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UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
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Scope Inquiry
Public Document
AD/CVD 4: ZP

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, Thailand, and Malaysia

SUBJECT: Final Scope Ruling for Medline Industries, Inc.

SUMMARY

On June 15, 2007, the Department of Commerce ("the Department") received a scope request from Medline Industries, Inc. ("Medline"), regarding whether certain "hospital bags" that Medline 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). The antidumping duty orders on PRCBs from Thailand and Malaysia apply to the same class or kind of merchandise as the order on PRCBs from the PRC. See Antidumping Duty Order: Polyethylene Retail Carrier Bags from the Thailand, 69 FR 48204 (August 9, 2004), and Antidumping Duty Order: Polyethylene Retail Carrier Bags from Malaysia, 69 FR 48203 (August 9, 2004).

Medline served its scope request on interested parties in the proceedings concerning PRCBs from the PRC, Thailand, and Malaysia. Thus, all interested parties involved with the orders on PRCBs from these three countries had an opportunity to submit comments regarding Medline's scope request. As such, we are making a determination with respect to Medline's request in the context of all three antidumping duty orders on PRCBs. We received comments from the Polyethylene Retail Carrier Bag Committee ("the petitioners") and Medline. No other comments were received. Upon review of all the submitted comments, the Department has determined that four of the ten bags listed in the Medline's scope request are outside the scope of the orders while the remaining six models are within the scope of the orders.



PROCEDURE

The regulations governing the Department's antidumping scope determinations are found in 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). Additionally, 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).¹

In this case, the Department evaluated Medline's request in accordance with section 351.225(k)(1) of the Department's regulations and found that the criteria contained in section 351.225(k)(1) of the regulations are dispositive with respect to whether Medline's hospital bags are covered by the scope of the orders.² We find it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2).

The scope request submitted by Medline covers ten 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 subject merchandise contained in the language of the orders is dispositive in determining whether the ten types of plastic bags described in Medline's scope request are within the scope of the orders.

Documents from the underlying proceeding deemed relevant by the Department to this scope ruling will be made part of the record of this determination and are referenced herein. 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 scope of the orders states:

¹ Prior to being codified in the regulations, these factors were identified by the Court of International Trade in Diversified Products Corp. v. United States, 572 F. Supp. 883 (CIT 1983); therefore, they are also referred to as the "*Diversified Products Criteria*."

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 supplemental information and extended the deadline of the final scope ruling until May 3, 2008. See "Memorandum To All Interested Parties" (January 30, 2008).

The merchandise subject to this antidumping duty 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.

See orders, 69 FR at 48202, 69 FR 48204, 69 FR 48203.

BACKGROUND

Medline's Request

In its request for a scope inquiry, Medline provides photographs of each of the ten types of plastic bags it imports and their respective packaging. Medline argues that the plastic bags are not within the scope of the orders because after importation into the United States they are incorporated into

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.

hospital patients' admission and surgical kits. The items in the kits, of which the bag is only one component, are intended for use during the patient's hospital stay and the hospital disposes of the bags after the patient has been discharged. According to Medline, model numbers DONDS600, 07510, 42818, 25117, 28614 and 26900 are used exclusively to hold patients' belongings during their hospital stay. Models DS500C, DS400C, 38667 and 42817 can be used to hold patients' belongings, as waste bags, or to hold other items related to the procedure for which the kit containing such a bag was designed. Regardless of the application, Medline states that no plastic bags are sold individually to hospitals. The bags are always sold as part of a specific kit. See Medline's Submission dated June 15, 2007, at 1-3.

In support of its arguments, Medline claims that the Department clarified the definition of the term "consumer packaging" in a prior PRCBs scope ruling issued by the Department where, according to Medline, the Department determined that packaging used in medical specimen bags imported by Consolidated Packaging, LLC (which were found to be outside the scope of the order on PRCBs from the PRC⁴), indicated (1) a specific end-use other than "packaging and carrying from retail establishments" and (2) that the ultimate consumer was not a retail establishment. *Id.*

Medline argues that the second exclusion of the orders, which states 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 applicable to its products. According to Medline, for models 07510, 42818, 28614 and 26900, the packaging states "Bag Patient Drawstring" which is a specific end-use other than "packaging and carrying merchandise from retail establishments." The packaging for models DONDS600 and 25117 states "Bag Drawstring Maternity" which also, according to Medline, indicates an end-use unrelated to "packaging and carrying merchandise from retail establishments." Finally, with regard to models DS500C, DS400C, 38667 and 42817, Medline claims that the packaging clearly indicates that the bags are to be used in a hospital, noting that the product is "latex free," a critical requirement for use in a hospital environment. Thus, according to Medline, the packaging used in the instant case meets the first prong set forth in the Consolidated Scope Ruling.

Additionally, Medline claims that it is also the ultimate consumer of PRCBs because hospitals or other similar medical establishments purchase the complete kit and not a bag alone. As such, Medline is a medical-supply corporation and not a retail establishment, thus meeting the second prong of the Consolidated Scope Ruling. Medline urges the Department to find its PRCBs outside the scope of the orders based on the language in the second exclusion of the orders consistent with the decision made in the Consolidated Scope Ruling. *Id.* at 3-4.

Medline also argues that its bags printed with patient-belongings 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

⁴ Medline 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").

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 People’s Republic of China”(May 9, 2005)), Medline emphasizes that the printing on its bags is 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.

Medline traces the history of the original investigations and concludes that, unlike its own products, the subject merchandise covered by the orders is limited to retail bags provided by merchants to customers in order to transport purchased items from a store. *Id.* Finally, Medline argues, should the Department decide to initiate a formal scope inquiry under 19 CFR 351.225(e), Medline has addressed the criteria under 19 CFR 351.225(k)(2). See Medline’s Submission at 5-6. The Department has not summarized these arguments because its determination is based on the criteria in 19 CFR 351.225(k)(1).

Petitioners’ Comments

The petitioners submitted comments dated July 16, 2007 (“Petitioners’ Comments”), focusing mainly on another scope request filed by Asia Dynamics, Inc. (“ADI”). Due to the similarity of the products in the requests by ADI and Medline, the petitioners requested that some of its comments be applied to Medline’s scope request. The petitioners argue that the packaging in which Medline imports certain polyethylene bags shows no indication as to the ultimate application of those bags. The petitioners argue also that there is no “use” exception in the orders. Specifically, the petitioners cite to the original antidumping investigations, 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 orders. The petitioners also cite to a recent scope ruling, where the Department found that certain “sample bags” were found to be within the scope of the orders despite not being used in retail.⁵ Further, Medline’s reliance on the Consolidated Scope Ruling is misplaced, according to the petitioners, because in contrast to the Consolidated Scope Ruling, Medline’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 petitioners assert, the orders’ second exclusion does not apply. See Petitioners’ Comments at 3-7.

Additionally, the petitioners argue that the orders apply to merchandise as entered. According to the petitioners, if the entered merchandise falls within the scope of the orders, it cannot be made to fall outside the scope subsequently merely by repackaging it in boxes indicating a non-retail end-use. Citing to the second exclusion of the orders, the petitioners claim that the exclusion was

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”).

intended to cover items such as “garbage or lawn” bags when imported in consumer packaging indicating such use. The petitioners argue that the second exclusion does not apply to consumer packaging which is added after importation. Such an interpretation of the language in the scope of the orders would create, according to the petitioners, a major risk of circumvention of the orders. *Id.* at 8-9.

ANALYSIS

We have analyzed the information Medline submitted on June 15, 2007, January 9, 2008, and August 23, 2007, and the comments submitted by the petitioners. Based on the provisions of 19 CFR 351.225(k)(1), we determine that the second exclusion in the orders 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” is dispositive in the instant proceeding.

The record of the proceeding shows that the consumer packaging used by Medline states that certain models imported into the United States are packaged in boxes indicating a non-retail use. For models DONDS600C, 07510, 42818, and 26900, the printing on the packaging refers interchangeably to either “patient belong,” “belonging” or “maternity.”⁶ With regard to model numbers DS500C, DS400C, 38667, 25117, 28614 and 42817, however, the packaging in which the PRCBs are imported refers, with slight variations, only to “poly bag drawstring” or “bag drawstring unprinted.”

One of Medline’s main arguments is that the PRCBs it imports from the PRC are never sold as individual bags. Rather, after importation, they are incorporated into medical kits which are in turn resold to hospitals or other medical establishments. As such, Medline argues that *it* is the ultimate consumer of PRCBs. According to Medline, once the PRCBs are imported, they become a component of another product, *i.e.*, a medical kit before being resold. While the Department agrees with Medline that it is the ultimate consumer of PRCBs, the antidumping duty orders apply to merchandise *as entered*. In the instant case, the entered merchandise is classified as PRCBs. The exclusionary language in the scope of the orders does not address a situation where PRCBs may be transformed into another product after importation. Consequently, the Department disagrees with Medline that, just because Medline’s product may undergo transformation after the entry, it is no longer subject to the orders.

With regard to Medline’s argument that the second exclusion of the order applies because its products are packed in consumer packaging with printing indicating a non-retail end-use, the Department agrees with Medline, in part. Because Medline is the last entity to purchase the bags before they are transformed into medical kits, *i.e.*, a distinct product, we find that Medline is the consumer of the plastic bags at issue. Therefore, we examined the packaging of the plastic bags at the time of Medline’s purchase. As mentioned above, the consumer packaging used for models DONDS600C, 07510, 42818, and 26900, indicates a non-retail use. As such, the second

⁶ See Medline’s submissions, dated January 9, 2008, at Appendix A. See also Medline’s submission, dated June 15, 2007, at Exhibits L-N1.

exclusion of the order applies here. Consequently, the Department finds models DONDS600C, 07510, 42818, and 26900 outside the scope of the orders. This decision comports with recently issued scope decisions where we determined that the printing on the consumer packaging is sufficient to find certain PRCBs outside the scope of the orders, regardless of the printing (or lack thereof) on the bags themselves.⁷

Conversely, with regard to models DS500C, DS400C, 38667, 25117, 28614, and 42817, the printing on the consumer packaging does not identify a specific non-retail use. Rather, the printing on the packaging refers, with slight variations, to “poly bag drawstring” which does not indicate a non-retail end-use. Medline’s argument that the printing on the packaging also refers to “latex-free,” an important requirement in hospital settings, is not reflected in the scope’s exclusionary language because “latex-free” does not describe an end-use. By Medline’s own admission, the physical characteristics of the PRCBs it imports from the PRC are the same as those for merchandise which is within the scope of the orders. See Medline’s Comments at 6. Thus, because their consumer packaging does not indicate a specific non-retail use, the Department finds models DS500C, DS400C, 38667, 25117, 28614, and 42817 to be within the scope of the orders.

Finally, Medline’s reliance on the Consolidated Scope Ruling is misplaced because that ruling was based on additional criteria found at 19 CFR 351.225(k)(2), also known as the *Diversified Products Criteria*. Our analysis is based on the existing record of this case, relying instead on 19 CFR 351.225(k)(1).

CONCLUSION

In summary and in accordance with 19 CFR 351.225(k)(1), our analysis indicates that four of the ten bags in question are imported in consumer packaging, which satisfies the second exclusion of the orders. With regard to the remaining six models, our analysis indicates that the consumer packaging in which they are imported does not satisfy the second exclusion of the orders and, therefore, they are subject to the orders.

RECOMMENDATION

Based on the above analysis, we recommend finding that Medline’s models identified below are outside the scope of the antidumping duty orders on PRCBs from the PRC, Thailand, and Malaysia because the consumer packaging indicates end-use other than packaging and carrying merchandise from retail establishments.

⁷ See Polyethylene Retail Carrier Bags from the People’s Republic of China, Malaysia, and Thailand; Final Scope Ruling for DMS Holdings, Inc. (January 8, 2008), and Polyethylene Retail Carrier Bags from the People’s Republic of China, Malaysia, and Thailand: Final Scope Ruling for Asia Dynamics, Inc., and Medline Industries, Inc. (November 15, 2007).

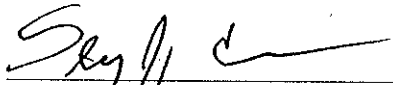
Model No.	Dimensions	Packaging Printing	Importer
DONDS600C	20" x 22" drawstring , 1ML	Bag Drawstring Maternity	Medline Industries, Inc.
07510	18" x 20" x 4" 2ML	Bag Drawstring BLonging	Medline Industries, Inc.
42818	18" x 20" x 4" 2ML	Bag Patient Belong Drawstring	Medline Industries, Inc.
26900	18" x 20" x 4" rigid handle 2ML	Bag Patient Belonging	Medline Industries, Inc.

Based on the above analysis, we recommend finding that Medline's models identified below are within the scope of the antidumping duty orders on PRCBs from the PRC, Thailand, and Malaysia because the consumer packaging does not indicate end-use other than packaging and carrying merchandise from retail establishments.

Model No.	Dimensions	Packaging Printing	Importer
DS500C	20.5" x 18" x 7" LG 1.25 ML	PolyBag Drawstring LG	Medline Industries, Inc.
DS400C	17" x 17" x 4" SML 1.5ML	PolyBag Drawstring SML	Medline Industries, Inc.
38667	18" x 21"	Bag Drawstring Unprinted	Medline Industries, Inc.
25117	17" x 17" 1ML	Drawstring Bag, Betty Lou	Medline Industries, Inc.
28614	11" x 17"	Bag Poly Drawstring	Medline

			Industries, Inc.
42817	13" x 16" 1ML	Poly Bag Drawstring	Medline Industries, Inc.

Agree Disagree



 Stephen J. Claeys
 Deputy Assistant Secretary
 for Import Administration

5/8/04

 Date

