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A-570-922

C-570-923

Scope Inquiry

Public Document


AD/CVD 5: MAR

JAN 11 2010

MEMORANDUM TO:

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM:

Laurie Parkhill 
Office Director
AD/CVD Enforcement 5

SUBJECT:

Raw Flexible Magnets from the People's Republic of China; Scope
Request from Medical Action Industries Inc. - Final Scope
Determination

SUMMARY

On June 14, 2010, the Department of Commerce (the Department) received a complete request from Medical Action Industries Inc. (MAI), asking the Department to determine that certain flexible magnet products that MAI imports from the People's Republic of China (PRC) into the United States are not within the scope of the antidumping and countervailing duty orders 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) (*AD Order*), and *Raw Flexible Magnets from the People's Republic of China: Countervailing Duty Order*, 73 FR 53849 (September 17, 2008) (*CVD Order*). On July 2, 2010, the petitioner, Magnum Magnetics Corporation (Magnum), submitted comments on MAI's scope-ruling request.² MAI submitted rebuttal comments on August 24, 2010.³ Magnum submitted additional comments on August 31, 2010.⁴

Pursuant to 19 CFR 351.302(b) we extended the 45-day time limit for action on a scope-ruling request by an additional 45 days to September 13, 2010.⁵ Pursuant to 19 CFR 351.225(f), we initiated a formal scope inquiry on September 13, 2010, regarding three products imported by MAI and discussed below.⁶ We received no additional comments after initiation of the formal

¹ See Letter from MAI to the Secretary of Commerce, "Medical Action Industries: Scope Inquiry Concerning Raw Flexible Magnets From the People's Republic of China and Taiwan, Inv Nos. A-570-922, C-570-923, A-583-842" (letter dated June 10, 2010) (Scope Request).

² See Letter from Magnum to the Secretary of Commerce, "Raw Flexible Magnets from the People's Republic of China and Taiwan: Comments on Scope Ruling Request of Medical Action Industries." (A-570-922) (July 2, 2010).

³ See Letter from MAI to the Secretary of Commerce, "Medical Action Industries: Scope Inquiry Concerning Raw Flexible Magnets From the People's Republic of China and Taiwan, Inv Nos. A-570-922, C-570-923, A-583-842" (August 24, 2010).

⁴ See Letter from Magnum to the Secretary of Commerce, "Raw Flexible Magnets from the People's Republic of China and Taiwan: Rebuttal Comments on Scope Ruling Request of Medical Action Industries" (August 31, 2010).

⁵ The addition of 45 calendar days to July 29, 2010, yields a due date of Sunday, September 12, 2010. The next business day is September 13, 2010.

⁶ See Raw Flexible Magnets from the People's Republic of China; Scope Request from Medical Action Industries



scope inquiry and have considered all comments described above. Further, pursuant to 19 CFR 351.225(k)(1), we recommend a determination that two of the three items are within the scope of the orders and that the other item is outside the scope of the orders. (See "Background" section for details.)

While there is a concurrent order on raw flexible magnets from Taiwan, MAI only imports or intends to import the products in question from the PRC. This scope determination is limited to these specific imports from the PRC.

LEGAL FRAMEWORK

The regulations governing the Department's antidumping and countervailing duty 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). If the Department finds that it cannot make a determination based on the application and the description of the merchandise referred to in paragraph 19 CFR 351.225(k)(1), it will initiate a formal scope inquiry. See 19 CFR 351.225(e).

In accordance with 19 CFR 351.225(c) and (d), the Department has reviewed the request in light of the descriptions of the merchandise subject to the orders, as those descriptions are set forth in the petitions, the initial investigations, and the determinations of the Secretary (including all prior scope determinations) and the ITC. Based on this review, we find that the issue of whether the three products in this scope request are within the scope of the orders can be determined solely upon the application and the descriptions of the merchandise referred to in 19 CFR 351.225(k)(1). See 19 CFR 351.225(d).

SCOPE OF THE ORDERS

The Department identified the scope of the investigations in its notices of initiation.⁷ In the final determinations,⁸ the Department clarified product coverage by reordering the scope language and adding certain explanatory definitions. The revised scope language neither enlarged nor

Inc. – Initiation of Formal Scope Inquiry (9/13/2010).

⁷ *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); *Raw Flexible Magnets from the People's Republic of China: Notice of Initiation of Countervailing Duty Investigation*, 72 FR 59076 (October 18, 2007).

⁸ *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 Final Determination*); *Raw Flexible Magnets from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 39667 (July 10, 2008) (*CVD Final Determination*).

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⁸ *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 Final Determination*); *Raw Flexible Magnets from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 39667 (July 10, 2008) (*CVD Final Determination*).

diminished product coverage.⁹ There have been no subsequent changes to the scope. The scope description as published in the orders is as follows:

The products covered by this order are certain flexible magnets regardless of shape,¹⁰ color, or packaging.¹¹ 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”). The HTSUS subheadings are provided only for convenience and customs purposes; the written description of the scope of the order is dispositive.

See *AD Order*, 73 FR at 53847, and *CVD Order*, 73 FR at 53850.

⁹ See *AD Final Determination*, 73 FR at 39671, and *CVD Final Determination*, 73 FR at 39667.

¹⁰ The term “shape” includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

¹¹ Packaging includes retail or specialty packaging such as digital printer cartridges.

BACKGROUND

MAI imports three products: two different flexible magnets and a Surgical Instrument Drape containing 24 flexible magnets produced in the PRC. See Scope Request at 2. Pursuant to 19 CFR 351.225(c)(1)(i), MAI requests that the Department find that its flexible magnets and Surgical Instrument Drape are not within the scope of the orders. See Scope Request at 2. Included in the Scope Request were descriptions and pictures of the items. See Scope Request at 2-5 and Attachment 1, respectively. For the purposes of this final ruling we refer to items by product names as categorized below.

Product 1: Magnet with a Mark

The first product is a flexible magnet with a rectangular cross-section measuring 1.75 inches in length, 0.5 inches in width, and 0.1 inches in thickness which, according to MAI, has “limited flexibility.” See Scope Request at 2. MAI states that this item does not have “any printing, covering or notation” but does have a mark painted on one side “to indicate the magnetic surface.” See Scope Request at 3. An examination of the pictures included in Attachment 1 of the Scope Request indicates that the product is a small rectangular magnet.

The petitioner states that this product is simply a flexible magnet “with no other material attached or included.” See petitioner’s July 2, 2010, letter at 2.

Product 2: Magnet Strip with a Groove

The second product is a flexible magnetic element with a rectangular cross-section measuring approximately 3.5 inches in length, 0.25 inches in width, and 0.1 inches in thickness. See Scope Request at 4. MAI states that this item can be “flexed along its length, but not its width” and it has a center groove to indicate the magnetized surface. *Id.* An examination of the pictures included in Attachment 1 of the Scope Request indicates that the product is a piece of magnetic strip.

The petitioner states that this product is simply a flexible magnet “with no other material attached or included.” See petitioner’s July 2, 2010, letter at 2.

Concerning products 1 and 2, MAI argues “that the magnets are (1) not highly flexible, (2) not designed to be formed or flexed into a different shape than in the shape that they are imported, and (3) because of their small size, not easy to cut.” See Scope Request at 8. MAI also states that these products “are not capable of being ‘slit,’ ‘punched’ or ‘coiled,’ all of which properties appear to be requirements of goods subject to the antidumping duty order.” See Scope Request at 9. Further MAI argues that these products are “cut and shaped to function as components of a surgical drape.” *Id.*

Product 3: Surgical Instrument Drape

The third product is constructed of “multiple magnetic elements bonded between two sheets of plastic.” See Scope Request at 4. MAI states that “the particular surgical drape in question features a total of twenty-four (24) rectangular magnets, arranged in eight rows of three magnets each.” See Scope Request at 5. The two pictures of the product provided by MAI indicate that

the magnets are physically separate from one another and that there is no printing on the product. See Attachment 1 of the Scope Request. Additionally, these pictures indicate that the dimensions of the product are approximately 16 inches by 12 inches. *Id.* The magnets are held stationary within pockets of the Surgical Instrument Drape. See MAI's August 24, 2010, letter at 3. The magnets are sealed between a foamed plastic backing sheet and a clear plastic covering film. See MAI's August 24, 2010, letter at 3-4. In its product description MAI does not describe in detail the magnet elements which are incorporated into the Surgical Instrument Drape, but MAI does state that "merchandise involved in this request are {sic} all...made, in whole or in part, from raw flexible magnet material." See Scope Request at 6. Further, MAI states that the Surgical Instrument Drape is not a raw flexible magnet but rather it is a manufactured product which contains magnets as components. See Scope Request at 9. The product is used during medical procedures for the temporary deposit of metal surgical instruments. See Scope Request at 4. MAI also claims that its Surgical Instrument Drape is not suitable for use in producing other articles and is therefore not a raw flexible magnet. See Scope Request at 6.

The petitioner states that this product consists of "flexible magnets bonded between two sheets of plastic." See petitioner's July 2, 2010, letter at 2.

Pursuant to 19 CFR 351.225(c)(1)(ii), MAI explains that its products are not within the scope of the orders because, while the "orders seek to encompass raw flexible magnets which are suitable for use as a material in producing other articles, the subject merchandise involved in this request are all finished articles made, in whole or in part from raw flexible magnet material." See Scope Request at 6.

ANALYSIS

When determining whether a specific product is within the scope of an antidumping or countervailing duty order, the Department reviews the descriptions of the subject merchandise contained in the petition, the investigation, and the determinations of the Secretary (such as prior scope rulings) and of 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) states that "a predicate for the interpretive 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, 1096 (CAFC 2002) (*Duferco Steel*).¹² 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 merchandise only if they contain language that specifically includes the subject merchandise or may be reasonably interpreted to include it." *Id.* at 1089.

Magnet with a Mark and Magnet Strip with a Groove

At issue in this scope inquiry is whether MAI's magnet products are outside the scope of the orders based on their physical characteristics. MAI states that, while Magnet with a Mark and Magnet Strip with a Groove are "produced from subject raw flexible magnet material, {they}

¹² Such an approach is a departure from past 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).

have been processed to a point where they are no longer highly flexible, capable of being formed or flexed into different shapes, or easy to cut,” and as such these products are now “not raw flexible magnets, but are magnetic elements, cut and shaped to function as components of a surgical drape.” See Scope Request at 9. Neither the scope nor the ITC’s product definition contain statements regarding the degree or directionality of a product’s flexibility or the ease by which it can be processed. Additionally, neither the scope nor the ITC’s product description contains a requirement that subject merchandise be formable.

With respect to flexibility, the scope of the orders requires that subject merchandise be composed of bonded flexible binders and ferrite permanent magnet material regardless of whether the magnet is magnetized. MAI has stated that its products consist of raw flexible magnet material. See Scope Request at 2 and 4. Additionally, with respect to the degree of flexibility its products exhibit, MAI argues, its two magnet products are processed to a point where they are not “highly” flexible, unlike subject merchandise, which it argues *is* “highly” flexible. See Scope Request at 8 (emphasis added). The ITC uses the descriptor “highly flexible” when referring specifically to wide sheets of raw flexible magnet, not to all raw flexible magnets.¹³ The ITC also states that, “regardless of form or production process, raw flexible magnets shared the same basic holding function while having the capability of being bent and flexed without affecting their performance.” See *ITC Final Determination* at 6. The scope of the orders does not adopt any gradation of flexibility; therefore, in-scope merchandise needs only to be flexible and have a magnetic holding ability when magnetized. Record evidence does not demonstrate that the processing that these magnets have already undergone has affected their performance, *i.e.*, in their current state they are flexible and have a magnetic holding ability when magnetized.

In a previous scope determination, the Department decided that a deterministic element for evaluating the flexibility of a raw flexible magnet was the addition of inflexible materials by bonding. These raw flexible magnets were deemed inflexible and outside the scope of the orders when the material that the magnet was bonded or laminated to was inflexible.¹⁴ This determination is not instructive in this case because neither Magnet with a Mark nor Magnet Strip with a Groove is bonded to other materials that are inflexible.

Concerning formability, the scope language of the orders and the *ITC Final Determination* are silent as to whether a raw flexible magnet must be formable. The scope states that a raw flexible magnet can be of any shape and must be composed of flexible material but does not state that subject merchandise must be formable (*i.e.*, able to have its shape changed without loss of integrity). The *ITC Final Determination* describes how raw flexible magnets can be molded¹⁵ and manipulated¹⁶ but is similarly silent regarding whether subject merchandise must be

¹³ See International Trade Commission Publication 4030 “*Raw Flexible Magnets from China and Taiwan, Investigations Nos. 701-TA-452 (Final) and 731-TA-1129-1130 (Final)*” (August 2008) (*ITC Final Determination*) at I-8.

¹⁴ In “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; Final Scope Ruling on Certain Retail Hook and Paper Towel Magnets” (9/13/2010) at 10, the Department determined that bonding an inflexible material to a raw flexible magnet put the magnet outside the scope of the orders.

¹⁵ Raw flexible magnets are produced primarily through calendaring, extrusion, and coating. See *ITC Final Determination* at I-9.

¹⁶ “Flexible magnets are permanent magnets that can be twisted, bent, slit, punched, coiled, and otherwise molded into any shape without loss of magnetic properties.” See *ITC Final Determination* at 5.

formable. Accordingly, MAI's argument regarding formability is not relevant to this determination.

MAI's claim that the magnets have been processed to a point where they are not easy to cut, *i.e.*, not easily machinable,¹⁷ is also inconsequential in this matter because the scope of the orders is silent regarding this issue. The Petition states that “[r]aw flexible magnets are generally thin, polymer bonded magnetic materials characterized primarily by their flexibility and ease of machinability.” See Petition at 5. The scope does not address or define “ease of machinability,” and the record does not reflect any discussion of how to quantify that characteristic. Instead, the Petition, the *ITC Final Determination*, and the scope of the orders describe a product that can undergo further processing while maintaining its magnetic and flexible capabilities. Further, these raw flexible magnets have not been processed to a point at which conducting further processing on them is unreasonable.

Both the Magnet with a Mark and the Magnet Strip with a Groove are simply small raw flexible magnets and as such are within the scope of the orders. The fact that MAI has stated that these products consist of flexible magnetic material is dispositive regarding the scope of the orders. The scope of the orders says specifically that subject merchandise may be any shape and does not limit its applicability by the size of the magnet. Also, the scope of the orders does not distinguish between degrees or the directionality of flexibility; therefore, MAI's arguments that Magnet Strip with a Groove is only flexible along its longest dimension and that Magnet with a Mark is processed to a point where it has “limited” flexibility are irrelevant. Further, the scope of the orders does not require a raw flexible magnet to be formable or be easily machinable (regardless of size). Neither flexible magnet at issue is bonded or laminated to another material; therefore, the scope's exclusion for printed flexible magnets and related caveats are not applicable to these two products.¹⁸ Further, the claim that these magnets have been processed to be non-subject merchandise because they cannot be easily cut, slit, or punched is baseless. These magnets could be easily processed into either in-scope or out-of-scope merchandise by, *e.g.*, dividing them into smaller pieces, bonding them with another material, or incorporating them into surgical instrument drapes.

We agree with the petitioner's contention that these products are within the scope of the orders regardless of their small size because they consist wholly of flexible magnet material, are flexible and magnetizable, and have no other materials attached. Additionally, the performance of the magnets has not been altered by machining them into their current dimensions or by printing markings on them. The production of the magnets at issue did not destroy their ability to be flexed, their holding ability, or their potential to be processed further.¹⁹ For these reasons we recommend finding that these products are within the scope of the orders.

¹⁷ The Petition uses “machinability” to describe the manufacturer's ability to cut or slit the product. See *Petition For The 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 6. See also *ITC Final Determination* at I-9 (“The key physical characteristics and similarities among all flexible magnets include. . . ease of cutting.”).

¹⁸ While the paint mark on the first flexible magnet and the groove on the second flexible magnet are simple indicators similar in utility to “manufacturing or use instructions” and are printed on the back of the magnet (both of which are non-exclusionary features of raw flexible magnets), these features are irrelevant to our analysis because the exclusion that discusses such printing is only applicable to flexible magnet products that have another layer bonded or laminated to the magnet.

¹⁹ The latter capabilities are not addressed explicitly in the scope of the orders, but descriptions in the Petition and

Surgical Instrument Drape

MAI's Surgical Instrument Drape consists of 24 flexible magnets, a skid-resistant, foamed plastic backing sheet, and a clear plastic film covering sheet. Like Magnet with a Mark and the Magnet Strip with a Groove, the magnets used to construct the Surgical Instrument Drape are raw flexible magnets. See Attachment 1 of the Scope Request. There is no printing on the plastic encasing layers or on the magnets.

The first issue is whether the magnets incorporated in the Surgical Instrument Drape are bonded or laminated to the plastic sheet and film. The scope of the orders states that it includes certain magnet products in which a magnet is bonded or laminated to other materials.²⁰ Further, the scope is silent regarding magnet products that incorporate flexible magnets and other material without bonding or laminating that other material to the magnet.

With respect to the Surgical Instrument Drape, MAI states that:

“the magnets in the surgical drape are neither fully or partially laminated nor fully or partially bonded with the plastic film, plastic foam, or any other material. The magnetic elements are rendered stationary by their assembly into the surgical drape, but the surfaces of the magnetic elements are never joined with (*i.e.*, laminated or bonded) to the plastic film and plastic foam. If the individual pockets were sliced open, the magnetic elements could be removed easily from their pockets. If either the film or foam sheets were to be cut or torn, or were separated from each other, the magnets would not stay in place.”

See MAI's August 24, 2010, letter at 3-4.

The petitioner states that this product consists of “flexible magnets bonded between two sheets of plastic.” See petitioner's July 2, 2010, letter at 2. The petitioner also contends that the magnets are affixed permanently to the flexible plastic material because the plastic layers are sealed around the magnets and that there is only a semantic difference between this process and bonding. See petitioner's August 31, 2010, letter at 3.

Here, adding plastic sheets to the cut-to-size flexible magnets by a process other than bonding or lamination physically confines the magnets. There is no information on the record that the scope of the orders equates bonding with confinement. Historically, we have identified bonding as a process that joins materials together with a reactant chemical medium such as glue.²¹ Additionally, we are not persuaded by the petitioner's argument that the construction of the Surgical Instrument Drape is such that the magnets are affixed permanently to other material, *i.e.*, that the static relationship between the magnets and the plastic sheets is a type of bonding.

the *ITC Final Determination* describe the capabilities of subject merchandise.

²⁰ “Subject 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 *AD Order*, 73 FR at 53847, *CVD Order*, 73 FR at 53850.

²¹ We have determined that magnet products containing material other than flexible magnet material are considered raw flexible magnets when the other material is bonded or laminated to the flexible magnet, *e.g.*, Magnets Attached to Printed Cardboard from It's Academic. See “Raw Flexible Magnets from the People's Republic of China; Scope Request from It's Academic - Final Scope Determination in Part,” 9/2/2009, at 4.

Therefore, we find that the magnets are not “bonded with” the encasing materials, and we have determined that the Surgical Instrument Drape does not consist of flexible magnets bonded or laminated to other material.

The second issue is whether the scope of the orders includes products that contain otherwise raw flexible magnets when those magnets are encased in but not bonded or laminated to the other materials making up the product. The scope indicates only two circumstances in which flexible magnets joined with other material are within the scope of the orders, namely bonding and lamination. Although the scope states that subject merchandise may “not be . . . fully or partially bonded” to other materials, we read this phrase to refer to raw flexible magnets that are not incorporated with other materials (*e.g.*, Magnet with a Groove). An alternative reading that includes all products in which other material is permanently affixed to, joined to, or held in a static relationship with a flexible magnet would be so expansive as to render the words “bonded” and “laminated” moot.

The final issue is whether the scope of the orders includes advanced products that incorporate raw flexible magnets. Here, the addition of other material to the flexible magnets has created a product that is different from a raw flexible magnet. The Surgical Instrument Drape is designed to be a flexible quilt stuffed with flexible magnets which holds ferrous surgical instruments magnetically. The plastic materials used for the drape are chosen for their aseptic quality and create additional flexibility which allows the product to adapt its shape to the contours of various surfaces in a surgical environment. See MAI’s August 24, 2010, letter at 3. The plastic sheets also allow the magnets to be hermetically sealed, as exposed magnets could otherwise contaminate the surgical environment. *Id.*

By combining a raw flexible magnet with a sheet of foam and a sheet of plastic film, MAI has created a product that is substantially different from a raw flexible magnet. In the construction of the Surgical Instrument Drape, MAI has augmented the product to expand the capabilities of the incorporated raw flexible magnet. This advances, rather than merely modifies, the function of the raw flexible magnets.²² The functions of the drape are specifically designed to meet the needs of the surgical environment. It is sterilizable, it forms to environmental contours, it is skid-resistant, and it holds ferrous instruments magnetically. These characteristics render the drape a different product from a raw flexible magnet subject to the orders. Therefore, we recommend finding that the Surgical Instrument drape is outside the scope of the orders.

CONCLUSION

Pursuant to 19 CFR 351.225(d), we find that the descriptions of the product contained in the Scope Request are dispositive when considered pursuant to 19 CFR 351.225(k)(1) (*i.e.*, the petition, the initial investigations, prior scope determinations, and ITC determination). Magnet with a Mark and Magnet Strip with a Groove are within the scope of the orders and the Surgical Instrument Drape is not within the scope of the orders for the following reasons:

²² This standard is employed with respect to other orders to determine whether a product is subject to the orders for complex products that incorporates otherwise subject merchandise. See “Ball Bearings and Parts Thereof from Japan: Final Determination on the Scope Request from NMB (USA) Inc. (Tape Guide Assemblies for Tape Drives),” 6/1/2009, at 2.

Products 1 and 2: These products consist wholly of raw flexible magnet material and are not processed to a point at which it is impossible to further process the magnets as described in the scope of the orders, the Petition, and the *ITC Final Determination*.

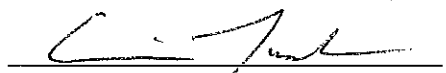
Product 3: This consists of an integrated product containing otherwise raw flexible magnets that have been augmented to expand their capabilities and advance their function beyond that of a raw flexible magnet.

RECOMMENDATION

We recommend determining, pursuant to 19 CFR 351.225(k)(1) and through our review of the descriptions of the products in the antidumping and countervailing duty orders, the petition, and the determinations of the Secretary and the ITC, that Magnet with a Mark and Magnet Strip with a Groove are both within the scope of the antidumping and countervailing duty orders on raw flexible magnets from the PRC. Additionally, based on our review of the above criteria, we recommend determining that the Surgical Instrument Drape is not within the scope of the orders.

If you agree, we will notify U.S. Customs and Border Protection of our determination and send a copy of this memorandum to all interested parties on the scope service list via first-class mail as directed by 19 CFR 351.303(f).

Agree Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

1/11/11
Date

