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

C-570-923
Sunset Review
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December 16, 2013

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh CM
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Countervailing Duty Order on Raw Flexible Magnets from the People's Republic of China

SUMMARY

We have analyzed the responses of interested parties in the expedited sunset review of the countervailing duty ("CVD") order on raw flexible magnets ("RFM") from the People's Republic of China ("PRC"). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

History of the Order

On July 10, 2008, the Department published in the *Federal Register* its final determination on RFM from the PRC.[1] In the final determination of the investigation, the Department found an estimated net countervailable subsidy rate of 109.95 percent for China Ningbo Cixi Import Export Corporation ("Cixi"), Polyflex Magnets Ltd. ("Polyflex"), and "all others" based on total adverse facts available ("AFA") and the following countervailable programs:

[1] *See Final Affirmative Countervailing Duty Determination: Raw Flexible Magnets from the People's Republic of China*, 73 FR 39667 (July 2, 2008).

Subsidy Rate Chart

No.	Program	Type	AFA Rate
1	Preferential Tax Policies for FIEs (Two Free, Three Half Program) *	Income Tax	33.00%
2	Preferential Tax Policies for Export-Oriented FIEs *	Income Tax	33.00%
3	Tax Subsidies to FIEs Based in Specially Designated Geographic Areas *	Income Tax	33.00%
4	Tax Credits on Domestic Equipment Purchases	Income Tax Credit	1.51%
5	Reinvestment Tax Benefits for FIEs	Income Tax Refund	1.51%
6	Reduced Income Tax Rate for New High-Technology FIEs *	Income Tax	33.00%
7	Reduced Income Tax Rate For Technology and Knowledge Intensive FIEs *	Income Tax	33.00%
8	VAT Refunds on Exports	VAT	1.51%
9	VAT and Tariff Exemptions on Imported Equipment	VAT	1.51%
10	State Key Technologies Renovation Project Fund	Grant	13.36%
11	GOC Payment of Legal Fees	Grant	13.36%
	Local and Provincial Programs		
12	Anhui Province *	Income Tax	33.00%
13	Zhejiang Province *	Income Tax	33.00%
14	Shanghai Municipality *	Income Tax	33.00%
15	Beijing Municipality *	Income Tax	33.00%
16	Preferential Loan Programs and Interest Rates in Guangdong Province	Loan	4.11%
17	Provincial and Local Direct Grants - Guangdong Province	Grant	13.36%
18	Provincial and Local Direct Grants - Zhejiang Province	Grant	13.36%
19	Provision of Goods for Less Than Adequate Remuneration in Zhejiang Province	LTAR	13.36%
	Total AFA Rate		**109.95%**

* We applied the 33% AFA rate on a combined basis (*i.e.*, the nine programs provide a 33% benefit).

The CVD order on RFM from the PRC was published on September 17, 2008.[2]

Although the Department initiated a new shipper review in response to a request from Jingzhou Meihou Flexible Magnet Company, Ltd. ("Jingzhou Meihou"), the review was rescinded when the Department determined that Jingzhou Meihou was not eligible for a new shipper review.[3] There have been no administrative reviews, or changed circumstances reviews of the order, pursuant to sections 751(a) and (c) of the Act.

Background

On August 1, 2013, the Department initiated the sunset review of the order pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c).[4] Magnum Magnetics Corporation ("Magnum"), on behalf of the domestic RFM industry, filed a timely notice of intent to participate on August 12, 2013, in accordance with 19 CFR 351.218(d)(1). On September 3, 2013, the Department received a substantive response from Magnum in accordance with 19 CFR 351.218(d)(3)(i).[5] The Department did not receive a response from the government of the PRC ("GOC") or any Chinese producers or exporters. Because the Department received no response from the respondent interested parties, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited review of this CVD order.

DISCUSSION OF THE ISSUES

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the Order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that in making this determination the Department shall consider: 1) the net countervailable subsidy determined in the investigation and any subsequent reviews, and 2) whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect the net countervailable subsidy.

Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("ITC") the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether the subsidy described is in Article 3 or Article 6.1 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures ("ASCM").

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[2] *See Raw Flexible Magnets From the People's Republic of China: Countervailing Duty Order*, 73 FR 53849 (September 17, 2008).
[3] *See Raw Flexible Magnets from the People's Republic of China: Initiation of Countervailing Duty New Shipper Review*, 75 FR 22741 (April 30, 2010) and *Raw Flexible Magnets From the People's Republic of China: Notice of Rescission of Countervailing Duty New Shipper Review*, 75 FR 52721 (August 27, 2010).
[4] *See Initiation of Five-Year ("Sunset") Review*, 78 FR 46575 (August 1, 2013).
[5] *See "Five-Year ("Sunset") Review of the Antidumping Duty and Countervailing Duty Order on Raw Flexible Magnets from China and the Antidumping Duty Order on Raw Flexible Magnets from Taiwan:* Domestic Industry Substantive Response" (September 3, 2013) ("Magnum's Substantive Response").

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments
Magnum argues that subsidization of RFM from the PRC would likely continue or recur if the Department revoked the order because subsidies continued since the order was imposed. Specifically, Magnum argues that (1) no Chinese exporter or producer has requested a review to establish that it ceased receiving countervailable benefits, (2) the Department continues to find the same programs countervailed in the underlying investigation continue to be countervailable in CVD investigations of other products from China, and (3) the benefit stream of subsidies that were allocated overtime continue to exist beyond the period of this sunset review.[6] Thus, Magnum argues that the Department should conclude that revocation of the order would result in renewed imports from China that benefit from countervailable subsidies to the same extent determined in the original investigation.[7]

Department's Position

According to the Statement of Administrative Action ("SAA"), the Department will consider the net countervailable subsidies in effect after the issuance of the order and whether the relevant subsidy programs have been continued, modified, or eliminated.[8] The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.[9] Additionally, the presence of programs that have not been used, but also have not been terminated without residual benefits or replacement programs, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.[10] Where a subsidy program is found to exist, the Department will normally determine that revocation of the CVD order is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization.[11]

As indicated above, the Department has not conducted any administrative reviews of the Order since it went into effect, and no party has submitted evidence to demonstrate that the countervailable programs have expired or been terminated. Thus, based on the facts on the record, the Department determines that there is a likelihood of recurrence of countervailable subsidies because the record in this proceeding indicates that the subsidy programs found countervailable during the investigation continue to exist and be used.

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[6] *See* Magnum's Substantive Response at 18 – 22.
[7] *Id.* at 22.
[8] *See* SAA, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.
[9] *Id.*
[10] *See, e.g., Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010) and accompanying Issues and Decision Memorandum at Comment 1.
[11] *Id.*

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

Citing to the SAA and *Sunset Policy Bulletin*,[12] Magnum states that the Department will normally select the rates determined in the original investigation as the subsidy rates likely to prevail if the order is revoked and claims that the Department's policy normally is to provide the rate determined in the original regardless of whether the rate was calculated using a company's own information or based on best information available or the facts available.[13] Further, Magnum asserts that because there have been no administrative reviews of the order, the original margin found represents the best evidence of the likely subsidy rates that would be enjoyed by Chinese producers and exporters in the absence of the order.[14]

Department's Position

The Department normally will normally provide the ITC the net countervailable subsidy that was determined in the investigation as the subsidy rate likely to prevail if the order is revoked because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.[15] Section 752(b)(l)(B) of the Act provides, however, that the Department will consider whether any change in the program which gave rise to the net countervailable subsidy determination in the investigation or subsequent reviews has occurred that is likely to affect the net countervailable subsidy. Therefore, although the SAA and House Report provide that the Department normally will select a rate from the investigation, this rate may not be the most appropriate if, for example, the rate was derived (in whole or part) from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.[16]

In this instance, however, the Department has conducted no administrative reviews and no evidence has been provided that would warrant making a change to the net countervailable subsidy rate found for Chinese producers and exporters in the investigation. Therefore, the Department determines that the net countervailable subsidy rate found in the investigation, 109.95 percent *ad valorem*, for Cixi, Polyflex, and all others, is the net countervailable subsidy rate likely to prevail were the order to be revoked.

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[12] *Policies Regarding Conduct of Five Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18 871 (April 16, 1998) ("*Sunset Policy Bulletin*").
[13] *See* Magnum's Substantive Response at 22.
[14] *Id.* at 23.
[15] *See* SAA at 890, and House Report, H.R. Rep. No. 103-826 (1994) ("House Report") at 64.
[16] *See, e.g., Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 6210 l (October 7, 2010) and accompanying Issues and Decision Memorandum at Comment 2.

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidies and whether the subsidies are subsidies as described in Article 3 or Article 6.1 of the WTO ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

The following programs could fall within the definition of an export subsidy under Article 3.1 of the ASCM, as receipt of benefits under these programs may be contingent upon export activity. Moreover, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or if they are subsidies to cover operating losses sustained by an industry or enterprise. Because there is insufficient information on the record to conclusively make this determination, the Department is providing to the ITC a list of programs for which we applied adverse facts available to the non-cooperating respondents in the investigation.

GOC Income Tax Programs

1. Preferential Tax Policies for Foreign Investment Enterprises (FIEs) (Two Free, Three Half Program)
2. Preferential Tax Policies for Export-Oriented FIEs
3. Tax Subsidies to FIEs Based in Specially Designated Geographic Areas
4. Reduced Income Tax Rate For New High-Technology FIEs
5. Reduced Income Tax Rate For Technology And Knowledge Intensive FIEs

GOC Income Tax Credit Program

6. Tax Credits on Domestic Equipment Purchases

GOC Income Tax Refund Program

7. Reinvestment Tax Benefits for FIEs

Provincial and Local Income Tax Programs

8. Anhui Province
9. Zhejiang Province
10. Shanghai Municipality

11. Beijing Municipality

Indirect Tax Programs and Import Tariff Program

12. Value Added Tax (VAT) and Tariff Exemptions on Imported Equipment

13. VAT Refunds on Exports

GOC Loan Program

14. Preferential loan programs and interest rates in Guangdong Province

Grant Programs

15. State Key Technologies Renovation Project Fund

16. GOC Payment of Legal Fees

17. Provincial and Local Direct Grants in Guangdong Province

18. Provincial and Local Direct Grants in Zhejiang Province

19. Provision of Goods for Less than Adequate Remuneration in Zhejiang Province

FINAL RESULTS OF REVIEW

The Department finds that revocation of the Order would be likely to lead to continuation or recurrence of countervailable subsidies at the rates listed below:

Manufacturers/Exporters	Subsidy rates
China Ningbo Cixi Import Export Corporation	109.95% *ad valorem*
Polyflex Magnets Ltd.	109.95% *ad valorem*
All Others	109.95% *ad valorem*

RECOMMENDATION

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

AGREE ✓ ________ DISAGREE________

Ronald K Lorentzen
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Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

December 16, 2013
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Date