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C-570-917
Scope Inquiry
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February 17, 2009

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

FROM: James C. Doyle
Director, Office 9
Import Administration

SUBJECT: Final Scope Ruling: Antidumping and Countervailing Duty Orders
on Laminated Woven Sacks from the People's Republic of China

Summary

On October 23, 2008, the Department of Commerce ("Department") received a request from the Archer Daniels Midland Company ("ADM") for a scope ruling on whether its imports of six different types of bags used to export rice are covered by the antidumping and countervailing duty orders on laminated woven sacks from the People's Republic of China ("PRC").¹ See Notice of Antidumping Duty Order: Laminated Woven Sacks From the People's Republic of China, 73 FR 45941, 45942 (August 7, 2008), and Laminated Woven Sacks From the People's Republic of China: Countervailing Duty Order, 73 FR 45955, 45956 (August 7, 2008) (collectively "Orders").

ADM labeled its imports of six different types of bags as "Product A," "Product B," "Product C," "Product D," "Product E" and "Product F." In accordance with 19 CFR § 351.225(d) and 19 CFR § 351.225(k)(1), the Department has determined that Products A and B are merchandise covered by the scope of the Orders while Products C, D, E and F are outside the scope of the Orders.

Background

On October 23, 2008, the Department received a letter from ADM requesting a scope ruling on whether its imports of six different types of bags used to export rice are covered by the Orders. On November 17, 2008, the Department met with counsel representing Petitioners² and counsel

¹ See Archer Daniels Midland Company Scope Ruling Request Laminated Woven Sacks from the People's Republic of China (October 23, 2008) ("ADM's Scope Request").

² Petitioners consist of the Laminated Woven Sacks Committee and its individual members, Bancroft Bag, Inc.,



representing Commercial Packaging, a U.S. importer of subject merchandise, to allow parties to view and inspect the six sample sacks submitted by ADM, as requested by Petitioners. On November 20, 2008, the Department received opposition comments from Petitioners.³ On November 25, 2008, the Department extended the deadline for issuing a ruling on ADM's scope request by 21 days to December 29, 2008. On December 3, 2008, the Department received rebuttal comments from ADM⁴ and on December 4, 2008, received rebuttal comments from Commercial Packaging ("CP").⁵ On December 17, 2008, Petitioners submitted surrebuttal comments.⁶ On December 18, 2008, the Department extended the deadline to issue a scope ruling or initiate a scope inquiry by an additional 32 days until January 30, 2009. On January 8, 2009, the Department received surrebuttal comments from CP⁷ and on January 14, 2009, the Department received surrebuttal comments from Petitioners.⁸ On January 15, 2009, the Department met with CP to discuss comments on the record of this scope review and extended the time to issue a scope ruling or initiate a scope inquiry by 14 days to February 13, 2009. On January 16, 2009, CP filed comments⁹ regarding the production and printing processes of producing laminated woven sacks.

ADM's Scope Request

ADM requests that the Department find its imports of bags used to export rice outside the scope of the Orders. ADM described the merchandise in its request as six different types of bags and referred to them as "Product A," "Product B," "Product C," "Product D," "Product E," and "Product F," respectively.

ADM described Product A and Product B as each: (1) made of a single ply of woven polypropylene strip; (2) laminated with biaxially-oriented polypropylene ("BOPP"); (3) printed in three colors; and (4) of less than one kilogram in weight. See ADM's Scope Request at 3.

Coating Excellence International, LLC, Hood Packaging Corporation, Mid-America Packaging, LLC, and Polytex Fibers Corporation (collectively, "Petitioners").

³ See Laminated Woven Sacks from China: Petitioners' Reply to ADM's Application For A Scope Ruling, November 20, 2008 ("Petitioners' November 20 Comments").

⁴ See Comments on Petitioner's Reply to ADM's Scope Ruling Request Laminated Woven Sacks from the People's Republic of China (December 2, 2008) ("ADM's Rebuttal Comments").

⁵ See Commercial Packaging Comments on Laminated Woven Sacks from the People's Republic of China: Scope Ruling Request, December 3, 2008 ("CP's December Comments").

⁶ See Laminated Woven Sacks from China: Petitioners' Second Submission Concerning ADM's Application For A Scope Ruling, December 17, 2008 ("Petitioners' December 17 Comments").

⁷ See Commercial Packaging Comments on Laminated Woven Sacks from the People's Republic of China: Scope Ruling Request, January 8, 2009 ("CP's January 8 Comments").

⁸ See Laminated Woven Sacks From China: Petitioners' Reply to CP's Comments Concerning ADM's Application For A Scope Ruling, January 14, 2009 (Petitioners' January 14 Comments).

⁹ See Commercial Packaging Comments Regarding Laminated Woven Sacks from the Peoples Republic of China, January 16, 2009 ("CP's January 16 Comments").

ADM described Product C as: (1) made of a single ply of woven polypropylene strip; (2) having no lamination or coating of BOPP; (3) not having any printing; and (4) less than one kilogram in weight. Id.

ADM described Product D as: (1) made of a single ply of woven polypropylene strip; (2) having no lamination or coating of BOPP; (3) not having any printing; and (4) of more than one kilogram in weight. Id.

ADM described Product E as: (1) made of a single ply of woven polypropylene strip; (2) laminated with BOPP; (3) printed in two colors; and (4) of less than one kilogram in weight.

ADM described Product F as: (1) made of a single ply of woven polypropylene strip; (2) having no lamination or coating of BOPP; (3) being printed in three colors; and (4) of less than one kilogram in weight. Id.

ADM contends that in-scope merchandise, as is described in the Orders, has four primary elements, those being: (1) made from woven polypropylene or polyethylene strip; (2) laminated by any method either to an exterior ply of plastic film such as BOPP or to an exterior ply of paper that is suitable for high quality print graphics; (3) printed with three or more colors in register; and (4) not exceeding one kilogram in weight. See ADM's Scope Request at 4. ADM then argues that, although its Products A and B fulfill all the required physical criteria to be classified as in-scope merchandise, these products should be considered outside the scope of the Orders because, according to the Diversified Products¹⁰ criteria, they are sold in different channels of trade than in-scope merchandise. ADM contends that Products A and B are not of the same class or kind as the laminated woven sacks covered by the Orders because the relevant channel of trade is not that to which the Orders are intended to apply. ADM states that its bags are not intended to remain in the United States and are not used in the retail market for dog food or bird seed, as the Orders are intended to address, but are instead used to export rice. See ADM's Scope Request at 6. Therefore, ADM argues that the Department should find Products A and B to be outside the scope of the Orders according to the Diversified Products criteria.

ADM contends that Products C, D, E and F are also outside the scope of the Orders because these products do not fulfill all four of the physical criteria required for merchandise subject to the scope of the Orders. Specifically, ADM states that Products C and D do not have any lamination or coating of BOPP, nor is there any printing on these bags. See ADM's Scope Request at 5. ADM argues that Product E is printed with only two colors, not three as described in the physical criteria of the scope of the Orders, while Product F, ADM contends, has no coating or lamination, which is required to be considered in-scope merchandise. See ADM's Scope Request at 5.

ADM further argues that Product E is outside the scope of the Orders because it has only two colors, those being red and blue, which are printed "in register." ADM rebuts Petitioners' claim

¹⁰ See Diversified Products v. United States, 572 F. Supp. 883, 889 (CIT 1983), in which the Court of International Trade first outlined criteria for scope analysis as: (i) The physical characteristics of the product; (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; and (v) The manner in which the product is advertised and displayed. See also 19 CFR § 351.225(k)(2).

that Product E is printed with three colors, arguing that the white color predominating on the sack is derived from the manufacture of the woven fabric, whereas only the text and graphics on the bag are printed, and then, in only two colors. ADM argues that it is the process of combining and melting together the polypropylene pellets and pigments which provides the white color to the woven fabric of Product E, not printing “in register,” as required by the scope of the Orders. See ADM’s Rebuttal Comments at 4. ADM contends that the scope of the Orders requires that laminated woven sacks have graphics or text which are printed with three or more colors in register, and that the scope of the Orders was never intended to include colors derived from the polypropylene pellets and pigments that are melted and woven together to form and color the fabric itself as part of the three colors “printed in register.” See ADM’s Rebuttal Comments at 3. ADM also provided a letter from the manufacturer of Product E which, it contends, certifies that Product E is printed in only two colors, red and blue, and any appearance of the color white is a reflection from the background of the bag itself. See ADM’s Rebuttal Comments at 6.

Therefore, based on the physical descriptions of Products C, D, E, and F, and applying the criteria of a 19 CFR § 351.225(k)(1) scope analysis, ADM argues that the Department should find these products to be outside the scope of the Orders.

Petitioners’ Comments Regarding ADM’s Request

Petitioners argue that Products A and B are in-scope merchandise because, as ADM has acknowledged, the physical characteristics of both fit the required criteria for merchandise subject to the scope of the Orders. Therefore, Petitioners argue that the description of these items is dispositive and the Department should not perform a Diversified Products analysis, but should instead find that Products A and B are within scope of the Orders pursuant to 19 CFR § 351.225(k)(1). See Petitioners’ November 20 Comments at 5.

Petitioners further argue that since neither ADM nor CP submitted any rebuttal arguments regarding Products A and B, the Department can conclude that these parties have conceded that Products A and B are included in the scope of the Orders. See Petitioners’ December 17 Comments at 2-3. Therefore, Petitioners maintain that the Department should issue a ruling that Products A and B are merchandise covered by the Orders, based on the physical description of these products and applying the criteria of a 19 CFR § 351.225(k)(1) scope analysis. Id.

Petitioners agree with ADM that Products C, D, and F are not in-scope merchandise and believe that, based on the physical description of these products, the Department should issue a ruling pursuant to 19 CFR § 351.225(k)(1) that these products are outside the scope of the Orders. See Petitioners’ November 20 Comments at 9.

Petitioners argue that Product E is merchandise subject to the scope of the Orders because it is printed with three colors: red, blue, and a background printed in white. See Petitioners’ November 20 Comments at 8. Petitioners also state that Product E is constructed of woven polypropylene strip, laminated with BOPP, and weighs less than one kilogram. Therefore, Petitioners argue that, because the physical characteristics of Product E match the required criteria for in-scope merchandise, the Department should find Product E to be within the scope of the Orders. Id.

Petitioners also argue that the text of the scope of the Orders allows one or more of the minimum three colors to originate in the fabric. Petitioners argue the relevant portion of the scope of the Orders, which states: “Laminated woven sacks are ... printed with three colors or more in register,” means that “in-scope merchandise is (1) printed, (2) has three colors, and (3) the colors that are printed are printed in register.” See Petitioners’ December 17 Comments at 4. Petitioners claim that ADM admitted Product E has three colors when ADM stated that Product E had, “two colors used in the printing – blue and red” and “white {which} is derived from the manufacturer of the woven fabric.” See Petitioners’ December 17 Comments at 4 (quoting ADM’s Rebuttal Comments at 2). Additionally, Petitioners argue that CP also admitted Product E has three colors when it stated that, “red and blue are printed in register” and “white woven fabric.” See Petitioners’ December 17 Comments at 4 (quoting CP’s December Comments at 6).

Petitioners argue that these statements reveal that Product E has (1) three colors, (2) is printed, and (3) two of the printed colors are printed in register. The fact that the white color in Product E is not printed in register, Petitioners argue, does not cause it to be outside the scope of the Orders because it has been shown that the physical characteristics of Product E fulfill the four required criteria for merchandise subject to the scope of the Orders. Petitioners argue that the Department should issue a ruling that Product E is merchandise covered by the Orders, based on the physical description of this product and applying the criteria of a 19 CFR § 351.225(k)(1) scope analysis.

Furthermore, Petitioners argue that any other interpretation of the language of the scope of the Orders would require officials of U.S. Customs and Border Protection (“CBP”) to determine whether these colors are imparted by the underlying fabric or not. This, Petitioners argue, could open the door to circumvention of the Orders with three-color merchandise and may prompt the need for CBP officials to require importers of three-color products to provide certifications showing the origin of each visible color. See Petitioners’ December 17 Comments at 5. Therefore, Petitioners contend that the language of the scope of the Orders should be interpreted so that products with three visible colors are covered by the Orders.

Petitioners further argue that, if the Department cannot interpret the scope language to include colors originating in the fabric, a full scope inquiry must be initiated to determine the number of inks actually used to produce Product E and ADM must be required to submit documentation supporting its claim that only two colors are used to print Product E. See Petitioners’ December 17 Comments at 5-6. Petitioners contend that the evidence submitted by ADM and CP regarding the number of inks used in the production of Product E is unsubstantiated and cannot be relied upon and therefore the Department should initiate a full scope inquiry, pursuant to 19 CFR § 351.225(e) to resolve this question. See Petitioners’ January 14 Comments at 3.

CP’s Comments Regarding ADM’s Scope Request

CP argues that the scope of the Orders specifies that for a product to be included in the scope the exterior ply must be “printed in three colors or more in register” and “printed at three separate print stations.” See CP’s December Comments at 5. Therefore, CP contends that for Product E to be considered merchandise subject to the scope of the Orders it must have an exterior ply with three or more colors printed in register. CP rebuts Petitioners’ claims that Product E is printed

with three colors, arguing that Product E is in fact printed with only two colors, red and blue. Furthermore, CP contends that the white colored background observed on Product E, and claimed by Petitioners to be the third printed color (in addition to red and blue), is not the result of white being printed in register; rather, the polypropylene strip was already white as part of the fabric-making process where white pigment is added to the clear resin of polypropylene. See CP's December Comments at 6. CP further argues that the use of pigments in producing the fabric, of which laminated woven sacks are made, is important as it is common for polypropylene or polyethylene strip (the natural color of which is clear) to be manufactured using pellets and white pigmentation in order to provide a white background upon which an exterior ply is laminated. See CP's December Comments at 5. For these reasons, CP concludes that the whiteness of Product E is not evidence of a third printed color, as claimed by Petitioners, but was created by the coloring of the polypropylene resin pellets used in the production of the fabric, which means that Product E is a bag with BOPP lamination printed in only two colors. See CP's January 16 Comments at 1.

CP also argues that Petitioners specified the requirement for "three or more colors printed in register" in the scope of the Orders because a printing process of three separate colors printed in three separate print stations was necessary to produce the "multicolor high quality print graphics" typically used for retail packaging of consumer goods, such as pet foods and bird seed, and that fewer than three colors will not be sufficient to produce the graphics used in such advertising. See CP's December Comments at 7. CP contends that it was the intention of Petitioners, as outlined in the scope of the petition,¹¹ to exclude bags that do not consist of three or more colors printed in register because these bags would not display the same "multicolor high quality print graphics."

CP also rebuts Petitioners' argument that the phrase "printed with three colors or more in register" can be interpreted to allow one or more of the minimum three colors to originate in the fabric. CP argues that the only time the words "three colors or more" appear in the scope language or the petition is when they are immediately preceded by the word "printed" and that the basic rules of syntax do not support Petitioners' interpretation because the relevant language – "printed with three colors or more in register" – is not written in the alternative and if it were, it would have said, sacks "with three colors or more, printed with one or more colors in register," but this is not the language used in the scope or the petition. See CP's January 8 Comments at 4-5. Additionally, CP rebuts Petitioners' statement that "This language means that in-scope merchandise is (1) printed, (2) has three colors, and (3) the colors that are printed are printed in register," arguing that these are not three stand-alone requirements, but rather a single requirement that sacks are printed with three colors in register. See CP's January 8 Comments at 6 (quoting Petitioners' December 17 Comments at 4). Therefore, CP argues, there is no interpretation of the scope of the Orders that could imply that one of the three colors could originate in the fabric or be imparted from the color of the fabric. Id.

CP rebuts Petitioners' argument that interpreting the scope language differently than the manner in which Petitioners have suggested will make it more difficult for CBP officials to determine which merchandise is in-scope. CP argues that it will be easy for CBP officials to identify

¹¹ See Petition For The Imposition Of Antidumping And Countervailing Duties Against Laminated Woven Sacks From The People's Republic Of China (June 28, 2007) ("petition").

whether three or more colors are printed in register on the bags by visually inspecting the inside of the bag to identify the bag's background color (which should not be counted against the three colors minimum requirement for in-scope merchandise). See CP's January 8 Comments at 7. Finally, CP rebuts Petitioners' request that the Department initiate a full scope inquiry, pursuant to 19 CFR § 351.225(k)(2), arguing that this request has no statutory basis because the Department's scope analysis ends once it concludes that the language of the Orders is dispositive. See CP's January 8 Comments at 8.

CP concludes that, based on Product E's physical description, which does not match the required criteria of the Orders, the Department should find this product to be outside the scope of the Orders by applying the criteria of a 19 CFR § 351.225(k)(1) scope analysis.

The Department's Position

Legal Framework

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 descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the U.S. 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 these products are covered by the order. See 19 CFR § 351.225(d).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the five additional factors set forth at 19 CFR § 351.225(k)(2). These criteria are: (1) the physical characteristics of the product; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of trade in which the product is sold; and (5) the manner in which the product is advertised and displayed. The determination of which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

Documents and parts thereof from the underlying investigation that the Department deemed relevant to these scope rulings were made part of the record of this determination and are referenced herein. Documents that neither the Department nor the parties placed on the record do not constitute part of the administrative record for this scope determination.

The Text of the Scope of the Investigations and the Orders

In its petition, the domestic industry described the merchandise it proposed to be covered by the less-than-fair value and countervailing duty investigations as follows:

Laminated woven bags of a kind used for the packaging of goods; consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip; with or without an extrusion coating of polypropylene and/or

polyethylene; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (“BOPP”) or to an exterior ply of paper that is suitable for high quality print graphics;¹ printed with three colors or more in register; with or without lining; whether finished or unfinished; whether or not closed on one end; whether or not in roll form; with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven bags are typically used for retail packaging of consumer goods such as pet foods and bird seed.

The scope does not include (1) woven polypropylene and/or polyethylene fabric; (2) plastic film; or (3) flexible intermediate bulk containers.

Imports of the subject merchandise are generally classified under statistical category 6305.33.0020 of the Harmonized Tariff Schedule of the United States. This statistical category also includes products that are outside the scope of the petition.

¹ “Paper suitable for high quality print graphics,” as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics. See Petition at 4-5.

In the Initiation Notices,¹² changes were made to the scope of the investigations, as defined in the petition, to include additional HTSUS classifications of sacks and to delete the paragraph describing articles not included in the scope. In the Initiation Notices the scope was published as follows:

The merchandise covered by this investigation is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (“BOPP”) or to an exterior ply of paper that is suitable for high quality print graphics;¹ printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form; with or without handles; with or without special closing features; not exceeding one kilogram in weight.

Laminated woven bags are typically used for retail packaging of consumer goods such as pet foods and bird seed. Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings 6305.33.0050 and 6305.33.0080. Laminated woven

¹² See Laminated Woven Sacks from the People’s Republic of China: Initiation of Antidumping Duty Investigation, 72 FR 40833, 40837 (July 25, 2007); see also Laminated Woven Sacks from the People’s Republic of China: Initiation of Countervailing Duty Investigation, 72 FR 40839, 40841 (July 25, 2007) (collectively “Initiation Notices”).

sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form, laminated woven sacks may be classifiable under HTSUS subheading 5903.90.2500 and 3921.19.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

¹ “Paper suitable for high quality print graphics,” as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

The scope was modified from the Initiation Notices in the Preliminary Determinations.¹³ In the Preliminary Determinations, changes were made to include additional descriptions of in-scope merchandise regarding the width of the strip and sacks in the forms of sheets, lay-flat tubing, and sleeves were added to both paragraphs and additional HTSUS classifications of sacks were added to the second paragraph, as follows:

The merchandise covered by this investigation is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (“BOPP”) or to an exterior ply of paper that is suitable for high quality print graphics;¹ printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight.

Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed. Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven

¹³ See Laminated Woven Sacks From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Determination of Critical Circumstances, and Postponement of Final Determination, 73 FR 5801, 5803 (January 31, 2008); in Laminated Woven Sacks From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 72 FR 67893-94 (December 3, 2007), the Department stated that any scope issues raised by Petitioners would be addressed in the preliminary determination of the anti-dumping duty investigation (collectively “Preliminary Determinations”).

polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measures more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

¹ “Paper suitable for high quality print graphics,” as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

This scope description of the merchandise subject to the investigation was unchanged in the Final Determinations¹⁴ and became the language of the scope of the Orders.

The ITC referenced the scope of the investigation as published by the Department:

bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (“BOPP”) or to an exterior ply of paper that is suitable for high quality print graphics;¹ printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.

¹ “Paper suitable for high quality print graphics,” as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.¹⁵

¹⁴ See Laminated Woven Sacks From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 35646-47 (June 24, 2008); see also Laminated Woven Sacks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639-40 (June 24, 2008) (collectively “Final Determinations”).

¹⁵ See Laminated Woven Sacks From China – Investigation Nos. 701-TA-450 and 731-TA-1122 (Preliminary), ITC Publication 3942 (August 2007) at 5.

The product description in the ITC's final determination¹⁶ reflected the scope used by the Department in its Final Determinations.

Analysis

For the reasons discussed below, the Department determines that Products A and B are covered by the scope of the Orders while Products C, D, E, and F are not covered by, and, therefore, outside the scope of the Orders.

Regarding Products A and B, which are each made of woven polypropylene strip, laminated with BOPP, printed in register with three or more colors, and of less than one kilogram in weight, the Department finds that the physical description of these products matches the required criteria for merchandise covered by the scope of the Orders. Therefore, the Department agrees with Petitioners that the physical description of these items is dispositive. Accordingly, the Department need not proceed to a Diversified Products analysis, rather it finds that Products A and B are within the scope of the Orders based on a 19 CFR § 351.225(k)(1) scope analysis.

Regarding Products C, D, and F, the Department determined that each of these have no lamination or coating of BOPP and therefore do not fulfill the physical criteria of merchandise covered by the scope of the Orders. Therefore, the Department agrees with the parties and finds that the physical descriptions of these items are dispositive. Accordingly, based on the physical descriptions of these products, the Department finds that these products are outside the scope of the Orders pursuant to 19 CFR § 351.225(k)(1).

Regarding Product E, for the reasons discussed below, the Department has determined that the physical description of Product E is dispositive and, therefore, based on a 19 CFR § 351.225(k)(1) scope analysis finds that Product E is not merchandise covered by the scope of the Orders.

As noted above, the scope of the Orders includes, among other criteria, bags that are "printed with three colors or more in register." In the instant case, Petitioners have argued that this language can be interpreted to include bags that have three colors whether or not those colors are printed in register. See Petitioners' December 17 Comments at 4. However, in the underlying investigation of laminated woven sacks from the PRC, the Department specifically asked Petitioners to address the question of whether laminated woven sacks could be printed in register with fewer than three colors, to which Petitioners replied:

Laminated Woven Sacks ("LWS") normally have four or more colors in register. Many have 6 to 8 colors in register. Petitioners intend to exclude sacks that have fewer than three colors in register, because they do not have high quality print graphics. Sacks meeting the other specifications but without graphics or printing are not LWS. The printing of multi-colored high quality print graphics is a critical element to the description of LWS, since the print on these bags typically

¹⁶ See Laminated Woven Sacks From China -- Investigation Nos. 701-TA-450 and 731-TA-1122 (Final), ITC Publication 4025 (July 2008) at 5.

serves as point of sale advertising on the retail shelf. Thus, the exterior ply must be printed in three colors or more in register; it must be aligned and printed at three or more separate print stations, each containing a different color, creating multicolor, high quality print graphics.¹⁷

Therefore, the Department finds that it was the express intention of Petitioners in drafting the description of the merchandise contained in the petition to include only those sacks that, while fulfilling the other physical criteria, were printed in register with three or more colors. Additionally, Petitioners defined the phrase “in register” to mean:

“Register” refers to “the correct positioning of an image especially when printing one color on another.” To register means to “position print in the proper position in relation to the edge of the sheet and to other printing on the same sheet.” Thus, a bag printed in register would have the name or picture on the bag in the same position each time. When printing an American flag in register, the red lines are positioned exactly next to the white lines so that they appear as red and white lines. If the lines were out of register, the overlapping would create pink lines.

Id. (footnotes omitted). The Department determines that, in accordance with the definition stated above, the phrase “in register” can reasonably only be applied to those sacks which have graphics printed in this specific method. Therefore, it is the Department’s conclusion that the complete phrase, “printed with three colors or more in register” can reasonably only be interpreted to mean that laminated woven sacks covered by the Orders must have three or more colors that have all been printed through the specific “in register” method of printing. Further, the Department finds that Petitioners’ original purpose in deciding that the language of the scope of the Orders would only include those sacks printed in register with three or more colors was because this printing was required to enable the high-quality graphics necessary in retail packaging of consumer goods such as pet foods and bird seed. In so making this determination, the Department must disagree with the argument of Petitioners that the language of the scope of the Orders can reasonably be interpreted to include any bag with three colors whether or not those colors were printed in register, as the Department finds that, by the express submission of the Petitioners themselves, this was not the originally intended interpretation of the language of the scope of the Orders.

The Department also disagrees with Petitioners’ argument that Product E should be covered by the scope of the Orders because it is printed with three colors in register. Petitioners claim that Product E’s white colored background, in addition to the colors red and blue, is printed in register. However, the Department has determined that Product E was printed with only two colors in register, red and blue, while the third color visible in Product E, white, appears as a

¹⁷ See Laminated Woven Sacks from the People’s Republic of China/Petitioners’ Response To The Department’s July 2, 2007 Request For Clarification Of Certain Items Contained In The Petition, July 9, 2007, page 3; see also Laminated Woven Sacks from the People’s Republic of China/Petitioners’ Response To The Department’s July 2, 2007 Request for Clarification Of Certain Items Contained In The Petition, July 12, 2007, page 3; as added to the record of the current review in the Memorandum from Blaine H. Wiltse, International Trade Compliance Analyst, Import Administration, Office 9, to the File, regarding “Laminated Woven Sacks from the People’s Republic of China – ADM Scope Request: Adding Sections of Petition and Supplemental Petition Questionnaire Response to the Record” (January 26, 2009) at Attachment II., page 3, and Attachment III., page 3 (emphases added).

result of the process of manufacturing the polyethylene strip. In making this determination, the Department agrees with ADM and CP that the record evidence supports ADM and CP's explanation that the white color present in Product E existed as a result of the coloring of the polypropylene resin pellets used in the production of the fabric and not as the result of "in register" printing. A visual examination of Product E, reinforced by detailed information included in CP's January 16 Comments explaining the manufacturing process and method of in register printing undertaken to produce laminated woven sacks, supports the Department's determination.

For these reasons, the Department finds that Product E is not merchandise covered by the scope of the Orders on laminated woven sacks from the PRC, because we agree with ADM and CP that the white color of the bag is not due to printing in register but due to the color of the underlying material. Furthermore, Petitioners included language in the description of the merchandise contained in the petition which specifically stated that three colors must be printed in register to be classified as merchandise meeting the scope of the less-than-fair value and countervailing duty investigations, and in Product E we find that only two colors were printed in register. Therefore, because the scope language is dispositive that all laminated woven sacks must have three colors or more printed in register, the Department has determined that the physical description of Product E is dispositive and, based on a 19 CFR § 351.225(k)(1) scope analysis, finds that Product E is not merchandise covered by the scope of the Orders.

Recommendation

Based on the preceding analysis, we recommend the Department find that Products A and B are merchandise covered by the scope of the Orders while Products C, D, E, and F are outside the scope of the Orders. If you agree, we will send the attached letter to the interested parties, and will notify CBP of our determinations.

Agree Disagree



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

2/17/09
Date

