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

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

FROM: Melissa Skinner
Office Director
Import Administration, Office 3

REGARDING: Antidumping and Countervailing Duty Orders on Raw Flexible Magnets from the People's Republic of China and Antidumping Duty Order on Raw Flexible Magnets from Taiwan

SUBJECT: Final Scope Ruling on Certain Decorative Retail Magnets

Summary

On March 20, 2009, Direct Innovations requested that the Department of Commerce (the "Department") determine whether certain magnets are subject to the antidumping and countervailing duty orders on raw flexible magnets from the People's Republic of China ("PRC") and the antidumping duty order on raw flexible magnets from Taiwan.¹

Pursuant to 19 CFR 351.225(d), we recommend that the Department determine that a formal scope inquiry is not warranted in this case. Further, pursuant to 19 CFR 351.225(k)(1), we recommend that the Department determine that the decorative magnet items subject to the request are within the scope of the Magnets Orders.²

¹ See Letter from Direct Innovations to the Secretary of Commerce, "Raw Flexible Magnets from the People's Republic of China: Scope Ruling Request," (March 20, 2009) ("Scope Ruling Request").

² See Antidumping Duty Order: Raw Flexible Magnets from the People's Republic of China, 73 FR 53847 (September 17, 2008) ("Magnets PRC AD Order"); Raw Flexible Magnets from the People's Republic of China: Countervailing Duty Order, 73 FR 53849 (September 17, 2008) ("Magnets PRC CVD Order"); and Antidumping Duty Order: Raw Flexible Magnets from Taiwan, 73 FR 53848 (September 17, 2008) ("Magnets Taiwan AD Order") (collectively, "Magnets Orders").



Applicable Regulations

The regulations governing the Department's antidumping and countervailing duty scope determinations can be found at 19 CFR 351.225. On matters concerning the scope of an antidumping and/or countervailing duty order, our initial bases for determining whether a product is included within the scope of an order are the application for a scope ruling, and the descriptions of the product contained in the Petition, the initial investigation, and the prior determinations of the Secretary (such as prior scope rulings) and the International Trade Commission ("ITC"). See 19 CFR 351.225(d) and 351.225 (k)(1).

Where the application for a scope ruling and the descriptions of the merchandise contained in the Petition, the initial investigation, and the prior determinations of the Secretary and the ITC are not dispositive, the Department will initiate a formal scope inquiry and may consider the additional factors set forth at 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 record evidence before the Department.

Product Descriptions

1. Scope of the Orders

The Department identified the scope of the investigations in its notices of initiation.³ In the final determinations of sales at less than fair value and the final affirmative countervailing duty determination,⁴ the Department clarified product coverage by reordering the scope language and adding certain explanatory definitions. The revised scope language neither enlarged nor contracted product coverage.⁵ There have been no subsequent changes to the scope. The scope description as published in the Magnets Orders is as follows:

The products covered by this order are certain flexible magnets regardless of shape,⁶ color, or packaging.⁷ Subject flexible magnets are bonded magnets composed (not necessarily exclusively) of (i) any one or combination of various

³ Notice of Initiation of Antidumping Duty Investigations: Raw Flexible Magnets from the People's Republic of China and Taiwan, 72 FR 59071 (October 18, 2007); and Raw Flexible Magnets from the People's Republic of China: Notice of Initiation of Countervailing Duty Investigation, 72 FR 59076 (October 18, 2007).

⁴ See Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from the People's Republic of China, 73 FR 39669 (July 10, 2008) ("AD PRC Final Determination"); Raw Flexible Magnets from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 39667 (July 10, 2008) ("CVD PRC Final Determination"); and Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets From Taiwan, 73 FR 39673 (July 10, 2008) ("AD Taiwan Final Determination") (collectively, "Final Determinations").

⁵ See AD PRC Final Determination at 39671; CVD PRC Final Determination and accompanying Issues and Decision Memorandum ("CVD PRC Final I&D Memo") at "Scope Comments"; and AD Taiwan Final Determination at 39674.

⁶ The term "shape" includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

⁷ Packaging includes retail or specialty packaging such as digital printer cartridges.

flexible binders (such as polymers or co-polymers, or rubber) and (ii) a magnetic element, which may consist of a ferrite permanent magnet material (commonly, strontium or barium ferrite, or a combination of the two), a metal alloy (such as NdFeB or Alnico), any combination of the foregoing with each other or any other material, or any other material capable of being permanently magnetized. Subject flexible magnets may be in either magnetized or unmagnetized (including demagnetized) condition, and may or may not be fully or partially laminated or fully or partially bonded with paper, plastic, or other material, of any composition and/or color. Subject flexible magnets may be uncoated or may be coated with an adhesive or any other coating or combination of coatings.

Specifically excluded from the scope of this order are printed flexible magnets, defined as flexible magnets (including individual magnets) that are laminated or bonded with paper, plastic, or other material if such paper, plastic, or other material bears printed text and/or images, including but not limited to business cards, calendars, poetry, sports event schedules, business promotions, decorative motifs, and the like. This exclusion does not apply to such printed flexible magnets if the printing concerned consists of only the following: a trade mark or trade name; country of origin; border, stripes, or lines; any printing that is removed in the course of cutting and/or printing magnets for retail sale or other disposition from the flexible magnet; manufacturing or use instructions (e.g., "print this side up," "this side up," "lamine here"); printing on adhesive backing (that is, material to be removed in order to expose adhesive for use such as application of laminate) or on any other covering that is removed from the flexible magnet prior or subsequent to final printing and before use; non-permanent printing (that is, printing in a medium that facilitates easy removal, permitting the flexible magnet to be re-printed); printing on the back (magnetic) side; or any combination of the above.

All products meeting the physical description of subject merchandise that are not specifically excluded are within the scope of this order. The products subject to the order are currently classifiable principally under subheadings 8505.19.10 and 8505.19.20 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The HTSUS subheadings are provided only for convenience and customs purposes; the written description of the scope of the order is dispositive.

See Magnets PRC AD Order at 53847; Magnets PRC CVD Order at 53849; and Magnets Taiwan AD Order at 53848-49.

2. The Petitions

Petitioner used language similar to that in the Magnets Orders to describe the covered merchandise and stated that the products covered are certain flexible magnet sheeting, strips, and

profile shapes. See “Petition for Imposition of Antidumping and Countervailing Duties On Raw Flexible Magnets From The People’s Republic Of China and For The Imposition Of Antidumping Duties On Raw Flexible Magnets from Taiwan” (September 21, 2007) (“Petition”) at 11-12. The Petition states that the scope does not include finished flexible magnetic products that have been printed for retail sale or for other distribution to end-users. Id. at 9. Finally, according to Petitioner, “{t}here is a single class or kind of subject merchandise that includes Raw Flexible Magnets.” Id. at 12.

3. The ITC’s Description

In its final injury analysis, the ITC described the domestic like product in the following manner:

Flexible magnets are permanent magnets that can be twisted, bent, slit, punched, coiled, and otherwise molded into any shape without loss of magnetic properties. Raw flexible magnets consist of sheet (or sheeting), strip, and thermoplastic profile shapes, typically of uniform thickness and surface finish.

Magnetic sheet is characterized as “{s}heets of material that are highly flexible and have permanent magnetic properties.” Sheet, which is generally (but not exclusively) produced by the calendaring process...is the widest form of raw flexible magnet, typically available from U.S. suppliers in widths up to approximately 24 inches. Sheets in larger widths are available from foreign suppliers. Raw flexible magnetic strips are dimensionally narrower than sheet...Finally, profile shapes are flexible magnets that are not square or rectangular in cross section. Thermoplastic profile shapes are manufactured exclusively by the extrusion method.

In general, flexible magnets are used in a range of applications, including refrigerator door gaskets; magnetic car and safety signs; direct mail promotional items; magnetic business cards; advertising signs; calendars; nameplates; medical applications; and toys and games. The key physical characteristics and similarities among all flexible magnets include magnetism, thinness, flexibility, lightness of weight, and ease of cutting. Raw flexible magnet profile shapes are used in the production of commercial products such as refrigerator doors, shower doors, and merchandise exhibits. Raw flexible magnetic sheet and strip typically are used to produce refrigerator magnets, magnetic photo pockets, magnetic business cards (such as those used by real-estate agents in promotional applications), label holders for metal shelving, and magnetic signage on the doors of cars or vans.

See Raw Flexible Magnets from China and Taiwan, Investigation Nos. 701-TA-452 (Final) and 731-TA-1129-1130 (Final), Pub. No. 4030 (August 2008) (“ITC Final Determination”) at I-7-I-9 (footnotes omitted).

4. Previous Scope Rulings

In the Department's December 22, 2008, scope ruling on a similar product (i.e., magnets in the shape of words and phrases), the Department determined that Target Corporation's (Target) magnets and magnet sets were not excluded from the scope of the orders. The Department evaluated Target's request in accordance with 19 CFR 351.225(k)(1) because the description of the products contained in the antidumping and countervailing duty orders, Petition, and determinations of the Secretary and the ITC were dispositive with respect to Target's products at issue. See Final Scope Ruling on Certain Decorative Retail Magnets, dated December 22, 2008 ("Target Scope").

Summary of Arguments

1. Direct Innovations

Direct Innovations requested the Department issue a scope ruling finding that its "decorative retail magnets" are not subject to the Magnets Orders. Specifically, Direct Innovations described its product as die cut EVA words with silk-screened artwork/icons for which the flexible magnet backing is bonded to foam words with glue. Direct Innovation further stated that the end use of its decorative magnet is for sale to retail customers.

Direct Innovation argues that this product should be excluded from the scope because its magnets are "bonded with other material, which bears printed text and/or images, including ...decorative motifs." Additionally, Direct Innovations argues that the magnets are packaged for direct sale to retail customers as decorative accessories and are not suitable for any other further processing." See Scope Ruling Request at 1.

In its request for a scope inquiry, Direct Innovations stated that it was unaware of the extent the flexible magnet anti-dumping duty order applied to its merchandise and that it believed that it only pertains to large commodity items. The company also stated that even though the amount of its order is relatively small, it would be not be able to pay the costs of the additional duty and a decision not to follow through with the importation of the merchandise would harm its relations with its PRC supplier and retail customers. See Scope Ruling Request at 2.

Because of these facts, Direct Innovations states in its scope request that the product is currently in the PRC and it will not import the merchandise unless it receives a favorable scope ruling. See Scope Ruling Request at 2.

2. Petitioner

There were no comments from the petitioner regarding Direct Innovation's request.

Analysis

As explained above, when determining whether a specific product is within the scope of an antidumping and/or countervailing duty order, the Department reviews the application for a scope ruling, and the descriptions of the subject merchandise contained in the Petition, the investigation, and the determinations of the Secretary (such as prior scope rulings) and the ITC. See 19 CFR 351.225(d) and 351.225(k)(1). In discussing the interpretive process the Department should follow in making scope rulings pursuant to 19 CFR 351.225(k)(1), the Court of Appeals for the Federal Circuit (“CAFC”) stated:

The critical question is not whether the petition covered the merchandise or whether it was at some point within the scope of the investigation. The purpose of the petition is to propose an investigation ... A purpose of the investigation is to determine what merchandise should be included in the final order. Commerce’s final determination reflects the decision that has been made as to which merchandise is within the final scope of the investigation and is subject to the order.... Thus, the question is whether the {final scope of the order} included the subject merchandise.

See Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1096 (Fed. Cir. 2002) (“Duferco”). The CAFC also commented that “a predicate for the interpretative process {in a scope inquiry} is language in the order that is subject to interpretation.” Id. at 1097. Through these statements, the CAFC found that the appropriate place to begin the analysis as to whether a product is within the scope of an antidumping duty order is to review the scope language of the antidumping duty order itself. Furthermore, the CAFC stated that “{s}cope orders may be interpreted as including subject merchandise only if they contain language that specifically includes the subject merchandise or may be reasonably interpreted to include it.” (Emphasis added.) Id. at 1089.

In accordance with 19 CFR 351.225(k)(1) and Duferco, the Department first examined the language of the scope of the Magnets Orders, including any exclusions, to determine whether Direct Innovation’s products are within the scope of the Magnets Orders. The Department also conducted analysis with reference to the ITC’s description of the scope and the Department’s prior scope determinations. Finally, the Department addressed Direct Innovation’s argument.

In analyzing whether Direct Innovations magnets sets are within the scope of the orders, the Department first reviewed the scope language contained in the Magnets Orders. The scope of each order states:

Subject flexible magnets are bonded magnets composed (not necessarily exclusively) of (i) any one or combination of various flexible binders (such as polymers or co-polymers, or rubber) and (ii) a magnetic element, which may consist of a ferrite permanent magnet material (commonly, strontium or barium

ferrite, or a combination of the two), a metal alloy (such as NdFeB or Alnico), any combination of the foregoing with each other or any other material, or any other material capable of being permanently magnetized.

See Scope of the Orders sub-section above.

Direct Innovations state that its magnets consist of “flexible magnet backing bonded to foam words with glue.” See Scope Ruling Request at 1. Additionally, through inspection of the magnet samples provided by Direct Innovations, the Department has confirmed that these magnets are composed of a flexible binder and a magnetic element. Moreover, Direct Innovations provides no argument that these products should be considered outside the scope based on material consistency. Thus, Direct Innovation’s magnets set satisfy the material requirements established by the scope.

Additionally, the scope states that “{s}ubject flexible magnets . . . may or may not be fully or partially laminated or fully or partially bonded with paper, plastic, or other material, of any composition and/or color.” See “Scope of the Orders” sub-section above. The magnets at issue consist of a foam material cut into the shapes of words or phrases that is, as reported by Direct Innovation, “bonded to the flexible magnet backing with glue.” Both foam and paper are covered by the language of the scope excerpted above which refers to subject magnets being “bonded with paper, plastic, or other material, of any composition and/or color.” Id. Therefore, the foam material and paper bonded to the flexible magnets do not exclude the magnets at issue from the scope of the Magnets Orders.

The scope of the orders specifically excludes printed flexible magnets which are defined as “flexible magnets (including individual magnets) that are laminated or bonded with paper, plastic, or other material if such paper, plastic, or other material bears printed text and/or images, including but not limited to business cards, calendars, poetry, sports event schedules, business promotions, decorative motifs, and the like.” Id. Because the magnets at issue do not incorporate a material that “bears printed text and/or images,” these magnets do not meet the exclusion criteria for printed flexible magnets. Additionally, as noted above, the Department previously determined in Target Scope that magnets in the shape of words and phrases are within the scope of the orders.

Finally, Direct Innovations arguments regarding their knowledge of the extent of the Magnets Orders are not relevant to whether a product is covered by the scope of these orders. See Scope Request at 2.

Conclusion

Pursuant to 19 CFR 351.225(d) and 351.225(d), the Department determines that a formal inquiry to decide whether the Direct Innovations magnets are covered by the scope of the orders is not warranted because the information within the application for a scope inquiry, and the description of the products contained in the antidumping and countervailing duty orders, Petition,

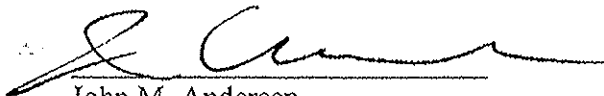
determinations of the Secretary and the ITC, and a prior scope ruling on a similar product are dispositive with respect to Direct Innovation's products at issue.

Recommendation

In accordance with 19 CFR 351.225(d), we have determined, through our review of the application for a scope inquiry, and the descriptions of the products contained in the antidumping and countervailing duty orders, the Petition, the determinations of the Secretary and the ITC, and a prior scope ruling on similar product that Direct Innovations magnets are within the scope of the Magnets Orders. If you agree, we will send a letter to interested parties enclosing this ruling and will notify U.S. Customs and Border Protection of our determination.

If the recommendations in this memorandum are accepted, we will serve a copy of this memorandum to all interested parties on the scope service via first class mail as directed by 19 CFR 351.303(f).

✓ Agree _____ Disagree



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

7/13/09
Date