

9/2/2009

MEMORANDUM TO: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Laurie Parkhill
Office Director
AD/CVD Enforcement 5

SUBJECT: Raw Flexible Magnets from the People's Republic of China; Scope
Request from It's Academic - Final Scope Determination in Part

SUMMARY

On June 4, 2009, the Department of Commerce (the Department) received a complete request from It's Academic, Inc. (It's Academic), asking the Department to determine that certain flexible magnet products that It's Academic imports from the People's Republic of China (PRC) into the United States are not within the scope of the antidumping duty order on raw flexible magnets from the PRC.¹ See Antidumping Duty Order: Raw Flexible Magnets from the People's Republic of China, 73 FR 53847 (September 17, 2008) (Order). On July 1, 2009, the petitioner, Magnum Magnetics Corporation (Magnum), submitted comments on It's Academic's scope-ruling request.² It's Academic submitted rebuttal comments on July 16, 2009.³ The petitioner submitted surrebuttal comments on August 7, 2009.⁴

Pursuant to 19 CFR 351.302(b) we extended the 45-day time limit for action on a scope-ruling request by an additional 45 days to September 2, 2009. Pursuant to 19 CFR 351.225(d), we recommend that a formal scope inquiry is not warranted regarding three of seven items imported by It's Academic and identified herein. Further, pursuant to 19 CFR 351.225(k)(1), we recommend a determination that these three items are not within the scope of the Order.

¹ See Letter from It's Academic to the Secretary of Commerce, "It's Academic Scope Ruling Request on Locker Magnets in Raw Flexible Magnets from the People's Republic of China" (A-570-922) (June 4, 2009) (Scope Request).

² See Letter from Magnum to the Secretary of Commerce, "Raw Flexible Magnets from the People's Republic of China: Comments on Scope Ruling Request of It's Academic, Inc." (A-570-922) (July 1, 2009) (Petitioner's Comments on Scope Request).

³ See Letter from It's Academic to the Secretary of Commerce, "It's Academic Scope Ruling Request on Locker Magnets in Raw Flexible Magnets from the People's Republic of China" (A-570-922) (July 16, 2009).

⁴ See Letter from Magnum to the Secretary of Commerce, "Raw Flexible Magnets from the People's Republic of China: Comments on Scope Ruling Request of It's Academic, Inc." (A-570-922) (August 7, 2009).

LEGAL FRAMEWORK

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 351.225. In considering whether a particular product is within the scope of an order, the Department will take into account the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Department (including prior scope determinations) and those of the International Trade Commission (ITC). See 19 CFR 351.225(k)(1). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether the subject merchandise is covered by the order. See 19 CFR 351.225(k)(1). If the Department finds that it cannot make a determination based on the application and the description of the merchandise referred to in paragraph (k)(1) of the regulations, it will initiate a scope inquiry. See 19 CFR 351.225(e).

In accordance with 19 CFR 351.225(c) and (d), the Department has reviewed the request in light of the descriptions of the merchandise subject to the order, as those descriptions are set forth in the petition, the initial investigation, and the determinations of the Secretary (including all prior scope determinations) and the ITC. Based on this review, we find that the issue of whether three of the items in this scope request are within the scope of the order can be determined solely upon the application and the descriptions of the merchandise referred to in 19 CFR 351.225(k)(1). See 19 CFR 351.225(d). We will issue a separate scope decision for the other four items of this scope request.

SCOPE OF THE ORDER

The Department identified the scope of the investigation in its notice of initiation.⁵ In the final determination of sales at less than fair value,⁶ the Department clarified product coverage by reordering the scope language and adding certain explanatory definitions. The revised scope language neither enlarged nor diminished product coverage.⁷ There have been no subsequent changes to the scope. The scope description as published in the Order is as follows:

The products covered by this order are certain flexible magnets regardless of shape,⁸ color, or packaging.⁹ 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.

⁵ 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).

⁶ Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from the People's Republic of China, 73 FR 39669 (July 10, 2008) (AD Final Determination).

⁷ See AD Final Determination, 73 FR at 39671.

⁸ The term "shape" includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

⁹ Packaging includes retail or specialty packaging such as digital printer cartridges.

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 Order, 73 FR at 53847.

BACKGROUND

It’s Academic imports seven packaged sets of magnets that can be grouped into three different types of merchandise. Pursuant to 19 CFR 351.225(c)(1)(i), It’s Academic requests that the Department find that its locker magnets are not within the scope of the Order. See Scope Request at 2. Included in the Scope Request were descriptions and pictures of the items. See Scope Request at 3 and Attachment 1, respectively. It’s Academic also submitted samples of the merchandise in question with the Scope Request. For the purposes of this final ruling we refer to items by their Universal Product Code (UPC) or by product categories as described below.

Category 1: Magnets Attached to Printed Cardboard

The first category includes items 7-25150-96114-7 and 7-25150-96113-0. It's Academic explains that “{t}hese magnets consist of multicolored images of skate boarders or faces with various expressions. The images are printed on cardboard paper. The paper is than glued to the magnet.” See Scope Request at 3. Magnum describes the same items as “flexible magnets to which are glued cardboard paper bearing multicolored printed images.” See Petitioner's Comments on Scope Request at 2. These two items are referred to as “Magnets Attached to Printed Cardboard” herein.

An examination of the sample included with the Scope Request confirms that Item UPC 7-25150-96114-7 consists of a sheet of flexible magnet glued to a sheet of thin cardboard that is printed with images of skateboarders. This assembly is cut to allow six individual magnets to be punched from the sheet. The cutting process leaves the individual magnets attached to the sheet at four points. Each magnet can be punched from the sheet by applying pressure to it to break it from the sheet. The individual magnets are squares with rounded corners.

Item UPC 7-25150-96113-0 is similar to the previous item in materials and construction. It has nine circular magnets that can be punched from a flexible magnet sheet. The individual magnets are attached at two points instead of four. Each magnet has a printed image of a face making a different expression.

Category 2: Magnets Attached to Layered Cardboard-Foam-Cardboard

The second category includes one item, UPC 7-25150-96112-3. It's Academic explains that “{t}hese magnets consist of two color printed text affixed to a sponge, which is then affixed to the magnet. The three materials are glued in layers.” See Scope Request at 3. Magnum describes them as “flexible magnets attached to materials bearing two-colored printed text and cut to the shape of the outline of the text. Printed paper is affixed directly to a sponge cut to the outline shape, which in turn is affixed to the flexible magnet.” See Petitioner's Comments on Scope Request at 2. This category is referred to as “Magnets Attached to Layered Cardboard-Foam-Cardboard” herein.

Item UPC 7-25150-96112-3 consists of four layers and, upon examination is slightly different from the above descriptions of both the requestor and petitioner. These magnets have a cardboard layer glued to a sponge foam layer; the cardboard has two-color text printed on it. This two-layer subassembly is cut to the outline of the text printed on the cardboard layer. The text on each magnet is “slap!” or “smack!” or “wham!” or “pow!” This subassembly is then glued to a second subassembly that consists of a flexible magnet sheet glued to printed cardboard sheet; this subassembly is cut at irregular angles forming a saw-tooth oval, the interior of which is large enough to accept the gluing of the first subassembly. The printing on the second subassembly's white cardboard layer is a single-color outline of its saw-tooth shape set inside the edge of the outline cut by a small margin. The printed cardboard layer that is affixed directly to the magnet, and not described by either party, does not change the analysis of the product

materially because the top cardboard layer is printed with text and is the deterministic factor as discussed below.

Category 3: Magnets Attached to PVC Bearing Injection-Molding

The third category includes four items, UPC 7-25150-96106-2, 0-20755-96109-8, 7-25150-96100-0, and 7-25150-96103-1. We are examining these “Magnets Attached to PVC Bearing Injection-Molding” separately and do not address them below. We will issue a separate scope decision regarding these items.

Pursuant to 19 CFR 351.225(c)(1)(ii), It’s Academic explains that its products described in Categories 1 and 2 are magnets designed to be used as decorative magnets for school lockers and should be found to be outside the scope based on the language of the Order, the petition, and the ITC’s record collectively. Further, it argues, its products were never intended to be considered as part of the “raw flexible magnets” subject to the Order. See Scope Request at 2. It’s Academic argues that, even if the scope language is found to be ambiguous, the Department should find that locker magnets are not within the scope of the Order because they are a different product from the merchandise subject to the original antidumping investigation and resulting order.

It’s Academic and the petitioner agree that these two product categories are not within the scope of the Order. According to It’s Academic it imports magnets that are “designed to be used as decorative magnets for school lockers. All the magnets consist of a raw flexible magnet cut to a size which matches the size of a piece of material that is bonded to the raw flexible magnet by glue.” See Scope Request at 2. Further, it contends that “[a]ll of the locker magnets imported by It’s Academic fit within the exclusion language of the scope which excludes magnets that are bonded with paper or plastic if the paper or plastic bears printed text or images.” See Scope Request at 6. The petitioner states that items 7-25150-96114-7, 7-25150-96113-0, and 7-25150-96112-3 “incorporate materials bearing ‘printed text and/or images’ and therefore are excluded from the scope of the Order pursuant to the express exclusion for ‘printed flexible magnets’.” See Petitioner’s Comments on Scope Request at 2.

ANALYSIS

When determining whether a specific product is within the scope of an antidumping duty order, the Department reviews the descriptions of the subject merchandise contained in the petition, the investigation, and the determinations of the Secretary (such as prior scope rulings) and of the ITC. See 19 CFR 351.225(d) and 351.225(k)(1). In discussing the interpretive process the Department should follow in making scope rulings pursuant to 19 CFR 351.225(k)(1), the Court of Appeals for the Federal Circuit (CAFC) stated that “a predicate for the interpretative process {in a scope inquiry} is language in the order that is subject to interpretation.” See Duferco Steel, Inc. v. United States, 296 F.3d 1087, at 1096 (CAFC 2002) (Duferco Steel).¹⁰ In Duferco

¹⁰ Such an approach is a departure from past CIT precedent that required the Department to give ample deference to the petitioner’s intent when examining a petition’s description of the subject merchandise. See, e.g., Torrington Co. v. United States, 995 F. Supp. 117, 121 (CIT 1998).

Steel, the CAFC reiterated “the importance of the language of the final scope order in defining the merchandise subject to the order.” Id. at 1097. Furthermore, the CAFC stated that “{s}cope orders may be interpreted as including subject merchandise only if they contain language that specifically includes the subject merchandise or may be reasonably interpreted to include it.” Id. at 1089.

The scope of the Order states that “{s}ubject flexible magnets are bonded magnets ...{that} 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.” The “Magnets Attached to Printed Cardboard” and the “Magnets Attached to Layered Cardboard-Foam-Cardboard” of Categories 1 and 2 consist of flexible magnets that are fully bonded to another material. Both categories of magnets satisfy the material consistency (any) and bonding/laminating allowances (may or may not be...fully or partially bonded) for inclusion in the scope of the Order because they consist of flexible magnets fully bonded to another material.

The scope of the Order “{s}pecifically excludes 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.” It’s Academic’s “Magnets Attached to Printed Cardboard” are not within the scope of the Order because the flexible-magnet part of this item is bonded with another material (cardboard) that bears a printed image (faces/skateboarders). Likewise, “Magnets Attached to Layered Cardboard-Foam-Cardboard” are not within the scope of the Order because they are bonded with another material (a sandwich of other materials, i.e., cardboard-foam-cardboard) that bears printed text (e.g., “pow!”).

CONCLUSION

Pursuant to 19 CFR 351.225(d), we find that the descriptions of the product contained in the Scope Request are dispositive when considered pursuant to 19 CFR 351.225(k)(1) (i.e., the petition, the initial investigation, prior scope determinations, and ITC determinations). “Magnets Attached to Cardboard” and “Magnets Attached to Layered Cardboard-Foam-Cardboard” are not within the scope of the Order for the following reasons:

- (1) Printed flexible magnets as defined in the scope were excluded from the scope of the Order.
- (2) These two categories of items fit the definition of the excluded printed flexible magnets because each contains a material bonded to a flexible magnet that bears printed images in the case of “Magnets Attached to Cardboard” and printed text in the case of “Magnets Attached to Layered Cardboard-Foam-Cardboard.”

RECOMMENDATION

We recommend determining, pursuant to 19 CFR 351.225(d), and through our review of the descriptions of the products in the antidumping duty order, the petition, and the determinations of the Secretary and the ITC, that “Magnets Attached to Cardboard” and “Magnets Attached to Layered Cardboard-Foam-Cardboard” are not within the scope of the antidumping duty order on raw flexible magnets from the People’s Republic of China. If you agree, we will notify U.S. Customs and Border Protection of our determination and send a copy of this memorandum to all interested parties on the scope service list via first class mail as directed by 19 CFR 351.303(f).

_____ Agree _____ Disagree

John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date