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Washington, D.C. 20230

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Sunset Reviews 2019  
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DATE: May 31, 2019

MEMORANDUM TO: Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

FROM: Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the  
Expedited Second Sunset Reviews of the Antidumping Duty  
Orders on Raw Flexible Magnets from the People's Republic of  
China and Taiwan

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## **I. SUMMARY**

In this second sunset reviews of the antidumping duty (AD) orders covering raw flexible magnets (RFM) from the People's Republic of China (China) and Taiwan, Magnum Magnetism Corporation (Magnum), the petitioner in the underlying investigation and a domestic interested party, submitted an adequate substantive response. No respondent interested party submitted a substantive response.

In accordance with our analysis of Magnum's substantive response, we recommend that you approve the positions developed in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues that we address in this expedited sunset review:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margin of dumping likely to prevail



## II. BACKGROUND

On September 17, 2008, the Department of Commerce (Commerce) published the AD *Orders* on RFM from China and Taiwan.<sup>1</sup> On February 5, 2019, Commerce initiated the second sunset review of the *Orders* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218(c).<sup>2</sup> On February 8, 2019, we received a notice of intent to participate in the sunset reviews from Magnum within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>3</sup> Magnum, a domestic producer of the subject merchandise, claimed interested party status under section 771(9)(C) of the Act.<sup>4</sup> On March 7, 2019, we received a substantive response from Magnum, in accordance with 19 CFR 351.218(d)(3)(i).<sup>5</sup>

Commerce did not receive substantive responses from respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), we conducted an expedited sunset review of these *Orders* and are issuing the final results of review no later than 120 days after the date of publication of the notice of initiation.

## III. SCOPE OF THE ORDERS

The products covered by these orders are certain flexible magnets regardless of shape,<sup>6</sup> color, or packaging.<sup>7</sup> Subject flexible magnets are bonded magnets composed (not necessarily exclusively) of (i) any one or combination of various flexible binders (such as polymers or copolymers, 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 these orders 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

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<sup>1</sup> See *Antidumping Duty Order; Raw Flexible Magnets from the People's Republic of China*, 73 FR 53847 (September 17, 2008) (*China Antidumping Order*); *Antidumping Duty Order; Raw Flexible Magnets from Taiwan*, 73 FR 53848 (September 17, 2008) (*Taiwan Antidumping Order*) (collectively, *Orders*).

<sup>2</sup> See *Initiation of Five-Year ("Sunset") Reviews*, 84 FR 1705 (February 5, 2019).

<sup>3</sup> See Letter from Magnum, "Five-Year Review of Raw Flexible Magnets from China and Taiwan: Notice of Intent to Participate," dated February 8, 2019.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> See Letter from Magnum, "Five-Year ("Sunset") Review of the Antidumping Duty Orders on Raw Flexible Magnets from China and Taiwan: Domestic Industry Substantive Response," dated March 7, 2019 (Substantive Response).

<sup>6</sup> The term "shape" includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

<sup>7</sup> Packaging includes retail or specialty packaging such as digital printer cartridges.

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,” “laminate 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 these orders. The products subject to the orders 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 orders is dispositive.<sup>8</sup>

#### IV. HISTORY OF THE ORDERS

##### **Final Determinations of Sales at Less than Fair Value and Orders**

###### China

On July 10, 2008, Commerce published its final affirmative determination of sales at less than fair value (LTFV) with respect to imports of RFM from China.<sup>9</sup> Commerce found the following *ad valorem* dumping margins:<sup>10</sup>

Guangzhou Newlife Magnet Electricity Co., Ltd.	105.00 percent
China-wide entity	185.28 percent

Following the issuance of Commerce’s final determination, the International Trade Commission (ITC) found that the U.S. industry was threatened with material injury by reason of subject imports from China pursuant to section 735(b) of the Act.<sup>11</sup> Subsequently, Commerce published the *China Antidumping Order*.

Since the issuance of the *China Antidumping Order*, Commerce has not conducted any administrative reviews of the order. There have been no new-shipper, changed-circumstances or duty-absorption reviews of the antidumping duty order. There have been several scope

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<sup>8</sup> See *Orders*, 73 FR at 53847 and 53848.

<sup>9</sup> 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) (*China LTFV Final*).

<sup>10</sup> *Id.* at 39672.

<sup>11</sup> See *Raw Flexible Magnets from China and Taiwan*, U.S. Int’l Trade Commission, Inv. No. 701-TA-452 (Final) and 731-TA-1129-1130 (Final), ITC Pub. 4030 (Aug. 2008), at 2 (*ITC Final Determination*).

determinations on RFM from China.<sup>12</sup> The *China Antidumping Order* remains in effect for all manufacturers, producers, and exporters of RFM from China.

### Taiwan

On July 10, 2008, Commerce published its final affirmative determination of sales at LTFV with respect to imports of RFM from Taiwan.<sup>13</sup> Commerce found the following *ad valorem* dumping margins:<sup>14</sup>

Kin Fong Magnets Co., Ltd.	38.03 percent
Magruba Flexible Magnets Co., Ltd.	38.03 percent
JASDI Magnet Co., Ltd.	38.03 percent
All others	31.20 percent

Following the issuance of Commerce's final determination, the ITC found that the U.S. industry was threatened with material injury by reason of subject imports from Taiwan pursuant to section 735(b) of the Act.<sup>15</sup> Subsequently, Commerce published the *Taiwan Antidumping Order*.

Since the issuance of the *Taiwan Antidumping Order*, Commerce has not conducted any administrative reviews of the order. Commerce rescinded the 2016-2017 administrative review of RFM from China.<sup>16</sup> There have been no new-shipper, changed-circumstances or duty-absorption reviews of the antidumping duty order. There have been several scope determinations on RFM from Taiwan.<sup>17</sup> The *Taiwan Antidumping Order* remains in effect for all manufacturers, producers, and exporters of RFM from Taiwan.

### Sunset Reviews

Commerce has conducted one sunset review of the *Orders*, pursuant to section 751(c) of the Act, and found in the review that revocation of the *Orders* would be likely to lead to continuation or recurrence of dumping at the same rates as found in the original investigation.<sup>18</sup> In the previous sunset review, the ITC likewise determined, pursuant to section 751(c) of the Act, that revocation of the *Orders* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>19</sup> Following the publication of the ITC's determinations, Commerce published continuation notices of the *Orders*.<sup>20</sup>

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<sup>12</sup> See Substantive Response.

<sup>13</sup> See *Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan*, 73 FR 39673 (July 10, 2008) (*Taiwan LTFV Final*).

<sup>14</sup> *Id.* at 39674.

<sup>15</sup> See *ITC Final Determination* at 1.

<sup>16</sup> See *Raw Flexible Magnets from the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 23890 (May 23, 2018).

<sup>17</sup> See Substantive Response.

<sup>18</sup> See *China LTFV Final*; and *Taiwan LTFV Final*.

<sup>19</sup> See *Raw Flexible Magnets from China and Taiwan*, Inv. No. 701-TA-1129-1130 (Review), 79 FR 2623 (January 22, 2014).

<sup>20</sup> See *Raw Flexible Magnets from the People's Republic of China and Taiwan: Continuation of Antidumping and Countervailing Duty Orders*, 79 FR 6886 (February 5, 2014).

## V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the *Orders* would be likely to lead to a continuation or recurrence of dumping. If Commerce determines that revocation of the *Orders* would be likely to lead to a continuation or recurrence of dumping, pursuant to section 752(c)(3) of the Act, Commerce shall provide the ITC with the magnitude of the margin of dumping likely to prevail if the *Orders* were revoked.

As explained in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, Commerce normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly; or (d) there are declining import volumes accompanied by the continued existence of dumping margins after the issuance of the order.<sup>21</sup> Pursuant to section 752(c)(4)(A) of the Act, a dumping margin of “zero or *de minimis* shall not by itself require” Commerce to determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at LTFV.<sup>22</sup>

Alternatively, Commerce normally will determine that revocation of an antidumping duty order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.<sup>23</sup> Consistent with guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (*i.e.*, SAA, H.R. Rep. No. 103-316, Vol. 1 (1994);<sup>24</sup> House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report);<sup>25</sup> and Senate Report, S. Rep. No. 103-412 (1994) (Senate Report)), Commerce will make its likelihood determination on an order-wide, rather than company-specific, basis.<sup>26</sup>

Sections 752(c)(1)(A) and (B) of the Act provide that, in determining whether revocation of the *Orders* would be likely to lead to a continuation or recurrence of dumping, Commerce shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the antidumping duty order. As a base period for import volume comparison, it is Commerce’s practice to use the one-year period immediately preceding

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<sup>21</sup> See SAA at 889-90; House Report at 63-64; and Senate Report at 52; *see also Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Sunset Policy Bulletin*).

<sup>22</sup> See *Folding Gift Boxes from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007) (*Folding Gift Boxes*) and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

<sup>23</sup> See SAA, H.R. Rep. No. 103-316, Vol. 1 (1994), at 889-90; *see also Sunset Policy Bulletin*.

<sup>24</sup> Reprinted at 1994 U.S.C.C.A.N. 4040 (1994).

<sup>25</sup> Reprinted at 1994 U.S.C.C.A.N. 3773 (1994).

<sup>26</sup> See SAA at 879; and House Report at 56.

the initiation of the investigation, rather than a period after initiation but before issuance of the order, as the initiation of an investigation may dampen import volumes and, thus, skew the comparison.<sup>27</sup>

If Commerce determines that revocation of the *Orders* would be likely to lead to a continuation or recurrence of dumping, generally Commerce provides the ITC with the magnitude of the margin of dumping likely to prevail based on the dumping margin(s) from the final determination in the investigation because this is the only calculated dumping margin that reflects the behavior of exporters without the discipline of an order in place.<sup>28</sup> However, in certain circumstances, Commerce may determine that a more recently calculated dumping margin may be more representative of a company's behavior in the absence of an order, *e.g.*, where a company increases dumping to maintain or increase market share with an order in place or "if dumping margins have declined over the life of an order and imports have remained steady or increased, {Commerce} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review."<sup>29</sup>

Regarding the margin of dumping likely to prevail, in the *Final Modification for Reviews*, Commerce announced that in five-year (*i.e.*, sunset) reviews, it will not rely on weighted-average dumping margins that were calculated using the methodology determined by the Appellate Body to be World Trade Organization (WTO)-inconsistent, *i.e.*, zeroing/the denial of offsets.<sup>30</sup> Commerce also noted that "only in the most extraordinary circumstances will Commerce rely on margins other than those calculated and published in prior determinations."<sup>31</sup> Commerce further stated that, apart from the "most extraordinary circumstances," it would "limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent" and that it "may also rely on past dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available (AFA), and dumping margins where no offsets were denied because all comparison results were positive."<sup>32</sup>

Below we address the comments submitted by Magnum.

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<sup>27</sup> See, *e.g.*, *Stainless Steel Bar from Germany*; *Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying IDM at Comment 1.

<sup>28</sup> See SAA at 890; and *Sunset Policy Bulletin* at section II.B.1. See, *e.g.*, *Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008) (*Persulfates from China*), and accompanying IDM at Comment 2.

<sup>29</sup> See SAA at 890-91; see also *Sunset Policy Bulletin* at section II.B.2.

<sup>30</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8109 (February 14, 2012) (*Final Modification for Reviews*).

<sup>31</sup> *Id.*; see also 19 CFR 351.218(e)(2).

<sup>32</sup> See *Final Modification for Reviews*, 77 FR at 8109.

## VI. DISCUSSION OF THE ISSUES

### 1. Likelihood of Continuation or Recurrence of Dumping

#### Magnum's Comments

- Revocation of the *Orders* would lead to a continuation or recurrence of dumping by producers and exporters of RFM from China and Taiwan.<sup>33</sup>
- Because there have been no reviews of the *Orders*, the applicable dumping margins, as established in the investigations, remain above *de minimis* levels.<sup>34</sup>
- Because dumping has continued at above *de minimis* levels after the issuance of the *Orders*, revocation of the *Orders* would likely lead to continuation or recurrence of dumping.<sup>35</sup>
- U.S. imports of RFM from China declined to very low levels after the imposition of the *China Antidumping Order*.<sup>36</sup> In Magnum's view, HTSUS 8505.19.10 contains the preponderance of subject imports.<sup>37</sup> Magnum explains that imports under HTSUS 8505.19.10 ranged from 20.6 million units in 2014 to a high of 23.5 million units in 2015, then fell to 18.2 million units in 2017.<sup>38</sup> The lack of recovery to pre-order levels of imports, in Magnum's view, indicates that imports would resume in the absence of the *China Antidumping Order*.<sup>39</sup>
- U.S. imports of RFM from Taiwan declined to very low levels after the imposition of the *Taiwan Antidumping Order*.<sup>40</sup> Magnum explains that imports under HTSUS 8505.19.10 fell from 1.2 million units in 2014 to 0.3 million units in 2017.<sup>41</sup> Thus, the lack of recovery to pre-order levels of imports, in Magnum's view, indicates that imports would resume in the absence of the *Taiwan Antidumping Order*.<sup>42</sup>

**Commerce's Position:** Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the SAA, the House Report, and the Senate Report, Commerce's determination of likelihood of continuation or recurrence will be made on an order-wide basis for each case.<sup>43</sup> In addition, Commerce will normally determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of an order and import volumes for the subject merchandise declined significantly.<sup>44</sup>

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<sup>33</sup> See Domestic Substantive Response at 14.

<sup>34</sup> *Id.* at 16-17.

<sup>35</sup> *Id.* at 17.

<sup>36</sup> *Id.* at 17-21.

<sup>37</sup> *Id.* at 19.

<sup>38</sup> *Id.* at 20.

<sup>39</sup> *Id.* at 21.

<sup>40</sup> *Id.* at 17-21.

<sup>41</sup> *Id.* at 20.

<sup>42</sup> *Id.* at 21.

<sup>43</sup> See SAA at 879; and House Report at 56.

<sup>44</sup> See SAA at 889-890; House Report at 63-64; and Senate Report at 52.

In considering import volumes, pursuant to section 752(c)(1)(B) of the Act, Commerce will consider the volume of imports of subject merchandise for the period before and after the issuance of an antidumping order. For both China and Taiwan, we analyzed import volumes under the two HTSUS subheadings listed in the scope of the *Orders* (HTSUS subheading 8505.19.10 and HTSUS subheading 8505.19.20) using the USITC Trade and Tariff DataWeb (DataWeb) import data placed on the record by the domestic interested party.<sup>45</sup> We compared the volume of imports for the five years following the first sunset review, *i.e.*, 2013 to 2018, to the volume of imports for the year immediately preceding the initiation of the LTFV investigations, *i.e.*, 2006.<sup>46</sup> Commerce's determination with respect to each order is explained below.

**China:** As stated above, if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the order were removed.<sup>47</sup> The SAA also provides that the existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping.<sup>48</sup> With respect to imports from China, Commerce has not completed any administrative reviews of the *China Antidumping Order* since the issuance of the order, meaning that the rates established in the investigation are still in effect.<sup>49</sup> As noted above, these rates range from 105.00 to 185.28 percent. Therefore, because there is a continued existence of above *de minimis* margins for U.S. imports of RFM from China, Commerce finds dumping is likely to continue or recur if the antidumping duty order on RFM from China were revoked.

In addition, the SAA also provides that declining import volumes accompanied by the continued existence of dumping margins after the issuance of an order may provide a strong indication that, absent an order, dumping would be likely to continue because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes.<sup>50</sup> Our review of DataWeb import statistics for RFM from China under HTSUS subheadings 8505.19.10 and 8505.19.20 demonstrates that imports of subject merchandise from China declined since the imposition of the *China Antidumping Order* and have not returned to pre-order volumes. DataWeb statistics show that imports of RFM from China under both subheadings declined at the inception of the order, became severely depressed in the years after the imposition of the order, and increased to

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<sup>45</sup> Magnum's arguments concerning the likelihood of continuation or recurrence of dumping were only based on imports under HTSUS subheading 8505.19.10 – "flexible magnets as such." However, it is clear from the import statistics that a significant number of imports also entered under HTSUS subheading 8505.19.20 – "composite goods of which a flexible magnet is a part" (some of which are non-subject merchandise and excluded from the order). See Domestic Substantive Response at page 19, n. 52.

<sup>46</sup> 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).

<sup>47</sup> See SAA at 890.

<sup>48</sup> *Id.*

<sup>49</sup> See *Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines; Final Results of the Expedited Five-year ("Sunset") Reviews of Antidumping Duty Orders*, 71 FR 26748 (May 8, 2006) (SSB) and accompanying IDM (finding that because there had been no completed administrative reviews of the antidumping duty orders on butt-weld pipe fittings from Italy, Malaysia, or the Philippines since the issuance of these orders, cash deposit rates above *de minimis* remained in effect).

<sup>50</sup> See SAA at 889.



somewhat more than half the pre-order level by the end of the sunset period.<sup>51</sup> The import volume under both HTSUS subheadings for 2006 was 109,312,632 units. During the course of the sunset period, imports under both subheadings amounted to a maximum of 45,694,179 units, or 41.80 percent, and a minimum of 32,928,599 units, or 30.12 percent, of the 2006 volume respectively.<sup>52</sup> Thus, imports during 2013-2018 were significantly below pre-order volumes.<sup>53</sup>

For Chinese exports to the United States imported under subheading 8505.19.10, those imports made up 89 percent of total imports of the two subheadings in 2006, and fluctuated between 48 percent and 71 percent of all imports of the two subheadings during the sunset period.<sup>54</sup> Given our experience with scope determinations for these orders,<sup>55</sup> the HTSUS subheading 8505.19.20 contains both subject and non-subject merchandise. Therefore, the entire volume under this HTSUS subheading (*e.g.*, 22,109,033 units in 2018) likely contains both subject and non-subject imports. Thus, the total volume for imports under both HTSUS subheadings (8505.19.10 and 8505.19.20) for 2018 is 38.85 percent of the 2006 volume and is likely higher than the actual volume of subject imports. For these reasons we find that imports during 2013-2018 were significantly below pre-order volumes.

Here, the decreased volumes of imports of RFM from China support a conclusion that exporters and importers of subject merchandise are declining to enter into some transactions at dumped prices that would have been made prior to the possible application of antidumping duties, and likely would be made again if the possibility of antidumping duties were removed.<sup>56</sup>

Furthermore, we find that declining import volumes accompanied by the continued existence of dumping margins at above *de minimis* levels after the issuance of an order (as described above) provide a strong indication that, absent the order, dumping would be likely to continue.

Therefore, Commerce concludes that dumping is likely to continue or recur if the *China Antidumping Order* were revoked.

**Taiwan:** As stated above, if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the order were removed.<sup>57</sup> The SAA also provides that the existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping.<sup>58</sup> With respect to imports from Taiwan, Commerce has not completed any administrative reviews of the *Taiwan Antidumping Order* since the issuance of the order, meaning that the rates established in the investigation are still in effect.<sup>59</sup> As noted above, these rates range from 31.20 to 38.30 percent. Therefore, because there is a continued existence of above *de minimis* margins for U.S. imports of RFM from

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<sup>51</sup> See Domestic Substantive Response at Exhibit 4 and 5, included as Attachment 1 of this memorandum for convenience.

<sup>52</sup> *Id.*

<sup>53</sup> See SSB, 71 FR 26748.

<sup>54</sup> *Id.*

<sup>55</sup> See Scope Determinations section above (describing our finding that “Foam Words and Phrases” magnet and the “Just Married” magnet are within the scope of the orders).

<sup>56</sup> See SAA at 890.

<sup>57</sup> *Id.* at 890.

<sup>58</sup> *Id.*

<sup>59</sup> See SSB, 71 FR 26748

Taiwan, Commerce finds dumping is likely to continue or recur if the order on RFM from Taiwan were revoked, in accordance with the SAA and our practice.

In addition, the SAA also provides that declining import volumes accompanied by the continued existence of dumping margins after the issuance of an order may provide a strong indication that, absent an order, dumping would be likely to continue because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes.<sup>60</sup> Our review of DataWeb import statistics for RFM from Taiwan under HTSUS subheadings 8505.19.10 and 8505.19.20 demonstrates that imports of subject merchandise from Taiwan have declined since the imposition of the *Taiwan Antidumping Order* and have not returned to the level of pre-order volumes. DataWeb statistics show that imports of RFM from Taiwan under both subheadings declined at the inception of the order, shifted in volume between the two subheadings once the order was in place, and slowly began to rise towards pre-order levels toward the end of the sunset period.<sup>61</sup> The total volume of imports under both HTSUS subheadings for 2006 was 3,748,199 units per year.<sup>62</sup> During the course of the sunset period, total imports under both subheadings fluctuated between 860,548 units and 2,996,496, or between 22.96 percent and 79.94 percent of the 2006 volume.<sup>63</sup> Thus, imports during 2013-2018 were significantly below pre-order volumes.<sup>64</sup>

During the sunset period, there was a major reversal in the predominance of imports of RFM from Taiwan between the two HTSUS subheadings. In 2006, 90 percent of the total imports of subject merchandise entered under HTSUS 8505.19.10.<sup>65</sup> By 2018, imports under HTSUS 8505.19.10 accounted for only 33 percent of total imports under the two subheadings. Meanwhile, imports under HTSUS 8505.19.20 increased around 1.5 percent over the 2006 volume of imports under HTSUS 8505.19.20 (from 379,444 units to 577,888 units).<sup>66</sup> The domestic interested party's analysis of only HTSUS 8505.19.10 shows a drastic decline in imports, but it doesn't capture the shift in production to composite products or the level of combined imports when both subheadings are considered.<sup>67</sup>

As stated above and given our experience with scope determinations for these orders,<sup>68</sup> HTSUS subheading 8505.19.20 contains both subject and non-subject merchandise. Therefore, the entire volume under this subheading, *e.g.*, 577,888 units in 2018, likely contains both subject and non-subject imports. Thus, the maximum sunset period volume (which includes combined imports under both subheadings) of 22.94 percent of the 2006 volume is likely higher than the actual

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<sup>60</sup> See SAA at 889.

<sup>61</sup> See Domestic Substantive Response at Exhibit 5.

<sup>62</sup> See Attachment 2.

<sup>63</sup> *Id.*

<sup>64</sup> See, *e.g.*, *SSB*, 71 FR 26748 (in which we found Italian imports at 81% of their pre-order volume (for 1999) to be significantly below pre-order volumes).

<sup>65</sup> See Attachment 2.

<sup>66</sup> *Id.*

<sup>67</sup> See Domestic Substantive Response at 20-21.

<sup>68</sup> See Scope Determinations section above (describing our finding that “Foam Words and Phrases” magnet and the “Just Married” magnet are within the scope of the orders).

volume of subject imports. For these reasons we find that imports during 2013-2018 were significantly below pre-order volumes.

Here, the decreased volumes of imports of RFM from Taiwan support a conclusion that exporters and importers of subject merchandise are declining to enter into some transactions at dumped prices that would have been made prior to the possible application of antidumping duties, and likely would be made again if the possibility of antidumping duties were removed.<sup>69</sup> Furthermore, we find that declining import volumes accompanied by the continued existence of dumping margins at above *de minimis* levels after the issuance of an order (as described above) provide a strong indication that, absent the order, dumping would be likely to continue. Therefore, Commerce concludes that dumping is likely to continue or recur if the *Taiwan Antidumping Order* were revoked.

## 2. Magnitude of the Margin of Dumping Likely to Prevail

### Magnum's Comments:

- The SAA indicates that, when determining the magnitude of dumping margins likely to prevail if an order were revoked normally, Commerce is to select a dumping margin from the original investigation.<sup>70</sup> Magnum cites the rationale provided in the SAA which provides that “[t]he Administration intends that Commerce normally will select the rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters . . . without the discipline of an order or suspension agreement in place.”<sup>71</sup>
- The *Final Modification for Reviews* acknowledges that Commerce modified its practice in sunset reviews “such that it will not rely on weighted average dumping margins that were calculated using the methodology determined by the Appellate Body to be WTO-inconsistent.”<sup>72</sup>
- The lack of administrative reviews of the orders, the original antidumping duty investigation rates represent the best evidence of the likely behavior of the Chinese and Taiwanese producers and exporters in the absence of the applicable orders.<sup>73</sup> Thus, the application of the principles set forth in the SAA and *Final Modification for Reviews* call for Commerce to rely on the margins from the original investigations which are up to 185.28 percent for China and up to 38.03 percent for Taiwan.<sup>74</sup>

**Commerce's Position:** Pursuant to section 752(c)(3) of the Act, Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the *Orders* were revoked. Normally, Commerce will select a weighted-average dumping margin from the investigation to report to the ITC.<sup>75</sup> Commerce's preference is to select a weighted-average dumping margin

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<sup>69</sup> See SAA at 890.

<sup>70</sup> See Domestic Substantive Response at 24 (citing SAA at 890).

<sup>71</sup> *Id.* quoting SAA at 890.

<sup>72</sup> *Id.* quoting *Final Modifications for Reviews*, 77 FR at 8101, 8102.

<sup>73</sup> *Id.* at 25.

<sup>74</sup> *Id.*

<sup>75</sup> See SAA at 890; see also, e.g., *Persulfates from China*, 73 FR at 11868, and accompanying IDM at Comment 2.

from the LTFV investigation because it is the only calculated rate that reflects the behavior of the producers and exporters without the discipline of an order or suspension agreement in place.<sup>76</sup> Under certain circumstances, however, Commerce may select a more recent rate to report to the ITC. Finally, as explained above, in accordance with the *Final Modification for Reviews*, Commerce will not rely on weighted-average dumping margins that were calculated using the zeroing methodology found to be WTO-inconsistent and that was subject to the *Final Modification of Reviews*.<sup>77</sup>

Commerce relied on adverse facts available, in accordance with section 776(a)-(b) of the Act, in assigning a margin to the China-wide entity in the *Final Determination*. This rate was based on the petition and did not involve the practice of zeroing.<sup>78</sup> Thus, we determine that revocation of the *China Antidumping Order* would be likely to lead to continuation or recurrence of dumping at the magnitude of weighted-average margins up to 185.28 percent. Consistent with section 752(c)(3) of the Act, Commerce will report to the ITC the margin from the *China LTFV Final* as the margin of dumping that is likely to prevail if the *China Antidumping Order* were revoked.

In Taiwan, the three mandatory respondents received the highest petition rate as AFA pursuant to section 776(a)(2) and (b) of the Act, and the all-others rate was determined by calculating a simple average of the petition rates pursuant to section 735(c)(5)(B) of the Act.<sup>79</sup> Thus, we determine that revocation of the *Taiwan Antidumping Order* would be likely to lead to continuation or recurrence of dumping at the magnitude of weighted-average margins up to 38.03 percent. Consistent with section 752(c)(3) of the Act, Commerce will report to the ITC the margin from the *Taiwan LTFV Final* as the margin of dumping that is likely to prevail if the *Taiwan Antidumping Order* were revoked.

## VII. FINAL RESULTS OF SUNSET REVIEWS

We determine that revocation of the *China Antidumping Order* would likely lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be at a rate up to 185.28 percent.

We determine that revocation of the *Taiwan Antidumping Order* would likely lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be at a rate up to 38.03 percent.

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<sup>76</sup> *Id.*

<sup>77</sup> See *Final Modification for Reviews*, 77 FR at 8103.

<sup>78</sup> See *China LTFV Final*, 73 FR at 39671-72; see also *China Antidumping Order*, 73 FR at 53849.

<sup>79</sup> See *Taiwan LTFV Final*, 73 FR at 39674; see also *Taiwan Antidumping Order*, 73 FR at 53848.

## VIII. RECOMMENDATION

Based on our analysis of the substantive responses received, we recommend adopting all the above positions. If these recommendations are accepted, we will publish the final results of these reviews in the *Federal Register* and notify the ITC of our determinations.



\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree

5/31/2019

X



Signed by: JEFFREY KESSLER  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

## Attachment 1

**Magnets: Customs Value by Country Name and Customs Value  
for ALL Countries**

**U.S. Imports for Consumption**

**Annual + Year-To-Date Data from Jan - Jun**

Country	HTS Number	2005	2006	2007	2008	2009	2010	2011	2012
<i>In Actual Dollars</i>									
Customs Value where quantities are collected in number									
China	85051910	13,131,944	14,998,062	13,891,794	9,705,261	5,292,511	6,466,043	9,205,046	9,701,221
	85051920	2,577,046	3,228,312	4,335,799	5,193,737	4,890,708	7,871,206	5,052,486	5,339,837
<b>Subtotal - China</b>		15,708,990	18,226,374	18,227,593	14,898,998	10,183,219	14,337,249	14,257,532	15,041,058
Taiwan	85051910	1,734,451	2,135,272	1,601,285	491,519	370,198	466,148	465,431	418,524
	85051920	64,886	170,308	176,380	226,843	165,150	718,545	562,498	822,129
<b>Subtotal - Taiwan</b>		1,799,337	2,305,580	1,777,665	718,362	535,348	1,184,693	1,027,929	1,240,653
<b>China &amp; Taiwan Subtotals</b>	85051910	14,866,395	17,133,334	15,493,079	10,196,780	5,662,709	6,932,191	9,670,477	10,119,745
	85051920	2,641,932	3,398,620	4,512,179	5,420,580	5,055,858	8,589,751	5,614,984	6,161,966
<b>Total</b>		17,508,327	20,531,954	20,005,258	15,617,360	10,718,567	15,521,942	15,285,461	16,281,711

**Magnets: First Unit of Quantity by Country Name and Customs Value  
for ALL Countries**

**U.S. Imports for Consumption**

**Annual + Year-To-Date Data from Jan - Jun**

Country	HTS Number	2005	2006	2007	2008	2009	2010	2011	2012
<i>In Actual Units of Quantity</i>									
First Unit of Quantity where quantities are collected in number									
China	85051910	76,809,409	97,687,577	88,901,470	41,604,480	24,954,947	23,671,221	35,975,210	36,473,736
	85051920	6,318,555	11,625,055	14,322,512	13,345,327	11,436,699	12,516,294	9,838,398	19,075,778
Taiwan	85051920	94,142	379,444	281,745	166,353	48,574	1,392,035	1,265,653	2,316,715
	85051910	3,258,159	3,368,755	2,686,827	1,300,553	1,162,157	538,563	606,092	253,453
<b>Total</b>		86,480,265	113,060,831	106,192,554	56,416,713	37,602,377	38,118,113	47,685,353	58,119,682

**Magnets: (Customs Value)/(First Unit of Quantity) by Country Name and Customs Value  
for ALL Countries**

**U.S. Imports for Consumption**

**Annual + Year-To-Date Data from Jan - Jun**

Country	HTS Number	2005	2006	2007	2008	2009	2010	2011	2012
<i>In Actual Dollars/Unit of Quantity</i>									
(Customs Value)/(First Unit of Quantity) where quantities are collected in number									
China	85051910	0.171	0.154	0.156	0.233	0.212	0.273	0.256	0.266
	85051920	0.408	0.278	0.303	0.389	0.428	0.629	0.514	0.28
Taiwan	85051920	0.689	0.449	0.626	1.364	3.4	0.516	0.444	0.355
	85051910	0.532	0.634	0.596	0.378	0.319	0.866	0.768	1.651

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.

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**Customs Value of 8505.19.10 and 8505.19.20 HTSUS - China and Taiwan**  
**U.S. Imports for Consumption**  
**Annual Plus Year-To-Date Data from January - November**

**Table Name: Customs Value**

Country	HTSUS	Year 2013	Year 2014	Year 2015	Year 2016	Year 2017	YTD 2018
<b>China</b>							
China	8505.19.10	7,837,173	6,578,045	6,983,005	7,719,271	7,675,993	5,479,143
China	8505.19.20	6,257,747	6,448,955	6,862,830	8,046,599	7,922,128	11,834,372
<b>Subtotal China</b>		<b>14,094,920</b>	<b>13,027,000</b>	<b>13,845,835</b>	<b>15,765,870</b>	<b>15,598,121</b>	<b>17,313,515</b>
<b>Taiwan</b>							
Taiwan	8505.19.10	319,854	456,808	235,668	245,131	146,867	150,039
Taiwan	8505.19.20	540,282	714,898	553,467	747,532	389,519	731,774
<b>Subtotal Taiwan</b>		<b>860,136</b>	<b>1,171,706</b>	<b>789,135</b>	<b>992,663</b>	<b>536,386</b>	<b>881,813</b>
<b>TOTAL</b>		<b>14,955,056</b>	<b>14,198,706</b>	<b>14,634,970</b>	<b>16,758,533</b>	<b>16,134,507</b>	<b>18,195,328</b>

**First Unit of Quantity of 8505.19.10 and 8505.19.20 HTSUS - China and Taiwan**  
**U.S. Imports for Consumption**  
**Annual Plus Year-To-Date Data from January - November**

**Table Name: First Unit of Quantity**

Country	HTSUS	Year 2013	Year 2014	Year 2015	Year 2016	Year 2017	Ytd 2018
<b>China</b>							
China	8505.19.10	29,160,596	20,607,371	23,550,195	23,184,982	18,212,785	12,288,819
China	8505.19.20	12,019,779	12,321,228	11,870,202	22,509,197	16,783,013	20,670,687
<b>Subtotal China</b>		<b>41,180,375</b>	<b>32,928,599</b>	<b>35,420,397</b>	<b>45,694,179</b>	<b>34,995,798</b>	<b>32,959,506</b>
<b>Taiwan</b>							
Taiwan	8505.19.10	382,332	1,170,550	313,075	481,236	331,904	180,176
Taiwan	8505.19.20	1,448,788	1,377,930	2,015,296	2,515,260	668,265	576,028
<b>Subtotal Taiwan</b>		<b>1,831,120</b>	<b>2,548,480</b>	<b>2,328,371</b>	<b>2,996,496</b>	<b>1,000,169</b>	<b>756,204</b>
<b>TOTAL</b>		<b>43,011,495</b>	<b>35,477,079</b>	<b>37,748,768</b>	<b>48,690,675</b>	<b>35,995,967</b>	<b>33,715,710</b>

**(Customs Value)/(First Unit of Quantity) of 8505.19.10 and 8505.19.20 HTSUS - China and Taiwan**  
**U.S. Imports for Consumption**  
**Annual Plus Year-To-Date Data from January - November**

**Table Name: (Customs Value)/(First Unit of Quantity)**

Country	HTSUS	Year 2013	Year 2014	Year 2015	Year 2016	Year 2017	Ytd 2018
<b>China</b>							
China	8505.19.10	0.27	0.32	0.3	0.33	0.42	0.45
China	8505.19.20	0.52	0.52	0.58	0.36	0.47	0.57
<b>Taiwan</b>							
Taiwan	8505.19.10	0.84	0.39	0.75	0.51	0.44	0.83
Taiwan	8505.19.20	0.37	0.52	0.27	0.3	0.58	1.27

Source: This data is compiled from the USITC Trade and Tariff Database, Dataweb, available at <https://dataweb.usitc.gov/>.



## Attachment 2

RFM: First Unit of Quantity by Country Name, HTS Number and First Unit of Quantity for FRM  
U.S. Imports for Consumption

Country	Hts Num	Units	2006	2013	2014	2015	2016	2017	2018
			In Actual Units of Quantity						
China	8505.19.10	number	97,687,577	29,160,596	20,607,371	23,550,195	23,184,982	18,212,785	20,352,712
China	8505.19.20	number	11,625,055	12,019,779	12,321,228	11,870,202	22,509,197	16,783,013	22,109,033
Subtotal			109,314,638	41,182,388	32,930,613	35,422,412	45,696,195	34,997,815	42,463,763
Percent Change per Year				-62.33%	-20.04%	7.57%	29.00%	-23.41%	21.33%
% of 2006			100%	37.67%	30.12%	32.40%	41.80%	32.02%	38.85%
% of total: HTS 85051910			89%	71%	63%	66%	51%	52%	48%

Taiwan	8505.19.10	number	3,368,755	382,332	1,170,550	313,075	481,236	331,904	282,660
Taiwan	8505.19.20	number	379,444	1,448,788	1,377,930	2,015,296	2,515,260	668,265	577,888
Subtotal			3,748,199	1,831,120	2,548,480	2,328,371	2,996,496	1,000,169	860,548
Percent Change per Year				-51.15%	39.18%	-8.64%	28.69%	-66.62%	-13.96%
% of 2006			100%	48.85%	67.99%	62.12%	79.94%	26.68%	22.96%
% of total: HTS 85051910			90%	21%	46%	13%	16%	33%	33%