



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

FOR PUBLIC FILE

A-570-886

A-549-821

A-557-813

Scope Inquiry
Public Document
AD/CVD 4: ZP

NOV 16 2007

MEMORANDUM FOR: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

FROM: Abdelali Elouaradia
Office Director
AD/CVD Operations, Office 4

REGARDING: Polyethylene Retail Carrier Bags from the People's Republic of
China

SUBJECT: Final Scope Ruling for Asia Dynamics, Inc., and Medline
Industries, Inc.

SUMMARY

On May 22, 2007, the Department of Commerce ("the Department") received a complete scope request from Asia Dynamics, Inc. ("Asia")¹, regarding whether certain "patient belongings" plastic bags which Asia 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"). On June 15, 2007, Medline Industries, Inc., ("Medline") submitted a separate scope request covering seven types of plastic bags labeled as "patient belongings" or "patient set-up bags" to determine whether they are outside the scope of the Order.

Upon review of the two scope requests, the Department notes that both scope requests contain one common type of plastic bag, i.e., a plastic bag with printing referring to either patient belongings or patient set-up bags. Due to the common characteristics in these bags, including a similar consumer packaging, the Department is addressing both scope requests in one scope

¹ Asia submitted the original scope request on December 4, 2006. However, the Department deemed that submission incomplete because it lacked specific model numbers. Therefore, the Department requested additional information. Although the December 4, 2006, submission is being included in the record of this proceeding, the complete version of Asia's scope request was not filed until May 22, 2007.



determination. Additional models identified by Medline involving a variety of other bags, and the separate scope ruling request for certain PRCBs imported by DMS Holdings, Inc. ("DMS"), will be addressed in a separate scope decision.

We have received comments from the Polyethylene Retail Carrier Bag Committee ("the petitioners"), Asia, Medline, and DMS, which is an interested party to this proceeding.

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 or not 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. 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, the Department evaluated Asia and Medline's requests in accordance with section 351.225(k)(1) of the Department's regulations and we find that the criteria contained in section 351.225(k)(1) of the regulations are dispositive with respect to whether Asia and Medline's patient belongings and patient set-up bags are covered by the scope of the Order.² We find it unnecessary to consider the additional factors in section 351.225(k)(2) of the Department's regulations.

The scope requests submitted by Asia and Medline jointly cover 15 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 15 types of plastic bags are within the scope of the Order.

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 are referenced herein.

² In the instant proceeding, the Department requested additional comments and rebuttal comments from interested parties. See "Memorandum To All Interested Parties" (July 9, 2007). Additionally, the Department determined that it needed additional time to review all of the filed comments and extended the date of the final scope ruling until November 7, 2007. See "Memorandum To All Interested Parties" (September 6, 2007).

Documents that were not presented to the Department or placed on the record by the Department do not constitute part of the administrative record for this scope ruling.

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 .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 3923.21.0085³ 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, our written description of the scope of the Order is dispositive.

BACKGROUND

1. Asia's Request

In its scope request, Asia provided photographs for each of the eight types of plastic bags it imports. Asia argues that the plastic bags are not within the scope of the Order because they are not sold into the retail trade and they contain certain features which explicitly exclude them from the scope of the Order. Asia argues that 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. According to Asia, the printing on all eight plastic bags refers to either personal belongings or patient belongings indicating that the intended end-use is for a medical or health care setting. Asia claims that hospital or medical facilities are the purchasers of its plastic

³ 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.

bags, which are in turn used to store a patient's personal belongings during the hospital stay. Upon discharge from the hospital, the patient's personal effects are returned to the patient while the bag is discarded by the hospital. See Asia's scope submission dated December 4, 2006, at 3-4.

Asia argues that the consumer packaging in which the bags enter the United States is the same packaging in which the product is sold to the ultimate consumer, the hospital. The printing on the packaging refers to a specific end-use such as "personal belongings" in conjunction with the names of the medical suppliers that will sell the boxes of belongings bags to the hospital. Id.

Asia also cites to a prior PRCBs scope ruling issued by the Department where, according to Asia, the Department determined that medical specimen bags imported by Consolidated Packaging, LLC were outside the scope of the Order. The provider of diagnostic testing and health services was the ultimate consumer of the specimen bags because these bags were ultimately returned to it for destruction. This, according to Asia, made the packaging in which the specimen bags were sold to the health provider "consumer packaging." Printing on the packaging stating "specimen transport bags" or "for medical use only" referred to a specific end-use other than packaging and carrying merchandise from retail establishments which, Asia claims, satisfied the second exclusion.⁴ Id. According to Asia, similar to the Consolidated Scope Ruling, its own plastic bags are sold to hospitals, the ultimate consumers, which discard them upon use. Thus, Asia argues, just as in the Consolidated Scope Ruling, its products also satisfy the second exclusion of the Order.

Other Parties' Comments

DMS, an applicant in a separate PRCBs scope request regarding certain hospital bags, submitted comments supporting Asia's request, citing to the second exclusion of the Order as a reason to find Asia's products outside the Order. In its comments, DMS traces the history of the original investigation leading to the issuance of the PRCBs Order, concluding that unlike Asia's products, the subject merchandise covered by the Order is limited to retail bags provided by merchants to customers in order to transport purchased items out of a store. See DMS Comments dated July 16, 2007, at 1-4.

The petitioners submitted comments dated July 16, 2007, on Asia's scope request. In their comments, the petitioners argue that there is no "use" exception in the Order, citing to original investigation and a prior scope decision. Specifically, the petitioners cite to the original antidumping investigation, where they claim that the Department rejected the respondents' arguments that certain bags not used in retail should not be included within the scope of the Order. The petitioners also cite to a recent scope ruling, where the Department found that certain

⁴ Asia refers to "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" (October 2, 2006) ("Consolidated Scope Ruling").

“sample bags” were found to be within the scope of the Order despite not being used in retail.⁵ Further, Asia’s reliance on the Consolidated Scope Ruling is, according to the petitioners, misplaced because unlike in the Consolidated Scope Ruling, Asia’s ultimate customers are patients and not hospitals. Using this argument, the petitioners claim that the containers, in which such bags are shipped to the hospitals, do not constitute “consumer packaging.” Thus, the Order’s second exclusion does not apply.

The petitioners also question whether Asia’s packaging, which identifies a non-retail use on the outside of the box, enters the United States as such. To support their claim, the petitioners refer to Asia’s sales invoice for the merchandise in question, noting that it refers only to “plastic bags” without any reference to non-retail use. See the Petitioners’ Comments dated July 16, 2007, at 8.

Rebuttal Comments

In its rebuttal comments dated July 19, 2007, Asia reiterates its previous arguments that all its plastic bags are intended for a non-retail use and, most importantly, the consumer packaging in which the bags are imported is the original packaging in which the bags entered the country. Asia rejects the petitioners’ allegations that its products were repackaged in the United States in order to exclude them from the scope of the Order. Asia adds that in some cases, the consumer packaging not only refers to patient or personal belongings bags, but also refers to “Medi-Pak Performance,” which establishes that the bags in questions are indeed used in non-retail establishments. As to the petitioners’ allegations that the sales invoice does not refer to medical use, Asia notes that it is the consumer packaging element which is relevant to whether the merchandise is excluded from the Order and not a description on a sales invoice. According to Asia, the sales invoice in the instant proceeding was provided for a purpose of identification of model numbers which can be then tied to a particular bag and its packaging.

In its rebuttal comments dated July 20, 2007, DMS disagrees with the petitioners’ contention that only bags with clearly non-retail printing and consumer packaging stating non-retail use satisfy the second exclusion. DMS argues that the plain reading of the Order’s second exclusion refers only to consumer packaging and not whether the bags are printed with any particular design. DMS also supports Asia’s argument that, similar to the Consolidated Scope Ruling, Asia’s ultimate customers are hospitals and not patients; thus the second exclusion’s conditions are met. See DMS Rebuttal Comments, dated July 20, 2007, at 1-2.

With regard to the petitioners’ claim that the plastic bags covered by the Order are not limited to

⁵ See Petitioners’ July 16, 2007, comments at 2-5, referring to the Issues and Decision Memorandum in Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from the People’s Republic of China, 69 FR 34125 (June 18, 2004) and Final Scope Ruling on Whether Polyethylene Sample Bags Are Covered by the Scope of the Antidumping Duty Order on Polyethylene Retail Carrier Bags from the PRC (May 9, 2005) at 9 (“Dimensions Trading Scope Ruling”).

bags used at retail, DMS refers to the language contained in the original investigations conducted by the Department and the ITC, concluding that the subject merchandise was defined by the retail carrier use. See DMS Rebuttal Comments, dated July 20, 2007, at 3-8.

Additionally, DMS claims that the two references about use made by the petitioners (see footnote 5 above), lack precedential value because: (1) the decision memorandum, as interpreted by the petitioners, would unlawfully expand the scope of the Order beyond the scope of the ITC's final injury determination; (2) the Department's Dimensions Scope Ruling does not expand the use to non-retail application, but rather clarifies that plastic bags can be used by many types of retail establishments; and (3) the Department, in the Dimensions Scope Ruling, based its decision strictly on the plain reading of the scope language while, according to DMS, the Department should have considered the complete record of the case, including the petition and the ITC's determination.

Finally, DMS claims that the petitioners' attempts to avoid "use" as a criterion for determining scope coverage is contrary to the factors set forth in 19 CFR 351.225(k)(2), where the criterion of "ultimate use of the products" has to be considered. See DMS Rebuttal Comments, dated July 20, 2007, at 8-11.

2. Medline's Request

In its scope inquiry, Medline provides photographs for each of the seven types of plastic bags it imports. Medline argues that the plastic bags are not within the scope of the Order because they are packed in consumer packaging that refers to uses other than carrying merchandise from retail establishment and, thus, are specifically excluded from the scope of the Order. According to Medline, the labels on all seven plastic bags, as well as the consumer packaging, refer to either "patient's personal belongings" or "patient set-up kit" indicating that the intended ultimate consumer is a medical or health care facility because, once the bag is used by a patient, the bag is discarded by the hospital. See Medline's submission dated June 15, 2007, at 2-3.

Medline also cites to the Consolidated Scope Ruling in support of its scope request. In that request, according to Medline, the Department excluded certain medical plastic bags because they were sold in consumer packaging referring to specific non-retail end-use and where the medical facility or lab issuing those bags to a patient was determined to be the ultimate consumer of such bags. In the instant scope request, Medline argues that the bags in question are in a similar factual situation portrayed in the Consolidated Scope Ruling. Just as in the Consolidated Scope Ruling, Medline's bags are sold to the hospital in consumer packaging indicating a non-retail use and that, upon discharge of a patient, the hospital disposes of the bag. Id. at 4.

Medline also argues that its bags printed with patient belonging or patient set-up kit language are not "typically provided . . . free of charge by the retail establishments." Id. at 5. While recognizing that the Department in a prior scope decision did not restrict subject merchandise to specific retail use (see Final Scope Ruling on Whether Polyethylene Sample Bags Are Covered

by the Scope of the Antidumping Duty Order on Polyethylene Retail Carrier Bags from the PRC (May 9, 2005)), Medline emphasizes that its bags are utilitarian in nature. According to Medline, bags typically provided by retail establishments do not contain printing which refers to patient belongings, name and room number. Id. at 5.

Finally, should the Department decided to initiate a formal scope inquiry according to 19 CFR 351.225(e), Medline addressed the criteria under 19 CFR 351.225(k)(2). The Department did not summarize these arguments as it did not initiate a formal scope inquiry. Instead, the Department based its determination on the criteria in 19 CFR 351.225(k)(1).

Other Parties' Comments

Because Asia's and Medline's plastic bags and the consumer packaging are highly similar, the petitioners filed one submission presenting the same arguments in both scope requests. Please refer to the petitioners' comment summary above. No additional comments or rebuttal comments specific to Asia's and Medline's scope applications were filed.

ANALYSIS

We have analyzed the information Asia and Medline submitted on May 22, 2007, and June 15, 2007, respectively. Each submission included photographs of the bags in question. 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 in the instant proceeding. The record of the proceeding indicates that, in both scope requests, as discussed below, the consumer packaging used by Asia and Medline clearly indicates a non-retail use. Both companies import their respective products in boxes with printing describing the imported products as patient belongings or patient set-up bags.⁶

In this case, the record indicates that it is the hospital, rather than the patient, that is the last entity in the distribution chain to purchase the bags. Further, after the bags are used, patients return the bags back to the hospital, which in turn disposes of 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 the usage. See Consolidated Scope Ruling.

Further, the record also indicates that, in both scope requests, the parties import bags in question that are packed in carton boxes printed with references to a non-retail use and there is no

⁶ See Asia's submission, dated December 4, 2006, at Exhibit E and F. See also Medline's submission, dated June 15, 2007, at Exhibit G and H.

additional packaging for these bags other than the cardboard box in which the bags are shipped. In fact, the printing on the boxes is identical to the printing on the bags referring to the use as patient personal belongings bags or patient set-up kits. Thus, the carton boxes, which represent consumer packaging destined for a medical facility, a non-retail establishment, meet the requirements of the second exclusion of the Order.

The petitioners' argument that the scope of the Order contain no "use" exception is misplaced in the instant scope ruling. During the PRCBs investigation, the Department declined to adopt respondents' proposal to exclude certain specific bag types by use. However, as the scope language shows, the Department did not disturb the exclusionary language at issue here. Further, the Department's prior scope decision in the Dimensions Trading Scope Ruling, which the petitioners cite, is distinguishable from this case. The petitioners fail to acknowledge that the Department found that the second exclusion did not apply to Dimensions' bags because they were not packed in consumer packaging.⁷ In the instant proceeding, the bags in question fall within the second exclusion because they are packed in consumer packaging with printing indicating a medical end-use.

With regard to the petitioners' argument that the consumer packaging indicating medical use may actually be re-packaged in the United States after the entry, we note that there is nothing on the record indicating a basis for such allegations. The record indicates that all 15 types of plastic bags are imported in consumer packaging with printing that refers to a specific end-use other than packaging and carrying merchandise from retail establishments. Based on the record of this case, the printing on consumer packaging in question indicates that the intended end-use is to hold patient belongings in hospitals and other medical establishments.

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 end-use other than packaging and carrying merchandise from retail establishments. Because all 15 bags in questions are imported in consumer packaging which satisfy the Order's second exclusion, we conclude that all 15 types of bags should be found outside the scope of the Order.

⁷ See the Petitioners' Comments at 4 (July 16, 2007) referring to the "Dimensions Trading Scope Ruling" at 9.


RECOMMENDATION

Based on the above analysis, we recommend finding that the patient belongings bags and patient set-up bags identified below and imported by Asia and Medline, 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. Additionally, because the scope language of the Orders from Malaysia and Thailand is identical to the scope language on the PRCBs from the PRC, the Department has placed Asia and Medline's scope determination on the record of those two countries.

| Item Number | Description | Printing on Packaging | Company /Importer |
|--------------------|-------------------------------|------------------------------|--------------------------|
| 304211 | 20"x20"x4" drawstring (white) | Personal Belongings Bag | Asia Dynamics, Inc. |
| 304311 | 20"x20"x4" drawstring (clear) | Personal Belongings Bag | Asia Dynamics, Inc. |
| 304411 | 22"x19"x3" PE handle (blue) | Personal Belongings Bag | Asia Dynamics, Inc. |
| 304611 | 22"x19"x3" PE handle (clear) | Personal Belongings Bag | Asia Dynamics, Inc. |
| 304711 | 20"x20"x4" PE handle (white) | Personal Belongings Bag | Asia Dynamics, Inc. |
| 304811 | 20"x20"x4" PE handle (clear) | Personal Belongings Bag | Asia Dynamics, Inc. |
| 40219 | 20"x20"x4" drawstring (white) | Patient's Belongings Bags | Asia Dynamics, Inc. |

| | | | |
|-------------|--|---------------------------|--------------------------|
| 40229 | 20"x20"x4" PE handle | Patient's Belongings Bags | Asia Dynamics, Inc. |
| NON026310 | 18"x20"x3.5" drawstring (gusset white) | Patient's Belonging Bag | Medline Industries, Inc. |
| NON026330 | 18"x20"x3.5" drawstring (gusset clear) | Patient's Belonging Bag | Medline Industries, Inc. |
| NON026320 | 18"x20"x3.5" rigid handle (gusset white) | Patient's Belonging Bag | Medline Industries, Inc. |
| NON026320GR | 18"x20"x3.5" rigid handle (gusset teal) | Patient's Belonging Bag | Medline Industries, Inc. |
| NON026340 | 18"x20"x3.5" rigid handle (gusset clear) | Patient's Belonging Bag | Medline Industries, Inc. |
| NON026350 | 15 1/2"x18" cut out handle (white) | Patient's Belonging Bag | Medline Industries, Inc. |
| NON026370 | 16"x12" patient set up bag (clear) | Patient Set-Up Bag | Medline Industries, Inc. |

Agree
 Disagree


 Stephen J. Claeys
 Deputy Assistant Secretary
 for Import Administration

11/15/07
 Date