



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

A-570-886

Scope Inquiry
Public Document
AD/CVD 05: DV

July 17, 2009

FOR PUBLIC FILE

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

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

SUBJECT: Polyethylene Retail Carrier Bags from the People's Republic of
China - Final Determination on the Scope Request from Care Line
Industries, Inc.

SUMMARY

On June 4, 2009, the Department of Commerce (the Department) received a complete scope request from Care Line Industries, Inc. (Care Line), regarding whether certain patient-belonging plastic bags and bags for patient-care kits which Care Line imports from the People's Republic of China (PRC) are 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); see Scope Ruling Request, Polyethylene Retail Carrier Bags from the People's Republic of China (A-570-886) Care Line Industries from Alston & Bird, LLP, June 4, 2009 (Scope Request).

Based on our analysis, we recommend determining that Care Line's patient-belonging bags and Care Line's bags for patient-care kits are outside the scope of the Order pursuant to 19 CFR 351.225(k)(1).

PROCEDURE

The regulations governing the Department's antidumping scope determinations are found at 19 CFR 351.225. On matters concerning the scope of an antidumping duty order, pursuant to 19 CFR 351.225(k)(1), the Department first examines 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). See 19 CFR 351.225(d). This determination may take place with or without a formal inquiry. See 19 CFR 351.225(d) and (e). 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). If the Department finds that it cannot make a determination based solely on the application and the descriptions of the merchandise referred to in paragraph (k)(1) of the regulations, the Department will initiate a



formal scope inquiry. See 19 CFR 351.225(e). If the descriptions of the merchandise contained in the petition, investigation, and past determinations made by the Department and the ITC are not dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2).

In this case, we have evaluated Care Line's request in accordance with 19 CFR 351.225(k)(1) and we find that the criteria at 19 CFR 351.225(k)(1) are dispositive with respect to whether Care Line's patient-belonging plastic bags and bags for patient-care kits are within the scope of the Order. We find it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2). We have received no comments from interested parties.

The scope request submitted by Care Line covers 47 different types of plastic bags. In accordance with 19 CFR 351.225(d) and 351.225(k)(1), we find that the descriptions of the products identified in the application and the language of the Order are dispositive. Accordingly, we conclude that Care Line's 47 types of plastic bags are not within the scope of the Order.

Documents from the underlying proceeding form the record of this determination and we refer to them herein.

SCOPE OF THE ORDER

The products 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 3923.21.0085¹ of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers

¹ This HTSUS 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 HTSUS.

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.

BACKGROUND

Care Line's Request

Pursuant to 19 CFR 351.225(c), Care Line submitted a complete scope-ruling request for 47 plastic bags to the Department on June 4, 2009. See Scope Request, Exhibit A. In its request, Care Line states that the plastic bags it imports are sold directly to hospitals and other medical-service providers and never to retail establishments. Although Care Line requests a scope determination on 47 individual bags, all of the bags are either patient-belonging bags or bags for patient-care kits. In its scope request, Care Line provided photographs of a representative sample of the 47 types of plastic bags it imports. *Id.*, Exhibit B. Care Line argues that the plastic bags are not within the scope of the Order because they contain certain features which exclude them explicitly from the scope of the Order, they are not the type of bags that are provided free of charge to customers of retail establishments, and they are sold in consumer packaging with printing that refers to a specific end-use other than packaging and carrying merchandise from retail establishments. *Id.*, page 3.

Care Line explains that hospitals or medical facilities purchase its patient-belonging bags to store a patient's personal belongings (or items provided by medical staff) during the hospital stay. Upon discharge from the hospital, the patient's personal effects are returned to the patient and the plastic bag is discarded by the hospital. *Id.*, page 2. Care Line states that the bags it imports are not printed with logos or store names. Instead, Care Line states, certain patient-belonging bags are printed only with block letters "PATIENT'S BELONGINGS" followed by "NAME" and "ROOM." It states that other patient-belonging bags are customized to reflect the name of the hospital and may or may not include space to accommodate a patient's name and room number. *Id.*, page 2. Care Line states that the bags for patient-care kits are used by patients in hospitals or medical facilities to contain items such as wash basins, wash cloths, toiletries, tissues, and other hygiene products. *Id.*, page 2. Care Line states that bags for patient-care kits may also be customized with the name of the hospital or the bags may be printed with thematic designs that convey the purpose of medical care (e.g., bags for patient-care kits for new mothers may include themes of baby toys; some of the bags bear no markings at all but are similar in design to those that do). *Id.*, page 3. Accordingly, Care Line argues, its bags are normally marked with printing that delineates a specific end-use contemplated by the exclusionary language in the scope. Care Line argues that the printing or theme on its bags reveals the intended end-use for medical or health-care settings.

Further, Care Line argues, the second exclusion of the Order stating that "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" is especially applicable to its products. *Id.*, page 5. Care Line argues that all of the patient-belonging bags and bags for patient-care kits that it imports are packaged in cardboard boxes or cartons that identify their

contents as “Plastic Patient Belonging/Patient Care Kit Bags.” Id. Care Line argues that this marking refers to a specific end-use which does not involve packaging and carrying merchandise from a retail establishment. For support, Care Line provided an affidavit from Care Line’s agent in the PRC who is responsible for sourcing the bags that Care Line imports. Id., Exhibit C. The agent described how the bags are packaged and provided photographs of consumer packaging for two types of bags shipped to Care Line recently. Id. Care Line also provided a packing list pertaining to the shipment. Id., Exhibit D. Care Line also provided an affidavit from Care Line’s procurement manager which describes the type of bags that it imports and the consumer packaging in which Care Line imports those bags. Id., Exhibit E. Care Line provided photographs taken by its procurement manager which demonstrate that the packing described and photographed by Care Line’s PRC agent is identical to the packaging in which Care Line imports patient-belonging bags and bags for patient-care kits. Id. Care Line states that the purchase-order number and product numbers reflected on the packaging correspond to the information in the packing list. Id., pages 5-6.

For further support, Care Line argues that the Department has found that bags packed in cartons with similar packaging which refer to uses as “patient belong,” “belonging,” “maternity,” and “patient personal belongings bags or patient set-up kits” were outside the scope of the Order. Id., page 6. Care Line cites Polyethylene Retail Carrier Bags from the People’s Republic of China, Thailand, and Malaysia, Final Scope Ruling for Medline Industries, Inc. (May 8, 2008), at pages 6-7 and Polyethylene Retail Carrier Bags from the People’s Republic of China, Thailand, and Malaysia, Final Scope Ruling for Asia Dynamics Inc., and Medline Industries, Inc. (November 16, 2007), at page 8. Care Line argues that the references to “patient” on the packages containing its bags confirm that the bags are intended for use by patients in hospitals to hold personal-care items and not by consumers to carry purchased items from retail establishments. Care Line argues that the relevant exclusion and the precedent deal with the printing on the consumer packaging which infer a specific end-use. Care Line argues that the printing on the packaging of its bags indicate that they have a non-retail end-use and that Care Line is the ultimate consumer for the imported bags for patient-care kits whereas the hospitals are the ultimate consumers of the imported patient-belonging bags; it asserts that a retail establishment is not a consumer.² Id., page 6.

Care Line also argues that its bags are dissimilar to the bags covered by the scope of the Order because the bags are never sold by Care Line to retail establishments and therefore never provided free of charge by retail establishments to customers to carry purchased products as required by the Order. Id., pages 2-3.

Care Line argues that, to the extent the Department finds that the scope language is not dispositive of its inquiry, the application of the criteria set forth in 19 CFR 351.225(k)(2) to the bags imported by Care Line shows that its bags differ in significant respects from bags that are within the scope of the Order. In its submission, Care Line addresses each of the criteria of 19 CFR 351.225(k)(2) in detail. Id., pages 8-10.

² Care Line asserts that it removes from consumer packaging bags that it uses to make patient-care kits but sells patient-belonging bags to hospitals in the original consumer packaging in which the bags are imported.

ANALYSIS

We have analyzed the information Care Line submitted in its June 4, 2009, submission. The submission includes photographs of the bags in question and packages in which they are shipped and imported. See Scope Request, Exhibits B through D. Based on the provisions of 19 CFR 351.225(k)(1), we have been able to determine that the second exclusion in the Order stating that “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” applies to this scope inquiry. The record of the scope inquiry indicates that, as discussed below, the consumer packaging used by Care Line indicates a non-retail use. Care Line imports its products in boxes with printing describing the contents as “plastic patient belonging bag/patient care kit bag.” See Scope Request, Exhibit E.

The record indicates that, with respect to the patient-belongs bag, the hospital, not the patient, is the last entity in the distribution chain to purchase the bags. With respect to the bags for patient-care kits, Care Line is the last entity in the distribution chain. Further, after the bags are used, patients typically return the bags back to the hospital which discards them. Thus, the hospital or medical facility is the consumer of the bags in question. This position is consistent with our prior scope decision where the medical lab and not the patient is the consumer and, just as in the current request, the bags were returned back to the medical establishments after usage. 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, dated October 2, 2006, available at Attachment B.

The record indicates that the bags in question are packed in carton boxes printed with references to a non-retail use and there is no additional packaging for these bags other than the cardboard box in which the bags are shipped. The printing on the boxes is consistent with the printing on the bags indicating a medical end-use. Thus, the carton boxes, which represent consumer packaging destined for non-retail establishments, meet the requirements of the second exclusion of the Order. Because the exclusionary language applies to Care Line’s patient-belongs bags and bags for patient-care kits, it is not necessary for the Department to consider Care Line’s alternative arguments in support of its position that its bags are not covered by the scope of the Order. The bags requested by Care Line and that the Department determines are excluded from the scope of the Order are listed in Attachment A to this scope decision by product number as submitted by Care Line in its Scope Request.

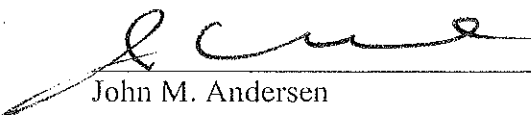
CONCLUSION

In summary and in accordance with 19 CFR 351.225(k)(1), our analysis indicates that the hospitals are the consumers of the merchandise in question and the consumer packaging indicates an end-use other than packaging and carrying merchandise from retail establishments. Because all 47 types of bags in question are imported in consumer packaging which satisfy the Order’s second exclusion, we conclude that all 47 types of bags should be found outside the scope of the Order.

RECOMMENDATION

Based on the above analysis, we recommend finding that certain patient-beloning plastic bags and bags for patient-care kits identified in Attachment A and imported by Care Line are outside the scope of the antidumping duty order on PRCBs from the PRC because the hospitals are the consumers of the merchandise in question and the consumer packaging indicates an end-use other than packaging and carrying merchandise from retail establishments.

Agree Disagree



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

7/17/09
Date

Attachment