

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

January 10, 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: Final Scope Ruling on Certain Retail Hook and Paper Towel Magnets

Summary

On March 26, 2010, the Department of Commerce (“the Department”) received a scope ruling request from InterDesign Corp. (“InterDesign”) for a determination as to whether sixty hook and paper towel magnet products are within the scope of the antidumping and countervailing duty orders on raw flexible magnets from the People’s Republic of China (“PRC”) and Taiwan.¹ The request contains descriptions and photographs of the magnets. Additionally, InterDesign Corp. submitted samples of the magnets. As described below, the InterDesigns hook and paper towel magnets subject to the scope inquiry are separated into five models based on their physical characteristics. On May 18, 2010, the Department initiated a formal scope inquiry, and requested comments from the interested parties with respect to the criteria of 19 CFR 351.225(k)(2). We received comments and rebuttal comments on June 9, 10, 17, and 21, 2010. On September 13, 2010, we extended the deadline for the Department’s final scope ruling to January 11, 2011.

For the reasons described below, we have determined, through our review of the descriptions of the products contained in the antidumping and countervailing duty orders, that certain retail hook and paper towel magnets are outside of the scope of the Magnets Orders.

¹ See Letter from InterDesign Corp. to the Secretary of Commerce, “Scope Ruling Request regarding A-570-922, C-570-923 and A-583-842; Raw Flexible Magnets from the People’s Republic of China and Taiwan” (March 26, 2010) (“Scope Ruling Request”).

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").²

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.

Scope Of The Orders

The scope description as published in Antidumping Duty Order: Raw Flexible Magnets from the People's Republic of China, 73 FR 53847 (September 17, 2008); Raw Flexible Magnets from the People's Republic of China: Countervailing Duty Order, 73 FR 53849 (September 17, 2008); and Antidumping Duty Order: Raw Flexible Magnets from Taiwan, 73 FR 53848 (September 17, 2008) ("Magnets Orders") is as follows:

The products covered by this order are certain flexible magnets regardless of shape,³ color, or packaging.⁴ 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.

² See 19 CFR 351.225(d) and 351.225 (k)(1).

³ The term "shape" includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

⁴ Packaging includes retail or specialty packaging such as digital printer cartridges.

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.

Products Under Scope Inquiry

All of InterDesign’s magnet products under consideration contain one of three types of ferrite magnets that are covered by the scope of the order.⁵ The final products are sold in retail stores such as Ace Hardware and True Value. InterDesign’s Scope Ruling Request covers the following five models:

(1) The first model covers five different InterDesign products called “Part #10101,” “Part #10206,” “Part #10250,” “Part #10260” and “Part #10101A0,” which use a ferrite magnet that is adhered to a round plastic housing. These products can be referred to as “round plastic magnets.”

(2) The product called “York Magnets” consists of a ferrite magnet that is adhered to a ceramic or chrome housing and a chrome hook. Ceramic housings may or may not be printed with a trade name.

⁵ Each magnet at issue uses one of three types of ferrite magnets (1) high power small ferrite magnet with a composition of Nd₂Fe₁₄B; (2) normal magnets with a composition of BaFe₁₂O₁₉, SrFe₁₂O₁₉ or (3) rubber magnets with a composition of SrO₆Fe₂O₃, CPE.

(3) The product called “Targa Magnets” consists of ferrite magnets that are adhered to the two ends of a stainless steel or chrome housing that is attached to a flexible hose to enable its use as a paper towel holder.

(4) The product called “Miro Magnets” consists of a ferrite magnet that is adhered to a plastic housing, which is attached to a plastic hook.

(5) The product called “Forma Magnets” consists of a ferrite magnet that is adhered to a stainless steel housing and a hook.⁶

In addition to color photographs and schematic drawings in Exhibits “A” through “M” of InterDesign’s Scope Ruling Request, InterDesign provided product samples to the Department.⁷

Summary Of Arguments

InterDesign

- The products for which it now seeks a scope ruling are not “raw flexible magnets” and, rather, are a further finished product. Therefore, the products are not defined in the scope of the order. Its products are for final retail sale, and they require no furthering processing.⁸ The flexible magnet allows the finished product to be hung on a household appliance or other metal object. The ITC, in its final injury analysis, provided a description of the domestic like product that is dissimilar from InterDesign’s products. The ITC stated that “(f)lexible magnets are permanent magnets that can be twisted, bent, slit, punched, coiled, and otherwise molded into any shape without loss of magnetic properties.” Also, the ITC stated that “raw flexible magnets consist of sheet (or sheeting), strip, and thermoplastic profile shapes, typically of uniform thickness and surface finish.”⁹
- The ITC description suggests that the products covered by the scope of the order are raw magnets that can be modified or further processed. By contrast, InterDesign’s magnets are finished products that would be destroyed if twisted, bent, slit, punched, coiled, and otherwise molded into any shape.
- InterDesign also requested a tariff classification ruling from U.S. Customs and Border Protection (“CBP”). CBP found that the magnets give the InterDesign products their “essential character,”¹⁰ and are thus correctly classified as magnets.

⁶ See Scope Ruling Request at 5-9.

⁷ The Department has retained InterDesign’s product samples. See Memorandum from Thomas Martin to the File, “InterDesign Corp. Product Samples,” dated May 4, 2010.

⁸ See Scope Ruling Request at 2.

⁹ 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.

¹⁰ The term “essential character” is a term of art used in the General Rules of Interpretation of the Harmonized Tariff Schedule of the United States.

Petitioner Magnum Magnetics Corporation (“Magnum”)

- All products from InterDesign are within the scope of the Magnets Orders, and are not a part of the printed text or images exclusion noted in the second paragraph of the scope.¹¹ The Magnets Orders applies to “all flexible magnets without regard to shape, color, packaging, or magnetization; or to lamination or bonding of the magnets to any material of any composition.”¹² InterDesign’s products are clearly described by the Magnets Orders in chemical composition and bonding. Additionally, all of the products subject to the scope inquiry do not meet the exclusion requirement of bearing printed text and/or images.¹³ The Department made a determination in the “It’s Academic Scope Ruling,” where the Department found that flexible magnets that were bonded to plastic or other materials and were not printed, were subject to the order.¹⁴
- InterDesign’s argument that its products should be excluded from the scope because they are meant for final retail sale at mass retailers and specialty stores does not exclude the products from the Magnets Orders. The Department made a previous determination in the “Target Scope Ruling”¹⁵ that retail packaging and the product’s intended end-use are not bases for exclusion.¹⁶ Also citing the “Target Scope Ruling,” Magnum argues that the Department has determined that there is no distinction in the language between finished products and raw materials in the Magnets Orders and, therefore, this is not a basis for exclusion from the orders.¹⁷
- Finally, Magnum states that the products under consideration are classified under the U.S. Harmonized Tariff Schedule (“HTSUS”) subheading that establishes its “essential character.” Specifically, HTSUS subheading 8505.19 describes the products as “composite goods containing flexible magnets.” The proper HTSUS classification for all of InterDesign’s products under consideration indicates that these products are essentially flexible magnets, despite being bonded to other materials.¹⁸

On May 18, 2010, the Department initiated a formal scope inquiry and solicited further comments from InterDesign and Magnum. The interested parties’ further arguments were as follows:

¹¹ See Letter from Magnum Magnetics Corporation to the Secretary of Commerce, “Raw Flexible Magnets from the People’s Republic of China and Taiwan: Comments on Scope Ruling Request By InterDesign Corp.” (April 23, 2010) (“Petitioner Comments”) at 2.

¹² Id. at 4; see also Magnets Orders at paragraph 1.

¹³ See Petitioner Comments at 3.

¹⁴ Id. at 4; See also Memorandum from Laurie Parkhill, Office Director, to John M. Andersen, Acting Deputy Assistant Secretary, “Raw Flexible Magnets from the People’s Republic of China; Scope Request from It’s Academic – Result of Inquiry – Final Determination in Part,” dated July 13, 2009 (“It’s Academic Scope Ruling”).

¹⁵ See Memorandum from Abdelali Elouaradia, Office Director, to John M. Andersen, Acting Deputy Assistant Secretary, “Final Scope Ruling on Certain Decorative Retail Magnets,” December 22, 2008 (“Target Scope Ruling”).

¹⁶ See Petitioner Comments at 6.

¹⁷ Id. at 6-7.

¹⁸ See Petitioner Comments at 7-8.

InterDesign

- The magnets it uses are not considered functionally flexible, as described in the Magnets Orders. Although the hook and paper towel holder have flexible magnets attached, the magnets cannot be manipulated without damaging the product, (i.e., the portion which is not a magnet).¹⁹
- The hook and paper towel holder are finished products packaged for retail sale, so InterDesign is not manufacturing flexible magnets in forms that can be further machined. InterDesign adds that its products are not produced by extrusion or calendaring.
- The manufacturing process places its products out of the scope. Its magnets have undergone “substantial transformation” as defined in 19 CFR 10.14(b), so that they are no longer considered magnets.²⁰ InterDesign also argues that the magnet is an insignificant component of the final product by material cost and net weight.
- Its magnets are purchased by its vendor from another vendor. Purchasing the magnet from a third party adds additional cost to the InterDesign hook and towel holder.²¹
- The application of the Magnets Orders is erratic due to inconsistent HTS number assignments for products containing magnets.²² InterDesign claims to have imported similar products.
- Its hooks and paper towel holder are designed for use as household articles, and thus have different ultimate uses than the in-scope flexible magnets.²³ Unlike flexible magnets, the hook and towel holder feature stronger holding capacities and are not designed to be adapted to various uses.
- It advertises its magnetic products differently from the producers of in-scope magnets, which are marketed to purchasers who intend to re-work the magnets.²⁴ Further, its hooks and towel holder are advertised to retailers that sell directly to the end user, thereby differentiating the products from other in-scope magnets.
- Finally, the function and visual aspect of the item attached to the magnet are reasons for ultimate purchasers to buy the product; the role of the magnet is insignificant.²⁵

¹⁹ See Letter from InterDesign to the Secretary of Commerce, dated June 9, 2010 (“InterDesign Comments”), at 6.

²⁰ Id. at 7.

²¹ Id. at 8.

²² Id.

²³ Id. at 10.

²⁴ See InterDesign Comments, at 10.

²⁵ Id. at 11.

Petitioner

- The language of the Magnets Orders is dispositive with respect to InterDesign’s magnetic products. Magnum cites to the Department’s ruling on “magnetic photo pockets”²⁶ and explains that the Magnets Orders clearly apply to raw flexible magnets without regard to shape, color, packaging, magnetization, lamination, or bonding to other materials.²⁷ In addition, the scope clearly does not exclude products based on end-use, packaging, or degree of “advancement”.²⁸
- InterDesign recognizes that its products contain flexible magnets, as indicated by the flexible magnets HTSUS classification for its products.²⁹
- The magnetic hook and towel holder would be useless without their magnetic properties, thereby making them essentially flexible magnets.³⁰
- Magnum rebuts InterDesign’s argument that it is importing finished goods, stating that the scope language does not differentiate between raw materials and finished goods.³¹
- InterDesign’s products share the same channels of trade and advertising as other in-scope magnets.³² Magnum also notes that the scope explicitly covers magnets packaged for retail sale.

InterDesign Rebuttal Comments

- The scope of the Magnets Orders applies to flexible magnets, but not to products that incorporate magnets.³³ Its hook and towel holder should be out of scope, since its products are not mere flexible magnets, but products that feature magnets as part of their composition.
- In response to Magnum’s claim that InterDesign’s products are in-scope regardless of the material bonded to the magnets,³⁴ InterDesign states that “bonding” is a stage in a flexible magnet’s production process rather than the production of a commercial item

²⁶ See Raw Flexible Magnets from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 39667 (July 10, 2008) and the accompanying Issues and Decision Memorandum at II. Scope Comments (“Final CVD Determination”).

²⁷ See Letter from Petitioner to the Secretary of Commerce, dated June 10, 2010 (“Petitioner’s Post Initiation Comments”), at 3.

²⁸ Id., at 6.

²⁹ Id., at 8.

³⁰ Id., at 9.

³¹ Id., at 10.

³² Id., at 12.

³³ See Letter from InterDesign to the Secretary of Commerce, dated June 17, 2010 (“InterDesign Rebuttal”), at 5.

³⁴ See Petitioner’s Post Initiation Comments, at 3.

incorporating such a magnet.³⁵ Its production process does not include “bonding,” which is the point when a magnet becomes subject to the Magnets Orders.³⁶

- InterDesign rejects Magnum’s claim that the product’s further advancement is irrelevant to the scope inquiry. Its products do not share in-scope magnets’ physical characteristics, such as thinness, flexibility, lightness of weight, and ease of cutting.³⁷
- Purchasers of its hooks and towel holder expect to use them as such, while purchasers of flexible magnets intend to further work them.³⁸ Furthermore, flexible magnets are magnetically weaker than its products, demonstrating that its products are designed for a different purpose.³⁹
- Its products are out of scope based on its channels of trade. While flexible magnets are mainly sold to distributors and wholesalers for resale, hooks and towel holders are sold to retailers.⁴⁰ Additionally, a consumer who sought a hook and towel holder would not secure supply from the distributors of magnetic magnets.⁴¹
- InterDesign reiterates that the magnets incorporated into its products compose 11% of material costs, and less than 4% of product weight.⁴²
- Magnum’s statement of the products covered by the scope is misleadingly broad.⁴³

Petitioner Rebuttal Comments

- InterDesign bases its argument on an outdated version of the scope language.⁴⁴ The latest language applies to non-printed flexible magnets regardless of shape, color, packaging, magnetization, lamination, or bonding to other materials.⁴⁵ Further, the bonding of hard material to the magnet does not remove it from the scope of the Magnets Orders, so even if the products cannot be twisted or bent without damaging them, they are within the scope.⁴⁶

³⁵ See InterDesign Rebuttal, at 6.

³⁶ Id.

³⁷ Id. at 8.

³⁸ Id.

³⁹ Id. at 9.

⁴⁰ Id.

⁴¹ Id. at 11.

⁴² Id. at 10.

⁴³ Id. at 12.

⁴⁴ See Letter from Petitioner to the Secretary of Commerce, dated June 21, 2010 at 2.

⁴⁵ Id. at 3.

⁴⁶ Id. at 4.

- InterDesign, in its comments, recognizes that its hooks and paper towel holder feature flexible magnets.⁴⁷
- InterDesign’s use of CBP’s “substantial transformation” analysis is irrelevant in determining whether the products are in-scope.⁴⁸
- Magnum rebuts InterDesign’s argument that the hooks and paper towel holders are out of scope because they are sold through retail outlets and used as household items, since in-scope magnets are generally the same.⁴⁹
- Channels of trade and advertisement are not criteria that sufficiently distinguish the hooks and towel holder from other in-scope magnets because in-scope magnets are sold through retailers and because the scope covers magnets packaged for retail sale.⁵⁰
- Finally, Magnum rebuts InterDesign’s claim that the role of magnets in the hook and paper towel holder is insignificant, since the descriptions of the end uses of its products state their primary uses are as magnets.⁵¹

Analysis

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.⁵²

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.”⁵³ 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

⁴⁷ Id.

⁴⁸ Id. at 5.

⁴⁹ Id. at 7.

⁵⁰ Id. at 7-8.

⁵¹ Id. at 8.

⁵² See Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1096 (Fed. Cir. 2002) (“Duferco”) (emphasis Added).

⁵³ Id. at 1097.

interpreted as including subject merchandise only if they contain language that specifically includes the subject merchandise or may be reasonably interpreted to include it.⁵⁴

In accordance with Duferco, the Department must first examine the language of the scope of the Magnets Orders, including any exclusions, to determine whether InterDesign's products are within the scope of the orders. Thus, the issue in this scope inquiry is whether InterDesign's products are included or excluded based on the language of the Magnets Orders.

Accordingly, the Department has referred to the language of the Magnets Orders to determine whether InterDesign's magnet products are within or outside of the scope of the Magnets Orders. First, regarding InterDesign's round plastic magnets, the type of housing to which the subject merchandise is bonded is not functionally flexible, *i.e.*, it cannot be manipulated without damaging the product. Second, with York Magnets, Miro Magnets, and Forma Magnets, devices such as metal or ceramic hooks bonded to a magnet render the product not to be functionally flexible, because they cannot be manipulated without damaging the product.⁵⁵ Third, for Targa Magnets, the paper towel holder's chrome skirt mount is bonded to a magnet, rendering the product not to be functionally flexible, because it cannot be manipulated without damaging the product. 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.

The Department has not ruled previously that any products were either (1) outside of the scope of the orders due to an attachment that constrains flexibility; or (2) within the scope of the orders based upon any analysis, despite having attached materials that render the product inflexible. All products previously subject to scope inquiries that had attached materials were still manually flexible to some degree. For instance, in the investigation, the Department ruled that magnetic photo pockets were within the scope; however, the attached material in that instance was a thin layer of plastic.⁵⁶ In the Target Scope Ruling, we stated that the attached material was foam rubber, the flexibility of the products was not affected, and the Department found certain of the products to be both inside and outside the scope on other bases.⁵⁷ In a Memorandum from

⁵⁴ Id. at 1089 (emphasis added).

⁵⁵ Record evidence also indicates that the York Magnets are printed with a trade name. See Scope Ruling Request at Exhibits A and B. Since the scope exclusion of printed magnets does not exclude printed trade names, the York Magnets printed with a trade name are not excluded from the orders based upon the printing.

⁵⁶ "In its request, SH Industries acknowledges that its magnetic photo pockets consist of flexible magnet material with a layer of plastic laminate fused along the sides of the flexible magnet." See Final CVD Determination and the accompanying Issues and Decision Memorandum at II. Scope Comments.

⁵⁷ "These decorative motifs, Target insists, are created by permanently bonding a variety of decorative materials (*e.g.*, inks, glitter, foam) to a flexible magnetic backing and, in many instances, cutting them into decorative shapes . . . In its request for a scope inquiry, Target states that the 'Foam Words & Phrases' magnets and the 'Just Married'

Laurie Parkhill to John M. Andersen, “Raw Flexible Magnets from the People’s Republic of China; Scope Request from It’s Academic – Result of Inquiry - Final Scope Determination in Part,” dated March 4, 2010 (“It’s Academic Scope Ruling II”), we stated that the products at issue were still flexible despite being attached to PVC, and ruled them to be within the scope of the orders.⁵⁸ In this instance, the five categories of InterDesign magnet products at issue are all attached to materials that are not flexible, and are thus outside the scope of the Magnets Orders.

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 351.225(k)(2).

Recommendation

In accordance with 19 CFR 351.225(k) and Duferco, we have determined, through our review of the descriptions of the products contained in the antidumping and countervailing duty orders, that certain retail hook and paper towel magnets are outside of 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

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date

magnet set consist of foam material and paper, respectively, ‘permanently bonded to a flexible magnetic backing.’” See Target Scope Ruling at 6, 8.

⁵⁸ “Therefore, the Department must determine whether the injection-molding of a multiple-layer, multiple-part form of colored, plasticized (bendable) PVC is a *printed* image and/or text.” (emphasis in original) See It’s Academic Scope Ruling II at 7.