



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

A-570-922

C-570-923

Scope Inquiry

Public Document

Office 3; Operations: EBG

April 15, 2011

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Melissa G. Skinner
Director
Office 3, Operations

RE: Antidumping (AD) and Countervailing Duty (CVD) Orders on
Raw Flexible Magnets (RFM) from the People's Republic of
China (PRC)

SUBJECT: Final Scope Ruling on Certain Decorative Refrigerator Magnets

PUBLIC FILE

Summary

On March 1, 2011, the Smith-Western Co. (Smith-Western) requested that the Department of Commerce (the Department) determine whether certain decorative refrigerator magnets are subject to the AD and CVD orders on RFM from the PRC. See Smith-Western's filing, "Request for Scope Determination on A-570-922-000 and C-570-923-000," (March 1, 2011) (Scope Ruling Request).¹ No other interested party submitted comments regarding the request filed by Smith-Western.

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, we recommend that the Department determine, pursuant to 19 CFR 351.225(k)(1), that the certain decorative refrigerator magnets described in the Scope Ruling Request are outside the scope of the Magnets from the PRC Orders. See Antidumping Duty Order: Raw Flexible Magnets from the People's Republic of China, 73 FR 53847 (September 17, 2008) (Magnets from the PRC AD Order); and Raw Flexible Magnets from the People's Republic of China: Countervailing Duty Order, 73 FR 53849 (September 17, 2008) (Magnets from the PRC CVD Order); (collectively, Magnets from the PRC Orders).

Applicable Regulations

The regulations governing the Department's AD and CVD scope determinations can be found at 19 CFR 351.225. On matters concerning the scope of an AD and/or CVD order, our

¹ Public versions of Departmental memoranda referenced in this document are on file in the Central Records Unit (CRU), Room 7046 in the main building of the Commerce Department.



initial basis for determining whether a product is included within the scope of an order are 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). Such scope determinations may take place with or without a formal scope inquiry. See 19 CFR 351.225(d).

Conversely, where 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 consider the additional factors set forth at 19 CFR 351.225(k)(2). These criteria analyze the following: (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; and (v) the manner in which the product is advertised and displayed. These factors are known commonly as the Diversified Products criteria. See Diversified Products Corp. v. United States, 6 CIT 155, 572 F. Supp. 883 (1983). 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 Description

1. Scope of the Orders

The Department identified the scope of the investigations in the Initiations. See 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) (collectively, Initiations). In the final determination of sales at less than fair value and the final affirmative CVD determination, 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. 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) (Magnets from the PRC AD Final), and accompanying Issues and Decision Memorandum (Magnets from the PRC AD Decision Memorandum) at "Scope Comments Section," and Raw Flexible Magnets from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 39667 (July 10, 2008) (Magnets from the PRC CVD Final) (collectively, Final Determinations). There have been no subsequent changes to the scope. The scope description as published in the Magnets from the PRC Orders is as follows:

The products covered by this order are certain flexible magnets regardless of shape,² color, or packaging.³ 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

² The Term "shape" includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

³ Packaging includes retail or specialty packaging such as digital printer cartridges.

initial basis for determining whether a product is included within the scope of an order are 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). Such scope determinations may take place with or without a formal scope inquiry. See 19 CFR 351.225(d).

Conversely, where 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 consider the additional factors set forth at 19 CFR 351.225(k)(2). These criteria analyze the following: (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; and (v) the manner in which the product is advertised and displayed. These factors are known commonly as the Diversified Products criteria. See Diversified Products Corp. v. United States, 6 CIT 155, 572 F. Supp. 883 (1983). 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 Description

1. Scope of the Orders

The Department identified the scope of the investigations in the Initiations. See 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) (collectively, Initiations). In the final determination of sales at less than fair value and the final affirmative CVD determination, 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. 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) (Magnets from the PRC AD Final), and accompanying Issues and Decision Memorandum (Magnets from the PRC AD Decision Memorandum) at "Scope Comments Section," and Raw Flexible Magnets from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 39667 (July 10, 2008) (Magnets from the PRC CVD Final) (collectively, Final Determinations). There have been no subsequent changes to the scope. The scope description as published in the Magnets from the PRC Orders is as follows:

The products covered by this order are certain flexible magnets regardless of shape,² color, or packaging.³ 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

² The Term "shape" includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

³ Packaging includes retail or specialty packaging such as digital printer cartridges.

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 from the PRC AD Order, 73 FR at 53847, and Magnets from the PRC CVD Order, 73 FR at 53849.

2. The Petition

Petitioners used language similar to that in the Magnets from the PRC 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 petitioners, “{t}here is a single class or kind of subject merchandise that includes Raw Flexible Magnets.” Id. at 12.

3. The ITC

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. Prior Scope Rulings

a. Target Ruling

On September 2008, the Target Corporation (Target) requested that the Department determine whether certain decorative retail magnets were subject to the Magnets from the PRC Orders. Specifically, Target requested that the Department consider four products: “Hearts and Bird” magnets, “Love Wish Frame” magnets, “Foam Words & Phrases” magnets, and “Just Married” magnet sets. “Foam Words & Phrases” magnets included 16 different flexible magnet products, each cut into the shape of a word or phrase, and bonded to an unprinted foam material. The “Just Married” magnet set was a series of individual flexible magnets that consisted of paper that was covered with glitter through a silk screening process, bonded to a flexible magnetic backing, and cut into the shapes of the letters in the phrase “JUST MARRIED.” The “Hearts and Bird” magnets were two individual flexible magnets that were packaged together. The magnets were cut and printed – one cut in the shape of a heart and printed with heart images and the other

cut into the shape of a bird and printed with the image of a bird. The “Love Wish Frame” magnet was a flexible magnet concentrically kiss-cut to allow for the removal of the interior of the magnet and printed with images of birds, hearts, stars, and the words “Love” and “Wish.” See the Memorandum to Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Decorative Retail Magnets,” (December 22, 2008) (Target Ruling) at 5.

Regarding the “Foam Words & Phrases” magnets and the “Just Married” magnet sets, the Department determined that they “do not incorporate a material that ‘bears printed text and/or images,’” and therefore found that these products did not meet the exclusion criteria for printed flexible magnets. *Id.* at 9. Regarding the “Hearts and Bird” magnets and “Love Wish Frame” magnets, the Department determined that they fell “within the scope’s exclusion for printed flexible magnets.” *Id.* at 11 – 12.

b. InterDesign Ruling

On March 26, 2010, InterDesign Corp. (InterDesign) requested that the Department determine whether sixty hook and paper towel magnet products were subject to the Magnets from the PRC Orders. Specifically, InterDesign’s request covered flexible magnets from the PRC that were glued to either plastic rings or various types of hooks. See the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Certain Retail Hook and Paper Towel Magnets,” (January 10, 2011) (InterDesign Ruling) at 1, 3 – 4.

In its analysis, the Department stated that the products at issue were “not functionally flexible, *i.e.*, it cannot be manipulated without damaging the product.” *Id.* at 10. The Department then determined that:

The scope’s provision that raw flexible magnets can be bonded with “paper, plastic, or other material, of any composition” does not extend to the point that the material renders the flexible magnet to be no longer flexible. As the first sentence of the scope of the orders indicates that it pertains to flexible magnets, this suggests that magnets that have been rendered inflexible by attached materials should be outside the scope of the orders. Thus, the scope of the orders itself indicates that all five categories of InterDesign’s magnet products are outside of the scope. The scope language itself is dispositive of the Department’s determination that InterDesign’s products are outside of the scope of the Magnets Orders.

Id.

Products Under Scope Inquiry

Smith-Western states that products at issue are of the model 1744M, which is a thin magnet bonded to a rigid, oblong plastic disc that is approximately three inches long and one inch wide. Smith-Western states that the magnet itself is not functionally flexible because it cannot be manipulated without damaging the product. Smith-Western states that the plastic bears images and text and that there are four different 1744M designs. Smith-Western states that

each is identical in form, the only difference being the printed images and text that each item bears. Smith-Western describes each 1744M design as follows:

1744M/SEA1006: A thin magnet bonded to a rigid, oblong plastic disc that is approximately three inches long and one inch wide. The plastic bears a printed image of a depiction of several umbrellas in the foreground and a rainy Seattle skyline in the background. The plastic also bears printed text spelling "Seattle." The magnet itself is not functionally flexible because it cannot be manipulated without damaging the product.

1744M/WA1050: A thin magnet bonded to a rigid, oblong plastic disc that is approximately three inches long and one inch wide. The plastic bears a printed image of a ship, a lighthouse, a compass, and a crab. The plastic also bears printed text spelling "Washington." The magnet itself is not functionally flexible because it cannot be manipulated without damaging the product.

1744M/WA1050W: A thin magnet bonded to a rigid, oblong plastic disc that is approximately three inches long and one inch wide. The plastic bears a printed image of a ship, a lighthouse, a compass, and a crab. The plastic also bears printed text spelling "Washington." The magnet itself is not functionally flexible because it cannot be manipulated without damaging the product. The item is identical to 1744M/WA1050 except that it has a UPC label affixed.

1744M/WA1101: A thin magnet bonded to a rigid, oblong plastic disc that is approximately three inches long and one inch wide. The plastic bears printed images and text. The magnet itself is not functionally flexible because it cannot be manipulated without damaging the product. The item is identical to 1744M/SEA1006 and 1744M/WA1050 except that it bears different printed images and text.

Summary of Arguments

Smith-Western argues that under the InterDesign Ruling, magnets rendered inflexible by attachment to a rigid material are not within the scope of the Magnets from the PRC Orders. See InterDesign Ruling at 10:

As the first sentence of the scope of the orders indicates that it pertains to flexible magnets, this suggests that magnets that have been rendered inflexible by attached materials should be outside the scope of the orders.

Smith-Western argues that, as the products at issue have also been "rendered inflexible" by attachment to rigid materials, the Department should also find that they are outside the scope of the Magnets from the PRC Orders.

Smith-Western further argues that under the Target Ruling, flexible magnets attached to materials bearing printed text or images are specifically excluded from the scope of the Magnets from the PRC Orders. See Target Ruling at 11:

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.” . . . Because these magnets bear printed text and/or images, they fall within the scope’s specific exclusion for printed flexible magnets.

Thus, Smith-Western argues that the plain language of the scope of the Magnets from the PRC Orders along with the Department’s findings in the Target Ruling and the InterDesign Ruling should lead the Department to conclude that the products at issue are outside the scope of the orders.

Petitioners did not file any comments in response to Smith-Western’s request for a scope ruling.

Department’s Analysis

In discussing the interpretive process the Department should follow in making scope rulings 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 or countervailing 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.” Id. at 1089.

In accordance with Duferco, the Department must first examine the language of the scope of the Magnets from the PRC Orders, including any exclusion, to determine whether Smith-Western’s products are within the scope of the orders. Thus, the issue in this scope inquiry is whether Smith-Western’s products are included or excluded based on the language of the Magnets from the PRC Orders.

Accordingly, the Department has referred to the language of the Magnets from the PRC Orders to determine whether Smith-Western’s products are within or outside the scope of the orders. First, we note that the magnets at issue are affixed to a rigid material that renders the product inflexible. The first sentence of the scope of the Magnets from the PRC Orders indicates that it pertains to “flexible magnets.” Further, in the InterDesign Ruling, the Department determined that “magnets that have been rendered inflexible by attached materials should be outside of the orders.” See InterDesign Ruling at 10 – 11.

Second, the products at issue bear printed text and/or images. The scope of the Magnets from the PRC Orders specifically excludes flexible 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.” In addition, in the Target Ruling, the Department determined that certain products at issue were outside the scope of the Magnets from the PRC Orders because it bore printed text and/or images. See Target Ruling at 11.

Based on the scope of the Magnets from the PRC Orders and the Department’s findings in the InterDesign Ruling and Target Ruling, we find that the products covered by Smith-Western’s scope ruling request are outside the scope of the Magnets from the PRC Orders. Furthermore, based upon the above analysis and pursuant to Duferco, there is no need to examine other sources pursuant to 19 CFR 351.225(k) (1) or use the Diversified Products criteria of 19 CFR 351.225(k) (2).

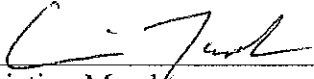
Recommendation:

In accordance with 19 CFR 351.225(k)(1) and Duferco, we have determined, through our review of the description of the products contained in the Magnets from the PRC Orders, that the certain decorative refrigerator magnets at issue are outside the scope of the orders. If you agree, we will serve 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) and will notify U.S. Customs and Border Protection of our determination.

✓

Agree

Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

4/15/11

Date

