



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
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Scope Ruling
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May 18, 2011

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: James C. Doyle
Director, Office 9
Antidumping and Countervailing Duty Operations

FROM: Kabir Archuletta
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RE: Laminated Woven Sacks from the People's Republic of China:
The Super Poly Partnership Final Scope Ruling

Summary

On February 14, 2011, the Department of Commerce ("Department") received a submission from The Super Poly Partnership ("SPP") requesting a scope determination¹ on whether the laminated woven sacks it produces are outside the scope of the antidumping and countervailing duty orders on laminated woven sacks from the People's Republic of China ("PRC"). See Notice of Antidumping Duty Order: Laminated Woven Sacks from the People's Republic of China, 73 FR 45941 (August 7, 2008) and Laminated Woven Sacks from the People's Republic of China: Countervailing Duty Order, 73 FR 45955 (August 7, 2008) (collectively, "Orders").

Pursuant to an analysis under 19 CFR 351.225(k)(1), we recommend that the Department determine that the laminated woven sacks described in SPP's request are not within the scope of the Orders on laminated woven sacks from the PRC.

Background

On February 14, 2011, SPP submitted a scope request for the laminated woven sacks that it produces from woven fabric of PRC origin. SPP requested that the Department consider the product in question as outside the scope of the Orders on laminated woven sacks from the PRC. See SPP Request at 1. On February 17, 2011, the Department sent a letter to SPP requesting physical samples of the product in question and a detailed description of each product under

¹ See Scope Ruling Request of The Super Poly Partnership, dated February 14, 2011 ("SPP Request").



consideration.² On March 7, 2011, the Department received a sample of the product in question and a list of unique products with product measurements and product codes.³

The products in question are made from fabric of woven polypropylene strip that is imported to Canada from the PRC. SPP stated that once imported into Canada, SPP glues/laminates a film to the fabric, applies graphics, welds the fabric into a tube, cuts it to size and sews it closed at one end.⁴ According to SPP, all film, glue, and inks used in processing the imported fabric into laminated woven sacks are sourced from Canada or the United States.⁵ SPP stated that all of its sacks are produced in the same manner, and only the size and type of bottom closure differs.⁶

Scope of the Orders

The merchandise covered by the orders 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;⁷ 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 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 measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

² See Letter to SPP dated February 17, 2011.

³ See SPP Supplemental Information Response, dated March 7, 2011, at 3.

⁴ See SPP Request at 2.

⁵ See *id.*

⁶ See SPP Supplemental Information Response, dated March 7, 2011, at 2.

⁷ “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.

SPP's Argument

SPP argues that the fabric it imports from the PRC is substantially changed through production in Canada and submitted a country-of-origin decision from the Department issued in the First Antidumping Duty Administrative Review of Laminated Woven Sacks (“AR1”) stating that the country-of-origin of laminated woven sacks should be determined by the country in which the essential characteristics are imparted.⁸ SPP also submitted a 2009 CBP ruling under NAFTA marking rules stating that its sacks are of Canadian origin,⁹ and a 2008 CBP ruling stating that the origin of certain sacks is determined by where the fabric is manufactured.¹⁰ SPP claims that the 2008 CBP ruling does not apply as it refers to textiles and the fabric SPP imports does not qualify as a textile by HTSUS definition.

Legal Framework

The Department examines scope requests in accordance with the Department’s scope regulations. See 19 CFR 351.225. On matters concerning the scope of an antidumping duty or countervailing 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 United States International Trade Commission (“ITC”). See 19 CFR 351.225(k)(1). This determination may take place with or without a formal inquiry.

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: 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; and v) the manner in which the product is advertised and displayed. See 19 CFR 351.225(k)(2). 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 evidence before the Department.

Analysis

First, we find that that the scope of the Orders does not clearly address whether or not the products at issue (made from fabric imported from China) are included. See Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1097 (Fed. Cir. 2002). However, the Department has evaluated SPP’s request in accordance with 19 CFR 351.225(k)(1) and finds that analysis contained in a prior scope determination is dispositive with respect to the sacks manufactured by SPP. Therefore, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2).

As we have explained in prior cases, CBP decisions regarding country-of-origin and substantial transformation, while instructive in antidumping and countervailing duty determinations, are not

⁸ See SPP Request, at Exhibit A.

⁹ See SPP Request, at Exhibit B.

¹⁰ See SPP Request, at Exhibit C.

binding on the Department.¹¹ Crucially, the Department makes these types of determinations with concerns specific to enforcement of antidumping and countervailing duty laws in mind.¹² In DRAMS, the Department stated that:

The Department has independent authority to determine the scope of its investigations. See Diversified Products Corp. v. United States, 572 F. Supp. 883, 887 (CIT 1983). The Department's authority to make its own country of origin determinations is inherent in its independent authority to determine the scope of AD/CVD investigations. Moreover, the Department's country-of origin determinations, which have not always been identical with Customs's country-of-origin determinations, reflect concerns specific to enforcement of the AD/CVD laws, such as the potential for the circumvention of orders. See, e.g., EPROMS from Japan, 51 FR 39680 (October 30, 1986); DRAMS of 256 Kilobits and Above from Japan, 51 FR 28396 (August 7, 1986); Certain Cold-Rolled Carbon Steel Flat Products From Argentina, 58 FR 37062 (July 9, 1993).

The Department is therefore not bound by CBP's rulings on laminated woven sacks. Accordingly, we find that prior CBP decisions regarding laminated woven sacks are not relevant to the Department's analysis in this inquiry.

In the Department's AR1 country-of-origin decision, we found that laminated woven sacks produced in the PRC from fabric imported from a third country is of PRC origin because the woven fabric undergoes a substantial transformation in the PRC. See Laminated Woven Sacks From the People's Republic of China: Final Results of First Antidumping Duty Administrative Review, 76 FR 14906 (March 18, 2011) ("AR 1 Final Results"), and accompanying Issues and Decision Memorandum at Comment 1. Specifically, we determined that (1) laminated woven sacks covered by the Orders are of a different class or kind of product than the upstream product, i.e., woven fabric, imported into the PRC, (2) the lamination, printing, and sack manufacturing processes substantially alter the inherent nature of the imported woven fabric by providing the unique features of laminated woven sacks that are valuable to the customer, such as greater strength, odor- and moisture-resistance, and suitability for high print graphics, and (3) significant additional processing is required to transform the imported woven fabric into laminated woven sacks. See id.

In this case, SPP imports the woven fabric input, i.e., a polypropylene interwoven strip material,

¹¹ See Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China, 71 FR 16116 (March 30, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

¹² See Notice of Initiation of Countervailing Duty Investigation: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 67 FR 70927, 70928 (November 27, 2002) ("DRAMS").

