

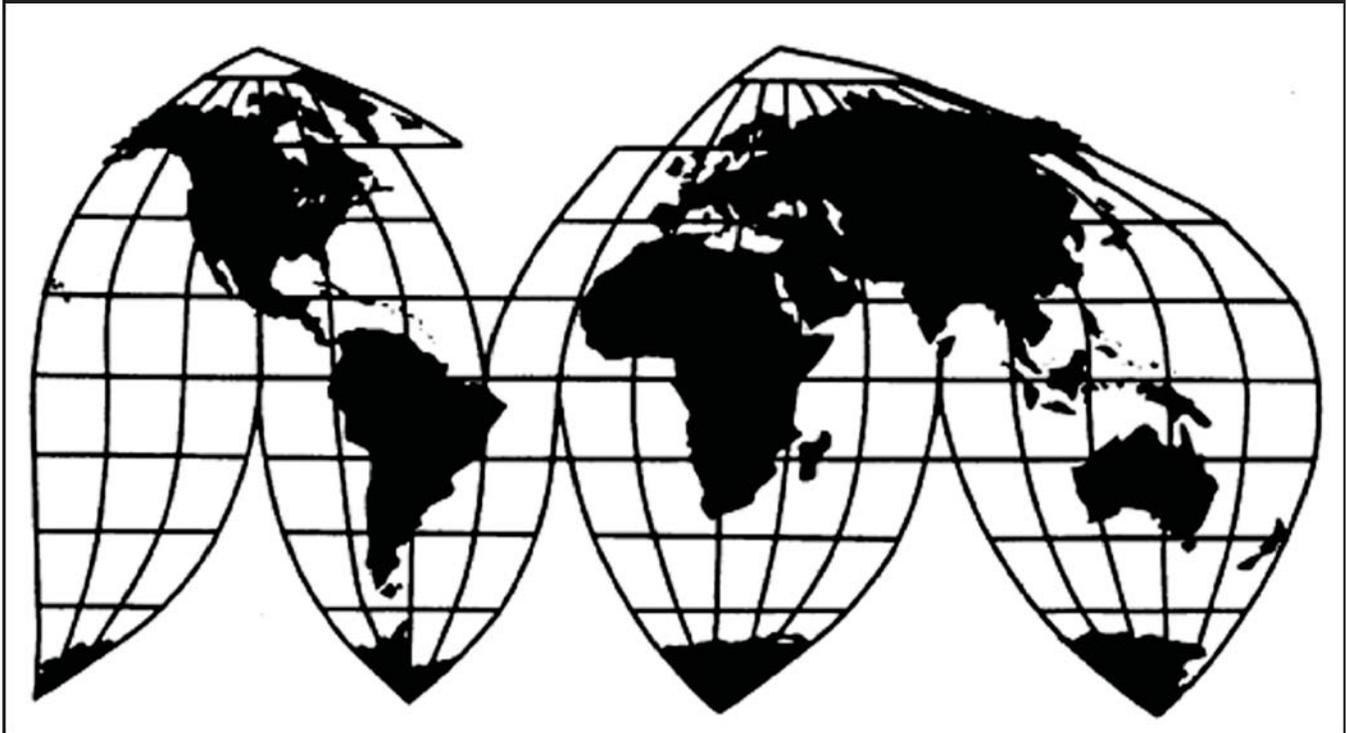
# **Raw Flexible Magnets from China and Taiwan**

Investigation Nos. 701-TA-452 and 731-TA-1129-1130 (Review)

**Publication 4449**

**January 2014**

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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## **UNITED STATES INTERNATIONAL TRADE COMMISSION**

Investigation Nos. 701-TA-452 and 731-TA-1129-1130 (Review)

Raw Flexible Magnets from China and Taiwan

### **DETERMINATION**

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the countervailing duty order on raw flexible magnets from China and the antidumping duty orders on raw flexible magnets from China and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### **BACKGROUND**

The Commission instituted these reviews on August 1, 2013 (78 F.R. 46604) and determined on November 20, 2013 that it would conduct expedited reviews (78 F.R. 73561, December 6, 2013).

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<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).



## Views of the Commission

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Tariff Act”), that revocation of the countervailing duty order on raw flexible magnets from China and the antidumping duty orders on raw flexible magnets from China and Taiwan would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### I. Background

*Original Investigations.* The original investigations of raw flexible magnets from China and Taiwan were instituted in response to a petition that Magnum Magnetics Corp. (“Magnum”) filed on September 21, 2007.<sup>1</sup> In July 2008, the Commission determined that an industry in the United States was threatened with material injury by reason of imports of raw flexible magnets from China that the U.S. Department of Commerce (“Commerce”) found had been subsidized and by reason of imports of raw flexible magnets from China and Taiwan that Commerce found had been sold at less than fair value.<sup>2</sup> Commerce issued antidumping duty and countervailing duty orders on subject imports on September 17, 2008.<sup>3</sup>

*Current Reviews.* The Commission instituted these reviews on August 1, 2013.<sup>4</sup> The Commission received one substantive joint response to the notice of institution from Magnum and \*\*\*, domestic producers of raw flexible magnets.<sup>5</sup> It did not receive a response from any respondent interested party. On November 20, 2013, the Commission found the domestic producers’ response to the notice of institution individually adequate, the domestic interested party group response adequate, and the respondent interested party group responses inadequate.<sup>6</sup> The Commission did not find any circumstances that would warrant conducting full reviews and determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act.<sup>7</sup>

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<sup>1</sup> Confidential Report (“CR”) at I-3, Public Report (“PR”) at I-2.

<sup>2</sup> *Raw Flexible Magnets from China and Taiwan*, Inv. Nos. 701-TA-452, 731-TA-1129, and 731-TA-1130 (Final), USITC Pub. 4030 at 3 (August 2008) (“Original Determinations”).

<sup>3</sup> *Raw Flexible Magnets from China*, 73 Fed. Reg. 53847 (Sept. 17, 2008) (notice of antidumping duty order); *Raw Flexible Magnets from Taiwan*, 73 Fed. Reg. 53848 (Sept. 17, 2008) (notice of antidumping duty order); *Raw Flexible Magnets from China*, 73 Fed. Reg. 53849 (Sept. 17, 2008) (notice of countervailing duty order).

<sup>4</sup> *Raw Flexible Magnets from China and Taiwan*, 78 Fed. Reg. 46604 (Aug. 1, 2013) (institution of five-year reviews).

<sup>5</sup> Substantive Response to the Commission’s Notice of Institution, Sept. 3, 2013 (“Response”).

<sup>6</sup> Summary Voting Sheet, INV-13-114, EDIS Doc. 524276.

<sup>7</sup> See Explanation of Commission Determination on Adequacy (Nov. 29, 2013).

## II. Domestic Like Product and Industry

### A. Domestic Like Product

In making its determination under section 751(c) of the Tariff Act, the Commission defines the “domestic like product” and the “industry.”<sup>8</sup> The Tariff Act defines “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.”<sup>9</sup> The Commission’s practice in five-year reviews is to examine the domestic like product definition from the original investigation and consider whether the record indicates any reason to revisit the prior findings.<sup>10</sup>

Commerce has defined the imported merchandise within the scope of the orders under review as follows:

The products covered by this order are certain flexible magnets regardless of shape, color, or packaging. 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

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<sup>8</sup> 19 U.S.C. § 1677(4)(A).

<sup>9</sup> 19 U.S.C. § 1677(10); see, e.g., *Cleo Inc. v. United States*, 501 F.3d 1291, 1299 (Fed. Cir. 2007); *NEC Corp. v. Department of Commerce*, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); *Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995); *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); *Torrington Co. v. United States*, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991); see also S. Rep. No. 249, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. 90-91 (1979).

<sup>10</sup> See, e.g., *Internal Combustion Industrial Forklift Trucks from Japan*, Inv. No. 731-TA-377 (Second Review), USITC Pub. 3831 at 8-9 (Dec. 2005); *Crawfish Tail Meat from China*, Inv. No. 731-TA-752 (Review), USITC Pub. 3614 at 4 (July 2003); *Steel Concrete Reinforcing Bar from Turkey*, Inv. No. 731-TA-745 (Review), USITC Pub. 3577 at 4 (Feb. 2003).

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 (i.e., “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 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 reprinted); 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.<sup>11</sup>

The scope definition set out above is unchanged from Commerce’s scope definition in the original investigations. Raw flexible magnets are magnets that can be twisted, bent, coiled, or otherwise molded into any shape without loss of magnetic properties.<sup>12</sup> Raw flexible magnet shapes are typically used in the production of commercial goods for purposes such as refrigerator door gaskets, shower doors, and merchandise exhibits.<sup>13</sup> Raw flexible magnets also are manufactured in sheet and strip form for use in the production of refrigerator magnets, magnetic signs and labels, and magnetic business cards used by, among others, real-estate agents for promotional purposes.<sup>14</sup>

Raw flexible magnets are produced by combining a mixture of magnetic ferrite powders with a flexible resin binder.<sup>15</sup> The resulting mixture is then either extruded, coated, or calendared into the required shape and is then finished and prepared for shipment, typically in rolls or coils.<sup>16</sup>

In the original investigations, the Commission found a single domestic like product consisting of raw flexible magnets that was coextensive with the scope of the investigations.<sup>17</sup> There is no new information obtained during these reviews that would suggest any reason to

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<sup>11</sup> *Raw Flexible Magnets from the People’s Republic of China*, 78 Fed. Reg. 77425 (Dec. 23, 2013) (final results of expedited sunset review of the countervailing duty order) and accompanying Issues and Decision Memorandum. Footnotes in the scope definition have been omitted.

<sup>12</sup> CR at I-7, PR at I-6.

<sup>13</sup> CR at I-8-9, PR at I-6-7.

<sup>14</sup> CR at I-8-9, PR at I-7.

<sup>15</sup> CR at I-9, PR at I-7.

<sup>16</sup> CR at I-9, PR at I-7-8.

<sup>17</sup> Original Determinations, USITC Pub. 4030 at 20.

revisit the Commission's domestic like product definition from the original determinations, and the responding domestic producers agree with that definition.<sup>18</sup> Accordingly, we define the domestic like product in accordance with Commerce's scope description as raw flexible magnets.

## **B. Domestic Industry**

Section 771(4)(A) of the Tariff Act defines the relevant industry as the domestic "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."<sup>19</sup> In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.

In its original investigations, the Commission defined a domestic industry consisting of the domestic producers of raw flexible magnets.<sup>20</sup> In these reviews, domestic producers have stated that they agree with the domestic industry definition in the original investigations.<sup>21</sup> There is no information on the record showing that any of the domestic producers imported subject merchandise from China or Taiwan during the review period or that otherwise presents related party issues. Accordingly, in light of the definition of the domestic like product, we define the domestic industry as all U.S. producers of raw flexible magnets.

## **III. Cumulation**

### **A. Legal Standard**

With respect to five-year reviews, section 752(a) of the Tariff Act provides as follows:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.<sup>22</sup>

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<sup>18</sup> See generally CR at I-8-12, PR at I-8-11; Response at 30.

<sup>19</sup> 19 U.S.C. § 1677(4)(A). The definitions in 19 U.S.C. § 1677 are applicable to the entire subtitle containing the antidumping and countervailing duty laws, including 19 U.S.C. §§ 1675 and 1675a. See 19 U.S.C. § 1677.

<sup>20</sup> Original Determinations, USITC Pub. 4030 at 9.

<sup>21</sup> Response at 31; Comments at 4.

<sup>22</sup> 19 U.S.C. § 1675a(a)(7).

Cumulation therefore is discretionary in five-year reviews, unlike original investigations, which are governed by section 771(7)(G)(i) of the Tariff Act.<sup>23</sup> The Commission may exercise its discretion to cumulate, however, only if the reviews are initiated on the same day, the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market, and imports from each such subject country are not likely to have no discernible adverse impact on the domestic industry in the event of revocation. Our focus in five-year reviews is not only on present conditions of competition, but also on likely conditions of competition in the reasonably foreseeable future.

In the original investigations, the Commission cumulated subject imports from China and Taiwan for the purposes of its material injury analysis. The parties did not dispute the appropriateness of cumulation. The Commission found that raw flexible magnets from China and Taiwan were significantly fungible in that they consisted of sheeting, strips, and profile shapes which were manufactured using the same calendaring process.<sup>24</sup> While the Commission observed some differences in channels of distribution between the subject imports and the domestic like product, it found that the record indicated geographic overlap among products from different sources and that subject imports and the domestic like product were simultaneously present in the U.S. market throughout the period of investigation.<sup>25</sup>

The Commission also decided to cumulate subject imports from China and Taiwan for the purposes of its threat analysis. It found that subject imports from China and Taiwan were likely to compete under similar conditions of competition in the U.S. market in the imminent future.<sup>26</sup> It also found that imports from both subject countries were present in the U.S. market throughout the original period of investigation (“POI”), which encompassed January 1, 2005 to March 31, 2008, and were likely to continue to be present in the market in the imminent future. Finally, the Commission found that the industries in both China and Taiwan were export-oriented and that subject imports from China and Taiwan were generally good substitutes.<sup>27</sup>

In these reviews, the statutory threshold for cumulation is satisfied because all reviews were initiated on the same day, August 1, 2013. In addition, we consider the following issues in deciding whether to exercise our discretion to cumulate the subject imports: (1) whether imports from either of the subject countries are precluded from cumulation because they are

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<sup>23</sup> 19 U.S.C. § 1677(7)(G)(i); *see also, e.g., Nucor Corp. v. United States*, 601 F.3d 1291, 1293 (Fed. Cir. 2010) (Commission may reasonably consider likely differing conditions of competition in deciding whether to cumulate subject imports in five-year reviews); *Allegheny Ludlum Corp. v. United States*, 475 F. Supp. 2d 1370, 1378 (Ct. Int’l Trade 2006) (recognizing the wide latitude the Commission has in selecting the types of factors it considers relevant in deciding whether to exercise discretion to cumulate subject imports in five-year reviews); *Nucor Corp. v. United States*, 569 F. Supp. 2d 1328, 1337-38 (Ct. Int’l Trade 2008).

<sup>24</sup> Original Determinations, USITC Pub. 4030 at 11.

<sup>25</sup> Original Determinations, USITC Pub. 4030 at 11-12.

<sup>26</sup> Original Determinations, USITC Pub. 4030 at 12.

<sup>27</sup> Original Determinations, USITC Pub. 4030 at 12.

likely to have no discernible adverse impact on the domestic industry; (2) whether there is a likelihood of a reasonable overlap of competition among subject imports from the subject countries and the domestic like product; and (3) whether subject imports are likely to compete in the U.S. market under different conditions of competition.

## **B. Likelihood of No Discernible Adverse Impact**

The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.<sup>28</sup> Neither the statute nor the Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.<sup>29</sup> With respect to this provision, the Commission generally considers the likely volume of subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked. Our analysis for each of the subject countries takes into account, among other things, the nature of the product and the behavior of subject imports in the original investigations.

Based on the record in these reviews, we do not find that imports from either of the subject countries would likely have no discernible adverse impact on the domestic industry in the event of revocation.

*China.* In the original investigations, the quantity of subject imports from China rose sharply. Subject imports from China were \*\*\* pounds in 2005, \*\*\* pounds in 2006, and \*\*\* pounds in 2007.<sup>30</sup> Shipments of imports from China as a share of apparent U.S. consumption similarly rose, from \*\*\* percent in 2005 to \*\*\* percent in 2006 and \*\*\* percent in 2007.<sup>31</sup> In the original investigations, data from responding Chinese producers showed that their capacity was \*\*\* pounds in 2005, \*\*\* pounds in 2006, and \*\*\* pounds in 2007.<sup>32</sup> Capacity utilization was \*\*\* percent in 2005, \*\*\* percent in 2006, and \*\*\* percent in 2007.<sup>33</sup> Responding Chinese producers exported \*\*\* percent of their raw flexible magnet shipments in 2005, \*\*\* percent in 2006, and \*\*\* percent in 2007.<sup>34</sup>

The record of these reviews contains no empirical data regarding the characteristics of subject imports or their volume over the review period. The relevant HTS subheadings that cover raw flexible magnets also include substantial nonsubject imports, rendering official import statistics an unreliable measure of subject import activity.<sup>35</sup> No respondents responded to the notice of institution, and there are no meaningful public data concerning worldwide

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<sup>28</sup> 19 U.S.C. § 1675a(a)(7).

<sup>29</sup> SAA, H.R. Rep. No. 103-316, vol. I at 887 (1994).

<sup>30</sup> Memorandum INV-FF-088 (“Original CR”) at Table IV-2.

<sup>31</sup> Original CR at Table IV-8.

<sup>32</sup> Original CR at Table VII-2.

<sup>33</sup> Original CR at Table VII-2.

<sup>34</sup> Original CR at Table VII-2.

<sup>35</sup> See CR at I-20 n.42, PR at I-13 n.42 (explaining lack of import data).

trade in raw flexible magnets. Responding domestic producers report very few or no imports of raw flexible magnets from China since the orders were imposed.

Based on the rapid increase in the volume of subject imports from China observed in the original investigations, as well as the Chinese industry's excess capacity and export orientation observed in those investigations, we do not find that subject imports from China would likely have no discernible adverse impact on the domestic industry if the orders were revoked.

*Taiwan.* In the original investigations, the quantity of subject imports from Taiwan was \*\*\* pounds in 2005, \*\*\* pounds in 2006, and \*\*\* pounds in 2007. Shipments of imports from Taiwan as a share of apparent U.S. consumption were \*\*\* percent in 2005, \*\*\* percent in 2006, and \*\*\* percent in 2007.<sup>36</sup> Producers in Taiwan reported \*\*\* pounds of capacity for each year from 2005 to 2007.<sup>37</sup> Capacity utilization was \*\*\* percent in 2005, \*\*\* percent in 2006, and \*\*\* percent in 2007.<sup>38</sup> Producers in Taiwan exported \*\*\* percent of their total shipments in 2005, \*\*\* percent in 2006, and \*\*\* percent in 2007.<sup>39</sup>

As previously discussed, the record in these current reviews does not contain empirical data pertaining to subject import volume or the subject industries for the review period.<sup>40</sup> Responding domestic producers report very few or no imports of raw flexible magnets from Taiwan since the orders were imposed.<sup>41</sup> Based on the volume of subject imports from Taiwan observed in the original investigations, as well as the excess capacity and export orientation of the industry in Taiwan that was observed in those investigations, we do not find that subject imports from Taiwan would likely have no discernible adverse impact on the domestic industry if the orders were revoked.

### **C. Likelihood of a Reasonable Overlap of Competition**

The Commission generally has considered four factors intended to provide a framework for determining whether subject imports compete with each other and with the domestic like product.<sup>42</sup> Only a "reasonable overlap" of competition is required.<sup>43</sup> In five-year reviews, the

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<sup>36</sup> Original CR at Tables IV-2 and IV-8.

<sup>37</sup> Original CR at Table VII-4, as modified by Memorandum INV-FF-088.

<sup>38</sup> Original CR at Table VII-4, as modified by Memorandum INV-FF-088.

<sup>39</sup> Original CR at Table VII-4, as modified by Memorandum INV-FF-088.

<sup>40</sup> See CR at I-20 n.42, PR at I-13 n.42 (explaining lack of import data).

<sup>41</sup> CR at I-20, PR at I-13-14.

<sup>42</sup> The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are as follows: (1) the degree of fungibility between subject imports from different countries and between subject imports and the domestic like product, including consideration of specific customer requirements and other quality-related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and (4) whether subject imports are simultaneously present in the market with one another and the domestic like product. See, e.g., *Wieland Werke, AG v. United States*, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

relevant inquiry is whether there likely would be competition even if none currently exists because the subject imports are absent from the U.S. market.<sup>44</sup>

*Fungibility.* The Commission found in the original investigations that there was significant fungibility among products from different sources.<sup>45</sup> Market participants overwhelmingly described raw flexible magnets, whether produced domestically or from subject sources, as at least sometimes interchangeable, and both the domestic like product and subject imports from China and Taiwan were produced using the same calendaring process.<sup>46</sup> There is no information in these reviews to warrant a different finding.

*Channels of Distribution.* In the original investigations, the Commission observed that a substantial portion of the sales of both the domestic like product and subject imports was to the same type of end user, printers.<sup>47</sup> In these reviews, the domestic producers indicate that they continue to sell raw flexible magnets to OEMs and printers.<sup>48</sup> There are no new data on the record suggesting the subject imports would not participate in these channels of distribution, as they did during the original investigations, if the orders were revoked.<sup>49</sup>

*Geographic Overlap.* In the original investigations, all domestic producers and 17 of 30 responding importers reported selling nationwide.<sup>50</sup> The Commission found there was geographic overlap among products from different sources in the regions of the country where subject imports were sold.<sup>51</sup> In these reviews, domestic producers indicate that major U.S. purchasers of the domestic like product are located in several different regions.<sup>52</sup> There are no new data on the record suggesting that the geographic distribution of the subject imports would not be similar to that in the original investigations if the orders were revoked.

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(...Continued)

<sup>43</sup> See *Mukand Ltd. v. United States*, 937 F. Supp. 910, 916 (Ct. Int'l Trade 1996); *Wieland Werke*, 718 F. Supp. at 52 ("Completely overlapping markets are not required."); *United States Steel Group v. United States*, 873 F. Supp. 673, 685 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996). We note, however, that there have been investigations where the Commission has found an insufficient overlap in competition and has declined to cumulate subject imports. See, e.g., *Live Cattle from Canada and Mexico*, Inv. Nos. 701-TA-386 and 731-TA-812-13 (Preliminary), USITC Pub. 3155 at 15 (Feb. 1999), *aff'd sub nom, Ranchers-Cattlemen Action Legal Foundation v. United States*, 74 F. Supp. 2d 1353 (Ct. Int'l Trade 1999); *Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan*, Inv. Nos. 731-TA-761-62 (Final), USITC Pub. 3098 at 13-15 (Apr. 1998).

<sup>44</sup> See generally, *Cheflene Corp. v. United States*, 219 F. Supp. 2d 1313, 1314 (Ct. Int'l Trade 2002).

<sup>45</sup> Original Determinations, USITC Pub. 4030 at 10-11.

<sup>46</sup> Original Determinations, USITC Pub. 4030 at 11.

<sup>47</sup> Original Determinations, USITC Pub. 4030 at 11. The largest share of U.S. producers' shipments went to original equipment manufacturers ("OEMs") and the second largest share went to printers. The majority of shipments of subject imports from China went to printers, and the second largest share went to OEMs. The majority of shipments of subject imports from Taiwan went to printers. *Id.*

<sup>48</sup> See Response at 13.

<sup>49</sup> Cf. CR at I-15, PR at I-10.

<sup>50</sup> Original Determinations, USITC Pub. 4030 at 11.

<sup>51</sup> Original Determinations, USITC Pub. 4030 at 11.

<sup>52</sup> Response at 28.

*Simultaneous Presence in Market.* In the original investigations, the Commission found that subject imports and the domestic like product were present in the U.S. market throughout the POI.<sup>53</sup> In these reviews, domestic producers indicate that they have continued to participate in the U.S. market throughout the period of review.<sup>54</sup> As previously stated, there are no new empirical data on the record in these reviews concerning the presence of subject imports since the imposition of the orders. Domestic producers posit that subject imports have likely entered the United States in small quantities during the review period.<sup>55</sup> Thus, there is no record information suggesting the subject imports would not have a simultaneous presence in the market, as they did during the original investigations, if the orders were revoked.

*Conclusion.* The record of these expedited reviews contains very limited information, and no empirical data, concerning subject imports from China or Taiwan in the U.S. market or changes in the foreign industries since the imposition of the orders. By the same token, there is nothing in the record that indicates that, upon revocation, imports from either subject country would have different characteristics, distribution patterns, or geographic presence than they did during the original POI. In light of this, and the absence of any contrary argument, we find a likely reasonable overlap of competition between and among subject imports from each subject country and the domestic like product if the orders under review were revoked.

#### **D. Likely Conditions of Competition**

In determining whether to exercise our discretion to cumulate the subject imports, we assess whether subject imports from China and Taiwan likely would compete under similar or different conditions in the U.S. market if the orders were revoked.

The record of the original investigations, which constitutes the available information for these reviews concerning the subject industries, shows that the industries in both countries were export-oriented and participated in the U.S. market.<sup>56</sup> The record in these reviews does not indicate that there would likely be any significant difference in the conditions of competition between subject imports from China and Taiwan if the orders were revoked.<sup>57</sup> Accordingly, we exercise our discretion to cumulate subject imports from China and Taiwan.

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<sup>53</sup> Original Determinations, USITC Pub. 4030 at 11.

<sup>54</sup> See Response at 16.

<sup>55</sup> See CR at I-20, PR at I-14.

<sup>56</sup> Original Determinations, USITC Pub. 4030 at 12.

<sup>57</sup> Commissioner Pinkert explains his analysis of other considerations as follows. Where, in a five-year review, he does not find that imports of the subject merchandise would be likely to have no discernible adverse impact on the domestic industry in the event of revocation, and finds that such imports would be likely to compete with each other and with the domestic like product in the U.S. market, he cumulates them unless there is a condition or propensity – not merely a trend – that is likely to persist for a reasonably foreseeable time and that significantly limits competition such that cumulation is not warranted. He finds that there is no evidence on this record of a condition or propensity warranting non-cumulation with respect to imports from the subject countries. Consequently, he has cumulated those imports.

## IV. Revocation of the Antidumping and Countervailing Duty Orders Would Likely Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time

### A. Legal Standards

In a five-year review conducted under section 751(c) of the Tariff Act, Commerce will revoke an antidumping or countervailing duty order unless: (1) it makes a determination that dumping or subsidization is likely to continue or recur and (2) the Commission makes a determination that revocation of the antidumping or countervailing duty order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>58</sup> The SAA states that “under the likelihood standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”<sup>59</sup> Thus, the likelihood standard is prospective in nature.<sup>60</sup> The U.S. Court of International Trade has found that “likely,” as used in the five-year review provisions of the Act, means “probable,” and the Commission applies that standard in five-year reviews.<sup>61</sup>

The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”<sup>62</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but

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<sup>58</sup> 19 U.S.C. § 1675a(a).

<sup>59</sup> SAA at 883-84. The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed.” *Id.* at 883.

<sup>60</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued {sic} prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

<sup>61</sup> See *NMB Singapore Ltd. v. United States*, 288 F. Supp. 2d 1306, 1352 (Ct. Int’l Trade 2003) (“‘likely’ means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)”), *aff’d mem.*, 140 Fed. Appx. 268 (Fed. Cir. 2005); *Nippon Steel Corp. v. United States*, 26 CIT 1416, 1419 (2002) (same); *Usinor Industeel, S.A. v. United States*, 26 CIT 1402, 1404 nn.3, 6 (2002) (“more likely than not” standard is “consistent with the court’s opinion;” “the court has not interpreted ‘likely’ to imply any particular degree of ‘certainty’”); *Indorama Chemicals (Thailand) Ltd. v. United States*, 26 CIT 1059, 1070 (2002) (“standard is based on a likelihood of continuation or recurrence of injury, not a certainty”); *Usinor v. United States*, 26 CIT 767, 794 (2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

<sup>62</sup> 19 U.S.C. § 1675a(a)(5).

normally will exceed the ‘imminent’ timeframe applicable in a threat of injury analysis in original investigations.”<sup>63</sup>

Although the standard in a five-year review is not the same as the standard applied in an original investigation, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the orders are revoked or the suspended investigation is terminated.”<sup>64</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the orders are revoked or a suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).<sup>65</sup> The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination.<sup>66</sup>

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked and/or a suspended investigation is terminated, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>67</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>68</sup>

In evaluating the likely price effects of subject imports if the orders under review are revoked and/or a suspended investigation is terminated, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to the domestic like product and whether the subject imports are likely to enter the

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<sup>63</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

<sup>64</sup> 19 U.S.C. § 1675a(a)(1).

<sup>65</sup> 19 U.S.C. § 1675a(a)(1). Commerce has not made any duty absorption findings with respect to the orders currently under review. CR at I-4, PR at I-3.

<sup>66</sup> 19 U.S.C. § 1675a(a)(5). Although the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>67</sup> 19 U.S.C. § 1675a(a)(2).

<sup>68</sup> 19 U.S.C. § 1675a(a)(2)(A-D).

United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.<sup>69</sup>

In evaluating the likely impact of imports of subject merchandise if the orders under review are revoked and/or a suspended investigation is terminated, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to the following: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>70</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry. As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the orders under review and whether the industry is vulnerable to material injury upon revocation.<sup>71</sup>

No respondent interested party participated in these expedited reviews. The record, therefore, contains limited new information with respect to the raw flexible magnet industries in China and Taiwan. There also is limited information on the raw flexible magnet market in the United States during the period of review. Accordingly, for our determination, we rely as appropriate on the facts available from the original investigations and data submitted in the response to the notice of institution.

## **B. Conditions of Competition and the Business Cycle**

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>72</sup> The following conditions of competition inform our determinations.

**Demand Conditions.** In the original investigations, the Commission found that demand for raw flexible magnets was closely linked to the demand for end-use products, such as promotional materials, magnetic signs, and refrigerators, into which they are incorporated as

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<sup>69</sup> See 19 U.S.C. § 1675a(a)(3). The SAA states that “{c}onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>70</sup> 19 U.S.C. § 1675a(a)(4).

<sup>71</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

<sup>72</sup> 19 U.S.C. § 1675a(a)(4).

gaskets.<sup>73</sup> Thus, demand for raw flexible magnets tends to track changes in the U.S. economy, particularly the real estate market.<sup>74</sup> The Commission found that the largest share of U.S. producers' shipments went to OEMs and that the second largest share went to printers.<sup>75</sup> The Commission found that apparent U.S. consumption of raw flexible magnets declined during the POI.<sup>76</sup>

The record in these reviews contains no usable data to calculate apparent U.S. consumption because, as stated earlier, meaningful import data are unavailable.<sup>77</sup> The limited information on the record indicates that the conditions of competition pertaining to demand have not changed significantly since the original investigations. The domestic producers report that demand for raw flexible magnets is still driven largely by demand for end-use products and by the real estate market. They further report that demand has declined since the beginning of the original POI and has not yet fully recovered from the effects of the recession in late 2008 and 2009.<sup>78</sup>

**Supply Conditions.** In the original investigations, the Commission found that U.S. producers were the dominant suppliers of raw flexible magnets in the U.S. market, but that their market share declined over the POI.<sup>79</sup> Virtually all of the market not supplied by the domestic industry was supplied by subject imports, which gained an increasing share of the U.S. merchant market and the total U.S. market during the POI.<sup>80</sup> Nonsubject imports supplied minimal amounts of raw flexible magnets during the POI.<sup>81</sup>

In these reviews, the record suggests that the imposition of antidumping duty and countervailing duty orders resulted in subject imports declining to very low levels in the U.S. market.<sup>82</sup> Responding producers reported that they produced \*\*\* pounds of raw flexible magnets in 2012.<sup>83</sup> Nonsubject imports are present in the U.S. market, but because the record does not contain usable import data, the quantity of nonsubject imports cannot be ascertained. Domestic producers report that nonsubject imports from Vietnam are increasing in the U.S. market.<sup>84</sup>

**Substitutability.** The Commission found in the original investigations that the domestic like product and subject imports were generally substitutable and therefore price played an

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<sup>73</sup> Original Determinations, USITC Pub. 4030 at 15. In the original investigations, the Commission found that the conditions for application of the statutory captive production provision were satisfied. The statutory provision regarding captive production does not apply in 5 year reviews.

<sup>74</sup> Original Determinations, USITC Pub. 4030 at 15.

<sup>75</sup> Original Determinations, USITC Pub. 4030 at 16.

<sup>76</sup> Original Determinations, USITC Pub. 4030 at 15.

<sup>77</sup> See CR at I-20 n.42, PR at I-13 n.42.

<sup>78</sup> Comments at 9.

<sup>79</sup> Original Determinations, USITC Pub. 4030 at 17.

<sup>80</sup> Original Determinations, USITC Pub. 4030 at 17.

<sup>81</sup> Original Determinations, USITC Pub. 4030 at 17.

<sup>82</sup> Response at 16.

<sup>83</sup> CR/PR at Table I-2.

<sup>84</sup> Comments at 9.

important role in purchasing decisions.<sup>85</sup> Purchasers reported that price was a “very important” factor in purchasing decisions, and price was listed after only quality as the most important factor in such decisions.<sup>86</sup>

In these reviews, there is no new information on the record to suggest that the substitutability of raw flexible magnets has changed since the original investigations. The domestic producers assert that price continues to play an important role in purchasing decisions.<sup>87</sup> Accordingly, we again find that the domestic like product and subject raw flexible magnets are generally substitutable and that price continues to be an important factor in purchasing decisions.

### C. Likely Volume of Subject Imports

**Original Investigations.** In the original investigations, the Commission found that cumulated subject imports increased sharply during the period of investigation even while apparent U.S. consumption, particularly in the merchant market, declined.<sup>88</sup> Consequently, subject imports increased their market share at a greater rate than their increase in volume. The Commission found that the increase in subject imports was significant, both on an absolute basis and relative to consumption.<sup>89</sup>

In its analysis of threat of material injury, the Commission found that substantially increased imports of the subject merchandise were imminent. Cumulated subject imports had grown rapidly on both an absolute and relative basis during the POI. Moreover, the subject producers had substantial unused capacity, and the projected unused capacity of the reporting subject producers indicated that they had the potential ability to increase shipments to the United States far in excess of the levels observed during the POI.<sup>90</sup> The Commission further found that the subject producers were highly export-oriented and that their exports to the United States increased at a \*\*\* rate during the POI than their exports to any other markets or their home market shipments.<sup>91</sup> Finally, the Commission observed that U.S. importers had increased their inventories of subject imports. The Commission concluded that subject imports,

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<sup>85</sup> Original Determinations, USITC Pub. 4030 at 17. Purchasers reported that subject imports from China were comparable to the domestic like product with respect to seven non-price factors and that the domestically produced product was superior with respect to six factors. Subject imports from Taiwan were reported comparable to the domestic like product with respect to five non-price factors, and the domestically produced product was reported superior with respect to seven factors. *Id.*

<sup>86</sup> Original Determinations, USITC Pub. 4030 at 17.

<sup>87</sup> Comments at 9.

<sup>88</sup> Original Determinations, USITC Pub. 4030 at 20. Cumulated subject imports increased from \*\*\* pounds in 2005 to \*\*\* pounds in 2006 and \*\*\* pounds in 2007. *Id.*

<sup>89</sup> Original Determinations, USITC Pub. 4030 at 20.

<sup>90</sup> Original Determinations, USITC Pub. 4030 at 21.

<sup>91</sup> Original Determinations, USITC Pub. 4030 at 21.

which were significant during the POI, were likely to increase substantially in the imminent future.<sup>92</sup>

**Current Reviews.** The information available in these reviews suggests that subject imports have declined to low levels in the U.S. market since the imposition of the orders. The record does not contain any current data specific to raw flexible magnet production or capacity in China or Taiwan because subject producers declined to participate or furnish information in these reviews.<sup>93</sup> There is evidence, however, that subject producers have demonstrated continued interest in exporting to the United States by making solicitations to potential U.S. customers.<sup>94</sup> There is no indication in the record that subject producers' capacity and production have declined appreciably since the original investigations.

We therefore find that, in light of their historically large production and capacity and their export orientation, the raw flexible magnet industries in China and Taiwan have the ability to increase exports of subject merchandise to the United States upon revocation, as they did during the original investigations.<sup>95</sup> Moreover, we find that they have the incentive to increase exports to the United States significantly upon revocation in light of their prior and current interest in supplying the U.S. market.

In light of these factors, we find that the subject producers are likely, absent the restraining effects of the orders, to direct significant volumes of raw flexible magnets to the U.S. market, as they did during the original investigations. We find that the likely volume of subject imports, both in absolute terms and relative to consumption in the United States, would be significant if the orders were revoked.

#### **D. Likely Price Effects**

**Original Investigations.** In the original investigations, the Commission found that subject imports significantly undersold the domestic like product during the POI. Cumulated subject imports undersold the domestic product in 72 out of 101 quarterly pricing comparisons.<sup>96</sup> The margins of underselling averaged 19.2 percent.<sup>97</sup> However, because prices for the domestic like product generally increased during the POI while prices for subject imports followed no clear price trend, the Commission concluded that subject imports did not have significant price-depressing effects.<sup>98</sup> While there was some indication of price suppression

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<sup>92</sup> Original Determinations, USITC Pub. 4030 at 21.

<sup>93</sup> For the same reason, the record does not contain current information about existing inventories of the subject merchandise or any likely increase in such inventories. The Commission did not rely on product shifting as a basis for its threat analysis in the original investigations. See Original Determinations, USITC Pub. 4030 at 21-22.

<sup>94</sup> Response at 23.

<sup>95</sup> There are no antidumping or countervailing duty orders on subject imports in effect in any third countries.

<sup>96</sup> Original Determinations, USITC Pub. 4030 at 22.

<sup>97</sup> Original Determinations, USITC Pub. 4030 at 22.

<sup>98</sup> Original Determinations, USITC Pub. 4030 at 23.

during the POI, the Commission stated it could not find that subject imports had significant price-suppressing effects.<sup>99</sup>

In its analysis of threat of material injury, the Commission found that several changes in the domestic industry's cost structure were likely to occur and, as a result, increasing volumes of low-priced subject imports would likely negatively affect prices in the imminent future.<sup>100</sup> Specifically, the Commission found that the domestic industry had faced fairly stable costs on a per unit basis in 2007, but that this stable cost environment was unlikely to continue due to an increase in per unit raw materials costs.<sup>101</sup> After observing that underselling at high margins was likely to continue in the imminent future, the Commission found it unlikely that the domestic industry would be able to raise prices commensurately with cost increases that were observed during the latter portion of the POI. The Commission thus concluded that subject imports would likely continue their significant underselling and would likely have significant price-suppressing effects on the domestic like product in the imminent future.<sup>102</sup>

**Current Reviews.** There is no new product-specific pricing information on the record of these expedited reviews. Given the substitutable nature of raw flexible magnets, we find that price continues to be an important factor in purchasing decisions. In light of the underselling at high margins that occurred during the original POI, if the antidumping and countervailing duty orders were revoked, subject imports from China and Taiwan would likely undersell the domestic like product at high margins as they did during the original investigations. This in turn would likely cause the domestic producers to cut prices or restrain price increases to avoid losing sales.

Accordingly, given the likely significant volume of subject imports, we conclude that significant underselling of the domestic like product by subject imports to gain market share is likely and that the significant volume of low-priced subject imports would likely have significant depressing or suppressing effects on the price of the domestic like product if the antidumping and countervailing duty orders were revoked.

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<sup>99</sup> Original Determinations, USITC Pub. 4030 at 23. Specifically, when the presence of subject imports increased, the ratio of cost of goods sold ("COGS") to net sales in the merchant market declined, which did not suggest price suppression. *Id.*

<sup>100</sup> Original Determinations, USITC Pub. 4030 at 23.

<sup>101</sup> Original Determinations, USITC Pub. 4030 at 23-24.

<sup>102</sup> Original Determinations, USITC Pub. 4030 at 24.

## E. Likely Impact<sup>103</sup>

**Original Investigations.** In its original investigations, the Commission found mixed results regarding the domestic industry's profitability.<sup>104</sup> Capacity increased during the POI, but output declined.<sup>105</sup> Production initially increased, but then declined toward the end of the POI.<sup>106</sup> Capacity utilization, commercial shipments, and inventories declined throughout the POI.<sup>107</sup> Employment-related indicators were also mixed, with the number of workers increasing and then declining during the POI. Hourly wages and productivity were higher at the end of the POI than at the beginning.<sup>108</sup> Finally, the domestic industry's financial performance fluctuated during the POI. The Commission concluded that it could not find evidence of material injury because the domestic industry's operating margins and operating income increased in 2007, when subject import volume and market share also increased.<sup>109</sup>

In its analysis of threat of material injury, the Commission found that the imminent threat of increased volume, underselling, and price suppression by subject imports would accelerate the adverse trends the domestic industry experienced in the latter portion of the POI.<sup>110</sup> Specifically, the Commission found that production, shipments, market share, capacity utilization, and employment levels would be negatively impacted.<sup>111</sup> The Commission found it likely that in the presence of increased subject imports, the domestic industry would not be able to recover the increased costs that were predicted for the future, resulting in increased

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<sup>103</sup> Under the statute, "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv); *see also* SAA at 887.

Commerce expedited its antidumping duty review determinations and found that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the following margins: 185.28 percent as the China-wide rate, 105.00 percent as the China separate rate, 38.03 percent for the individually investigated exporters and producers in Taiwan, and 31.20 percent as the Taiwan all others rate. *Raw Flexible Magnets from the People's Republic of China and Taiwan*, 78 Fed. Reg. 77424 (listing each individually investigated exporter and/or producer). Commerce also expedited its countervailing duty review determination and found that revocation of the order would likely lead to continuation or recurrence of a countervailable subsidy at the following rates: 109.95 percent ad valorem for individually investigated producer/exporters and 109.95 percent as the all others rate. *Raw Flexible Magnets from the People's Republic of China*, 78 Fed. Reg. 77425 (listing each individually investigated exporter and/or producer).

<sup>104</sup> Original Determinations, USITC Pub. 4030 at 25-26.

<sup>105</sup> Original Determinations, USITC Pub. 4030 at 25.

<sup>106</sup> Original Determinations, USITC Pub. 4030 at 25.

<sup>107</sup> Original Determinations, USITC Pub. 4030 at 25.

<sup>108</sup> Original Determinations, USITC Pub. 4030 at 26.

<sup>109</sup> Original Determinations, USITC Pub. 4030 at 26.

<sup>110</sup> Original Determinations, USITC Pub. 4030 at 27.

<sup>111</sup> Original Determinations, USITC Pub. 4030 at 27.

losses and overall deterioration in the financial performance of the domestic industry as a whole.<sup>112</sup> The Commission thus concluded that the domestic industry was threatened with material injury by reason of subject imports from China and Taiwan.<sup>113</sup>

**Current Reviews.** Because these are expedited reviews, we have only limited information with respect to the domestic industry's financial performance.<sup>114</sup> The information available concerning the domestic industry's condition in these reviews consists of the data that the domestic producers provided in response to the notice of institution. The limited record is insufficient for us to make a finding on whether the domestic industry is vulnerable to the continuation or recurrence of material injury in the event of revocation of the orders.<sup>115</sup>

In 2012, the capacity of the reporting U.S. raw flexible magnet producers was \*\*\* pounds, production was \*\*\* pounds, and capacity utilization was \*\*\* percent.<sup>116</sup> U.S. shipments were \*\*\* pounds, and domestic producers reported an \*\*\* of \*\*\* from sales of \*\*\*, resulting in an \*\*\* of \*\*\* percent in 2012.<sup>117</sup>

Based on the information on the record, we find that should the order be revoked, the likely significant volume and adverse price effects of the subject imports would likely have a significant adverse impact on the production, shipments, sales, market share, and revenues of the domestic industry. These declines would likely have a direct adverse impact on the domestic industry's profitability.

In our analysis, we typically examine known factors other than subject imports which may cause injury so as not to attribute likely injury caused by these factors to the subject imports. In these reviews, however, there are no factors other than the subject imports that are known to be a likely cause of material injury.

Accordingly, we conclude that, if the orders were revoked, subject imports would likely have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

## **V. Conclusion**

For the above reasons, we determine that revocation of the antidumping and countervailing duty orders on raw flexible magnets from China and Taiwan would likely lead to

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<sup>112</sup> Original Determinations, USITC Pub. 4030 at 27.

<sup>113</sup> Original Determinations, USITC Pub. 4030 at 27.

<sup>114</sup> In the original investigations, the record contained data from seven responding domestic producers, whereas in these expedited reviews the record contains data from two responding domestic producers.

<sup>115</sup> Based on the record of this review, Commissioner Pinkert finds that the domestic industry is not vulnerable to the continuation or recurrence of material injury in the event of revocation of the orders. The domestic producers that responded to the Commission's notice of institution, which accounted for \*\*\* percent of industry production in 2012, reported an \*\*\* of \*\*\* percent. CR/PR at Tables I-1 and I-2. In addition, those firms had an \*\*\* in 2012 that \*\*\* the domestic industry's \*\*\* in any year during the period of the original investigation.

<sup>116</sup> CR/PR at Table I-2.

<sup>117</sup> CR/PR at Table I-2.

continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.



# INFORMATION OBTAINED IN THE REVIEW

## INTRODUCTION

### Background

Effective August 1, 2013, the U.S. International Trade Commission (“Commission” or “USITC”) gave notice, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”),<sup>1</sup> that it had instituted a review to determine whether revocation of the countervailing duty order on raw flexible magnets from China and the antidumping duty orders on raw flexible magnets from China and Taiwan would likely lead to the continuation or recurrence of material injury to a domestic industry.<sup>2 3</sup> On November 20, 2013, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.<sup>4</sup> The following tabulation presents information relating to the background and schedule of this proceeding:

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<sup>1</sup> 19 U.S.C. 1675(c).

<sup>2</sup> *Raw Flexible Magnets From China and Taiwan; Institution of a Five-Year Reviews*, 78 FR 46604, August 1, 2013. All interested parties were requested to respond to this notice by submitting the information requested by the Commission.

<sup>3</sup> In accordance with section 751(c) of the Act, the U.S. Department of Commerce (“Commerce”) published a notice of initiation of five-year reviews of the subject countervailing and antidumping duty orders concurrently with the Commission’s notice of institution. *Initiation of Five-Year (“Sunset”) Review*, 78 FR 46575, August 1, 2013.

<sup>4</sup> *Raw Flexible Magnets from China and Taiwan; Scheduling of Expedited Five-Year Reviews Concerning the Countervailing Duty Order on Raw Flexible Magnets from China and the Antidumping Duty Orders on Raw Flexible Magnets from China and Taiwan*, 78 FR 73561, December 6, 2013. The Commission received one joint submission in response to its notice of institution in the subject review. It was filed on behalf of Magnum Magnetics Corporation (“Magnum”) and \*\*\*, U.S. producers of the domestic like product. U.S. producers are believed to account for \*\*\* percent of production of the domestic like product in 2012. The Commission did not receive any responses from producers in China or Taiwan or U.S. importers of the subject merchandise. The Commission determined that the domestic interested party group response to its notice of institution was adequate and that the respondent interested party group response was inadequate. In the absence of respondent interested party responses and any other circumstances that would warrant the conduct of full reviews, the Commission determined to conduct expedited reviews.

Effective date	Action
September 17, 2008	Commerce's antidumping duty order on raw flexible magnets from China (73 FR 53847, September 17, 2008) <a href="http://www.gpo.gov/fdsys/pkg/FR-2008-09-17/pdf/E8-21717.pdf">http://www.gpo.gov/fdsys/pkg/FR-2008-09-17/pdf/E8-21717.pdf</a> Commerce's antidumping duty order on raw flexible magnets from Taiwan (73 FR 53848, September 17, 2008) <a href="http://www.gpo.gov/fdsys/pkg/FR-2008-09-17/pdf/E8-21718.pdf">http://www.gpo.gov/fdsys/pkg/FR-2008-09-17/pdf/E8-21718.pdf</a> Commerce's countervailing duty order on raw flexible magnets from China (73 FR 53849, September 17, 2008) <a href="http://www.gpo.gov/fdsys/pkg/FR-2008-09-17/pdf/E8-21719.pdf">http://www.gpo.gov/fdsys/pkg/FR-2008-09-17/pdf/E8-21719.pdf</a>
August 1, 2013	Commission's institution of first five-year reviews (78 FR 46604, August 1, 2013) <a href="http://www.gpo.gov/fdsys/pkg/FR-2013-08-01/pdf/2013-18107.pdf">http://www.gpo.gov/fdsys/pkg/FR-2013-08-01/pdf/2013-18107.pdf</a>
August 1, 2013	Commerce's initiation of first five-year reviews (78 FR 46575, August 1, 2013) <a href="http://www.gpo.gov/fdsys/pkg/FR-2013-08-01/pdf/2013-18554.pdf">http://www.gpo.gov/fdsys/pkg/FR-2013-08-01/pdf/2013-18554.pdf</a>
November 20, 2013	Commission's determination to conduct an expedited five-year review (78 FR 73561, December 6, 2013) <a href="http://www.gpo.gov/fdsys/pkg/FR-2013-12-06/pdf/2013-29182.pdf">http://www.gpo.gov/fdsys/pkg/FR-2013-12-06/pdf/2013-29182.pdf</a> The press release announcing the Commission's determination concerning adequacy and the conduct of an expedited review can be found at <a href="http://www.usitc.gov/press_room/news_release/2013/er1120112.htm">http://www.usitc.gov/press_room/news_release/2013/er1120112.htm</a> A summary of the Commission's votes concerning the adequacy and the conduct of an expedited review can be found at <a href="http://iapps2.usitc.gov/sunset/caseProfSuppAttmnt/download/11588">http://iapps2.usitc.gov/sunset/caseProfSuppAttmnt/download/11588</a> . The Commission's explanation of its determination can be found at <a href="http://iapps2.usitc.gov/sunset/caseProfSuppAttmnt/download/11591">http://iapps2.usitc.gov/sunset/caseProfSuppAttmnt/download/11591</a> .
December 23, 2013	Commerce's final result of expedited five-year review of the countervailing duty order on imports from China <a href="http://www.gpo.gov/fdsys/pkg/FR-2013-12-23/pdf/2013-30329.pdf">http://www.gpo.gov/fdsys/pkg/FR-2013-12-23/pdf/2013-30329.pdf</a> Commerce's final result of expedited five-year review of the antidumping duty orders on imports from China and Taiwan <a href="http://www.gpo.gov/fdsys/pkg/FR-2013-12-23/pdf/2013-30511.pdf">http://www.gpo.gov/fdsys/pkg/FR-2013-12-23/pdf/2013-30511.pdf</a>
January 6, 2014	Commission's vote
January 15, 2014	Commission's determination

### The original investigations

The original investigation resulted from a petition filed on September 21, 2007, by Magnum Magnetics Copr. ("Magnum") alleging that an industry in the United States was materially injured and threatened with material injury by reason of subsidized imports of raw flexible magnets from China and less-than-fair-value ("LTFV") imports of raw flexible magnets from China and Taiwan. On July 10, 2008, Commerce determined that countervailable subsidies were being provided to producers and exporters of raw flexible magnets from China.<sup>5</sup> Commerce also determined on the same date that imports of raw flexible magnets from China

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<sup>5</sup> *Raw Flexible Magnets from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 39667, July 10, 2008.

and Taiwan were being sold at LTFV.<sup>6</sup> On August 25, 2008, the Commission issued its determination that an industry in the United States was threatened with material injury by reason of subsidized imports from China of raw flexible magnets. The Commission further determined that an industry in the United States was threatened with material injury by reason of LTFV imports of raw flexible magnets from China and Taiwan.<sup>7</sup> On September 17, 2008, Commerce issued a countervailing duty order on raw flexible magnets from China,<sup>8</sup> and antidumping duty orders on raw flexible magnets from China and Taiwan.<sup>9 10</sup>

### Commerce's reviews

Commerce has initiated and rescinded one new shipper review of the countervailing duty order on imports from China and rescinded one new shipper review of the antidumping duty order on imports from China.<sup>11</sup> Commerce has not conducted any administrative reviews, nor issued any duty absorption findings, and has not conducted changed circumstances reviews or scope inquiry reviews with respect to raw flexible magnets from China or Taiwan.

Commerce's results of its expedited sunset reviews of the subject countervailing duty order and antidumping duty orders were approved on December 16, 2013. Commerce determined that revocation of the countervailing duty order on imports from China would likely lead to continuation or recurrence of countervailable subsidy rate of 109.95 percent.<sup>12</sup> Commerce determined that revocation of the antidumping duty order on imports from China would likely lead to continuation or recurrence of dumping margins of 105.00-185.28 percent<sup>13</sup>

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<sup>6</sup> *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 and *Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets From Taiwan*, 73 FR 39673, July 10, 2008.

<sup>7</sup> *Raw Flexible Magnets From China and Taiwan: Determinations*, 73 FR 51317, September 2, 2008.

<sup>8</sup> *Raw Flexible Magnets from the People's Republic of China: Countervailing Duty Order*, 73 FR 53849, September 17, 2008.

<sup>9</sup> *Antidumping Duty Order: Raw Flexible Magnets from the People's Republic of China*, 73 FR 53847, September 17, 2008.

<sup>10</sup> *Antidumping Duty Order: Raw Flexible Magnets from Taiwan*, 73 FR 53848, September 17, 2008.

<sup>11</sup> *Raw Flexible Magnets From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 75 FR 22740, April 30, 2010, *Raw Flexible Magnets From the People's Republic of China: Initiation of Countervailing Duty New Shipper Review*, 75 FR 22741, April 30, 2010, *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, and *Raw Flexible Magnets From the People's Republic of China: Rescission of New Shipper Review*, 75 FR 61425, October 5, 2010.

<sup>12</sup> *Raw Flexible Magnets from the People's Republic of China: Final Results of Expedited Sunset Review*, 78 FR 77425, December 23, 2013.

<sup>13</sup> *Raw Flexible Magnets from the People's Republic of China and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 78 FR 77423, December 23, 2013.

and that revocation of the antidumping duty order on imports from Taiwan would likely lead to continuation or recurrence of dumping margins of 31.20-38.03 percent.<sup>14</sup>

## THE PRODUCT

### Commerce's scope

In its countervailing duty and antidumping duty orders, Commerce defined the subject merchandise as:

The products covered by this order are certain flexible magnets regardless of shape,<sup>15</sup> color, or packaging.<sup>16</sup> Subject flexible magnets are bonded magnets composed (not necessarily exclusively) of (i) any one or combination of various flexible binders (such as polymers or 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

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<sup>14</sup> *Raw Flexible Magnets from the People's Republic of China and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 78 FR 77423, December 23, 2013.

<sup>15</sup> The term "shape" includes, but is not limited to profiles, which are flexible magnets with a nonrectangular cross-section.

<sup>16</sup> Packaging includes retail or specialty packaging such as digital printer cartridges.

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 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.<sup>17</sup>

### **U.S. tariff treatment**

The raw flexible magnets products that are the subject of these reviews are currently imported under the following Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings: 8505.19.10 (flexible magnets) and 8505.19.20 (composite goods containing flexible magnets) at a general rate of duty of 4.9 percent *ad valorem*.

### **Domestic like product and domestic industry**

In the final phase of the original investigations, the Commission defined a single domestic like product, coextensive with the scope of the investigation.<sup>18</sup> The Commission also defined the domestic industry as consisting of all producers of raw flexible magnets and did not exclude any domestic producer as a related party.<sup>19</sup>

In its notice of institution for this review, the Commission solicited comments from interested parties regarding the appropriate domestic like product and domestic industry. In the domestic interested parties’ response to the Commission’s notice of institution, it indicated that it agrees with the Commission’s definition of the domestic like product and domestic industry that were adopted in the original investigation.<sup>20</sup> No further comment on the domestic like product or domestic industry has been filed with the Commission in this proceeding.

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<sup>17</sup> *Raw Flexible Magnets from the People’s Republic of China: Countervailing Duty Order*, 73 FR 53849, September 17, 2008, *Antidumping Duty Order: Raw Flexible Magnets from the People’s Republic of China*, 73 FR 53847, September 17, 2008. *Antidumping Duty Order: Raw Flexible Magnets from Taiwan*, 73 FR 53848, September 17, 2008.

<sup>18</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008, p. 7.

<sup>19</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008, p. 9.

<sup>20</sup> Domestic interested parties’ Substantive Response To The Notice Of Institution, September 3, 2013, p. 31.

## Description and uses<sup>21</sup>

Flexible magnets are permanent magnets that can be twisted, bent, slit, punched, coiled, and otherwise molded into any shape without loss of magnetic properties. Raw flexible magnets consist of sheet (or sheeting), strip, and thermoplastic profile shapes, typically of uniform thickness and surface finish. Figure I-1 presents a depiction of various types of sheet, strip, and profile shape flexible magnets produced by Magnum.

**Figure I-1**

### **Raw flexible magnets: Product forms**



Source: *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008, figure I-1.

Magnetic sheet is characterized as “(s)heets of material that are highly flexible and have permanent magnetic properties.” Sheet, which is generally (but not exclusively) produced by the calendaring process described below, is the widest form of raw flexible magnet, typically available in widths up to approximately 24 inches. Flexible magnetic strips are dimensionally narrower than sheet. According to testimony at the staff conference, “(s)trips may be produced by cutting sheets into much narrower products, or they may be made by extruding the materials to its final dimension. Thicker strips typically are extruded.” Finally, profile shapes are flexible magnets that are not square or rectangular in cross section. Thermoplastic profile shapes are manufactured exclusively by the extrusion method.

In general, flexible magnets are used in a number of applications such as refrigerator door gaskets; magnetic car and safety signs; direct mail promotional items; magnetic business cards; advertising signs; calendars; nameplates; and toys and games. The key physical

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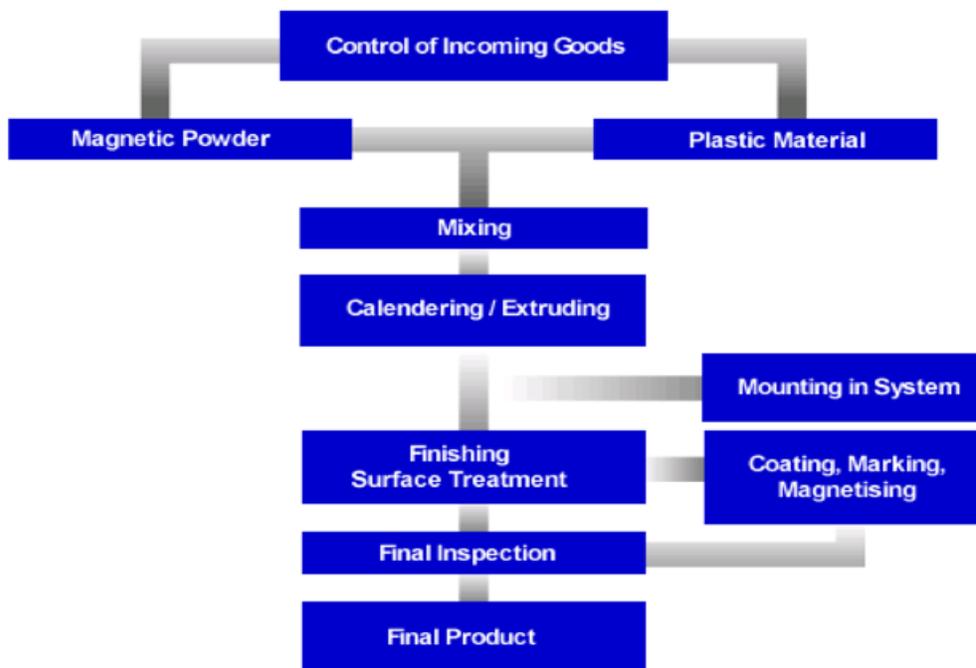
<sup>21</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008.

characteristics and similarities among all flexible magnets include magnetism, thinness, flexibility, lightness of weight, and ease of cutting. Raw flexible magnet profile shapes are used in the production of commercial products such as refrigerator doors, shower doors, and merchandise exhibits. Raw flexible magnetic sheet and strip are typically used to produce refrigerator magnets, magnetic business cards such as used by real-estate agents in promotional applications, and label holders for metal shelving.

### Production process<sup>22</sup>

Raw flexible magnets are manufactured by consolidating a mixture (in either granular or slurry form) of magnetic ferrite powders such as strontium or barium with a flexible resin binder (polymer), then transferring the mixture to one of several varieties of forming processes (namely calendaring, coating, or extrusion). The product - in sheet form, narrower strip form, or as a profile shape - is finished and prepared for shipment, typically in rolls or coils (Figure I-2).

**Figure I-2**  
**Raw flexible magnets: Manufacturing process**



Source: *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008, figure I-2.

<sup>22</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, Staff Report, INV-FF-087, June 30, 2008, pp. I-11-14.

In the calendaring process, the magnetic particulate (a mixture of ferrite metals and resins) is fed through a calender, where it is pressed between two large rotating steel rolls to create magnetic sheets or strip of uniform thickness and surface finish. In the extrusion process, the magnetic particulate is forced through a shaped die to create rectangular or square sheets, strips, or other profile shapes. In the coating process the magnetic material is coated onto a carrier material such as paper, using a slot die or similar coating method. These materials are then cut, scored, slit, or die-cut into many different sizes. Some types of flexible magnet sheeting are laminated with paper or plastic (typically white, but can be any color), or are coated with an adhesive (in most cases a pre-printed or decorated laminate) or other material. A minority of flexible magnets is shipped in rolls or coils, but the manufacturer cuts most magnetic sheeting into various sized (widths and lengths) sheets to be shipped in stacks to the customer or distributor.

In the original investigations, Magnum reported that slitting might add approximately \*\*\* percent value to the product by a converter, however, Magnum typically charged customers \*\*\* for most of its slitting. Likewise, although Magnum typically charged \*\*\* for cutting operations, whereas converters might add \*\*\* percent of the value in their cutting operations. For extrusions and small pieces of sheeting, cutting is done on a punch press and can add \*\*\* percent in value. Likewise, scoring can add \*\*\* percent of the value if the score is down the length of the web, as with slitting; or it can add \*\*\* percent of the value if must be done across the width of the magnet with a punch press (as with cutting), depending on the distance between "scores." Die cutting may add \*\*\* percent of the value, depending on the method used and the size of the piece: a punch press with a steel-rule die or by creating "score" lines within a die cut piece. According to Magnum, in some cases, one or more of the steps can be combined for a single product, resulting in cumulated added values from each step. Slitting, cutting, and scoring, for example, can be combined resulting in cumulated added values. Die-cutting, meanwhile, is typically not combined with any other type of converting.

According to Magnum, in describing its value-added operations, most laminating is done by the flexible magnet manufacturer or printer, not by a converter. A converter's laminating operations would generally be limited to 60-mil 3" wide extrusions, and most commonly would involve adding an adhesive backing to the magnet, resulting in added value of approximately \*\*\* percent. Laminating is only performed on a small range of products by converters but is performed by Magnum on its products.

Raw flexible magnets can be magnetized by either the producer at various stages of the manufacturing process or by the customer, depending on the particular customer's material handling needs. There are no particular handling precautions that have to be taken with flexible magnets since they are relatively weak magnetically, are not brittle, and can be used up to temperatures of \*\*\* degrees centigrade or more.

### **Interchangeability and customer and producer perceptions**

In its original investigation, the Commission observed that "the predominant forms of raw flexible magnets, sheet and strip, could be produced through either a calendaring or extrusion process. Raw flexible magnets of the same type produced using different processes were generally interchangeable. Raw flexible magnets used in commercial applications such as

refrigerator gaskets, however, were generally not interchangeable with raw flexible magnets used for printed applications.”<sup>23</sup> The Commission reaffirmed what it noted in its preliminary determinations, namely “that raw flexible magnets, regardless of their shape or production process, are part of a continuum with no clear dividing lines. There are limitations in interchangeability among various types of raw flexible magnets, notably between the products produced for gaskets and those produced for refrigerator magnets, but a lack of complete interchangeability among types of products comprising a continuum is not unexpected.”<sup>24</sup> The Commission remarked when addressing cumulation that “{a} majority of each type of market participant reported that subject imports from China and the domestic like product were at least frequently interchangeable. A majority of U.S. producers and purchasers reported that subject imports from Taiwan and the domestic like product were at least frequently interchangeable; all importers reported that subject imports from Taiwan and the domestic like product were at least sometimes interchangeable. A majority of U.S. producers and purchasers reported that subject imports from China and Taiwan were at least frequently interchangeable; all importers reported that subject imports from China and Taiwan were at least sometimes interchangeable.”<sup>25</sup> The Commission noted that “the record indicates significant fungibility among products from different sources” and that “{m}arket participants overwhelmingly find raw flexible magnets from different sources to be at least sometimes interchangeable.” The Commission observed that the “domestic like product, subject imports from China, and subject imports from Taiwan are each primarily produced through the calendaring process and sold in the form of sheeting.”<sup>26</sup> The Commission continued “{w}hile there are some differences in channels of distribution between the subject imports, on the one hand, and the domestic like product, on the other, a substantial proportion of the domestic like product and a majority of imports from each subject source are sold to the same type of customer: printers.” The Commission also stated that the “record also indicates geographic overlap among products from different sources” and that the “domestic like product, subject imports from China, and subject imports from Taiwan were simultaneously present in the U.S. market throughout the period of investigation.” Accordingly, the Commission concluded that “there is a reasonable overlap of competition between the domestic like product and subject imports from China and Taiwan, and between the subject imports from China and Taiwan” and consequently cumulated

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<sup>23</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008, p. 6.

<sup>24</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008, p. 6.

<sup>25</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008, pp. 10-11.

<sup>26</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008, p. 11.

subject imports from China and Taiwan for its analysis of material injury by reason of subject imports.<sup>27</sup>

### **Channels of distribution**

In the original investigations, the majority of shipments by both U.S. producers and U.S. importers of raw flexible magnets from China and Taiwan were to end users (i.e., printers and OEMs) rather than distributors or retailers. For U.S. producers, during 2005-2007 and January-March 2008, sales to printers accounted for 35.3-38.5 percent of U.S. shipments and sales to OEMs accounted for 40.0-45.3 percent of U.S. shipments.<sup>28</sup> For China subject importers, sales to printers accounted for \*\*\* percent of U.S. shipments and sales to OEMs accounted for \*\*\* percent of U.S. shipments.<sup>29</sup> For Taiwan subject importers, sales to printers accounted for \*\*\* percent of U.S. shipments \*\*\*.<sup>30</sup> In their response to the notice of institution, domestic interested parties noted that demand from printers has shifted increasingly in the direction of thinner magnetic sheeting, which has reduced the volumes of product needed to meet their requirements.<sup>31</sup>

### **Pricing and related information**

In the original investigation, the Commission collected price data for six products. A total of 101 quarterly net weighted-average U.S. f.o.b. selling price comparisons were possible between the domestic and imported Chinese raw flexible magnets and imported Taiwan raw flexible magnets shipped to U.S. customers during 2005-March 2008. In total, products imported from China undersold the U.S.-produced product in 24 of 37 possible quarterly comparisons and products imported from Taiwan undersold the U.S.-produced product in 48 of 64 possible quarterly comparisons.<sup>32</sup>

Since raw flexible magnets are a raw material product with many end-use applications, including promotional magnets, magnetic signs, trade show displays, custom parts, office supplies, refrigerator gaskets, and schedules, the overall demand for raw flexible magnets is

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<sup>27</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008, pp. 11-12.

<sup>28</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, Staff Report, INV-FF-087, June 30, 2008, table II-1.

<sup>29</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, Staff Report, INV-FF-087, June 30, 2008, table II-1.

<sup>30</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, Staff Report, INV-FF-087, June 30, 2008, table II-1.

<sup>31</sup> Domestic interested parties' Substantive Response To The Notice Of Institution, September 3, 2013, p. 14.

<sup>32</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008, table V-8.

closely linked to the demand for those end-use products.<sup>33</sup> Demand for raw flexible magnets tends to fluctuate from period to period. In the original investigations, Magnum reported there was seasonality in its sales of raw flexible magnets: 40 percent of its sales occur in the first six months of the year (with a spike in March attributed to sales of baseball schedules) and 60 percent of their sales occur in the last half of the year (attributed to advertisement budget cycles and the issuance of new calendars).<sup>34</sup> Furthermore, when parties were asked during the hearing to discuss any anticipated changes in future demand, the petitioner reported that demand will follow the course of the economy in general. One importer reported that the magnet industry is a maturing industry, but it has not yet matured, and demand will continue to grow.<sup>35</sup>

Raw materials account for the largest share of the cost of producing raw flexible magnets. During January 2005-March 2008, raw materials costs accounted for slightly more than one-half of the cost of goods sold. The primary raw material used in the production of raw flexible magnets in the United States is primarily manufactured ferrite powders combined with polymer binders.<sup>36</sup>

## THE INDUSTRY IN THE UNITED STATES

### U.S. producers

In the original investigation, the Commission issued questionnaires to the six firms that participated in the preliminary phase of these investigations and to two additional firms identified as producers of photo pockets by other firms in the industry. The Commission received questionnaire responses with usable data from \*\*\* firms, believed to account for more than 95 percent of the U.S. production of raw flexible magnets during January 2005-March 2008. Magnum, the petitioner in the original investigation, accounted for \*\*\* percent of reported U.S. production of the domestic like product in 2007 and \*\*\* accounted for \*\*\* percent.<sup>37</sup>

In its substantive response to the Commission's notice of institution, Magnum identified six known and currently operating raw flexible magnets producers. Table I-1 lists the domestic interested parties (believed to account for \*\*\* percent of production of the domestic like

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<sup>33</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008, II-4.

<sup>34</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008, II-5.

<sup>35</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008, II-6.

<sup>36</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008, V-1.

<sup>37</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, Staff Report, INV-FF-087, June 30, 2008, table III-1.

product in 2012), and share of reported production of raw flexible magnets in 2012. Neither Magnum nor \*\*\* directly imports the subject merchandise from China or Taiwan, and neither is known to have any affiliation with subject Chinese or Taiwan producers of raw flexible magnets.<sup>38</sup>

**Table I-1**

**Raw flexible magnets: U.S. producers' responding to the notice of institution shares of 2007 and 2012 reported U.S. production**

\* \* \* \* \*

In the domestic interested parties' substantive response to the Commission's notice of institution, six firms were identified as current producers of raw flexible magnets in the United States: (1) Magnum, (2) The Electrodyne Company, (3) Flexmag Industries, Inc., (4) ILPEA Industries ("ILPEA"), (5) Magnecote, and (6) Magnet Technology. In their response to the Commission's notice of institution, the domestic interested parties indicated that they agree with the Commission's definition of the domestic like product and domestic industry that were adopted in the original investigation.<sup>39</sup> Furthermore, the domestic interested parties reported that they are not aware of other currently operating U.S. producers that are related parties.<sup>40</sup>

**U.S. producers' trade and financial data**

The Commission requested domestic interested parties to provide trade and financial data in their response to the notice of institution of the five-year reviews of the subject orders. Table I-2 presents the data reported by responding U.S. producers from both the original investigation (2005-07) and the response to the notice of institution (2012). The table presents data provided by \*\*\* firms for the period 2005-07, and presents data for 2012 for Magnum and \*\*\* combined.

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<sup>38</sup> Domestic interested parties' Substantive Response To The Notice Of Institution, September 3, 2013, p. 9 and Domestic interested parties' Response to the Commission's Cure Letter, p. 3.

<sup>39</sup> Domestic interested parties' Substantive Response To The Notice Of Institution, September 3, 2013, p. 31.

<sup>40</sup> Domestic interested parties' Substantive Response To The Notice Of Institution, September 3, 2013, p. 12, fn 20.

**Table I-2**  
**Raw flexible magnets: U.S. producers' trade and financial data, 2005-07 and 2012**

Item	2005	2006	2007	2012
Capacity (1,000 pounds)	131,003	153,196	154,696	***
Production (1,000 pounds)	87,527	88,385	75,007	***
Capacity utilization (percent)	66.8	57.7	48.5	***
U.S. shipments				
Quantity (1,000 pounds)	81,765	83,637	70,401	***
Value (\$1,000)	87,351	89,235	79,217	***
Unit value (dollars per short ton)	\$1.07	\$1.07	\$1.13	***
Net sales value (\$1,000 dollars)	93,670	96,738	85,819	***
Cost of goods sold (COGS) (\$1,000)	76,522	78,008	67,995	***
Gross profit or (loss) (\$1,000)	17,148	18,730	17,823	***
SG&A (\$1,000)	16,629	15,111	13,354	***
Operating income or (loss) (\$1,000)	519	3,619	4,470	***
COGS/sales (percent)	81.7	80.6	79.2	***
Operating income or (loss)/sales (percent)	0.6	3.7	5.2	***

Source: *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008, table C-1 and Domestic interested parties' Substantive Response To The Notice Of Institution, September 3, 2013, exh. 8.

## U.S. IMPORTS AND APPARENT CONSUMPTION

### U.S. importers

In the original investigations, 42 firms, accounting for over 95 percent of total U.S. imports of raw flexible magnets, supplied useable questionnaire responses to the Commission. Imports from China were concentrated among the following 10 firms: \*\*\*. Jasdi USA, affiliated with Jasdi in Taiwan, accounted for \*\*\* reported imports of raw flexible magnets from Taiwan.<sup>41</sup>

In its substantive response to the Commission's notice of institution, the domestic interested parties reported that there have been very few or no imports of subject merchandise from China or Taiwan since the orders were imposed.<sup>42</sup> Domestic interested parties are aware

<sup>41</sup> *Raw Flexible Magnets from China and Taiwan, INV-FF-087*, July 30, 2008, pp. IV-1, IV-4.

<sup>42</sup> This statement is based on domestic interested parties' market intelligence and compilations of vessel manifest information (the response to notice of institution did not, however, include these compilations). *Response*, p. 4 and n. 4. Furthermore, import data are not available for the current reviews. In the original investigations, U. S. import data were based on questionnaire responses, which collected quantity data in 1,000 pounds. Official import statistics cannot be relied upon to disclose amounts of or trends in subject imports because (1) the Harmonized Tariff Schedule of the United States subheadings in question also cover substantial nonsubject imports within their scope and (2) the unit of  
(continued...)

of one Chinese producer, Jingzhou Meihou Flexible Magnet Co., Ltd., requesting a new shipper review from Commerce.<sup>43</sup> Further, the domestic interested parties said it is possible that one or more of the firms that requested scope inquiries from Commerce may have imported small volumes of subject merchandise, but they do not have any definitive information indicating whether there were any such imports. Finally, the domestic interested parties believe that JLP Company, Inc. has imported relatively small volumes of wide-format flexible magnet sheeting produced by Jasdi in Taiwan.<sup>44</sup>

### U.S. imports

In its original investigation, the Commission found the increase in subject imports, both on an absolute basis and relative to consumption, to be significant.<sup>45</sup> U.S. subject imports from China increased from \*\*\* pounds in 2007 to \*\*\* pounds in 2007.<sup>46</sup> U.S. subject imports from Taiwan decreased from \*\*\* pounds in 2007 to \*\*\* pounds in 2007.<sup>47</sup> The volume of cumulated subject imports increased from \*\*\* pounds in 2005 to \*\*\* pounds in 2006, and then to \*\*\* pounds in 2007.<sup>48</sup> Cumulated subject imports' share of the total quantity of imports was steady during the original investigations, ranging from \*\*\* percent to \*\*\* percent.

### Ratio of imports to U.S. production

Cumulated subject imports of raw flexible magnets as a ratio to U.S. production increased from \*\*\* percent in 2005 to \*\*\* percent in 2007.<sup>49</sup> Imports from nonsubject sources as a ratio to U.S. production increased from \*\*\* percent in 2005 to \*\*\* percent in 2007.<sup>50</sup> Total

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(...continued)

quantity specified in the HTS for reporting subject merchandise under these subheadings is "number" whereas the Commission relied upon quantity measured in 1,000 pounds.

<sup>43</sup> The importer of the subject merchandise was not identified in the public version of the companies' submissions to Commerce. The new shipper review was subsequently rescinded. *Response*, pp. 26-27 and n. 64.

<sup>44</sup> *Ibid.*, p. 27.

<sup>45</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008, p. 20.

<sup>46</sup> Subject imports from China were \*\*\* in January-March 2008 compared to \*\*\* in January-March 2007.

<sup>47</sup> Subject imports from Taiwan were \*\*\* pounds in January-March 2008 compared to \*\*\* pounds in January-March 2007.

<sup>48</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, Confidential Views of the Commission, p. 31.

<sup>49</sup> The ratio of cumulated subject imports to U.S. production was \*\*\* percent in January-March 2008 compared to \*\*\* percent in January-March 2008.

<sup>50</sup> The ratio of nonsubject imports to U.S. production was \*\*\* percent in January-March 2008 compared to \*\*\* percent in January-March 2008.

imports as a ratio to U.S. production increased from 4.4 percent in 2005 to 11.4 percent in 2007 of total reported U.S. production during 2005-07.<sup>51</sup>

### **Apparent U.S. consumption and market shares**

During the original investigations, apparent consumption decreased from 85.6 million pounds in 2005 to 78.4 million pounds in 2007.<sup>52</sup> The responding producers' share of consumption was 95.6 percent in 2005 and 89.8 percent in 2007.

In its original determination, the Commission found that demand for raw flexible magnets is closely linked to the demand for the end-use products, such as promotional materials, magnetic signs, and refrigerator gaskets, in which they are incorporated. Magnum indicated that demand for raw flexible magnets tends to track changes in the U.S. economy in general and in the U.S. real estate market in particular. At the hearing, a Magnum witness stated that real estate professionals purchase a large percentage of flexible raw magnets used to produce promotional materials and that the downturn in the U.S. real estate market may help explain the declines in apparent U.S. consumption for raw flexible magnets evident during the latter period for which data were collected in these investigations.<sup>53</sup> According to domestic interested parties, the antidumping and countervailing duty orders allowed the domestic industry to survive the recession and \*\*\* production and profitability during the slow recovery that has followed.<sup>54</sup>

## **THE INDUSTRY IN CHINA**

### **Background**

During the original investigation, the petition identified 58 alleged producers/exporters of raw flexible magnets in China. Foreign producer questionnaires were issued to producers with contact information in the petition, plus 12 additional producers identified by staff. Chinese producers and exporters of raw flexible magnets supplied three questionnaires. Respondent Newlife estimated that the three responding firms accounted for approximately \*\*\* percent of production in China.<sup>55</sup> Respondents to the original questionnaire included Cixi City, Newlife, and Polyflex.

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<sup>51</sup> The ratio of total imports to U.S. production was 4.7 percent in January-March 2008 compared to 7.3 percent in January-March 2008.

<sup>52</sup> Apparent consumption was 17.2 million pounds in January-March 2008 compared to 19.2 million pounds in January-March 2007.

<sup>53</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008, pp. 15-16.

<sup>54</sup> Domestic interested parties' Substantive Response To The Notice Of Institution, September 3, 2013, p. 14.

<sup>55</sup> *Raw Flexible Magnets from China and Taiwan, INV-FF-087*, July 30, 2008, p, VII-1.

The Commission did not receive any responses to the notice of inquiry from foreign producers or exporters. The domestic interested party identified 30 Chinese producers/exporters of raw flexible magnets.<sup>56</sup>

### **Capacity and production**

During the original investigation, three firms provided data on their individual capacity and production in 2007. The two largest firms (\*\*\*) combined accounted for approximately \*\* percent of the reported production and \*\* percent of the reported exports to the United States (equivalent to \*\* percent of U.S. subject imports) in 2007.<sup>57</sup> Since no Chinese producers responded to the notice of institution, no further data are available specific to the production or capacity of subject raw flexible magnets in China.

## **THE INDUSTRY IN TAIWAN**

### **Background**

During the original investigation, the petition identified six alleged producers/exporters of raw flexible magnets in Taiwan. Foreign producer questionnaires were issued to producers with contact information in the petition, plus four additional producers identified by staff. Taiwan producers and exporter Jasdi and Magruba supplied questionnaire responses, and these two firms were the only firms identified by importer questionnaire responses as their suppliers during the period for which data were collected.<sup>58</sup>

The Commission did not receive any responses to the notice of inquiry from foreign producers or exporters. The domestic interested party identified 11 Taiwan producers/exporters of raw flexible magnets.<sup>59</sup>

### **Capacity and production**

During the original investigation, two firms provided data on their individual capacity and production in 2007. The two firms combined accounted for \*\* pounds of production and \*\* million pounds of exports to the United States (equivalent to \*\* of U.S. subject imports

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<sup>56</sup> Domestic interested parties' Substantive Response To The Notice Of Institution, September 3, 2013, exh. 3.

<sup>57</sup> *Raw Flexible Magnets from China and Taiwan*, INV-FF-087, July 30, 2008, tables VII-1, VII-2, and IV-2.

<sup>58</sup> *Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452 and 731-TA-1129-1130 (Final)*, USITC Publication 4030, August 2008, p. VII-4.

<sup>59</sup> Domestic interested parties' Substantive Response To The Notice Of Institution, September 3, 2013, exh. 4.

from Taiwan]) in 2007.<sup>60</sup> Since no Taiwan producers responded to the notice of institution, no further data are available specific to the production or capacity of subject raw flexible magnets in Taiwan.

### **Trade remedy measures in third-country markets**

During the original investigation, there were no antidumping duty investigations on raw flexible magnets from China or Taiwan in third-country markets. No trade remedy investigations in third country markets have been identified since the original investigations.

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<sup>60</sup> *Raw Flexible Magnets from China and Taiwan*, INV-FF-087, July 30, 2008, tables VII-4 and IV-2.