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Scope Inquiry
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FOR PUBLIC FILE

MEMORANDUM FOR: Gary Taverman
Acting 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: Final Scope Ruling on Certain Decorative Retail Magnets

Summary

On September 9, 2008, Target Corporation ("Target") requested that the Department of Commerce (the "Department") determine whether certain magnets are subject to the antidumping and countervailing duty orders on raw flexible magnets from the People's Republic of China ("PRC") and the antidumping duty order on Raw Flexible Magnets from Taiwan.¹ On September 30, 2008, Magnum Magnetics Corporation ("Petitioner") submitted comments on this scope inquiry.² On October 24, 2008, the Department issued a supplemental questionnaire to Target.³ Target submitted a response to this questionnaire on November 7, 2008.⁴ On December 4, 2008, Petitioner provided additional comments.⁵

¹ See Letter from Target to the Secretary of Commerce, "Raw Flexible Magnets from the People's Republic of China: Scope Ruling Request," (September 9, 2008) ("Scope Ruling Request").

² See "Raw Flexible Magnets from the People's Republic of China: Comments on Scope Ruling Request of Target Corporation" (September 30, 2008) ("Petitioner Comments").

³ See Letter from Karine Gziryan, Acting Program Manager, AD/CVD Operations, Office 4, to Target, "Request for Additional Information on Scope Inquiry of Raw Flexible Magnets from the People's Republic of China" (October 24, 2008).

⁴ See "Response to Request for Additional Information on Scope Inquiry of Raw Flexible Magnets from the



Pursuant to 19 CFR 351.225(d), we recommend that the Department determine that a formal scope inquiry is not warranted in this case. Further, pursuant to 19 CFR 351.225(k)(1), we recommend that the Department determine that 1) the “Foam Words & Phrases” magnets and the “Just Married” magnet set are within the scope of the Magnets Orders; and 2) the “Hearts and Bird” magnets and the “Love Wish Frame” magnet are excluded from the scope of the Magnets Orders.⁶

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 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 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; and (v) the manner in which the product is advertised and displayed. These factors are known commonly as the Diversified Products criteria.⁷ The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all record evidence before the Department.

Product Descriptions

1. Scope of the Orders

The Department identified the scope of the investigations in its notices of initiation.⁸ In the final determinations of sales at less than fair value and the final affirmative countervailing

People’s Republic of China” (November 7, 2008) (“Supplemental Response”).

⁵ See “Raw Flexible Magnets from the People’s Republic of China: Comments on Response of Target Corporation on Scope Inquiry” (December 4, 2008) (“Petitioner Second Comments”).

⁶ 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”).

⁷ See Diversified Products Corp. v. United States, 6 CIT 155, 572 F. Supp. 883 (1983).

⁸ Notice of Initiation of Antidumping Duty Investigations: Raw Flexible Magnets from the People’s Republic of

duty determination,⁹ 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.¹⁰ There have been no subsequent changes to the scope. The scope description as published in the Magnets Orders is as follows:

The products covered by this order are certain flexible magnets regardless of shape,¹¹ color, or packaging.¹² 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

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).

⁹ 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”).

¹⁰ See AD PRC Final Determination at 39671; “Issues and Decision Memorandum for Final Determination in the Countervailing Duty Investigation of Raw Flexible Magnets from the People’s Republic of China,” 73 ITADOC 39667 (“CVD PRC Final I&D Memo”) at “Scope Comments” section; and AD Taiwan Final Determination at 39674.

¹¹ The term “shape” includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

¹² Packaging includes retail or specialty packaging such as digital printer cartridges.

application of laminate) or on any other covering that is removed from the flexible magnet prior or subsequent to final printing and before use; non-permanent printing (that is, printing in a medium that facilitates easy removal, permitting the flexible magnet to be re-printed); printing on the back (magnetic) side; or any combination of the above.

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

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

2. The Petition

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

3. The ITC’s Description

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

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

Magnetic sheet is characterized as “{s}heets of material that are highly flexible and have permanent magnetic properties.” Sheet, which is generally (but not exclusively) produced by the 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.

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).

Summary of Arguments

1. Target

Target requested that the Department issue a scope ruling finding that its "decorative retail magnets" are not subject to the Magnets Orders. Specifically, Target requested that the Department consider four products: "Hearts and Bird" magnets, the "Love Wish Frame" magnet, "Foam Words & Phrases" magnets, and the "Just Married" magnet set.¹³ "Foam Words & Phrases" magnets include 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 is a series of individual flexible magnets that consist of paper that is 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 are two individual flexible magnets that are packaged together. The magnets are 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 is 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."

Target argues that the scope excludes non-commodity products. Target states that its "decorative retail magnets" are not sheets, strips, or profile shapes, nor are they any other type of

¹³ See Attachment 1.

commodity product. See Scope Ruling Request at 5. Target contends that: 1) the ITC found that Petitioner specifically adopted the term “raw flexible magnets” to distinguish between the commodity products of raw flexible magnet producers and the products of their non-distributor customers, and 2) the ITC’s injury requirement dictates that the definition of the like product cannot be narrower than the class or kind of merchandise subject to the investigation. Id. at 3. Therefore, Target argues, if the Department were to interpret the scope language to include the magnets subject to this inquiry, this interpretation would constitute an impermissible expansion of the scope. Id. at 3 n.8.

Moreover, Target argues, these products are not commodity products but rather are uniquely designed, finished magnets packaged as single items intended for direct sale to retail customers. Id. at 5. Target claims that the products at issue have an intended end-use as decorative accessories and are only suitable for this purpose because the permanent decorative motifs make these products unsuitable for any other use (i.e., further processing by printers, converters, or manufacturers of other products). Id.

Additionally, Target argues that its “Foam Words & Phrases” magnets, “Just Married” magnet set, “Hearts and Bird” magnets, and “Love Wish Frame” magnet bear permanent decorative motifs and, therefore, fall within an exclusion for decorative motifs in the scope. Id. These decorative motifs, Target insists, are created by permanently bonding a variety of decorative materials (e.g., inks, glitter,¹⁴ foam) to a flexible magnetic backing and, in many instances, cutting them into decorative shapes. See Scope Ruling Request at 5-6. Target claims that there is an explicit exclusion in the scope for any product with a decorative motif.

2. Petitioner

As a general matter, Petitioner disagrees with Target’s claim that the scope of these orders excludes “non-commodity” products. Petitioner states that the term “commodity” does not appear anywhere in the scope language nor is it found anywhere in the Petition or in any of the Department’s determinations. See Petitioner Comments at 5-6. Petitioner asserts that Target interprets the title of the investigations as a limitation on the scope of the proceedings. Id. Petitioner objects to Target’s representation of the ITC’s finding regarding the Petitioner’s reasons for adopting the term “raw flexible magnets.” Id. Rejecting Target’s claim that the term was adopted in order to distinguish between commodity magnet products and printed magnet products, Petitioner insists that “raw flexible magnets” is a term adopted to distinguish between printed flexible magnets and unprinted flexible magnets. Id. at 6.

Furthermore, Petitioner disagrees with Target’s assertion that products should be excluded because they are packaged as single items intended for, and only suitable for direct sale to, retail customers. Petitioner argues that this argument is directly refuted by the express inclusion of flexible magnets “regardless of... packaging,” including “retail and specialty packaging.” Id. at 7. Petitioner also points to the Department’s Final Determinations in which

¹⁴ Target claims that glitter is applied to the letters of the “Just Married” magnet set through a silk screening printing process. See Supplemental Response at 1.

the Department rejected a similar “only for retail sale” argument by stating that “the Department does not generally define subject merchandise by end-use application.” Id.

Petitioner rejects Target’s contention that there is an exclusion in the scope of the Magnets Orders for any product with a decorative motif. Petitioner states that the relevant provision of the exclusion applies only to flexible magnets bonded to a material that “bears printed text and/or images, including but not limited to...decorative motifs.” Id. at 5-6. Accordingly, Petitioner argues that Target’s attempt to characterize the foam material in “Foam Words & Phrases” magnets and the glitter in the “Just Married” magnet set as “decorative motifs” does not alter the fact that the products concerned are not printed¹⁵ and, therefore, do not fall within the exclusion. See Petitioner Comments at 5-6.

Finally, Petitioner agrees with Target that the “Hearts and Bird” magnets and the “Love Wish Frame” are outside the scope of the Magnets Orders. Petitioner states that, because those magnets are laminated with a material that bears printed images, they fall within the specific exclusion for printed flexible magnets. Id. at 4.

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. See 19 CFR 351.225(d) and 351.225(k)(1). In discussing the interpretive process the Department should follow in making scope rulings pursuant to 19 CFR 351.225(k)(1), the Court of Appeals for the Federal Circuit (“CAFC”) stated:

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

See Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1096 (Fed. Cir. 2002) (“Duferco”). The CAFC also commented that “a predicate for the interpretative process {in a scope inquiry} is language in the order that is subject to interpretation.” Id. at 1094. Through these statements, the CAFC found that the appropriate place to begin the analysis as to whether a product is within the scope of an antidumping duty order is to review the scope language of the antidumping duty

¹⁵ Petitioner believes glitter is applied to the letters of the “Just Married” magnet set through a screen coating process. However, Petitioner believes that even if the glitter is applied through a silk screen printing process, the “Just Married” magnet set would not satisfy the exclusion criteria because this product does not bear printed text and/or images. See Petitioner Second Comments at 3-4.

order itself. Furthermore, the CAFC stated that “{s}cope orders may be interpreted as including subject merchandise only if they contain language that specifically includes the subject merchandise or may be reasonably interpreted to include it.” (Emphasis added.) Id. at 1089.

In accordance with 19 CFR 351.225(k)(1) and Duferco, the Department has first examined the language of the scope of the Magnets Orders, including any exclusions, to determine whether Target’s products are within the scope of the orders. The Department has also conducted analysis with reference to the ITC’s description of the scope and the Department’s prior scope determination in these investigations. Finally, the Department has addressed Target’s arguments pertaining to each product.

1. “Foam Words & Phrases” Magnets and the “Just Married” Magnet Set

In analyzing whether Target’s “Foam Words & Phrases” magnets and the “Just Married” magnet set are within the scope of the orders, the Department first reviewed the scope language contained in the Magnets Orders. The scope of each order states:

Subject flexible magnets are bonded magnets composed (not necessarily exclusively) of (i) any one or combination of various flexible binders (such as polymers or co-polymers, or rubber) and (ii) a magnetic element, which may consist of a ferrite permanent magnet material (commonly, strontium or barium ferrite, or a combination of the two), a metal alloy (such as NdFeB or Alnico), any combination of the foregoing with each other or any other material, or any other material capable of being permanently magnetized.

See “Scope of the Orders” sub-section above. In its request for a scope inquiry, Target states that the “Foam Words & Phrases” magnets and the “Just Married” magnet set consist of foam material and paper, respectively, “permanently bonded to a flexible magnetic backing.” See Scope Ruling Request at 4. Additionally, through inspection of the “Foam Words & Phrases” magnets and the “Just Married” magnet set, the Department has confirmed that these magnets are composed of a flexible binder and a magnetic element. Moreover, Target provides no argument that these products should be considered outside the scope based on material consistency. Thus, Target’s “Foam Words & Phrases” magnets and the “Just Married” magnet set satisfy the material requirements established by the scope.

Additionally, the scope states that “{s}ubject flexible magnets...may or may not be fully or partially laminated or fully or partially bonded with paper, plastic, or other material, of any composition and/or color.” See “Scope of the Orders” sub-section above. The “Foam Words & Phrases” magnets consist of a foam material cut into the shapes of words or phrases that is, as reported by Target, “permanently bonded to a flexible magnetic backing.” Similarly, the “Just Married” magnet set consists of paper which is permanently bonded to a flexible magnetic backing. Both foam and paper are covered by the language of the scope excerpted above which refers to subject magnets being “bonded with paper, plastic, or other material, of any composition and/or color.” Id. Therefore, the foam material and paper bonded to the flexible

magnets do not exclude either the “Foam Words & Phrases” magnets or the “Just Married” magnet set from the scope of the Magnets Orders.

The scope of the orders specifically excludes printed flexible magnets which are defined as “flexible magnets (including individual magnets) that are laminated or bonded with paper, plastic, or other material if such paper, plastic, or other material bears printed text and/or images, including but not limited to business cards, calendars, poetry, sports event schedules, business promotions, decorative motifs, and the like.” Id. Target interprets this exclusion to mean that “magnets bearing permanent decorative motifs fall within the explicit exclusion from the scope of the investigation.” See Scope Ruling Request at 5. The Department disagrees with Target’s interpretation. Instead, the Department agrees with Petitioner that this exclusion applies only to flexible magnets bonded to a material that “bears printed text and/or images, including but not limited to...decorative motifs.” See Petitioner Comments at 5-6. In this exclusion for printed flexible magnets, the items listed after the word “including” refer to types of printed text and/or printed images that may appear on excluded printed flexible magnets. Thus, the phrase “decorative motifs” refers simply to a type of printed text and/or printed image that may appear on printed flexible magnets that would be excluded from the scope of the Magnets Orders. Because the “Foam Words & Phrases” magnets and the “Just Married” magnet set do not incorporate a material that “bears printed text and/or images,” these magnets do not meet the exclusion criteria for printed flexible magnets.

Additionally, the Department believes that Target’s claim that the glitter is applied to the paper by a silk screening printing process does not place the “Just Married” magnet set within the exclusion for printed flexible magnets. As stated above, this exclusion applies only to flexible magnets laminated or bonded to a material that bears printed text and/or printed images. Because the “Just Married” magnet set does not incorporate a material that bears printed text and/or printed images, these magnets do not meet the exclusion criteria for printed flexible magnets.

Having established that Target’s “Foam Words & Phrases” magnets and the “Just Married” magnet set satisfy the material requirements and bonding allowances of the scope but do not satisfy the exclusion for printed flexible magnets provided in the scope, the Department then analyzed Target’s other arguments supporting exclusion of the “Foam Words & Phrases” magnets and the “Just Married” magnet set from the scope of the Magnets Orders.

With regard to Target’s argument that the “Foam Words & Phrases” magnets and the “Just Married” magnet set fall outside the scope of the orders because the scope excludes non-commodity products, the Department disagrees. Target arrived at this argument by interpreting the scope of the Petition to exclude “non-commodity products” and then using this understanding to claim erroneously that the ITC adopted this interpretation in its preliminary and final determinations. We disagree with Target’s argument that the inclusion of the magnets subject to this inquiry within the scope of the orders would constitute an expansion of the class or kind of merchandise subject to the investigations beyond the ITC’s definition of like product. See Scope Ruling Request at 3. In fact, the scope description in the Petition states:

Specifically excluded from the scope of this petition is retail printed flexible magnet sheeting, defined as flexible magnet sheeting (including individual magnets) that is 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.

See Petition at 11-12. Thus, as in the Magnets Orders, the only exclusion to the scope requested in the Petition is an exclusion for printed flexible magnets. There is no specific exclusion for non-commodity products.

As further illustration of the breadth of the Petition's scope and the specificity of its exclusion, we disagree with Target's view that Petitioner adopted the term "raw flexible magnets" to distinguish between commodity products and non-commodity products. In fact, the ITC found that the term "raw flexible magnets" was "adopted for the purposes of these investigations to distinguish between the unprinted products of raw magnet producers...and the printed magnets and other products of their non-distributor customers." See ITC Final Determination at I-7 n.15. The ITC incorporated this distinction into its preliminary determination by defining the domestic like product to be raw flexible magnets – a definition coextensive with the Department's scope. See Raw Flexible Magnets from China and Taiwan, Investigation Nos. 701-TA-452 and 731-TA-1129 and 1130 (Preliminary), Pub. No. 4030 (November 2007) ("ITC Preliminary Determination") at 6. The distinction between printed magnets and unprinted magnets was carried with the scope throughout the investigations, as evidenced in the "Scope of the Orders" section above, which states that the scope language of the Final Determinations and Magnets Orders neither enlarged nor contracted product coverage. This distinction was also retained by the ITC for the duration of its investigations. In the ITC Final Determination, the ITC acknowledged the Department's revised scope description and agreed with Petitioner that "the record contains no information pertinent to the definition of the domestic like product materially different from the information generated in the preliminary phase of these investigations." See ITC Final Determination at 6-7. Accordingly, in that final determination, the ITC defined a single like product coextensive with the Department's scope definition. *Id.* at 7. Because the ITC followed the scope language adopted by the Department in defining like product for purposes of its injury investigation, the injury determination of the ITC covered only products within the scope of the Department's investigations. Because non-commodity products were never excluded from the scope and, consequently, were never excluded from the ITC's definition of the domestic like product, the Department's interpretation of the scope language as inclusive of the magnets subject to this inquiry does not constitute an expansion of the scope beyond either the scope of the Magnets Orders or the ITC's definition of like product.

With regard to Target's assertion that the "Foam Words & Phrases" magnets and the "Just Married" magnet set are outside the scope of the Magnets Orders because they are uniquely designed, finished magnets packaged as single items intended for direct sale to retail customers,

we disagree. The scope expressly includes flexible magnets “regardless of...packaging,” including “specialty or retail packaging.” See “Scope of the Orders” sub-section above. Furthermore, the Department stated in its Final Determinations that it “does not generally define subject merchandise by end-use application.”¹⁶ Therefore, the retail packaging and the product’s intended end-use are not bases for exclusion.

For the foregoing reasons, the Department determines that the “Foam Words & Phrases” magnets and the “Just Married” magnet set are within the scope of the Magnets Orders.

2. “Hearts and Bird” Magnet and the “Love Wish Frame” Magnet

In analyzing whether Target’s “Hearts and Bird” magnet and “Love Wish Frame” magnet are within the scope of the orders, the Department again reviewed the scope language contained in the Magnets Orders. The scope of the orders specifically excludes printed flexible magnets which are defined as “flexible magnets (including individual magnets) that are laminated or bonded with paper, plastic, or other material if such paper, plastic, or other material bears printed text and/or images, including but not limited to business cards, calendars, poetry, sports event schedules, business promotions, decorative motifs, and the like.” See “Scope of the Orders” sub-section above. However, the scope places limits on this exclusion, stating:

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.

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

Target states that the “Hearts and Bird” and “Love Wish Frame” magnets contain “printed birds, hearts, and other decorative flourishes.” See Scope Ruling Request at 4-5. Neither Target nor Petitioner has suggested that these magnets are not printed. Thus, because these magnets bear printed text and/or images, they fall within the scope’s specific exclusion for printed flexible magnets. Furthermore, the “Hearts and Bird” and “Love Wish Frame” magnets are not subject to any of the limits placed on the exclusion for printed flexible magnets. See “Scope of the Orders” sub-section above. Therefore, the Department agrees with Petitioner and

¹⁶ See AD PRC Final Determination at 39671; CVD PRC Final I&D Memo at “Scope Comments” section; and AD Taiwan Final Determination at 39674.

Target that the "Hearts and Bird" magnets and the "Love Wish Frame" magnet are excluded from the scope of the Magnets Orders.

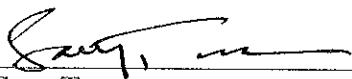
Conclusion

Pursuant to 19 CFR 351.225(d), the Department determines that a formal inquiry to decide whether the "Hearts and Bird" magnets, "Love Wish Frame" magnet, "Foam Words & Phrases" magnets, and the "Just Married" magnet set are covered by the scope of the orders is not warranted. We have evaluated this request in accordance with 19 CFR 351.225(k)(1) because the description of the products contained in the antidumping and countervailing duty orders, Petition, and determinations of the Secretary and the ITC are dispositive with respect to Target's products at issue. Therefore, we have not referred to the additional factors found in 19 CFR 351.225(k)(2).

Recommendation

In accordance with 19 CFR 351.225(k)(1), we have determined, through our review of the descriptions of the products contained in the antidumping and countervailing duty orders, the Petition, and the determinations of the Secretary and the ITC, that: 1) Target's "Foam Words & Phrases" magnets and "Just Married" magnet set are within the scope of the Magnets Orders; and 2) Target's "Hearts and Bird" magnets and "Love Wish Frame" magnet are excluded from the scope of the Magnets Orders. If you agree, we will send a letter to interested parties enclosing this ruling and will notify U.S. Customs and Border Protection of our determination.

Agree Disagree



Gary Taverman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

12/22/08

Date