



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

A-570-922
C-570-923
A-583-842
Scope Inquiry
Public Document
ITA/IA/O4: BF

May 16, 2011

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

FROM: Abdelali Elouaradia
Office Director
Import Administration, Office 4

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: Scope Ruling on Certain Magnets from Jingzhou Meihou Flexible Magnet Company, Ltd. and TyTek Industries, Inc.

Summary

On March 30, 2011, Jingzhou Meihou Flexible Magnet Company, Ltd. ("Jingzhou Meihou") and TyTek Industries, Inc. ("TyTek") requested¹ 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.² The request contains descriptions, photographs, and samples (except for the meter-wide magnet sheet) of the requested magnets. On April 18, 2011, Magnum Magnetics Corporation ("Petitioner") submitted comments on this scope inquiry.³ On May 6, 2011, Jingzhou Meihou and TyTek filed rebuttal comments to Petitioner's April 18, 2011 filing.⁴

¹ See Letter from Jingzhou Meihou and TyTek to the Secretary of Commerce, "Raw Flexible Magnets from China and Taiwan – Scope Ruling Request," (March 30, 2011) ("Scope Ruling Request") but dated March 28, 2011.

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 CVD Order"); and Antidumping Duty Order: Raw Flexible Magnets from Taiwan, 73 FR 53848 (September 17, 2008) ("Magnets Taiwan AD Order") (collectively, "Magnets Orders").

³ See "Raw Flexible Magnets from the People's Republic of China: Petitioner's Comments on Scope Ruling Request," (April 18, 2011) ("Petitioner Comments").

⁴ See "Raw Flexible Magnets from the People's Republic of China: Jingzhou Meihou and TyTek's Rebuttal Comments," (May 6, 2011) ("Rebuttal Comments").



In accordance with 19 CFR 351.225(d) and 19 CFR 351.225(k)(1), we recommend that the Department determine that the requested products (*i.e.*, meter-wide magnet sheet, craft magnets, and door gasket extrusion magnet) are within the scope of the Magnets Orders and, thus, a formal scope inquiry is not warranted in this case.

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").⁵

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.

Raw Flexible Magnets Descriptions

1. Scope of the Orders

The Department identified the scope of the investigations in its notices of initiation.⁶ In the final determinations of sales at less than fair value and the final affirmative countervailing duty determination,⁷ 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.⁸ There have been no subsequent changes to the scope. The scope description as published in the Magnets Orders is as follows:

⁵ See 19 CFR 351.225(d) and 351.225 (k)(1).

⁶ 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).

⁷ 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").

⁸ See AD PRC Final Determination, 73 FR at 39671; CVD PRC Final Determination, 73 FR 39667 and accompanying Issues and Decision ("I&D") Memo at "Scope Comments" section; and AD Taiwan Final Determination, 73 FR at 39674.

The products covered by this order are certain flexible magnets regardless of shape,⁹ color, or packaging.¹⁰ 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.¹¹

⁹ The term “shape” includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

¹⁰ Packaging includes retail or specialty packaging such as digital printer cartridges.

¹¹ See Magnets PRC AD Order, 73 FR at 53847; Magnets CVD Order, 73 FR at 53849; and Magnets Taiwan AD Order, 73 FR at 53848-49.

2. 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 calendering 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.¹²

Products under Scope Inquiry

Jingzhou Meihou and TyTek requested that the Department issue a scope ruling finding that certain items are not subject to the Magnets Orders. Specifically, Jingzhou Meihou and TyTek requested that the Department consider three products: a meter-wide magnet sheet, craft magnets, and a door gasket extrusion magnet.

The meter-wide magnet sheet under consideration is approximately 40 inches in width and used

¹² 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) at I-7-I-9 (footnotes omitted).

as a raw material for various other products.¹³ The craft magnets under consideration are produced in different sizes and shapes, and typically used for hobby and craft projects.¹⁴ The door gasket extrusion magnets under consideration are manufactured using extruded dies, and are commonly used as a sealing mechanism for doors.¹⁵ All three magnet products are composed of: 1) strontium ferrite, a magnetic powder; 2) chlorinated polyethylene, a type of elastomer/binder that holds the magnetic powder together; and 3) flow/mixing agents, which aid in the blending of magnetic powder into an elastomer or binder.¹⁶

Summary of Arguments and Rebuttal Comments

Jingzhou Meihou and TyTek

- The meter-wide magnet sheet is more than 24 inches wide and, therefore, is expressly excluded by the ITC's domestic like product definition. The record is uncontested that U.S. manufacturers do not produce magnetic sheeting in widths of more than 24 inches. Therefore, since the U.S. industry does not produce the product in this scope inquiry (40-inch magnetic sheet), this product was never part of the injury determination. Because there is no domestic like product, meter-wide sheeting would be unavailable to U.S. buyers if Petitioner succeeds in expanding the scope of the Magnets Orders.
- Craft magnets are "uniquely designed, finished magnets packaged as single items intended for direct sale to a particular group of retail customers."¹⁷ Therefore, these craft magnets are excluded as defined by the Diversified Products¹⁸ criteria.
- Craft magnets are similar to excluded printed magnets in that they are a "uniquely designed, finished" product manufactured to the consumer's specifications.
- Craft magnets are too small to be considered flexible.
- The door gasket extrusion magnet is unlike magnetic sheeting and strips due to their different manufacturing processes.
- The door gasket extrusion magnet is not within the scope of the Magnets Orders because of its unique technical characteristics (i.e., specifications regarding profile shape and design) and are therefore not interchangeable with raw flexible sheets or strips.

¹³ See Scope Ruling Request at Exhibit A.

¹⁴ Id. at Exhibit B

¹⁵ Id. at Exhibit C

¹⁶ Id. at 4, 6, and 8.

¹⁷ Id. at 7.

¹⁸ See Diversified Products Corp. v. United States, 572 F. Supp. 883, 889 (CIT 1983) ("Diversified Products"); see also 19 CFR 351.225(k)(2).

- Substantial work has been performed on the craft magnets and door gasket extrusion magnet such that these products should be excluded from the Magnets Orders.

Petitioner

- The composition of the meter-wide magnet sheet, craft magnets, and the door gasket extrusion magnet, as described in the scope ruling request, meet the physical description of subject merchandise as defined in the Magnets Orders. Specifically, as reported by Jingzhou/TyTek, all three products have strontium ferrite and chlorinated polyethylene, which are magnetic and flexible binder elements, respectively, from the scope language. Also, while flow/mixing agents contained in these products are not specifically mentioned in the scope language, the scope does state that subject flexible magnets are composed “not necessarily exclusively” of flexible binders and a magnetic element.
- The scope of the Magnets Orders places no size restrictions on the physical dimensions of subject magnet sheets.
- Craft magnets do not have printing; therefore, they do not fall within the printing exclusion in the Magnets Orders.
- The Magnets Orders do not specifically exclude magnets “manufactured using extruded dies.”
- Analyzing craft magnets and door gasket extrusions using the Diversified Products criteria is unnecessary because the language of the scope in this case is clear.
- The Department does not define subject merchandise by packaging and/or end-use application.

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 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.¹⁹ 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.

¹⁹ See 19 CFR 351.225(d) and 351.225(k)(1).

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.²⁰

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."²¹ 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 order is to review the scope language of the order itself.

In accordance with 19 CFR 351.225(k)(1) and Duferco, the Department has first examined the language of the scope of the Magnets Orders, including any exclusions, to determine whether Jingzhou Meihou and TyTek's products are within the scope. The scope of the Magnets Orders 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.²²

Based on record evidence, we have determined that all three magnet products are composed of a binding material (chlorinated polyethylene), magnetic element (strontium ferrite), and flow/mixing agents.²³ The scope specifically states that the composition of subject flexible magnets is flexible binders and a magnetic element. Additionally, we agree with Petitioner that the scope also provides that subject flexible magnets are not necessarily exclusively flexible binders and magnetic elements; hence, the addition of flow/mixing agents does not alter the fact that these magnets are within the scope. Furthermore, for the craft magnets and door gasket extrusion magnets, Jingzhou Meihou and TyTek provide no evidence that its substantial work has transformed these products such that the products would be outside of the scope of the Magnets Orders. Moreover, Jingzhou Meihou and TyTek provide no evidence that these products should be outside the scope based on material specifications or consistency.

The scope of the Magnets Orders specifically excludes printed flexible magnets which are defined as "flexible magnets (including individual magnets) that are laminated or bonded with

²⁰ See Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1096 (Fed. Cir. 2002) ("Duferco").

²¹ Id. at 1094.

²² See "Scope of the Orders" sub-section above.

²³ Also, the Department examined the craft magnets and door gasket extrusion magnet samples provided and we have concluded that the magnets are both magnetic and flexible in nature and, therefore, are composed of a magnetic element as well as a flexible binder. After a careful inspection of a photograph provided in the Scope Ruling Request at Exhibit A, we can determine that the meter-wide magnet sheet under consideration is rolled over a cylinder for storage and, therefore, contains a flexible binder.

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.”²⁴ We have analyzed the three products at issue and have determined that none of these products incorporate a material that bears printed text and/or images. Because the craft magnets, door gasket extrusion magnet, and meter-wide magnet sheet do not incorporate a material that “bears printed text and/or images,” these magnets do not meet the exclusion criteria for printed flexible magnets.

Having established that Jingzhou Meihou and TyTek’s craft magnets, door gasket extrusion magnet, and meter-wide magnet sheet satisfy the material requirements of the scope but do not satisfy the scope’s exclusion for printed flexible magnets, we then analyzed Jingzhou Meihou and TyTek’s other arguments²⁵ supporting exclusion of the craft magnets, door gasket extrusion magnet, and meter-wide magnet sheet from the scope of the Magnets Orders.

First, we disagree with Jingzhou Meihou and TyTek’s argument that the meter-wide magnet sheet is excluded from the scope of the Magnets Orders because it is more than 24 inches wide. Contrary to Jingzhou Meihou and TyTek’s argument, neither the scope of the Magnets Orders nor the ITC’s domestic like product definition contain any restrictions based on dimension (e.g., width or shape). The scope of the Magnets Orders specifically states that “{t}he products covered by this order are certain flexible magnets regardless of shape.” Moreover, while the ITC’s description of a domestic-like product states that “{s}heet...is the widest form of raw flexible magnet, typically available from U.S. suppliers in widths up to approximately 24 inches,” we find that the inclusion of the term “typically” in this sentence suggests that the width of the domestic like product is not expressly limited. Therefore, we determine that the width of the meter-wide magnet sheet is not a basis for exclusion from the Magnets Orders.

Second, we disagree with Jingzhou Meihou and TyTek’s arguments that the door gasket extrusion magnet is outside of the scope of the Magnets Orders because of its specific manufacturing process and its unique technical characteristics and uses. Jingzhou Meihou and TyTek stated that the technical characteristics and uses of the door gasket extrusion magnets demonstrate that these types of magnets are outside of the scope. However, Jingzhou Meihou and TyTek offered no evidence that the door gasket extrusion magnet is not a raw flexible magnet as defined by the scope of the Magnets Orders. Also, as noted below, the Department does not consider end-use application as a reason for exclusion. Moreover, the scope of the Magnets Orders does not provide any exclusion based on manufacturing processes. Therefore, we have determined that the door gasket extrusion magnet’s manufacturing process and technical characteristics are not bases for exclusion from the Magnets Orders.

Third, we disagree with Jingzhou Meihou and TyTek’s argument that the size of the craft magnets renders them inflexible for purposes of the Magnets Orders. As noted above, the physical composition of the craft magnets includes a flexible binder (i.e., chlorinated polyethylene). In addition, the packaging for the samples on the record indicates that they are

²⁴ See “Scope of the Orders” sub-section above.

²⁵ See Scope Ruling Request at 4-10.

easy to cut, which is a characteristic of raw flexible magnets noted in the ITC's description of the domestic like product. In a previous determination, the Department determined that the magnets in question were inflexible because they could not "be manipulated without damaging the product."²⁶ In contrast, the craft magnets under review are not rendered inflexible by material such as plastic or chrome, and alterations such as cutting or bending will not destroy the product. Therefore, we have determined that the small size of the craft magnets is not a basis of exclusion from the Magnets Orders.

Finally, we disagree with Jingzhou Meihou and TyTek's assertion that their products should be excluded from the scope of the Magnets Orders because of the products' packaging and end-use applications. The scope expressly includes flexible magnets "regardless of...packaging," including "specialty or retail packaging."²⁷ Furthermore, the Department stated in previous scope determinations that it "does not generally define subject merchandise by end-use application."²⁸ Therefore, the packaging and the products' intended end-use are not bases for exclusion from the Magnets Orders.

Because we find the scope language to be unambiguous, further reference to "the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission," as listed in 19 CFR 351.225 (k)(1) are not needed to aid the analysis.²⁹ Furthermore, it is only when the scope language is ambiguous, and the (k)(1) factors still are not determinative that we may rely on the Diversified Products criteria of 351.225(k)(2) in our determination.

Recommendation

Pursuant to 19 CFR 351.225 (k)(1) and Duferco, we have determined, through our review of the descriptions of the products contained in the antidumping and countervailing duty orders, that the craft magnets, meter-wide magnet sheet, and door gasket extrusion magnet are within the scope

²⁶ See Memorandum from Abdelali Elouaradia, Office Director, Import Administration, Office 4, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "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" (January 10, 2011).

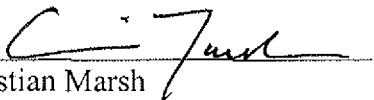
²⁷ See "Scope of the Orders" sub-section above.

²⁸ See AD PRC Final Determination, 73 FR at 39671; CVD PRC Final Determination, 73 FR 39667 and accompanying I&D Memo at "Scope Comments" section; AD Taiwan Final Determination, 73 FR at 39674; and Memorandum from Abdelali Elouaradia, Office Director, Import Administration, Office 4, to Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "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 Decorative Retail Magnets" (December 22, 2008).

²⁹ The CAFC stated in Walgreen Co. v. United States, 620 F.3d 1350, 1357 (Fed. Cir. 2010) that "(w)hile the petition, factual findings, legal conclusions, and preliminary orders can aid in the analysis, they cannot substitute for the language of the order itself, which remains the "cornerstone" in any scope determination.... Thus, Commerce was correct in focusing its analysis on the language of the Final Order and the clear guidance it provided."

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.

Agree Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

5/10/11

Date