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

A-570-886

Scope Inquiry
Public Document
AD/CVD 5: GC

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

FOR PUBLIC FILE

FROM: Laurie Parkhill 
Office Director
AD/CVD Enforcement 5

SUBJECT: Polyethylene Retail Carrier Bags from the People's Republic of
China - Final Scope Determination on the Request from Bags on
the Net

SUMMARY

On May 30, 2008, the Department of Commerce (the Department) received a request from Bags on the Net, asking that the Department determine that a certain polyethylene bag, identified by Bags on the Net as HOLIDAYINN-8410 which it imports from the People's Republic of China (PRC), is not within the scope of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from the PRC. See Antidumping Duty Order: Polyethylene Retail Carrier Bags from the People's Republic of China, 69 FR 48201 (August 9, 2004) (Order). We have not received any comments from the petitioners (the Polyethylene Retail Carrier Bag Committee) or other interested parties. Based on our analysis, we recommend determining that the HOLIDAYINN-8410 bag is within the scope of the order.

PROCEDURE

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 the subject merchandise is covered by the order. 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 description of the merchandise referred to in paragraph (k)(1) of the regulations, it will initiate a scope inquiry. See 19 CFR 351.225(e).

In accordance with 19 CFR 351.225(c) and (d), the Department has reviewed the request in light of the descriptions of the merchandise subject to the order, as those descriptions are set forth in the petition, the initial investigation, and the determinations of the Secretary (including all prior



scope determinations) and the International Trade Commission. Based on this review, we find that the issue of whether the product in this scope request is within the scope of the order can be determined solely upon the application and the descriptions of the merchandise referred to in section 351.225(k)(1) of the Department's regulations. See 19 CFR 351.225(d).

SCOPE OF THE ORDER

The merchandise subject to the order is as follows:

Polyethylene retail carrier bags (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 3923.21.0085¹ 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.

The scope request submitted by Bags on the Net covers one type of plastic bag referred to as the HOLIDAYINN-8410. In the instant case, in accordance with 19 CFR 351.225(d) and 351.225(k)(1), we are able to find that the description of the product contained in the scope request, petition, the initial investigation, and the prior determinations of the Department and the ITC are, in fact, dispositive.

¹ 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.

BACKGROUND AND ANALYSIS

In its request, Bags on the Net provided a description of the bag it requests the Department to find outside the scope of the Order. See Scope Ruling Request, dated May 29, 2008, at 3. Bags on the Net describes its bags as high-density, made of polyethylene, and measuring 8” wide by 10” in length with 2 handles heat-welded to the side. They are sealed at the bottom and open at the top. The bag has the Holiday Inn Express name and logo printed on the side. According to Bags on the Net, the bag is provided free to hotel guests and is used solely to carry products and/or food that are made available to guests of the Holiday Inn Express.

Bags on the Net’s bag, at 8” wide and 10” tall falls within the parameters of bags covered by the scope (*i.e.*, no length or width shorter than 6 inches or longer than 40 inches). It is a non-sealable bag with handles and is .3 millimeters (mm) in thickness. Bags with a thickness no greater than .889 and no less than .00889 mm are included in the scope as are non-sealable bags with handles.

Bags on the Net lists two reasons why it believes its 8410 bag is outside the scope of the Order. First, it states that its bag is not manufactured in the United States and there are no similar bags being manufactured in the United States. Therefore, it contends, there is no American market and/or any American manufacturers who are at risk of importation of the HOLIDAYINN-8410. See Request at 2. Bags on the Net also states that the description of its 8410 bag falls outside the definition of polyethylene retail carrier bags due to its intended use. *Id.*

With respect to the requestor’s first point, the scope of the Order provides no exclusion for PRCBs manufactured outside of the United States for which there are no similar bags manufactured in the United States. Moreover, the prior determinations of the ITC and the Department also do not provide for such an exclusion from the scope of the Order.

With respect to the requestor’s second point, that its intended use also renders its 8410 bag outside of the scope, the scope does not state that end-use *per se* is a basis for exclusion from the Order. We stated during the investigation that “{e}xcluding a bag type by its use would not assist CBP in the enforcement of an antidumping order because it is not practicable to base determinations on product use and because such a practice would create a major risk of circumvention.” See 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 at 8.

The scope of the Order 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). There is no record evidence indicating that the 8410 bag is packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments. Cases in which the Department has found PRCBs outside the scope of the Order based on this exclusion include bags which are packed in consumer packaging for hospitals and containing printing that designates them for specific medical uses, *e.g.*, patient-belongings bag. See Final

Scope Ruling of the Antidumping Duty Order on Polyethylene Retail Carrier Bags from the PRC; Based on a Request Filed by Consolidated Packaging, LLC (October 2, 2006), Final Scope Ruling for DMS Holdings, Inc. (January 8, 2008), Final Scope Ruling for Asia Dynamics, Inc., and Medline Industries, Inc. (November 15, 2007), and Final Scope Ruling for Medline Industries, Inc. (May 8, 2008). Therefore, we find that this exclusion does not apply to the 8410 bag.

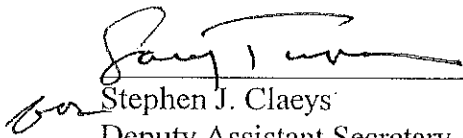
The scope of the Order also excludes polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film. The 8410 bag has handles heat-welded to the sides of the bag and has the Holiday Inn Express name and logo printed on its side. See request at 3. Therefore, this exclusion does not apply to the 8410 bag.

Therefore, based on our review of the request, the descriptions of the merchandise subject to the order, previous scope determinations, and the preceding analysis, we find that the 8410 bag in Bags on the Net's request meets the description of merchandise covered by the scope of the Order.

RECOMMENDATION

We recommend that the Department determine, pursuant to 19 CFR 351.225(d), that the HOLIDAYINN-8410 bag is within the scope of the antidumping duty order on PRCBs from the People's Republic of China.

Agree Disagree



Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

7/14/08

Date