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DEPARTMENT OF COMMERCE

International Trade Administration

(C-570-923)

Raw Flexible Magnets from the People's Republic of China: Notice of Initiation of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: (Insert date of publication in the Federal Register)

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INITIATION OF INVESTIGATION

On September 21, 2007, the Department of Commerce (the Department) received a petition concerning imports of raw flexible magnets from the People's Republic of China (PRC) filed in proper form by Magnum Corporation (petitioner). On September 26 and 27, 2007, the Department issued requests for additional information and clarification of certain areas of the petition involving general issues as well as issues concerning the countervailing duty (CVD) allegations. On September 27, 2007, the petitioner filed a supplement to the petition. See Petition for the Imposition of Antidumping and Countervailing Duties on Raw Flexible Magnets from the People's Republic of China and for the Imposition of Antidumping Duties on Raw Flexible Magnets from Taiwan (September 27, 2007) (Supplement). Based on the Department's requests, on October 1 and 2, 2007, the petitioner filed responses to the Department's requests

for additional information and clarification of the general issues as well as issues related to the CVD petition. See Petition for the Imposition of Antidumping and Countervailing Duties on Raw Flexible Magnets from the People's Republic of China and for the Imposition of Antidumping Duties on Raw Flexible Magnets from Taiwan (October 2, 2007) (General Issues Response 1); see also Petition for the Imposition of Antidumping and Countervailing Duties on Raw Flexible Magnets from the People's Republic of China (October 2, 2007). On October 4, 9, and 10, 2007, the petitioner filed responses to the Department's requests for additional information and clarification of the PRC-specific portions of the petition. See Petition for the Imposition of Antidumping Duties and Countervailing Duties on Raw Flexible Magnets from the People's Republic of China (October 4, 2007) (PRC Response 1), Petition for the Imposition of Antidumping Duties and Countervailing Duties on Raw Flexible Magnets from the People's Republic of China (October 9, 2007) (PRC Response 2), and Petition for the Imposition of Antidumping Duties and Countervailing Duties on Raw Flexible Magnets from the People's Republic of China (October 10, 2007) (PRC Response 3). On October 4 and 10, 2007, the Department requested additional information and clarification of certain areas of the general issues. On October 10 and 11, 2007, the petitioner filed responses to these requests. See Petition for the Imposition of Antidumping and Countervailing Duties on Raw Flexible Magnets from the People's Republic of China and for the Imposition of Antidumping Duties on Raw Flexible Magnets from Taiwan (October 10, 2007) (General Issues Response 2); see also Petition for the Imposition of Antidumping and Countervailing Duties on Raw Flexible Magnets from the People's Republic of China and for the Imposition of Antidumping Duties on Raw Flexible Magnets from Taiwan (October 11, 2007) (General Issues Response 3). On October 9, 2007, Magnet Technology, a U.S. producer of raw flexible magnets, and an importer of raw flexible

magnets from the PRC, submitted a letter challenging the assertion made by the petitioner that it represents more than 50 percent of the domestic production of raw flexible magnets. The petitioner rebutted this challenge to its industry support calculation on October 9, 2007.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that manufacturers, producers, or exporters of raw flexible magnets in the People's Republic of China (the PRC) received countervailable subsidies within the meaning of section 701 of the Act and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in sections 771(9)(C) and (D) of the Act and the petitioner has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department to initiate (see, infra, “Determination of Industry Support for the Petition”).

PERIOD OF INVESTIGATION

The anticipated period of investigation (POI) is calendar year 2006. See 19 CFR 351.204(b)(2).

SCOPE OF INVESTIGATION

The products covered by this investigation are certain flexible magnet sheeting, strips, and profile shapes. Subject flexible magnet sheeting, strips, and profile shapes 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 magnet sheeting, strips, and profile shapes are capable of being permanently magnetized, but may be imported in either magnetized or unmagnetized (including demagnetized) condition. Subject merchandise may be of any color and may or may not be laminated or bonded with paper, plastic or other material, which paper, plastic or other material may be of any composition and/or color. Subject merchandise may be uncoated or may be coated with an adhesive or any other coating or combination of coatings. Subject merchandise is within the scope of this investigation whether it is in rolls, coils, sheets, or pieces, and regardless of physical dimensions or packaging, including specialty packaging such as digital printer cartridges.

Specifically excluded from the scope of this investigation is retail printed flexible magnet sheeting, defined as flexible magnet sheeting (including individual magnets) that is laminated 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 magnet sheeting if the printing concerned consists of only: 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 sheeting; 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 sheeting 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 sheeting to be re-printed); printing on the back (magnetic) side; or any combination of the above.

All products meeting the physical description of the subject merchandise that are not specifically excluded are included in this scope. The products subject to the investigation 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, however, and the written description of the scope of this proceeding is dispositive.

COMMENTS ON SCOPE OF INVESTIGATION

During our review of the petition, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit (CRU), Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

CONSULTATIONS

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of the People's Republic of China (the GOC) for consultations with respect to

the CVD petition. The Department held these consultations in Beijing, China, with representatives of the GOC on September 28, 2007. See the memorandum to the file, entitled, “Consultations with Officials from the Government of People’s Republic of China” (September 28, 2007), a public document on file in the CRU.

DETERMINATION OF INDUSTRY SUPPORT FOR THE PETITION

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they

do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See USEC, Inc. v. United States, 132 F. Supp. 2d 1, 8 (CIT 2001), citing Algoma Steel Corp. Ltd. v. United States, 688 F. Supp. 639, 644 (CIT 1988), aff'd 865 F.2d 240 (Fed. Cir. 1989), cert. denied 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation,” (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that raw flexible magnets constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like-product analysis in these cases, see the Countervailing Duty Investigation Initiation Checklist: Raw Flexible Magnets from the People's Republic of China (PRC) (CVD Initiation Checklist) at Attachment II, on file in the CRU.

Our review of the data provided in the Petition, Supplemental Responses, and other information readily available to the Department indicates that the petitioner has established industry support. Based on information provided in the Petition, we determine that the domestic producers have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers who support the Petition account for at least 25 percent of

the total production of the domestic like product. The Petition did not establish support from domestic producers accounting for more than 50 percent of the total production of the domestic like product, however, and the Department was required to take further action in order to evaluate industry support. See section 702(c)(4)(D) of the Act. In this case, the Department was able to rely on other information, in accordance with section 702(c)(4)(D)(i) of the Act, to determine industry support. See CVD Initiation Checklist at Attachment II. The Department received opposition to the petition from a U.S. producer of the domestic like product, who is also an importer of raw flexible magnets from the PRC. See October 9, 2007, submission by Magnet Technology; see also CVD Initiation Checklist at Attachment II. Based on information provided in the Petition and other submissions, the domestic producers have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. See CVD Initiation Checklist at Attachment II.

The Department finds that the petitioner filed the petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department to initiate. See CVD Initiation Checklist at Attachment II.

INJURY TEST

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the

ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

ALLEGATIONS AND EVIDENCE OF MATERIAL INJURY AND CAUSATION

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise. The petitioner contends that the industry's injured condition is illustrated by reduced market share, lost sales, reduced production, reduced capacity, a lower capacity-utilization rate, fewer shipments, underselling, price depression or suppression, lost revenue, decline in financial performance, reduced employment, and an increase in import penetration. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See CVD Initiation Checklist at Attachment III.

SUBSIDY ALLEGATIONS

Section 702(b) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. The Department has examined the CVD petition on raw flexible magnets from the PRC and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers,

or exporters of raw flexible magnets in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, see CVD Initiation Checklist.

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise:

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. Tax Credits on Domestic Equipment Purchases
5. Reinvestment Tax Benefits for FIEs
6. Reduced Income Tax Rate For New High-Technology FIEs
7. Reduced Income Tax Rate For Technology And Knowledge Intensive 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 Import Duty 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. Key Technologies Renovation Project Fund
16. Hengdian Group Grants
17. GOC Payment of Legal Fees
18. Provincial and Local Direct Grants in Guangdong Province
19. Provincial and Local Direct Grants in Zhejiang Province

Provision of Goods for Less than Adequate Remuneration

20. Provision of Land for Less than Adequate Remuneration for Zhejiang Province, specifically the Ningbo Export Processing Zone

For further information explaining why the Department is investigating these programs, see [CVD Initiation Checklist](#).

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the PRC:

1. Preferential Loan Programs at the National Level

The petitioner alleges that raw flexible magnet producers potentially benefit from preferential loans and interest rates by the GOC. The petitioner states that policy directives described in five-year national-level policy plans and other government documents show that the PRC potentially provides or directs discounts on interest rates and loan guarantees through GOC-owned banks. There is insufficient evidence on the record to support that the GOC has a policy that favors the raw flexible magnet industry or that the magnet industry was a targeted or strategic industry for financing. In addition, the petitioner has not provided any information on whether raw flexible magnet producers received any direct loans. Therefore, we do not plan to

investigate at the national level.

2. Provincial and Local Income Tax Programs in Guangdong Province

The petitioner alleges that Guangdong Province has adopted its own “encouraged industry” list and “industry to be improved” list. The petitioner alleges that the income tax for “productive” FIEs in Guangdong’s special-economic zones is 15 percent, compared to the general rate of 30 percent. The petitioner also cites to Shenzhen City, which is located in Guangdong Province, as having preferential tax programs for FIEs located there. The petitioner failed to demonstrate that Guangdong Province provided preferential income tax programs. Therefore, we do not plan to investigate this program.

3. Provincial and Local Income Tax Programs in Fujian Province

The petitioner alleges that Fujian Province has adopted its own “encouraged industry” list that includes “high-performance magnetic materials.” The petitioner alleges that numerous policy documents state that local governments provide financial assistance to encouraged industries. The petitioner alleges that FIEs have enjoyed a preferential income tax rate of 15 percent for many years. The petitioner failed to demonstrate that Fujian Province provided preferential income tax programs. Therefore, we do not plan to investigate this program.

4. Provincial and Local Income Tax Programs in Jiangsu Province

The petitioner alleges that Jiangsu Province has adopted its own “encouraged industry” list that includes the magnetic materials sector. The petitioner alleges that FIEs have enjoyed a preferential income tax rate of 15 percent for many years. The petitioner failed to demonstrate

that Jiangsu Province provided preferential income tax programs. Therefore, we do not plan to investigate this program.

5. Currency Valuation

The petitioner alleges that the GOC tightly manages the exchange rate for the renminbi (RMB) instead of allowing it to be determined by market forces. According to the petitioner, the manipulation of the exchange rate has resulted in the undervaluation of the RMB in comparison to the U.S. dollar, thereby providing a financial benefit to PRC exporters. The petitioner has not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Therefore, we do not plan to investigate the currency valuation program.

6. Preferential Lifting of Certain Regulatory Obligations and Associated Reduction in Regulatory Compliance Costs

The petitioner alleges that manufacturers of certain types of products can be exempted from a quality inspection carried out by the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), and that magnetic material has been listed as one such product. The petitioner has not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Therefore, we do not plan to investigate this program.

7. Refusals to License Out-of-Province Companies

The petitioner alleges that many Chinese provincial administrations block the entrance of out-of-province firms into their market. Thus, the local protection leads to over supply, artificially reduced costs and the ability to cross-subsidize into export markets. The petitioner

has not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Therefore, we do not plan to investigate this program.

8. Provision of Goods for Less than Adequate Remuneration at the National Level

The petitioner alleges that the GOC sets the prices charged by electricity producers and that this allegedly below-market price is passed through to “special industrial sectors,” within the meaning of 19 CFR 351.523, thereby reducing the producers’ cost of inputs. The petitioner alleges the magnet industry is among the “special industrial sectors” designated by the GOC.

The petitioner has not provided sufficient information demonstrating that producers of raw flexible magnets receive inputs at a reduced cost from the GOC or within the Lin’an Economic Development Zone. In addition, we have not addressed the petitioner’s upstream allegation, as it is not relevant to this type of subsidy allegation.

APPLICATION OF THE COUNTERVAILING DUTY LAW TO THE PRC

The Department has treated the PRC as a non-market economy (NME) country in all past antidumping duty investigations and administrative reviews. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. See e.g., Tapered Roller Bearings and Parts Thereof, Finished and 10 Unfinished, (TRBs) From the People's Republic of China: Preliminary Results of 2001-2002 Administrative Review and Partial Rescission of Review, 68 FR 7500, 7500-1 (February 14, 2003), unchanged in TRBs from the People's Republic of China: Final Results of 2001-2002 Administrative Review, 68 FR 70488, 70488-89 (December 18, 2003).

In the amended preliminary determination in the investigation of coated free sheet paper from the PRC, the Department preliminarily determined that the current nature of the PRC

economy does not create obstacles to applying the necessary criteria in the CVD law. See Coated Free Sheet Paper from the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination, 72 FR 17484, 17486 (April 9, 2007), and Memorandum for David M. Spooner, Assistant Secretary for Import Administration, “Countervailing Duty Investigation of Coated Free Sheet Paper from The People's Republic of China--Whether the Analytic Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy” (March 29, 2007), on file in the CRU. Therefore, because the petitioner has provided sufficient allegations and support of its allegations to meet the statutory criteria for initiating a CVD investigation of raw flexible magnets from the PRC, initiation of a CVD investigation is warranted in this case.

DISTRIBUTION OF COPIES OF THE PETITION

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the GOC. To the extent practicable, we will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

ITC NOTIFICATION

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

PRELIMINARY DETERMINATION BY THE ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of this initiation, whether there is a reasonable indication that imports of subsidized raw flexible magnets from the PRC are materially injuring, or threatening material injury to, a U.S. industry. See section 703(a)(2) of the Act. A negative ITC determination will result in the

investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

David M. Spooner
Assistant Secretary
for Import Administration

(Date)