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

A-570-886

Scope Inquiry
Proprietary Document
AD/CVD 5: GC
Public Version

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

FOR PUBLIC FILE

FROM: Laurie Parkhill *LP*
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 Majestic
International LLC

SUMMARY

On July 22, 2008, 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 Majestic International LLC (Majestic), an importer of plastic bags from the PRC. See Polyethylene Retail Carrier Bags from the People's Republic of China; Scope Request from Majestic International LLC – Initiation of Formal Scope Inquiry, dated July 22, 2008, from Laurie Parkhill to Stephen J. Claeys (Scope Initiation), available in the Central Records Unit (CRU), main Commerce Department building, room 1117.

After a thorough analysis of the comments received from the parties as well as a review of the record, we recommend that you determine that the specific plastic bags imported by Majestic, and identified herein, are not within the scope of the antidumping duty order on PRCBs from the PRC.¹

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 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 as follows: 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; 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.

SCOPE OF THE ORDER

The merchandise subject to the Order 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 0.035 inch (0.889 mm) and no less than 0.00035 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 3923.21.0085³ 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, the written description of the scope of the Order is dispositive. See Order.

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

³ 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

On July 2, 2007, the Department received a complete request from Majestic International LLC (Majestic)⁴ that the Department determine that 76 models of plastic bags which Majestic imports from the PRC are not within the scope of the Order. See Majestic Scope Ruling Request letter dated March 22, 2007 (Request). Majestic requested 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. In response to a request from the Department, Majestic provided additional information in a letter dated October 4, 2007 (October 4 response).

In accordance with the provisions of 19 CFR 351.225(d) and (e), the Department 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 ITC. Based on this review, we found that the issue of whether the bags included in the Request are within the scope of the Order could not 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. Hence, pursuant to 19 CFR 351.225(e), we initiated a scope inquiry.

Although the Request and supporting documents provided considerable information, there were several reasons why we were unable to determine under section 351.225(k)(1) whether the gift bags Majestic identified in its Request are within the scope of the Order:

1. The size of the bags was not clear. There were three and sometimes four dimensions given for the bags. While it appeared that a few bags could have been outside the applicable dimensions for length and width, it was not clear from the information on the record for each bag. Given the number and variety of bags, we needed to issue a questionnaire requesting the specific physical characteristics of each bag.
2. Majestic argued that the bags are not retail carrier bags and are not provided free of charge. Majestic stated that the bags are primarily imported in cartons containing 300 bags per carton, packaged in groups of 10 bags per inner pack. Majestic asserted that its customers, retail stores, open the inner packs and display the bags on pegs or racks, provided by Majestic, for individual sales. We have determined in a prior scope ruling that the term "retail" describes a general type of bag that is not necessarily restricted to specific retail use. See 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 9 (Dimensions). See Attachment 2. Accordingly, we needed to collect information regarding channels of distribution, methods of advertising, expectations of the ultimate purchasers, and the ultimate use of the bags imported by Majestic to determine whether they are within the scope.

⁴ The letter was dated March 22, 2007, but the Department did not receive it until July 2, 2007.

3. 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. Based on the information in the Request, Majestic's bags did not appear to be packed in consumer packaging with printing referring to end-uses. Although Majestic's bags did not appear to have logos or store names, it was not clear whether they were closable with drawstrings made of polyethylene film. Accordingly, we sought additional information on this physical characteristic in order to complete the scope inquiry.

On July 30, 2008, we sent a letter to Majestic requesting additional information and Majestic responded on August 11, 2008 (August 11 response). We requested additional information on September 5, 2008, and Majestic responded on September 11, 2008 (September 11 response).

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

ANALYSIS

The Department initiated this scope inquiry because it could not determine based solely upon Majestic's application and the descriptions of the merchandise in 19 CFR 351.225(k)(1) (*i.e.*, the petition, the initial investigation, prior scope determinations, and the ITC determination) whether the 76 models identified by Majestic are within the scope of the Order. Therefore, in accordance with 19 CFR 351.225(k)(2), we have analyzed this issue based on the Diversified Products criteria.

A. Physical Characteristics

Based on an examination of the physical specifications of the products imported by Majestic, we have determined that, with one exception, the bags have physical specifications that fit the criteria identified in the scope of the Order (*i.e.*, dimensions, thickness, handles, etc.). The Majestic bags are all non-sealable with flexible handles made of polypropylene rope, without zippers or integral extruded closures, and all have gussets. All of the bags have a thickness no greater than .035 inch (0.889 mm) and no less than .00035 inch (0.00889 mm), and all except one have no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). One bag, P.O. # 0515, is 4.5 inches wide and 15.5 inches long. The width of this bag excludes it from the scope of the Order.

B. Expectations of the Ultimate Purchaser

Majestic refers to its bags as gift bags and states in its August 11 response that the bags are "typically positioned within the store in close proximity to similar use items such as gift wrap, tissue paper, bows, and greeting cards." See August 5 response at 2.

According to Majestic, the ultimate purchaser is buying the gift bag for presentation of a gift and is using the gift bag instead of wrapping paper. See Request at 1. Majestic also states that the bags are not provided free of charge by retail establishments for the purpose of carrying their own purchased products. *Id.* at 2.

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 Majestic’s explanations under this criterion, the ultimate purchaser of Majestic gift bags expects to use the bag for presentation of a gift. This is in contrast to the statements in the petition concerning the expectations of the ultimate customer for PRCBs. Accordingly, we find that the expectations of ultimate purchasers of Majestic’s gift bags are different from the expectations of those customers purchasing PRCBs covered by the Order.

C. Ultimate Use of the Product

Majestic states that the ultimate use of its gift bags is for presentation of a gift and that the bags are used instead of wrapping paper. See Request at 1. Majestic also states that the bags are not provided free of charge by retail establishments for the purpose of carrying their own purchased products. *Id.* at 2.

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 inquiry 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.” See Dimensions at 5(emphasis in original). Majestic’s gift bags are printed with Hawaiian themes, are not printed with logos or store names, and are closeable with flexible handles made of polypropylene rope. Polypropylene is a type of polyethylene.

Based on our review of the products imported by Majestic, we find that, because they are not given free of charge to retail customers, the bags do not have logos or store names, and they are closeable with flexible handles made of polypropylene rope, it is clear that these bags are generally used for the presentation of gifts and are different from those intended to be within the scope of the Order.

D. Channels of Trade

Majestic states that it has three principal channels of trade. The major channel consists of smaller retail establishments that resell the bags. Each bag is individually labeled with a UPC bar code to facilitate scanning when they are sold. See August 5 response at 2. The bags are marketed within retail stores on wall displays or racks that indicate their use as gift bags. *Id.* The second channel comprises community organizations that purchase the bags and resell them for fund-raising purposes. A final channel of trade is to purchasers via the internet. Majestic included lists of its customers in its August 5 response.

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 PRBCs 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 of the information Majestic provided and on the record of the proceeding, we find that the gift bags imported by Majestic are distributed in a manner completely different from that of PRCBs covered by the scope of the Order, specifically as follows: 1) the bags are not provided free of charge to its customers; 2) the bags are resold by retail establishments and community organizations; 3) the bags are marketed as gift bags and are used for that purpose.

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

Majestic is the importer and wholesaler of polyethylene gift bags. There are three channels of trade. The gift bags are marketed to two channels – retail outlets and community organizations - by direct sales by means of sales staff visits, telephone calls, and correspondence. See September 11 response at 2. With respect to its third channel of trade, internet purchasers, the bags are sold directly via e-mail inquiries that Majestic receives via its web site (www.giftbagsofhawaii.com).

With the exception of the internet, Majestic explained, it does no direct advertising. Local advertising in Hawaii is handled by the respective retail establishment.

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* (emphasis added).

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

Based on our review of the record, we find that the gift bags imported by Majestic are not advertised or displayed in the same manner as the merchandise subject to the Order.

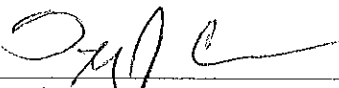
CONCLUSION

In summary, in accordance with 19 CFR 351.225(k)(2) and 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 gift bags are advertised and displayed are not the same as merchandise covered by the scope of the Order on PRCBs from the PRC.

RECOMMENDATION

Based on the foregoing analysis, we recommend that the Department determine that, pursuant to 19 CFR 351.225(k)(2), the gift bags identified in Attachment 1 and imported by Majestic are not within the scope of the antidumping duty order on polyethylene retail carrier bags from the People's Republic of China.

Agree Disagree



Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

10/20/04

Date

