



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

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A-570-922

Scope Inquiry

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

FROM: Laurie Parkhill *LP*
Office Director
AD/CVD Enforcement 5

SUBJECT: Raw Flexible Magnets from the People's Republic of China; Scope
Request from It's Academic – Result of Inquiry - Final Scope
Determination in Part.

SUMMARY

On June 4, 2009, the Department of Commerce (the Department) received a request in proper form from It's Academic, Inc. (It's Academic), asking the Department to determine that certain flexible magnet products that It's Academic imports from the People's Republic of China (PRC) are not within the scope of the antidumping duty order on raw flexible magnets from the PRC.¹ See *Antidumping Duty Order: Raw Flexible Magnets from the People's Republic of China*, 73 FR 53847 (September 17, 2008) (*Order*). On July 1, 2009, the petitioner, Magnum Magnetics Corporation (the petitioner), submitted comments on It's Academic's scope-ruling request.² It's Academic submitted rebuttal comments on July 16, 2009.³ The petitioner submitted rebuttal comments on August 7, 2009.⁴

On September 2, 2009, the Department determined that three of the seven items presented for scope review by It's Academic are not within the scope of the order.⁵

With respect to the remaining four items, the Department initiated a scope inquiry in part on September 2, 2009, pursuant to 19 CFR 351.225(e).⁶ Accordingly, this scope inquiry concerns four of seven items imported by It's Academic and identified herein. In support of this inquiry we issued a short questionnaire to It's Academic on September 10, 2009,⁷ in accordance with 19 CFR 351.225(f)(2). It's Academic responded to the Department's request for additional

¹ See Letter from It's Academic to the Secretary of Commerce (June 4, 2009) (scope request).

² See Letter from Magnum Magnetics Corporation to the Secretary of Commerce (July 1, 2009).

³ See Letter from It's Academic to the Secretary of Commerce (July 16, 2009).

⁴ See Letter from Magnum Magnetics Corporation to the Secretary of Commerce (August 7, 2009).

⁵ See Memorandum from Laurie Parkhill to John M. Andersen (September 2, 2009).

⁶ See Memorandum from Laurie Parkhill to John M. Andersen (September 2, 2009).

⁷ See Letter from Laurie Parkhill to It's Academic Inc. (September 10, 2009).



information in a letter dated November 2, 2009.⁸ The petitioner commented on It's Academic's response to the Department's questionnaire in comments dated November 23, 2009.⁹

Pursuant to 19 CFR 351.225(k)(1), we recommend a determination that the four items in question are within the scope of the order.

LEGAL FRAMEWORK

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 351.225. In considering whether a particular product is within the scope of an order, the Department will take into account the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Department (including prior scope determinations) and those of the International Trade Commission (ITC). See 19 CFR 351.225(k)(1). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether the subject merchandise is covered by the order. See 19 CFR 351.225(k)(1). When the Department determines that these criteria are not dispositive the Department can consider the additional factors set forth at 19 CFR 351.225(k)(2). These criteria are as follows: 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; v) the manner in which the product is advertised and displayed. These factors are commonly known as the *Diversified Products*¹⁰ criteria.

If the Department finds that it cannot make a determination based solely on the application and the descriptions of the merchandise referred to in 19 CFR 351.225(k)(1), it will initiate a scope inquiry and issue a final scope ruling after a further period of inquiry. See 19 CFR 351.225(d) and (e). The determination as to which analytical framework, either 19 CFR 351.225(k)(1) or (k)(2), is appropriate in a given scope inquiry is made on a case-by-case basis after consideration of all record evidence before the Department.

SCOPE OF THE ORDER

The Department initially identified the scope of this product in its notice of initiation of an antidumping duty investigation.¹¹ In the final determination of sales at less than fair value,¹² the Department clarified product coverage by reordering the scope language and adding certain explanatory definitions. The revised scope language neither enlarged nor contracted product

⁸ See Letter from It's Academic to the Secretary of Commerce (November 2, 2009).

⁹ See Letter from Magnum Magnetics Corporation to the Secretary of Commerce (November 23, 2009).

¹⁰ *Diversified Products Corp. v. United States*, 572 F. Supp. 883 (CIT 1983).

¹¹ *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).

¹² *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) (*LTFV Final*).

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coverage.¹³ There have been no subsequent changes to the scope. The scope description as published in the scope of the *Order* is as follows:

The products covered by this order are certain flexible magnets regardless of shape,¹⁴ color, or packaging.¹⁵ 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. 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”).

¹³ See *LTFV Final*, 73 FR at 39671.

¹⁴ The term “shape” includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

¹⁵ Packaging includes retail or specialty packaging such as digital printer cartridges.

The HTSUS subheadings are provided only for convenience and customs purposes; the written description of the scope of the order is dispositive.

See *Order*, 73 FR at 53847.

BACKGROUND

It's Academic imports seven packaged sets of magnets that can be grouped into three different types of merchandise. Pursuant to 19 CFR 351.225(c)(1)(i), It's Academic requests that the Department find that these magnet products are not within the scope of the order. See scope request at 2. Included in the scope request were descriptions and pictures of the items. See scope request at 3 and Attachment 1, respectively. It's Academic also submitted samples of the merchandise in question with the scope request. On September 9, 2009, the Department issued a final determination regarding two types of merchandise. These two types of merchandise included three of the seven sets of magnets for which It's Academic requested a scope review.¹⁶

This scope inquiry covers the remaining type of merchandise that consists of Universal Product Code (UPC) 7-25150-96106-2, 0-20755-96109-8, 7-25150-96100-0, and 7-25150-96103-1. Each of these four products consists of a set of four magnet products packaged according to one of four themes where the products picture text, cartoon human characters, sea creatures, or a mix of hearts and flowers. This category is referred to as "Magnets Attached to Injection-Molded PVC" herein. For the purposes of this final ruling we refer to items by the UPC or by the product category designated above.

Pursuant to 19 CFR 351.225(c)(1)(ii), It's Academic explains that its products are magnets designed to be used as decorative magnets for school lockers and should be found to be outside the scope based on the language of the *Order*, the petition, and the ITC's record collectively. Further, it argues, its products were never intended to be considered "raw flexible magnets" that are subject to the order. See scope request at 2. It's Academic argues that, "even if the scope language is found to be ambiguous, the Department should find that its magnets are excluded from the scope, as they are clearly a different product from the merchandise subject to the original antidumping investigation and resulting order." *Id.*

The language in the *Order* allows for the exclusion of "printed flexible magnets" where a layer bonded to a flexible magnet "bears printed text and/or images" unless that printing meets one of the following descriptions: is temporary; is designed to be removed in further processing; consists of a maker's or country-of-origin mark; consists of borders, stripes, or lines; consists of instructions; is on the magnet itself (on the reverse of the product); is on a removable backing material. It's Academic contends that its "magnets consist of multicolored text or images on polyvinyl chloride (PVC). The PVC layer is glued to the magnetic base. The text {or} image {is} in effect printed on the PVC through an injection molding process." See scope request at 3.

¹⁶ See Memorandum from Laurie Parkhill to John M. Andersen (September 2, 2009).

The petitioner describes the same items as “flexible magnets to which {are} glued in each case a layer of PVC, which in turn bears multiple pieces of colored, injection-molded plastic foam that are arranged in patterns to create various images. Neither {the} flexible magnet, the PVC layer, nor the injection-molded plastic bears any printed image or text.” See the petitioner’s July 1, 2009, comments at 2.

It’s Academic’s “Magnets Attached to Injection-Molded PVC” are constructed by bonding an injection-molded, multilayer, plasticized PVC form with a flat back to a similarly shaped, cutout piece of flexible magnet sheet. It’s Academic explains that “{t}he text and images are in effect printed on the PVC through an injection molding process.” See scope request at 3. “Rather than stamping a piece of material (*e.g.*, PVC, foam *etc.*) into a shape and then printing it, the injection molding process both creates that shape of the text or image and ‘prints’ the colors on it through the use of specific colored dyes in the molding process.” *Id.* It’s Academic contends that “{t}he result is identical to a traditional printing process, namely, a flexible magnet to which has been affixed a multicolored text or images for retail sale.” *Id.*

Further, in its November 2, 2009, response It’s Academic explains that the PVC form is created by injecting several different colored PVCs into a mold. This mold is then heated to solidify the PVC. Once the colored layer has solidified, the mold is removed from the oven and the mold is filled with black PVC to act as a base to the colored layer. This layer is left flat on the top. The mold is returned to the oven to solidify the black PVC. After cooling and being removed from the mold, the injection-molded PVC piece is bonded to a flexible magnet that is cut in the same shape. The colored part of the injection-molded form, the layer that was injected first, depicts text or images when it is separated from its mold (and affixed to the magnet). See It’s Academic’s November 2, 2009, response at 2 and Exhibit 1 therein.

The petitioner disagrees with It’s Academic’s contention that the injection-molded plastic part of the merchandise is printed. In the petitioner’s opinion, the injection molding is another material layer that is bonded to the flexible magnet. The petitioner states that “{n}either the flexible magnet, the PVC Layer, nor the injection-molded plastic bears any printed text or image” (here “PVC Layer” refers to the black backing layer of the molded PVC part, as described above, and the “injection-molded plastic” refers to the colored PVC layer) and that these items “do not incorporate materials bearing ‘printed text and/or images’ and therefore are not excluded as ‘printed flexible magnets.’” See the petitioner’s July 1, 2009, comments at 2-3. Further, the petitioner specifically counters It’s Academic’s arguments concerning the nature of the injection-molding process, stating that It’s Academic’s claim that the “arrangement of colored plastic pieces ‘in effect’ is printing” is unfounded because this process “is nothing more than further lamination or bonding with plastic.” Specifically, the petitioner claims that, “{b}ecause none of {the} pieces of plastic laminated or bonded to the magnet ‘bears printed text and/or images,’ the ... magnets do not qualify for the clear language of the specific exclusion for ‘printed flexible magnets’” available in the scope of the order. *Id.* at 5.

It’s Academic argues that “{t}he injection molding process allows achievement of three-

dimensional text or images similar to other forms of three-dimensional printing.” See It’s Academic’s November 2, 2009, response at 3. It’s Academic explains that “[t]here are several methods of ‘printing’ that involve the creation of three-dimensional text and/or images on a surface by applying layers of liquid polymer material.” See It’s Academic’s July 16, 2009, comments at 2. Additionally, It’s Academic supplies literature that describes “3D printing” and “Stereolithography” in Exhibit 1 of its July 16, 2009, comments. The petitioner refutes this categorization of It’s Academic’s manufacturing processes, stating that, “as the literature included in It’s Academic’s own submission makes clear, the “3D printing” process to which it refers “is a form of additive manufacturing technology” and is not in fact “printing” at all. See the petitioner’s August 7, 2009, comments at 3.

In the petitioner’s November 23, 2009, comments at 2 it compares a dictionary definition of the verb “to print” with the definition of injection-molding, whereby “to print” means to impress or stamp in or on and injection-molding is “a method of forming articles (as of plastic) by heating a molding material until it can flow and injecting it into a mold.” The petitioner argues that this comparison reveals a clear distinction between printing and injection-molding; printing makes a depression or impression in or on a material and injection-molding forms a material with a mold and heat. It’s Academic’s injection-molding process forms articles by heating a liquid to solidify or cure it once the liquid polymer has been injected in a form. The definition describes a process where heat is used to change a material from a solid to a liquid in order to inject it into a mold. It’s Academic’s process does the reverse; it uses heat to stop the flow of a liquid. Whether heat is used to initiate or stem the flow of the molding material the result is the same - the formation of new articles and not the impression or stamping on or in another surface.

ANALYSIS

The Department initiated a scope inquiry pursuant to 19 CFR 351.225(e) in order to ascertain a better understanding of the injection-molding production process employed in the manufacture of It’s Academic’s “Magnets Attached to Injection-Molded PVC.” Information obtained during this inquiry broadened our understanding of It’s Academic’s manufacturing process. We are now able to make a determination pursuant to 19 CFR 351.225(k)(1) in this matter.

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 that “a predicate for the interpretative process {in a scope inquiry} is language in the order that is subject to interpretation.” See *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, at 1096 (CAFC 2002) (*Duferco Steel*).¹⁷ In *Duferco Steel*, the CAFC reiterated “the importance of the language of the final scope order in defining the merchandise subject to the order.” *Id.* at 1097. Furthermore, the CAFC stated that “[s]cope orders may be interpreted as including subject

¹⁷ Such an approach differs from earlier Court of International Trade (CIT) precedent that required the Department to give ample deference to the petitioner’s intent when examining a petition’s description of the subject merchandise. See, e.g., *Torrington Co. v. United States*, 995 F. Supp. 117, 121 (CIT 1998).

merchandise only if they contain language that specifically includes the subject merchandise or may be reasonably interpreted to include it.” *Id.* at 1089.

The issue in this scope inquiry is whether It’s Academic’s magnet products are excluded from the scope of the order because they contain a material that “bears printed images and/or text” that is laminated or bonded to a magnet. Therefore, the Department must determine whether the injection-molding of a multiple-layer, multiple-part form of colored, plasticized (bendable) PVC is a *printed* image and/or text. The term “printing” commonly describes a wide range of manufacturing processes¹⁸ including (but not limited to) printing with ink,¹⁹ three-dimensional printing with plastics and other materials,²⁰ and the machine printing of components onto circuit boards.²¹ All printing makes three-dimensional structures; even ink printed on a page is not two-dimensional. Finally, all printing transfers substances, shape, or components to create a multi-dimensional depiction on or in another surface either by the addition of material or by the deformation of a receiving surface.

It’s Academic’s injection-molding process is not a printing process because it neither transfers material to another surface to create an image or text on it nor does it impress or stamp a depiction of an image or text into another surface. Not all processes that result in images and/or text are printing processes. For It’s Academic’s products, the PVC form is not “printed” because the form that depicts the image or text was not transferred onto the surface of another material. It’s Academic’s injection-molding process creates a three-dimensional object that depicts text or images but it does not print that text or image on or in another surface. Rather it molds a three-dimensional object that depicts text or images and later bonds it to a flexible magnet. This process is similar to the molding of clay and porcelain, both of which are heat-cured after molding or shaping as is the PVC form.

It’s Academic contends that its process has the same effect as three-dimensional printing. While the effect of its process may be similar, the Department finds that the scope exclusion only applies to printed magnets. The Department agrees with the petitioner that “Magnets Attached to Injection-Molded PVC” are flexible magnets bonded to plastic and are within the scope of the order. Because It’s Academic’s magnets are not printed, they are subject to the order, regardless of the effect of the injection-molding process.

¹⁸ See Exhibit 1 – National Institute of Industrial Research, *The Complete Book on Printing Technology* (Delhi, India: Asia Pacific Business Press Inc., 2009), at 39-42.

¹⁹ See Exhibit 2 - Kipphan, Helmut, *Handbook of Print Media: Technologies and Production Methods* (Heidelberg, Germany: Heidelberger Druckmaschinen, 2001), at 40.

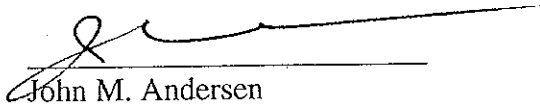
²⁰ See Exhibit 3 - “A Factory on Your Desk,” *The Economist*, London: September 3, 2009, Vol. 392, Iss. 8647, at 26.

²¹ See Exhibit 4 – US Patent 7,617,774 (November 17, 2009).

RECOMMENDATION

Based on the foregoing analysis and pursuant to 19 CFR 351.225(e), we recommend that you determine, based on a review of the descriptions of the products contained in the *Order*, the petition, and the determinations of the Secretary and the ITC, that It's Academic's "Magnets Attached to Injection-Molded PVC" are within the scope of the antidumping duty order on raw flexible magnets from the People's Republic of China.

Agree Disagree



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

3/4/10
(Date)

