058	20"x26" Cotton Draw String
7. 485MLED CH	12.5"x16"x4" 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

Agree
 Disagree

We also recommend specifying that this scope ruling applies only to the medical-specimen bags addressed specifically in this determination as described in Consolidated's submissions to the Department and it does not apply to other products or different types of medical-specimen bags shipped under the product designations addressed in this ruling.

Agree
 Disagree



 Stephen J. Claeys
 Deputy Assistant Secretary
 for Import Administration

10/2/00

 Date

