




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

A-570-886
Scope Inquiry
Public Document
AD/CVD 5: MAR

MEMORANDUM TO: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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 Request from Majestic
International, LLC

SUMMARY

On May 5, 2009, the Department of Commerce (the Department) received a complete scope-ruling request from Majestic International, LLC (Majestic), asking that the Department determine that certain plastic bags imported by Majestic from the People's Republic of China (PRC) are outside 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). The request, submitted by Island Customs Brokers on behalf of Majestic, contains a description of the bags. 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 68 of the 120 types of polyethylene bags imported by Majestic and identified herein are not within the scope of the antidumping duty order on PRCBs from the PRC. The Department has already found the remaining 52 of the 120 types of bags submitted in the Scope Request to be outside the scope of the Order in a separate determination dated October 20, 2008.

LEGAL FRAMEWORK

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 351.225. In considering whether a particular product is within the scope of an order, the Department will take into account the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Department (including prior scope determinations and those of the International Trade Commission (ITC)). See 19 CFR 351.225(k)(1). 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(k)(1). If the Department makes a dispositive determination based solely upon the application and the descriptions of the merchandise referred to in paragraph (k)(1) whether a product is within the scope of an order, the Department will issue a final ruling. See 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will further 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 Products¹ criteria. The determination as to which analytical framework is most appropriate in a given scope inquiry is made on a case-by-case basis after consideration of all record evidence before the Department.

SCOPE OF THE ORDER

The merchandise subject to the Order is as follows:

Polyethylene retail carrier bags 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

¹ Diversified Products Corp. v. United States, 572 F. Supp. 883 (CIT 1983).

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. See Harmonized Tariff Schedule of the United States (2005) – Supplement I Annotated for Statistical Reporting Purposes Change Record – 17th Edition – Supplement 1.

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 Department's written description of the scope of the order is dispositive.

See Order.

BACKGROUND

Pursuant to 19 CFR 351.225(c)(1)(i), in its request Majestic provided a description of the 120 bags it requests the Department to find outside the scope of the Order. Majestic describes its bags as being made of polyethylene sheeting and having flexible handles made of polypropylene rope. Majestic asserts that the bags are non-sealable and do not have zippers or integral extruded closures, that all of the bags are gusseted, that all the bags have a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.0035 inch (0.00889 mm), and that all of the bags have no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). Majestic also asserts that some of the bags are printed with Hawaiian themes. See Scope Request at 2.

Majestic includes in its request at Exhibit A a list of the 120 bags for which it requests a scope ruling. This table lists the Universal Product Code (UPC), a unique number for each type of bag, an item code, the color of each bag, a design classification, and the size of each bag. In this column, the bags are grouped by the design on the bag and then each individual item's size is described in the same column. We refer to individual bags by their UPC number in the discussion which follows.

Pursuant to 19 CFR 351.225(c)(1)(ii), in its request Majestic states that the imported products are polyethylene gift bags for retail sale, indicating that its bags are intended for use in the presentation of gifts instead of wrapping paper. See Scope Request at 2. Majestic believes that all 120 of its bags are outside the scope of the Order.

ANAYLSIS

Majestic identified 120 bags for our consideration in its May 5, 2009, scope-ruling request; upon review of earlier scope determinations, we find that we have already issued a decision with respect to 52 of the bags. See Polyethylene Retail Carrier Bags from the People's Republic of China – Final Scope Determination on the Request from Majestic International LLC (October 20, 2008) (Majestic October 2008 Scope Decision). These 52 bags were determined to be outside the scope of the Order; their UPCs are listed below:

8-51603-00033-7, 8-51603-00034-4, 8-51603-00045-0, 8-51603-00066-5, 8-51603-00069-6, 8-51603-00070-2, 8-51603-00071-9, 8-51603-00075-7, 8-51603-00076-4, 8-51603-00077-1, 8-51603-00080-1, 8-51603-00092-4, 8-51603-00093-1, 8-51603-00094-8, 8-51603-00098-6, 8-51603-00131-0, 8-51603-00133-4, 8-51603-00136-5, 8-51603-00150-1, 8-51603-00151-8, 8-51603-00153-2, 8-51603-00155-6, 8-51603-00160-0, 8-51603-00165-5, 8-51603-00175-4, 8-51603-00176-1, 8-51603-00181-5, 8-51603-00226-3, 8-51603-00230-0, 8-51603-00231-7,

8-51603-00246-1, 8-51603-00252-2, 8-51603-00253-9, 8-51603-00259-1, 8-51603-00260-7, 8-51603-00262-1, 8-51603-00263-8, 8-51603-00303-1, 8-51603-00305-5, 8-51603-00306-2, 8-51603-00307-9, 8-51603-00308-6, 8-51603-00309-3, 8-51603-00350-5, 8-51603-00362-8, 8-51603-00363-5, 8-51603-00365-9, 8-51603-00367-3, 8-51603-00368-0, 8-51603-00372-7, 8-51603-00373-4, 8-51603-00374-1.

Two of the UPC codes in the above list were reported short a zero in the third section of the UPC in the Scope Request at Exhibit A. We confirmed the 12-digit version of the UPC from the UPC labels on the sample bags provided with the Scope Request. In each case, we have added the missing zero after the second hyphen in the above list; these two UPCs are 8-51603-00155-6 and 8-51603-00160-0.³ As we have previously determined that these 52 bags are outside the scope of the Order, our analysis below will only take into account the remaining 68 bags submitted for the scope ruling under the May 5, 2009, scope request.

The scope of the Order states that 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, and with or without printing. Majestic's bags are all non-sealable polyethylene bags with gussets. Three of the 68 bags have die-cut integral handles (the handle is a cut-out in the sheeting on the front face and back face of the bag); the remaining 65 bags are closeable with flexible handles made of polypropylene rope. The bags all have printing. Based on this first set of physical characteristics all of the bags are within the scope of the Order.

Next, the scope of the Order defines the subject merchandise as being made 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). Majestic states that its bags are of a thickness no greater than .035 inch (0.889 mm) and no less than .00035 inch (0.00889 mm) and asserts that none of the bags have a depth, length, or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). See Scope Request at 2.

An examination of the table provided by Majestic in the Scope Request at Exhibit A and measurements taken of the sample bags submitted with the Scope Request allows us to conclude

³ All 52 bags listed were included in the liquidation instructions we issued pursuant to the Majestic October 2008 Scope Decision. See Message 8337203 dated December 2, 2008 (Attachment 1). There are two other instances of single missing zeroes in the third section of the UPC for Majestic's bags: (1) Item UPC 8-51603-0003-0 (only 11 digits) was submitted under Majestic's August 5, 2008, request; this bag was found to be outside the scope of the Order in the Majestic October 2008 Scope Decision and the 11-digit UPC was included in our December 2, 2008, Liquidation Instructions. The correct 12-digit UPC 8-51603-00003-0 was submitted under the May 5, 2009, request and is included in the 68 UPCs to be evaluated in the instant case. (2) Item UPC 8-51603-0163-1 (only 11 digits) was submitted in the May 5, 2009, request at Exhibit A. The sample bags submitted with the request include a bag that matches the description in the request at Exhibit A and is labeled UPC 8-51603-00163-1. We refer to this bag by the 12-digit UPC in this determination.

that four of the bags have length and/or width dimensions shorter than 6 inches (15.24 cm). We find these four bags to be outside the scope of the Order based on their dimensions alone; they are identified in the chart below.

UPC	Dimensions ⁴
851603-00060-3	3 inch, 3 inch, 3.5 inch, 3 inch
851603-00062-7	3 inch, 3 inch, 3.5 inch, 3 inch
851603-00152-5	4 inch, 3 inch, 5.5 inch, 3 inch
851603-00223-2	4.5 inch, 4 inch, 15 inch, 4 inch

The other 64 of the 68 bags under examination (including the three with die-cut handles mentioned above) are within the scope dimensions.

The scope of the Order provides two provisions for exclusion: (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.

With respect to the first exclusion provision of the scope of the Order, on the first point of the provision, the type of printing, Majestic states that some of the bags are printed with Hawaiian themes and the bags are not printed with logos or store names. See Scope Request at 3. Furthermore, Majestic states that the bags have flexible handles made of polypropylene rope. *Id.* at 2. This exclusion does not provide a dispositive remedy because where bags lack printed logos or store names they must also have drawstrings made of polyethylene film to be excluded under this provision. A physical review of each sample bag submitted with the Scope Request confirms that the physical characteristics of the bags are dissimilar to those described in the first exclusion provision.

The second exclusion provision in the scope of the Order specifically 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. Majestic's bags are not packed in consumer packaging.

Under 19 CFR 351.225(k)(1), we must also consider determinations by the Department and the ITC. The merchandise presented under the current Scope Request is similar to that presented for the Majestic October 2008 Scope Decision. In that determination, the Department found similar Majestic polyethylene gift bags to be outside the scope of the Order pursuant to an analysis under 19 CFR 351.225(k)(2). We found that the expectations of the ultimate purchasers, the ultimate use, the channels of trade, and the manner in which the gift bags were advertised and displayed

⁴ The dimensions in order of appearance are shown from the perspective of the bag expanded and sitting upright – horizontal width of front and back faces, depth of side gussets from front face to back face, vertical height of front and back faces, and depth of bottom gusset from front face to back face. The front and back faces have handles.

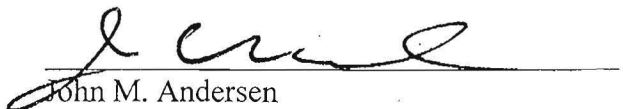
were not the same as merchandise covered by the scope of the Order. See Majestic October 2008 Scope Decision at 7. The regulations at 19 CFR 351.225(k)(1) instruct the Department to consider its prior scope determinations. Because we have already undertaken a Diversified Products analysis for similar merchandise imported by Majestic in the Majestic October 2008 Scope Decision, we determine that the decision is applicable to our analysis of the remaining 64 items in Exhibit A of the Scope Request for which Majestic has requested a scope determination.

Pursuant to 19 CFR 351.225(d) we find that the descriptions of the product contained in the scope request are dispositive when considered pursuant to 19 CFR 351.225(k)(1) (i.e., the petition, the initial investigation, prior scope determinations, and ITC determinations). Four of the 68 requested bags are outside the scope of the Order based on their dimensions. The remaining 64 bags are within the dimensions defined in the scope of the Order but are outside the scope of the Order in light of the Majestic October 2008 Scope Decision that similar merchandise was outside the scope of the Order.

RECOMMENDATION

Based on the foregoing analysis, we recommend finding that, pursuant to 19 CFR 351.225(d), all of Majestic's 68 bags (see Attachment 2) are not within the scope of the antidumping duty order on Polyethylene Retail Carrier Bags from the People's Republic of China.

Agree Disagree



John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

7/7/09
(Date)

Attachments