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Sunset Reviews
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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

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

Summary

We have analyzed the substantive response of a domestic interested party in the first sunset reviews of the antidumping duty orders covering raw flexible magnets (RFM) from the People's Republic of China (PRC) and Taiwan. We recommend that you approve the positions we developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in these sunset reviews for which we received substantive responses:

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

Background

On August 1, 2013, the Department of Commerce (the Department) published the notice of initiation of the sunset reviews of the antidumping duty orders on RFM from the PRC and Taiwan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).¹ The Department received a notice of intent to participate from a domestic interested party, Magnum Magnetics Corporation (domestic interested party), within the deadline specified in 19 CFR 351.218(d)(1)(i).² The domestic interested party claimed interested party status under section

¹ See *Initiation of Five-Year ("Sunset") Reviews*, 78 FR 46575 (August 1, 2013) (*Initiation*).

² See letter of Intent to Participate from the domestic interested party to Acting Secretary Rebecca Blank, entitled "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" {italics removed} dated



771(9)(C) of the Act as a producer of the domestic like product. On September 3, 2013, the Department received an adequate substantive response from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department received no responses from respondent interested parties with respect to the orders covered by these sunset reviews. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department has conducted expedited (120-day) sunset reviews of the antidumping duty orders on RFM from the PRC and Taiwan.

History of the Orders

Taiwan

On July 10, 2008, the Department published its final affirmative determination of sales at less than fair value (LTFV) with respect to imports of RFM from Taiwan.³ The Department found the following *ad valorem* dumping margins:⁴

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

Following the issuance of the Department'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 Taiwan pursuant to section 735(b) of the Act.⁵ Subsequently, the Department published the antidumping duty order on RFM from Taiwan.⁶

Since the issuance of the *Taiwan Antidumping Duty Order*, the Department 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 determinations on RFM from Taiwan.⁷ The order remains in effect for all manufacturers, producers, and exporters of RFM from Taiwan.

People's Republic of China

³ See *Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets From Taiwan*, 73 FR 39673 (July 10, 2008) (*Taiwan LTFV*).

⁴ *Id.*, 73 FR at 39674.

⁵ 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 1 (*ITC Final Determination*).

⁶ See *Antidumping Duty Order: Raw Flexible Magnets from Taiwan*, 73 FR 53848 (September 17, 2008) (*Taiwan Antidumping Duty Order*).

⁷ See Scope Determination section below.

On July 10, 2008, the Department published its final affirmative determination of sales at LTFV with respect to imports of RFM from the PRC.⁸ The Department found the following *ad valorem* dumping margins:⁹

People's Republic of China:	
Guangzhou Newlife Magnet Electricity Co., Ltd.	105.00
PRC-wide entity	185.28

Following the issuance of the Department's final determination, the ITC found that the U.S. industry was threatened with material injured by reason of subject imports from the PRC pursuant to section 735(b) of the Act.¹⁰ Subsequently, the Department published the antidumping duty order on RFM from the PRC.¹¹

Since the issuance of the *PRC Antidumping Duty Order*, the Department has not conducted any administrative reviews of the order. There have not been any new-shipper, changed-circumstances or duty-absorption reviews of the antidumping duty order. There have been several scope determinations on RFM from the PRC.¹² The order remains in effect for all manufacturers, producers, and exporters of RFM from the PRC.

Scope Determinations

The Department issued nine scope determinations since the inception of the orders. For the convenience of the public the Department has published all of the scope determinations for the RFM orders at <http://ia.ita.doc.gov/download/rfm-scope/index.html>. The following six scope determinations are applicable to both the Taiwan and the PRC orders.

On 12/28/2008, the Department issued a scope determination with respect to certain products containing a flexible magnet at the request of Target Corporation.¹³ We found that the "Foam Words and Phrases" magnet and the "Just Married" magnet are within the scope of the orders. We also found that the "Hearts and Bird" magnet and the "Love Wish Frame" magnet are not within the scope of the orders.

⁸ 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) (*PRC LTFV*).

⁹ *Id.*, 73 FR at 39672.

¹⁰ See *ITC Final Determination* at 1.

¹¹ See *Antidumping Duty Order: Raw Flexible Magnets from the People's Republic of China*, 73 FR 53847 (September 17, 2008) (*PRC Antidumping Duty Order*).

¹² See Scope Determination section below.

¹³ See Department memorandum entitled, "Antidumping and Countervailing Duty Orders on Raw Flexible Magnets from the People's Republic of China and Antidumping Duty Order on Raw Flexible Magnets from Taiwan: Final Scope Ruling on Certain Decorative Retail Magnets" dated December 28, 2008 (Target Scope Determination).

On 7/13/2009, the Department issued a scope determination with respect to certain products containing a flexible magnet at the request of Direct Innovations.¹⁴ We found that “Decorative Retail Magnets” are within the scope of the orders.

On 1/10/2011, the Department issued a scope determination with respect to sixty products containing flexible magnets at the request of InterDesign Corp.¹⁵ We found that “round plastic magnets,” “York Magnets,” “Miro Magnets,” “Forma Magnets,” and “Targa Magnets” (hooks and paper towel holders) are not within the scope of the orders.

On 4/15/2011, the Department issued a scope determination with respect to certain products containing a flexible magnet at the request of Smith-Western Co.¹⁶ We found that “certain decorative refrigerator magnets” are not within the scope of the orders.

On 5/10/2011, the Department issued a scope determination with respect to certain products containing a flexible magnet at the request of Jingzhou Meihou Flexible Magnet Company, Ltd, and TyTek Industries, Inc.¹⁷ We found that “meter-wide magnet sheet,” “craft magnets,” and “door gasket extrusion magnet” are within the scope of the orders.

On 8/7/2012, the Department issued a scope determination with respect to certain products containing a flexible magnet at the request of Accoutrements, LLC.¹⁸ We found that the “Mustache Magnet” is not within the scope of the orders.

The Department made three scope determinations which were only applicable to the PRC order:

On 9/2/2009, the Department issued a scope determination with respect to certain products containing a flexible magnet at the request of It’s Academic, Inc.¹⁹ We found that “Magnets

¹⁴ See Department memorandum entitled, “Antidumping and Countervailing Duty Orders on Raw Flexible Magnets from the People’s Republic of China and Antidumping Duty Order on Raw Flexible Magnets from Taiwan: Final Scope Ruling on Certain Decorative Retail Magnets” dated July 13, 2009.

¹⁵ See Department memorandum entitled, “Antidumping and Countervailing Duty Orders on Raw Flexible Magnets from the People’s Republic of China and Antidumping Duty Order on Raw Flexible Magnets from Taiwan: Final Scope Ruling on Certain Retail Hook and Paper Towel Magnets” dated January 10, 2011.

¹⁶ See Department memorandum entitled, “Antidumping (AD) and Countervailing Duty (CVD) Orders on Raw Flexible Magnets (RFM) from the People’s Republic of China (PRC): Final Scope Ruling on Certain Decorative Refrigerator Magnets” dated April 15, 2011.

¹⁷ See Department memorandum entitled, “Antidumping and Countervailing Duty Orders on Raw Flexible Magnets from the People’s Republic of China and Antidumping Duty Order on Raw Flexible Magnets from Taiwan: Scope Ruling on Certain Magnets from Jingzhou Meihou Flexible Magnet Company, Ltd. and TyTek Industries, Inc.” dated May 10, 2011.

¹⁸ See Department memorandum entitled, “Raw Flexible Magnets from the People’s Republic of China and Taiwan: Scope Request from Accoutrements LLC - Final Scope Determination” dated August 7, 2012.

¹⁹ See Department memorandum entitled, “Raw Flexible Magnets from the People’s Republic of China; Scope Request from It’s Academic - Final Scope Determination in Part” dated September 2, 2009.

Attached to Printed Cardboard” and “Magnets Attached to Layered Cardboard-Foam-Cardboard” are not within the scope of the order.

On 3/4/2010, the Department issued a scope determination with respect to certain products containing a flexible magnet at the request of It’s Academic, Inc.²⁰ We found that “Magnets Attached to Injection-Molded PVC” are within the scope of the orders.

On 1/11/2011, the Department issued a scope determination with respect to certain products containing a magnet at the request of Medical Action Industries.²¹ We found that “Magnet with a Mark” and “Magnet with a Grove” are within the scope of the orders. We also found that the “Surgical Instrument Drape” magnet product is not within the scope of the orders.

Scope of the Orders

The products covered by these orders are certain flexible magnets regardless of shape,²² color, or packaging.²³ 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 flexible magnets if the printing concerned consists of only the following: a trade mark or trade name; country of origin; border, stripes, or lines; any printing that is removed in the course of cutting and/or printing magnets for retail sale or other disposition from the flexible magnet; manufacturing or use instructions (*e.g.*, “print this side up,” “this side up,” “lamine here”);

²⁰ See Department memorandum entitled, “Raw Flexible Magnets from the People’s Republic of China; Scope Request from It’s Academic – Result of Inquiry - Final Scope Determination in Part” dated March 4, 2010.

²¹ See Department memorandum entitled, “Raw Flexible Magnets from the People’s Republic of China; Scope Request from Medical Action Industries Inc. - Final Scope Determination” dated January 11, 2011.

²² The term “shape” includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

²³ Packaging includes retail or specialty packaging such as digital printer cartridges.

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.

Discussion of the Issues

Legal Framework

In accordance with section 751(c)(1) of the Act, the Department is conducting these sunset reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigations 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 orders.

As explained in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, the Department 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; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. Alternatively, the Department 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.²⁴ In addition, as a base period for import volume comparison, it is the Department's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew comparison.²⁵

²⁴ See SAA, H.R. Rep. No. 103-316, Vol. 1 (1994), at 889-90.

²⁵ 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 Issues and Decision Memorandum at Comment 1.

Further, section 752(c)(3) of the Act states that the Department shall provide to the International Trade Commission (ITC) the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the margin(s) from the final determination in the original investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.²⁶ However, the Department may use a rate from a more recent review where the dumping margin increased, as this rate 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).²⁷ Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of “zero or *de minimis* shall not by itself require” the Department to determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at less than fair value.

In the *Final Modification for Reviews*, the Department announced that it was modifying 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 World Trade Organization (WTO)-inconsistent.²⁸ The Department also noted that “*only in the most extraordinary circumstances* will the Department rely on margins other than those calculated and published in prior determinations.”²⁹ The Department further noted that it does not anticipate that it will need to recalculate the dumping margins in sunset determinations to avoid WTO inconsistency, apart from the “most extraordinary circumstances” provided for in its regulations.³⁰

Below we address the comments submitted by the domestic interested party.

1. Likelihood of Continuation or Recurrence of Dumping

Interested-Party Comments

The domestic interested party asserts that revocation of the antidumping duty orders would lead to a continuation or recurrence of dumping by producers and exporters of RFM from the PRC and Taiwan.³¹

The domestic interested party argues that because there have been no reviews of the orders, the applicable dumping margins, as established in the investigation, remain above *de minimis*

²⁶ See SAA at 890. 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), and accompanying Issues and Decision Memorandum at Comment 2.

²⁷ See SAA at 890-91.

²⁸ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) (“*Final Modification for Reviews*”).

²⁹ See *id.* (emphasis added).

³⁰ See *id.*

³¹ See Domestic Substantive Response at 31.

levels.³² Thus, the domestic interested party argues that dumping has continued at above *de minimis* levels after the issuance of the order, and therefore revocation of the order would likely lead to continuation or recurrence of dumping.³³

The domestic interested party asserts that U.S. imports of RFM from Taiwan declined to very low levels after the imposition of the *Taiwan Antidumping Duty Order*.³⁴ In the domestic interested party's view, HTSUS 8505.19.10 contains the preponderance of subject imports.³⁵ It argues that imports under HTSUS 8505.19.10 fell from 1.301 million units in 2008 to 1.162 million units in 2009, to 0.539 million units in 2010, and further to 0.253 million units in 2012.³⁶ Thus, the lack of recovery to pre-order levels of imports, in the domestic interested party's view, indicates that imports would resume in the absence of the order.³⁷

The domestic interested party asserts that U.S. imports of RFM from the PRC declined to very low levels after the imposition of the *PRC Antidumping Duty Order*.³⁸ It argues that imports under HTSUS 8505.19.10 fell from 41.6 million units in 2008 to 24.9 million units in 2009, and remained well below pre-order levels in 2012 at 36.5 million units.³⁹ The lack of recovery to pre-order levels of imports, in the domestic interested party's view, indicates that imports would resume in the absence of the order.⁴⁰

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (URAA), specifically the SAA, the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department's determination of likelihood of continuation or recurrence will be made on an order-wide basis for each case.⁴¹ In addition, the Department 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.⁴²

In considering import volumes, pursuant to section 752(c)(1)(B) of the Act, the Department will consider the volume of imports of subject merchandise for the period before and after the

³² See *id.* at 14-16.

³³ See *id.*

³⁴ See *id.* at 16-18.

³⁵ See *id.* at 17-18.

³⁶ See *id.* at 18.

³⁷ See *id.*

³⁸ See *id.* at 17-18.

³⁹ See *id.* at 18.

⁴⁰ See *id.*

⁴¹ See SAA at 879 and House Report at 56.

⁴² See SAA at 889-890, House Report at 63-64, and Senate Report at 52.

issuance of an antidumping order. For both Taiwan and the PRC, 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 ITC Interactive Tariff and Trade DataWeb (DataWeb) import data placed on the record by the domestic interested party.⁴³ We compared the volume of imports for the five years following the issuance of the orders (*i.e.*, 2008 to 2012) to the volume of imports for the year immediately preceding the initiation of the LTFV investigations (*i.e.*, 2006⁴⁴). The Department's determination with respect to each order is explained below.

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.⁴⁵ 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.⁴⁶ With respect to imports from Taiwan, the Department has not completed any administrative reviews of the *Taiwan Antidumping Duty Order* since the issuance of the order, meaning that the rates established in the investigation are still in effect.⁴⁷ 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 Taiwan, the Department finds dumping is likely to continue or recur if the order on RFM from Taiwan was 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.⁴⁸ 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 Duty 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

⁴³ The domestic interested party'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 18, n. 46.

⁴⁴ 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).

⁴⁵ See SAA at 890.

⁴⁶ See *id.*

⁴⁷ 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 from Italy*) (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).

⁴⁸ See SAA at 889.

toward the end of the sunset period.⁴⁹ The total volume of imports under both HTSUS subheadings for 2006 was 3,748,199 units per year.⁵⁰ During the course of the sunset period, total imports under both subheadings fluctuated between 1,210,731 units and 2,570,168, or between 32.30% and 68.57% of the 2006 volume.⁵¹ Thus, imports during 2008-2012 were significantly below pre-order volumes.⁵²

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 8505.19.10.⁵³ By 2012, imports under HTSUS 8505.19.10 accounted for only ten percent of total imports under the two subheadings. Meanwhile, imports under HTSUS 8505.19.20 increased six-fold over the 2006 volume of imports under HTSUS 8505.19.20 (from 379,444 units to 2,316,715 units).⁵⁴ 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.⁵⁵ Combined import volumes under both subheadings were still significantly below pre-order levels, by roughly one-third of the pre-order volume at maximum,⁵⁶ and by roughly two-thirds the pre-order volume at minimum.⁵⁷

As stated above, and given our experience with scope determinations for these orders,⁵⁸ HTSUS subheading 8505.19.20 contains both subject and non-subject merchandise. Therefore, the entire volume under this subheading (*e.g.*, 2,316,715 units in 2012) likely contains both subject and non-subject imports. Thus, the maximum sunset period volume (which includes combined imports under both subheadings) of 68.57% of the 2006 volume is likely higher than the actual volume of subject imports. For these reasons we find that imports during 2008-2012 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.⁵⁹ 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)

⁴⁹ See Domestic Substantive Response at Exhibit 3, included as Attachment 1 of this memorandum for convenience.

⁵⁰ See Attachment 2.

⁵¹ See *id.*

⁵² See, *e.g.*, *SSB from Italy*, 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).

⁵³ See Attachment 2.

⁵⁴ See *id.*

⁵⁵ See Domestic Substantive Response at 18.

⁵⁶ See Attachment 2.

⁵⁷ See *id.*

⁵⁸ See *i.e.*, 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).

⁵⁹ See SAA at 890.

provide a strong indication that, absent the order, dumping would be likely to continue. Therefore, the Department concludes that dumping is likely to continue or recur if the *Taiwan Antidumping Duty Order* were revoked.

The PRC: 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.⁶⁰ 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.⁶¹ With respect to imports from the PRC, the Department has not completed any administrative reviews of the *PRC Antidumping Duty Order* since the issuance of the order, meaning that the rates established in the investigation are still in effect.⁶² 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 the PRC, the Department finds dumping is likely to continue or recur if the order on RFM from the PRC was 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.⁶³ Our review of DataWeb import statistics for RFM from the PRC under HTSUS subheadings 8505.19.10 and 8505.19.20 demonstrates that imports of subject merchandise from the PRC declined since the imposition of the *PRC Antidumping Duty Order* and have not returned to pre-order volumes. DataWeb statistics show that imports of RFM from the PRC under both subheadings declined at the inception of the order, became severely depressed in the two years after the imposition of the order, and increased to somewhat more than half the pre-order level by the end of the sunset period.⁶⁴ 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 55,549,514 units, or 50.82%, and a minimum of 36,187,515 units, or 33.10%, of the 2006 volume respectively.⁶⁵ Thus, imports during 2008-2012 were significantly below pre-order volumes.⁶⁶

The amount of imports under HTSUS subheading 8505.19.10 compared to the amount of all imports for both HTSUS subheadings did not change in the PRC during the sunset period as drastically as it did in Taiwan.⁶⁷ In the PRC, imports under subheading 8505.19.10 were 89% of total imports of the two subheadings in 2006, and fluctuated between 65% and 79% of all imports during the sunset period.⁶⁸ As explained above, and given our experience with scope

⁶⁰ See SAA at 890.

⁶¹ See *id.*

⁶² See *SSB from Italy*, 71 FR 26748.

⁶³ See SAA at 889.

⁶⁴ See Domestic Substantive Response at Exhibit 3.

⁶⁵ *Id.*

⁶⁶ See *SSB from Italy*, 71 FR 26748.

⁶⁷ See Attachment 2.

⁶⁸ *Id.*

determinations for these orders,⁶⁹ HTSUS subheading 8505.19.20 contains both subject and non-subject merchandise. Therefore, the entire volume under this subheading (*e.g.*, 19,075,778 units in 2012) likely contains both subject and non-subject imports. Thus, the maximum sunset period volume (which includes combined imports under both subheadings) of 50.82% of the 2006 volume is likely higher than the actual volume of subject imports. For these reasons we find that imports during 2008-2012 were significantly below pre-order volumes.

Here, the decreased volumes of imports of RFM from the PRC 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.⁷⁰ 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, the Department concludes that dumping is likely to continue or recur if the *PRC Antidumping Duty Order* were revoked.

2. Magnitude of the Margins Likely to Prevail

Interested-Party Comments

According to the domestic interested party, the *Policy Bulletin* and SAA indicate that, when determining the magnitude of dumping margins likely to prevail if an order were revoked normally, the Department is to select a dumping margin from the original investigation.⁷¹ The domestic interested party 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.”⁷² The domestic interested party asserts that the *Policy Bulletin* acknowledges that the SAA reflects appropriate policy and provides the following guidance:

{T}he Department normally will provide the company-specific margin from the investigation for each company regardless of whether the margin was calculated using a company’s own information or based on best information available or facts available.⁷³

⁶⁹ See *i.e.*, 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).

⁷⁰ See SAA at 890.

⁷¹ See Domestic Substantive Response at 22 (citing SAA and *Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 18871 (April 16, 1998) (*Policy Bulletin*)).

⁷² *Id.* (quoting SAA at 890).

⁷³ *Id.* (quoting *Policy Bulletin*, 63 FR at 18875-76).

The domestic interested party argues that given the lack of administrative reviews of the orders, the original antidumping duty investigation rates represent the best evidence of the likely behavior of the PRC and Taiwanese producers and exporters in the absence of the applicable orders.⁷⁴ Thus, the application of the principles set forth in the SAA and *Policy Bulletin* call for the Department to rely on the margins from the original investigations as listed below:

<u>Manufacturers/Producers/Exporters</u>	<u>Weighted-Average Margin (Percent)</u>
People's Republic of China:	
Guangzhou Newlife Magnet Electricity Co., Ltd.	105.00
PRC-wide entity	185.28
Taiwan:	
Kin Fong Magnets Co., Ltd.	38.03
Magruba Flexible Magnets Co., Ltd.	38.03
JASDI Magnet Co., Ltd.	38.03
All others	31.20

Department's Position

Normally, the Department will provide to the ITC the company-specific, weighted-average dumping margins from the investigation for each company.⁷⁵ For companies not individually examined, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a rate based on the all-others rate from the investigation.⁷⁶ However, for the PRC, which the Department considers to be a non-market economy under section 771(18)(A) of the Act, the Department does not have an all-others rate. Thus, in non-market economy cases, instead of an all-others rate, the Department uses separate rates for non-examined respondents as well as a country-wide rate which applies to all exporters that have not established their eligibility for a separate rate.⁷⁷

The Department prefers to select a margin from the investigation because it is the only calculated rate that reflects the behavior of producers or exporters without the discipline of an order or suspension agreement in place.⁷⁸ Under certain circumstances, however, the Department may select a more recent rate to report to the ITC. As explained above, in accordance with the *Final*

⁷⁴ See *id.* at 23.

⁷⁵ See *Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 (Ct. Int'l Trade 1999).

⁷⁶ See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People's Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 70506 (December 5, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

⁷⁷ See *Bristol Metals L.P. et al. v. United States*, 703 F. Supp. 2d 1370, 1378 (Ct. Int'l Trade 2010) (citation omitted); see also *Amanda Foods (Vietnam) Ltd v. United States*, 647 F. Supp. 2d 1368, 1379 (Ct. Int'l Trade 2009) (citation omitted).

⁷⁸ See *Eveready Battery*, 77 F. Supp. 2d at 1333; see also SAA at 890.

Modification for Reviews, the Department will not rely on weighted-average dumping margins that were calculated using the WTO-inconsistent methodology.⁷⁹

In these sunset reviews, the Department has relied upon antidumping duty rates that were not affected by the WTO-inconsistent methodology, *i.e.*, zeroing, because the final antidumping duty rates calculated in the original LTFV investigations were not affected by zeroing. In the PRC, Guangzhou Newlife Magnet Electricity Co., Ltd. received a separate rate that was a simple average of the petition rates as a “reasonable method” pursuant to section 735(c)(5)(B) of the Act, and the PRC-wide entity received the highest petition rate as adverse facts available (AFA), pursuant to section 776(a)(2)(A) of the Act.⁸⁰ 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.⁸¹ Thus, the Department finds it appropriate to report to the ITC the rates from the original investigation, in accordance with our normal practice, as the magnitudes of the margins of dumping likely to prevail because they are WTO-consistent rates that best reflect the behavior of the producers and exporters subject to the orders without the discipline of the orders in place.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on RFM from Taiwan and the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (Percent)
People’s Republic of China:	
Exporters with a separate rate	105.00
Exporters which are part of the country-wide entity	185.28
Taiwan:	
Kin Fong Magnets Co., Ltd.	38.03
Magruba Flexible Magnets Co., Ltd.	38.03
JASDI Magnet Co., Ltd.	38.03
All others	31.20

Recommendation

⁷⁹ See *Final Modification for Reviews*, 77 FR at 8103.

⁸⁰ See *PRC LTFV*, 73 FR at 39671-72. See also *PRC Antidumping Duty Order*, 73 FR at 53849.

⁸¹ See *Taiwan LTFV*, 73 FR at 39674. See also *Taiwan Antidumping Duty Order*, 73 FR at 53848.

Exporters which are part of the country-wide entity	185.28
Taiwan:	
Kin Fong Magnets Co., Ltd.	38.03
Magruba Flexible Magnets Co., Ltd.	38.03
JASDI Magnet Co., Ltd.	38.03
All others	31.20

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 sunset reviews in the *Federal Register*, and notify the ITC of our determination.

AGREE _____

DISAGREE _____

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

December 16, 2013
 Date

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	2012 YTD	2013 YTD	Percent Change
		In Actual Dollars										
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	4,532,367	4,063,578	-10.30%
	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	2,780,686	2,917,876	4.90%
Subtotal - China		15,708,990	18,226,374	18,227,593	14,898,998	10,183,219	14,337,249	14,257,532	15,041,058	7,313,053	6,981,454	-4.50%
Taiwan	85051920	64,886	170,308	176,380	226,843	165,150	718,545	562,498	822,129	415,898	295,855	-28.90%
	85051910	1,734,451	2,135,272	1,601,285	491,519	370,198	466,148	465,431	418,524	229,139	146,823	-35.90%
Subtotal - Taiwan		1,799,337	2,305,580	1,777,665	718,362	535,348	1,184,693	1,027,929	1,240,653	645,037	442,678	-31.40%
China & Taiwan Subtotals	85051920	13,196,830	15,168,370	14,068,174	9,932,104	5,457,661	7,184,588	9,767,544	10,523,350	4,948,265	4,359,433	
	85051910	4,311,497	5,363,584	5,937,084	5,685,256	5,260,906	8,337,354	5,517,917	5,758,361	3,009,825	3,064,699	
Subtotal		17,508,327	20,531,954	20,005,258	15,617,360	10,718,567	15,521,942	15,285,461	16,281,711	7,958,090	7,424,132	
Total		21,455,882	24,959,110	25,087,912	20,344,421	15,744,188	24,506,141	22,086,167	27,597,765	13,334,933	11,977,136	-10.20%

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	2012 YTD	2013 YTD	Percent Change
		In Actual Units of Quantity										
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	21,914,276	16,634,915	-24.10%
	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	11,446,239	4,480,856	-60.90%
Taiwan	85051920	94,142	379,444	281,745	166,353	48,574	1,392,035	1,265,653	2,316,715	1,240,609	1,014,692	-18.20%
	85051910	3,258,159	3,368,755	2,686,827	1,300,553	1,162,157	538,563	606,092	253,453	130,980	137,612	5.10%
Subtotal number		122,588,450	140,405,109	137,580,536	81,838,947	58,814,583	64,319,996	70,649,915	83,897,808	46,370,471	34,093,431	-26.50%

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	2012 YTD	2013 YTD	Percent Change
		In Actual Dollars/Unit of Quantity										
(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	0.207	0.244	18.10%
	85051920	0.408	0.278	0.303	0.389	0.428	0.629	0.514	0.28	0.243	0.651	168.10%
Taiwan	85051920	0.689	0.449	0.626	1.364	3.4	0.516	0.444	0.355	0.335	0.292	-13.00%
	85051910	0.532	0.634	0.596	0.378	0.319	0.866	0.768	1.651	1.749	1.067	-39.00%

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.

Attachment 2

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

			Annual							
Country	HTS Number	Quantity Description	2005	2006	2007	2008	2009	2010	2011	2012
			<i>In Actual Units of Quantity</i>							
China	85051910	number	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	number	6,318,555	11,625,055	14,322,512	13,345,327	11,436,699	12,516,294	9,838,398	19,075,778
		Subtotal	83,127,964	109,312,632	103,223,982	54,949,807	36,391,646	36,187,515	45,813,608	55,549,514
		Percent Change per Year		31.50%	-5.57%	-46.77%	-33.77%	-0.56%	26.60%	21.25%
		% of 2006		100%	94.43%	50.27%	33.29%	33.10%	41.91%	50.82%
		% of total: HTS 85051910		89%	86%	76%	69%	65%	79%	66%
Taiwan	85051910	number	3,258,159	3,368,755	2,686,827	1,300,553	1,162,157	538,563	606,092	253,453
	85051920	number	94,142	379,444	281,745	166,353	48,574	1,392,035	1,265,653	2,316,715
		Subtotal	3,352,301	3,748,199	2,968,572	1,466,906	1,210,731	1,930,598	1,871,745	2,570,168
		Percent Change per Year		11.81%	-20.80%	-50.59%	-17.46%	59.46%	-3.05%	37.31%
		% of 2006		100%	79.20%	39.14%	32.30%	51.51%	49.94%	68.57%
		% of total: HTS 85051910		90%	91%	89%	96%	28%	32%	10%