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

**FOR PUBLIC FILE**

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

MEMORANDUM FOR: Susan H. Kuhbach  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

FROM: Laurie Parkhill  
Office Director  
AD/CVD Operations

SUBJECT: Polyethylene Retail Carrier Bags from the People's Republic of  
China - Final Scope Ruling for The St. John Companies

SUMMARY

On April 16, 2010, the Department of Commerce (the Department) received a scope request from The St. John Companies (SJC) regarding whether certain "patient belongings" plastic bags imported by SJC 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). We found that the initial scope request lacked certain necessary information for ruling on the request. On May 11, 2010, we sent SJC a letter explaining that, in order to issue a determination in response to its scope request, we would need additional information regarding the bags in question and that the clock for issuing the scope ruling would not begin until after we received the information. On August 19, 2010, SJC responded to our letter with the additional information.

On April 23, 2010, we received comments from the Polyethylene Retail Carrier Bag Committee (the petitioner) in response to SJC's April 16, 2010, request. On September 13, 2010, we received additional comments from the petitioner in response to SJC's August 19, 2010, submission.

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, 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). 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(k)(1). 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 and consider the five additional factors set forth at 19 CFR 351.225(k)(2) of the Department's regulations.

In this case, we evaluated SJC's request in accordance with 19 CFR 351.225(k)(1) and we find that the criteria contained therein are dispositive with respect to whether SJC's patient-belongings bags are covered by the scope of the order. We find it unnecessary to consider additional factors in 19 CFR 351.225(k)(2).

The scope request submitted by SJC covers four different types of plastic bags. In the instant case and in accordance with 19 CFR 351.225(d) and 351.225(k)(1), we find that the description of the product contained in the language of the order is dispositive in determining whether the four types of plastic bags are within the scope of the order.

Public documents from the underlying proceeding deemed relevant by the Department to the scope of the order will be made part of the record of this determination and referenced herein.

#### 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 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 currently classifiable under statistical category 3923.21.0085<sup>1</sup> 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.

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<sup>1</sup> This HTSUS number was changed effective July 1, 2005. Prior to July 1, 2005, imports of subject merchandise were classified under statistical category 3923.21.0090 of the HTSUS.

## BACKGROUND

According to its April 19 scope request, SJC is a “small business that has become a leader in the manufacture and distribution of medical labels, medical records solutions, medical imaging and patient identification products.” In this request, SJC provides photographs and samples of each of the four types of plastic bags it imports. SJC argues that, while the bags themselves conform to the measurements listed in the scope definition, they are not used in a retail environment. SJC explains that the bags are marked for patient use and are marketed and sold to hospitals and alternative medical sites. SJC refers to two other unrelated companies, Medline Industries, Inc. and Asia Dynamics, Inc., which requested and received scope rulings on their imports of patient-belongings bags. According to SJC, the bags in question in the instant scope inquiry are virtually identical to the bags in the requests from Medline Industries, Inc., and Asia Dynamics, Inc., which the Department determined to be outside the scope of the antidumping duty order. SJC asserts that, by virtue of their intended use, its four models fall outside of the scope of the antidumping duty order.

In response to the April 19 scope request, the petitioner counters that the Department should reject SJC’s argument that certain patient-belonging bags are outside the scope of the order “by virtue of their intended use” because the Department has made clear that there is no “use” exception to the scope and that the scope of the order is not limited to bags actually used in retail. The petitioner explains that, in the two decisions cited by SJC, the Department’s decisions that the bags were outside the scope of the order were not based on any general “use” exception. Rather, the petitioner explains, the Department reached its decision based on the consumer packaging in which the bags entered the United States; specifically, the Department determined that the consumer packaging referred to specific end-uses other than carrying merchandise from retail establishments. The petitioner asserts that patient-belongings bags that are imported in non-descript packaging are within the scope of the order. The petitioner concludes that, because SJC makes no claim and provides no evidence that the bags subject to the scope-ruling request were packed in consumer packaging indicating specific end-uses other than carrying merchandise from retail establishments, the Department should conclude that these bags are within the scope of the order.

In our May 11, 2010, letter to SJC, we explained that, where the previous scope requests cited by SJC are concerned, we found certain patient-belongings bags are outside the scope of the order largely by virtue of the packaging in which the bags entered the United States which, in those cases, indicated usage in a non-retail environment and thus satisfied the second scope-exclusion criterion. We explained to SJC that, in order to make a decision on the bags it imports, we would need additional information; specifically, we explained that we would need details regarding the packaging in which the bags are imported into the United States.

SJC responded to our request on August 19, 2010. This submission includes photographs and descriptions of the packaging in which each of the belongings bags in question are shipped. For the four models, the photographs of the packaging indicates that, along with additional information, the boxes are printed as follows:

Item #	Description
PBD01	Belongings Bag Clear
PBD02	Belongings Bag White
PBR01	Belongings Bag Clear
PBR02	Belongings Bag White

Along with each photograph of the packaging, SJC has provided a description of the boxes in which these belongings bags are packaged. Supplementing its photographs and descriptions of the packaging is a copy of the pre-shipment inspection report conducted by Daintily Quality Consulting Co., Ltd., in the PRC. This report also includes photographs of the bags in question and photographs of the packaging in which they are shipped from the PRC to the United States. The photographs of the inspection report illustrate packaging identical to the packaging in SJC's photographs.

On September 13, 2010, the petitioner replied to SJC's August 19 submission. The petitioner asserts that SJC did not provide the information solicited by the Department. The petitioner contends that SJC described and provided photographs of the packaging for the hospital bags as they are shipped from SJC (in California) to its U.S. customers. The petitioner claims that SJC makes no assertion that this is the same packaging for the bags as they enter the United States. Because SJC provides no evidence that the patient-belongings bags in question were "packaged in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments" at their time of entry into the United States, the petitioner concludes that the Department should find that these bags are within the scope of the order.

### ANALYSIS

We have analyzed the information submitted by all parties. The submissions contain photographs of the bags in question, a sample of each bag, and photographs of the packaging in which the bags are imported into the United States. We find that the descriptions and supplemental information provided by SJC are dispositive in the matter. 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 end-uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash-can liners" applies in this case. The record of the scope proceeding indicates that the consumer packaging used by SJC indicates a clear non-retail use. SJC imports its product in boxes with printing describing the imported products as belongings bags, which are used in a manner other than carrying merchandise from retail establishments.<sup>2</sup>

Similar to previous scope decisions, the record of this case indicates that SJC's customers, which are hospitals and other medical facilities, purchase the bags from SJC, which are then provided to their patients for storing their belongings during their stay at the medical facility. Thus, the hospital or medical facility is the consumer of the bags in question. This position is consistent

<sup>2</sup> See SJC's August 19 submission at 1-4.

with prior scope decisions where patient-belongings bags entered the United States in packaging that indicated the bags were intended for a non-retail environment. See the November 15, 2007, memorandum to Stephen J. Claeys, entitled "Final Scope Ruling for Asia Dynamics, Inc., and Medline Industries, Inc."

With regard to the petitioner's assertion that it is unclear that the photographs presented in SJC's August submission represent the packaging in which the bags enter the United States, we are satisfied that the packaging described in SJC's August submission is the packaging in which the bags in question enter the United States. In our May 11 letter, we requested descriptions of the packaging *in which the bags are shipped to the United States*, including descriptions of all print that appears on the packaging, photographs of the packaging, and documentation that the photographs depict the packaging *entering* the United States. See May 11 letter at 3 (emphasis in original). On August 19, SJC responded to our May letter with the requested information, consisting of packaging descriptions, photographs of the packaging, and an inspection report, completed in the PRC by Daintily Quality Consulting Co., Ltd., for shipments of the bags to the United States. The photos of the packaging in this inspection report portray packaging identical to the packaging photos and descriptions provided by SJC.

#### 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 that the consumer packaging indicates an end-use other than packaging and carrying merchandise from retail establishments. Because all four bags in question are imported in consumer packaging which satisfies the order's second exclusion criterion, we conclude that all four types of bags should be found to be outside the scope of the order.

#### RECOMMENDATION

Based on the above analysis, we recommend finding that the patient-belongings bags identified below and imported by SJC 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 end-use other than packaging and carrying merchandise from retail establishments.

Item Number	Description	Printing on Packaging
PBD01	20"x20"x4" drawstring (clear)	Belongings Bag Clear
PBD02	20"x20"x4" drawstring (white)	Belongings Bag White
PBR01	20"x18.5"x3.5" handle (clear)	Belongings Bag Clear
PBR02	20"x18.5"x3.5" handle (white)	Belongings Bag White



Agree

Disagree



Susan H. Kuhbach  
 Acting Deputy Assistant Secretary  
 for Antidumping and Countervailing Duty Operations

October 1, 2010

Date