C-570-923
Sunset Review 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 Review of the Countervailing Duty Order on Raw Flexible Magnets from the People's Republic of China

I. SUMMARY

In this second sunset review of the countervailing duty (CVD) order covering raw flexible magnets (RFM) from the People's Republic of China (China), Magnum Magnetics 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 described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues that we address in this expedited sunset review:

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Likely to Prevail
3. Nature of the Subsidy

II. BACKGROUND

On September 17, 2008, the Department of Commerce (Commerce) published the *Order* on RFM from China.[1] On February 5, 2019, Commerce initiated the second sunset review of the *Order* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218(c).[2] On February 8, 2019, we received a notice of intent to participate in the sunset

[1] *See Raw Flexible Magnets from the People's Republic of China: Countervailing Duty Order*, 73 FR 53849 (September 17, 2008) (*Order*).
[2] *See Initiation of Five-Year (Sunset) Reviews*, 84 FR 1705 (February 5, 2019).

review from Magnum within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] Magnum, a domestic producer of the subject merchandise, claimed interested party status under section 771(9)(C) of the Act.[4] On March 7, 2019, we received a substantive response from Magnum, in accordance with 19 CFR 351.218(d)(3)(i).[5] We did not receive a response from the Government of China (GOC) or any Chinese producer or exporter of merchandise covered by the *Order*.

In accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C), because Commerce did not receive any substantive response from the GOC, pursuant to 19 CFR 351.218(e)(1)(ii)(B), or from a respondent party, pursuant to 19 CFR 351.218(e)(1)(ii)(C), we deem that the respondent interested parties did not provide an adequate response to the notice of initiation. Therefore, consistent with 19 CFR 351.218(e)(1)(ii)(B)(2) and 19 CFR 351.218(e)(1)(ii)(C)(2), we conducted an expedited sunset review of the *Order* 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 ORDER

The products covered by this order are certain flexible magnets regardless of shape,[6] color, or packaging.[7] Subject flexible magnets are bonded magnets composed (not necessarily exclusively) of (i) any one or combination of various flexible binders (such as polymers or co-polymers, or rubber) and (ii) a magnetic element, which may consist of a ferrite permanent magnet material (commonly, strontium or barium ferrite, or a combination of the two), a metal alloy (such as NdFeB or Alnico), any combination of the foregoing with each other or any other material, or any other material capable of being permanently magnetized. Subject flexible magnets may be in either magnetized or unmagnetized (including demagnetized) condition, and may or may not be fully or partially laminated or fully or partially bonded with paper, plastic, or other material, of any composition and/or color. Subject flexible magnets may be uncoated or may be coated with an adhesive or any other coating or combination of coatings.

Specifically excluded from the scope of this order are printed flexible magnets, defined as flexible magnets (including individual magnets) that are laminated or bonded with paper, plastic, or other material if such paper, plastic, or other material bears printed text and/or images, including but not limited to business cards, calendars, poetry, sports event schedules, business promotions, decorative motifs, and the like. This exclusion does not apply to such printed flexible magnets if the printing concerned consists of only the following: a trade mark or trade name; country of origin; border, stripes, or lines; any printing that is removed in the course of cutting and/or printing magnets for retail sale or other disposition from the flexible magnet; manufacturing or use instructions (*e.g.*, "print this side up," "this side up," "laminate here"); printing on adhesive backing (that is, material to be removed in order to expose adhesive for use

[3] *See* Letter from Magnum, "Notice of Intent to Participate," dated February 8, 2019.
[4] *Id*. at 2.
[5] *See* Letter from Magnum, "Domestic Industry Substantive Response," dated March 7, 2019 (Substantive Response).
[6] The term "shape" includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.
[7] Packaging includes retail or specialty packaging such as digital printer cartridges.

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.[8]

IV. HISTORY OF THE ORDER

On July 10, 2008, Commerce published its final determination that countervailable subsidies are being provided to producers and exporters of RFM from China.[9] Commerce 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 other producers and exporters of RFM based on the application of total adverse facts available (AFA) to the following subsidy programs:

[8] *See Order*, 73 FR at 53850.
[9] *See Final Affirmative Countervailing Duty Determination: Raw Flexible Magnets from the People's Republic of Chin*a, 73 FR 39667 (July 10, 2008) (*RFM Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

Subsidy Rate Chart

No.	Program	Type	AFA Rate
1	Preferential Tax Policies for Foreign-Invested Enterprises (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	Value-added Tax (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 (LTAR) in Zhejiang Province	LTAR	13.36%
	Total AFA Subsidy Rate		**109.95%**

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

On September 17, 2008, Commerce published the *Order* on RFM from China and applied a cash deposit rate of 109.95 percent for Cixi, Polyflex, and "all other" companies.[10]

[10] *See Order*, 73 FR at 53850.

Since the issuance of the *Order*, Commerce has not completed any administrative reviews, or conducted any changed circumstances reviews. On November 13, 2017, Commerce initiated an administrative review for the period January 1, 2016, through December 31, 2016, covering SOM International Limited and Wenzhou Haibao Printing Co., LTD, based on a request by Qwik Picz Photo Booth, LLC (QPP), a U.S. importer of RFM from China.[11] QPP subsequently withdrew its request for a review and the administrative review was rescinded.[12]

Commerce also initiated a new shipper review on April 30, 2010, in response to a request from Jingzhou Meihou Flexible Magnet Company, Ltd. (Jingzhou Meihou).[13] The review was rescinded on August 27, 2010, when Commerce determined that Jingzhou Meihou was not eligible for a new shipper review.[14] Additionally, Commerce has completed over 15 scope rulings of the *Order*.[15]

<u>Sunset Review</u>

Commerce has conducted one sunset review of the *Order*, pursuant to section 751(c) of the Act, and found in the review that revocation of the *Order* would be likely to lead to continuation or recurrence of a countervailable subsidy at the same rates found in the original investigation.[16] In the previous sunset review, the ITC likewise determined, pursuant to section 751(c) of the Act, that revocation of the *Order* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[17] Following the publication of the ITC's determination Commerce published a continuation notice of the *Order*.[18]

V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce conducted this sunset 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, Commerce shall consider: (1) the net countervailable subsidy determined in the investigation and any subsequent reviews, and (2) whether any changes in the programs which

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[11] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 52268 (November 13, 2017).
[12] *See Raw Flexible Magnets from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2016*, 83 FR 5060 (February 5, 2018).
[13] *See Raw Flexible Magnets from the People's Republic of China: Initiation of Countervailing Duty New Shipper Review*, 75 FR 22741 (April 30, 2010).
[14] *See 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).
[15] *See* Substantive Response at 26 – 34, for a summary of scope rulings; *see also* Memorandum, "Antidumping and Countervailing Duty Orders on Raw Flexible Magnets from the People's Republic of China and Taiwan: Final Scope Ruling – Granulated Flexible Magnets," dated March 14, 2019.
[16] *See Raw Flexible Magnets from the People's Republic of China: Final Results of Expedited Sunset Review,* 78 FR 77425 (December 23, 2013), and accompanying IDM; and *RFM Final Determination*.
[17] *See Raw Flexible Magnets from China and Taiwan*, Inv. No. 701-TA-1129-1130 (Review), 79 FR 2623 (January 22, 2014).
[18] *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).

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

Below we address the comments submitted by Magnum.

VI. DISCUSSION OF THE ISSUES

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Magnum's Comments: Magnum argues that subsidization of RFM from China would likely continue or recur if Commerce revoked the *Order* because the subsidies have continued since the *Order* was imposed.[19] Magnum states that no Chinese exporter or producer has requested an administrative review to establish that it ceased receiving countervailable benefits. As such, the entities with actual knowledge of the full extent to which subsidies are bestowed on RFM production and export have failed to submit any evidence to show that the subsidy programs were terminated or that the companies concerned relinquished the benefits.

Magnum also asserts that Commerce continues to find the same programs countervailed in the underlying investigation to be countervailable in CVD proceedings of other products from China. For example, Magnum notes that Commerce countervailed the same tariff and VAT program in *Forged Steel Fittings from China.*[20] Therefore, Magnum argues that the subsidy programs which Commerce found to be countervailable in the RFM investigation still exist, consistent with the subsidy rates for the programs found in the *RFM Final Determination*, which were all above *de minimis*.

Additionally, Magnum argues that the benefit stream of subsidies that were allocated over time continue to exist beyond the period of this sunset review. Magnum states that in the *RFM Final Determination*, Commerce applied AFA for the GOC's provision of inputs for LTAR based on *Woven Sacks from China*, where Commerce allocated the provision of land for LTAR.[21] Magnum asserts that a benefit stream of the same duration should apply to the AFA used in RFM.

[19] *See* Substantive Response at 21 –24.
[20] *Id*. at 22 – 23; *see also Forged Steel Fittings from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 83 FR 50342 (October 5, 2018) (*Forged Steel Fittings from China*), accompanying IDM at 5.
[21] *See RFM Final Determination* IDM at 7; and *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008), and accompanying IDM 14 –18.

Thus, Magnum argues that Commerce should conclude that revocation of the *Order* would result in renewed imports of RFM from China that benefit from countervailable subsidies to the same extent determined in the original investigation.[22]

Commerce's Position: According to the Statement of Administrative Action (SAA), Commerce 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.[23] The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.[24] 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.[25] Where a subsidy program is found to exist, Commerce 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.[26]

As indicated above, Commerce has not completed 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, Commerce 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.

2. Net Countervailable Subsidy Likely to Prevail

Magnum's Comments: Citing to the SAA,[27] Magnum states that Commerce will normally select the rates determined in the original investigation as the subsidy rates likely to prevail if the order is revoked. Magnum also asserts that because there have been no administrative reviews of the *Order*, the original subsidy rates represent the best evidence of the likely subsidy rates that would be enjoyed by Chinese producers and exporters in the absence of the order.[28]

Commerce's Position: Commerce will normally provide to the ITC the net countervailable subsidy rate 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.[29] Section 752(b)(l)(B) of the Act provides, however, that Commerce will consider whether any change

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[22] *See* Substantive Response at 24.
[23] *See* SAA, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.
[24] *Id*.
[25] *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 IDM at Comment 1.
[26] *Id*.
[27] *See* SAA at 890.
[28] *See* Substantive Response at 25.
[29] *See* SAA at 890; and House Report, H.R. Rep. No. 103-826 (1994) (House Report) at 64.

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 Commerce 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.[30]

In this instance, Commerce has completed 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 of RFM in the investigation. Therefore, Commerce determines that the net countervailable subsidy rate found in the investigation, *i.e.*, 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.

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, Commerce is providing the following information to the ITC concerning the nature of the subsidies and whether the subsidies are prohibited subsidies as described in Article 3, or subsidies described in Article 6.1 of the ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000. Magnum did not address this issue in its substantive response.

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, Commerce is providing to the ITC a list of programs for which we applied AFA to the non-cooperating respondents in the investigation.

<u>Income Tax Programs</u>

1. Preferential Tax Policies for 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

[30] *See, e.g.*, *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 62103 (October 7, 2010), and accompanying IDM at Comment 2.

Income Tax Credit Program

6. Tax Credits on Domestic Equipment Purchases

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. VAT and Tariff Exemptions on Imported Equipment
13. VAT Refunds on Exports

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

LTAR Program

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

VII. FINAL RESULTS OF SUNSET REVIEW

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

Manufacturer/Producer/Exporter	Net Countervailable Subsidy *Ad Valorem* Rate
China Ningbo Cixi Import Export Corporation	109.95%
Polyflex Magnets Ltd.	109.95%
All Others	109.95%

VIII. RECOMMENDATION

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

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Agree Disagree

5/31/2019

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Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance