



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

A-570-832

Scope Review
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MEMORANDUM FOR:

Richard W. Moreland
Acting Deputy Assistant Secretary
AD/CVD Enforcement Group II
Import Administration

FROM:

Louis Apple
Office Director
AD/CVD Enforcement Group II, Office 5
Import Administration

SUBJECT:

Final Scope Ruling -- Antidumping Duty Order on Pure
Magnesium from the People's Republic of China (PRC)

SUMMARY

On September 30, 1997, a U.S. importer, American Metallurgical, Inc. ("AMI"), requested that the Department of Commerce ("the Department") issue a scope ruling finding that magnesium crystal granules with either a length or width smaller than one inch and which can pass through a one inch mesh are not subject to the amended antidumping duty order on pure magnesium from the PRC (60 FR 65635, Notice of Amended Antidumping Duty Order: Pure Magnesium from the People's Republic of China, December 20, 1995). See Attachment 1.

In its October 31, 1997, submission, the petitioner stated that granules in question are unambiguously covered by the antidumping duty order. See Attachment 2.

In accordance with 19 CFR 351.225(c), we recommend that the Department determine that no scope inquiry is warranted. Further, pursuant to 19 CFR 351.225(k)(1), we recommend that the Department determine that the merchandise in question is within the scope of the antidumping duty order. Granules having a maximum dimension (i.e., either length or diameter) of less than one inch are included in the scope of the order. In addition, we do not find it appropriate to revise the scope to state that the granules must pass through a one inch mesh. Such a requirement does not specify the physical dimensions of the item and, therefore, does not adequately describe the product excluded from the scope of the order.



BACKGROUND

In its September 30, 1997, request for a formal scope inquiry, AMI states that the magnesium granules it imports into the United States from the PRC are not within the scope of the subject antidumping duty order because one of the dimensions (*i.e.*, length or width) of the granule is smaller than one inch (*see* scope description below). AMI argues that if the Department had intended to include in the scope granules with any dimension greater than one inch, then the Department would have defined dimensions as "length and width" as opposed to "length or width." *See* scope description below.

ANALYSIS

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 351.225. On matters concerning the scope of the antidumping duty order, our normal bases for determining whether a product is included within the scope of the order are the descriptions of the product contained in the order, the determinations of the Secretary and International Trade Commission ("ITC"), the initial investigation and the petition. The determination may take place with or without a formal inquiry. (*See* 19 CFR 351.225(c) and (k)(1)).

We have evaluated this request in accordance with 19 CFR 351.225(k)(1) because the descriptions of the products contained in the petition, the final determinations of the Secretary and the ITC, and the antidumping duty order are dispositive of the issue. Therefore, we have not referred to the additional factors found in section 351.225(k)(2).

Magnesium is described in the May 22, 1997, clarification¹ of the scope of the amended antidumping duty order as follows:

The product covered by this order is pure primary magnesium regardless of chemistry, form or size unless expressly excluded from the scope of this order. Pure primary magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

- (1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium);
- (2) Products containing less than 99.95% but not less than 99.8%

¹ It should be noted that the scope in the 1995 antidumping duty (AD) order (60 FR 25691, May 12, 1995) characterized magnesium granules as having a "typical size of 2 mm in diameter or smaller." However, the original AD order language concluded with the same sentence requiring the "maximum physical dimension" of such excluded merchandise to be one inch or less. *See* Attachment 3.

primary magnesium, by weight (generally referred to as "pure " magnesium); and

(3) Products (generally referred to as "off-specification pure" magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

If entry documentation fails to establish that the pure primary magnesium content of the imported merchandise falls outside of the above-described parameters, then liquidation shall be suspended and appropriate antidumping duty deposits collected unless the merchandise is expressly excluded from the orders as described below.

The only primary magnesium products that are excluded from the scope of this order are alloy primary magnesium (that meets ASTM specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powders) having a maximum physical dimension (i.e., length or diameter) of one inch or less, secondary magnesium (which has a pure primary magnesium content or less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50%, by weight. If the entry documentation fails to establish that the imported merchandise (1) meets ASTM specifications for alloy magnesium; (2) has a maximum physical dimension (i.e., length or diameter) of one inch or less; (3) is secondary magnesium which has a pure primary magnesium content of less than 50% by weight; or (4) is remelted magnesium whose pure primary magnesium content is less than 50%, by weight, then liquidation shall be suspended and appropriate antidumping duty liquidation shall be suspended and appropriate antidumping duty deposits collected.

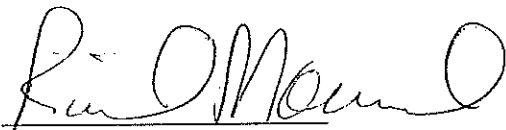
Pure magnesium products covered by this order are classifiable under HTS subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19, and 9817.00.90. (see document sent by U.S. Department of Commerce to U.S. Customs entitled, "Clarification of Antidumping Order Pure Magnesium from the People's Republic of China," (May 22, 1997) which is a clarification to the Notice of Amended Antidumping Duty Order in the Antidumping Duty Investigation of Pure Magnesium from the People's Republic of China (December 20, 1995)). See Attachments 4 and 5.

The revised, May 12, 1995, scope states that granules with a maximum physical dimension of one inch or less are excluded from the scope of the order. AMI suggests that the scope language can be interpreted to mean that granules with either a length or width of less than one inch are excluded from the order. We disagree. Clearly, the intent of the scope language of the order is to exclude only granules with no dimension greater than one inch. The revised, May 12, 1995, scope language does not exclude from the order granules with a length or width or diameter of one inch or less. The scope language excludes from the order granules with all physical dimensions of less than one inch. As such, the imported pure magnesium in question must be considered subject to the order.

RECOMMENDATION

We believe that the merchandise being examined under this scope review falls within the scope of the antidumping duty order. Because the product description provides a sufficient basis for making a determination, and the issue can be resolved by reference to the descriptions of the product contained in the petition, and the final determinations of the Secretary and the ITC, we recommend determining no formal inquiry is required.

Agree Disagree



Richard W. Moreland

November 14, 1997
Attachments