

DEPARTMENT OF COMMERCE**International Trade Administration****A-570-922****Preliminary Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from the People's Republic of China****AGENCY:** Import Administration, International Trade Administration, Department of Commerce.**EFFECTIVE DATE:** April 25, 2008.**SUMMARY:** The Department of Commerce (the "Department") preliminary determines that raw flexible magnets ("magnets") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated dumping margins for this investigation are listed in the "Preliminary Determination Margins" section of this notice.**FOR FURTHER INFORMATION CONTACT:** Melissa Blackledge or Shawn Higgins; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3518 or (202) 482-0679, respectively.**SUPPLEMENTARY INFORMATION:****Case History**

On September 21, 2007, the Department received a petition concerning imports of magnets from the PRC and Taiwan filed in proper form by Magnum Magnetics Corporation ("Petitioner"). On October 4, 2007, in response to a supplemental questionnaire issued by the Department on September 27, 2008, Petitioner submitted a revised version of the petition's margin calculations. *See* "Petitioner's Response to Questionnaire Received on September 27, 2007 in Investigation No. A-570-922," ("Pre-initiation Supplemental Response") (October 4, 2007). The Department initiated antidumping duty investigations of magnets from the PRC and Taiwan on October 11, 2007. *See Notice of Initiation of Antidumping Duty Investigations: Raw Flexible Magnets from the People's Republic of China and Taiwan*, 72 FR 59071 (October 18, 2007) ("Initiation Notice"). On November 5, 2007, the International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material

injury by reason of imports of magnets from the PRC and Taiwan. *See Raw Flexible Magnets from China and Taiwan, Investigation Nos. 701-TA-452 and 731-TA-1129 and 1130 (Preliminary)*, 72 FR 63629 (November 9, 2007).

On November 1, 2007, the Department selected Polyflex Magnets Ltd. ("Polyflex") and Qualita Magnetics Ltd. ("Qualita"), as the mandatory respondents in this investigation based upon U.S. Customs and Border Protection ("CBP") entry data. *See Memorandum from Abdelali Elouaradia, Office Director, to Stephen J. Claeys, Deputy Assistant Secretary, "Respondent Selection Memorandum,"* dated November 1, 2007.

On November 1, 2007, the Department issued shipment questionnaires and sections A, C, and D of its antidumping duty questionnaire to the mandatory respondents. On November 9, 2007, Polyflex and Qualita submitted timely responses to the shipment questionnaires. Polyflex confirmed that it exported subject merchandise to the United States during the period of investigation ("POI"). Qualita reported that it did not export such merchandise to the United States during the POI. In November and December 2007, the Department issued shipment questionnaires to additional companies identified as large exporters by CBP entry data. The Department was able to determine through public means that four companies, Logimag Limited ("Logimag"), Marketa International, Ltd. ("Marketa"), Ningbo Magnetics Factory Ltd. ("Ningbo"), and Sinomag Technology Co., Ltd. ("Sinomag"), exported magnets. Ningbo and Sinomag reported that they did not export subject merchandise to the United States during the POI. Logimag and Marketa did not respond to the Department's original shipment letter or our second inquiries.

Polyflex submitted timely responses to sections A, C, and D of the Department's antidumping duty questionnaire during December 2007 and January 2008. The Department received comments from Petitioner and issued supplemental questionnaires to Polyflex in December 2007 and January 2008. On January 10, 2008, Polyflex submitted a timely response to the section A supplemental questionnaire. However, Polyflex did not respond to the sections C and D supplemental questionnaires.

In January 2008, the Department released to interested parties a memorandum from the Department's Office of Policy that listed potential surrogate countries and invited interested parties to comment on

surrogate country and factor value selection. *See* Memorandum from Carole Showers, Acting Director, Office of Policy, to Mark Manning, Program Manager, AD/CVD Operations, Office 4, "Antidumping Duty Investigation of Raw Flexible Magnets from the People's Republic of China (PRC): Request for a List of Surrogate Countries," dated January 14, 2008 ("Office of Policy Surrogate Country Memorandum"). No party responded to the Department's invitation to comment on surrogate country selection. However, on February 4, 2008, Petitioner submitted comments on surrogate values. All of the surrogate value data submitted by Petitioner are from India.

On January 16, 2008, Petitioner requested a 50-day extension of the preliminary determination in this investigation. On January 31, 2008, the Department published the postponement of the preliminary determination. *See Notice of Postponement of Preliminary Determination of Antidumping Duty Investigation: Raw Flexible Magnets from the People's Republic of China*, 73 FR 5794 (January 31, 2008). On February 13, 2008, the Department published a correction to the above-referenced notice. *See Notice of Correction of Postponement of Preliminary Determination of Antidumping Duty Investigation: Raw Flexible Magnets from the People's Republic of China*, 73 FR 8291 (February 13, 2008). On February 12, 2008, Polyflex withdrew from participating in the investigation. *See* Letter from Garvey Schubert Barer to the Department of Commerce, regarding "Raw Flexible Magnets from the People's Republic of China: Notice of Withdrawal," dated February 12, 2008 ("Polyflex Withdrawal Letter").

On December 14, 2007, the Department received a timely separate rate application from Guangzhou Newlife Magnet Co., Ltd. ("Newlife"). The Department issued supplemental questionnaires to Newlife and received timely responses in February and March 2008.

On April 11, 2008, Petitioner submitted comments on magnetic photo pockets and the application of adverse facts available ("AFA") in calculating dumping margins. *See* "Raw Flexible Magnets from the People's Republic of China: Comments on Scope and Adverse Facts Available," (April 11, 2008).

Period of Investigation

The POI is January 1, 2007, through June 30, 2007. This period comprises the two most recently completed fiscal

quarters prior to the month in which the petition was filed (*i.e.*, September 2007). See 19 CFR 351.204(b)(1).

Scope of the Investigation

The products covered by this investigation are certain flexible magnet sheeting, strips, and profile shapes. Subject flexible magnet sheeting, strips, and profile shapes are bonded magnets composed (not necessarily exclusively) of (i) any one or combination of various flexible binders (such as polymers or co-polymers, or rubber) and (ii) a magnetic element, which may consist of a ferrite permanent magnet material (commonly, strontium or barium ferrite, or a combination of the two), a metal alloy (such as NdFeB or Alnico), any combination of the foregoing with each other or any other material, or any other material capable of being permanently magnetized. Subject flexible magnet sheeting, strips, and profile shapes are capable of being permanently magnetized, but may be imported in either magnetized or unmagnetized (including demagnetized) condition. Subject merchandise may be of any color and may or may not be laminated or bonded with paper, plastic or other material, which paper, plastic or other material may be of any composition and/or color. Subject merchandise may be uncoated or may be coated with an adhesive or any other coating or combination of coatings. Subject merchandise is within the scope of this investigation whether it is in rolls, coils, sheets, or pieces, and regardless of physical dimensions or packaging, including specialty packaging such as digital printer cartridges.

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

application of laminate) or on any other covering that is removed from the flexible magnet sheeting prior or subsequent to final printing and before use; non-permanent printing (that is, printing in a medium that facilitates easy removal, permitting the flexible magnet sheeting to be re-printed); printing on the back (magnetic) side; or any combination of the above.

All products meeting the physical description of the subject merchandise that are not specifically excluded are included in this scope. The products subject to the investigation are currently classifiable principally under subheadings 8505.19.10 and 8505.19.20 of the Harmonized Tariff Schedule of the United States (“HTSUS”). The HTSUS subheadings are provided only for convenience and customs purposes, however, and the written description of the scope of this proceeding is dispositive.

Scope Comments

In accordance with the Preamble to the Department’s regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (Preamble)), in our *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.

On November 7, 2007, SH Industries, a U.S. importer of subject merchandise, argued that magnetic photo pockets, which are flexible magnets with clear plastic material fused to the magnet to form a pocket into which photographs and other items may be inserted for display, should be excluded from the scope of the antidumping and countervailing duty investigations on raw flexible magnets from the People’s Republic of China and Taiwan. On November 13, 2007, the petitioner filed a response to the request by SH Industries, arguing that magnetic photo pockets are properly within the scope of the investigations. On April 11, 2008, the petitioner submitted additional arguments concerning this issue. Because we received this letter only four business days before the statutory deadline for this preliminary determination, we did not have an opportunity to consider it prior to issuance of this preliminary determination.

We invite interested parties to submit comments on the petitioner’s April 11, 2008, submission and to present evidence concerning the meaning of the terms “sheeting, strips, and profiles” as those terms are used within the

industry. Additionally, because the scope language also states that “subject merchandise may be of any color and may or may not be laminated or bonded with paper, plastic or other material, which paper, plastic or other material may be of any composition and/or color,” we encourage interested parties to comment on whether the plastic photo pocket fused to the flexible magnet satisfies this description.

Finally, interested parties may submit information that would be relevant in an analysis conducted pursuant to section 351.225(k)(2) of our regulations. The Department deadline for such comments will be 14 days after the publication of this notice. Rebuttal comments must be filed within five days thereafter. Comments should be addressed to Import Administration’s Central Records Unit (CRU), Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Non-Market Economy Treatment

The Department considers the PRC to be a non-market economy (“NME”) country. In accordance with section 771(18)(c)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof (TRBs), Finished and Unfinished, From the People’s Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *TRBs, Finished and Unfinished, from the People’s Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). Therefore, in this preliminary determination, we have treated the PRC as an NME country and applied our current NME methodology.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department’s policy to assign all exporters of merchandise subject to investigation involving an NME country this single rate unless an exporter can demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.

The Department’s separate-rate test is not concerned, in general, with macroeconomic/border-type controls,

e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (December 31, 1998). Rather, the test focuses on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61758 (November 19, 1997), and *TRBs, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"), and Section 351.107(d) of the Department's regulations. In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

In this case, Polyflex has withdrawn from participating in the investigation. Since Polyflex's withdrawal has prevented the Department from asking additional supplemental questions on its separate rate status, and prevents the Department from verifying its responses, the Department has no basis upon which to grant Polyflex a separate rate. Although Polyflex remains a mandatory respondent, the Department considers Polyflex part of the PRC-wide entity because it failed to demonstrate that it qualifies for a separate rate.

Newlife submitted a timely separate rates application. In its application, Newlife stated that it is a wholly Chinese-owned company. Therefore, the Department must analyze whether this company can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. In its application, it provided company-specific information to

demonstrate that it operates independently of *de jure* and *de facto* government control, and therefore is entitled to a separate rate.

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses, (2) any legislative enactments decentralizing control of companies, and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR 20588 at Comment 1.

The evidence provided by Newlife supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) an absence of restrictive stipulations associated with Newlife's business and export licenses, and (2) the existence of legislative enactments decentralizing control of companies. *See* "Supplemental Separate Rate Questionnaire Response of Guangzhou Newlife Magnet Electricity Co., Ltd." (February 22, 2008). Therefore, the Department has preliminarily found a *de jure* absence of government control over Newlife's export activities.

B. Absence of De Facto Control

The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates. Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

The evidence provided by Newlife supports a preliminary finding of *de facto* absence of governmental control based on the following: (1) Newlife sets

export prices independent of the government and without the approval of a government authority; (2) Newlife has the authority to negotiate and sign contracts and other agreements; (3) Newlife has autonomy from the government regarding the selection of management; and (4) Newlife retains proceeds from sales and makes independent decisions regarding the disposition of profits or financing of losses. Therefore, the Department has preliminarily found a *de facto* absence of government control over Newlife's export activities.

The evidence placed on the record of this investigation by Newlife preliminarily demonstrates an absence of *de jure* and *de facto* government control with respect to Newlife's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

In determining what rate to assign companies receiving separate rates, the Department's normal practice is to weight-average the individually calculated margins from the mandatory respondents. *See* section 735(c)(5)(A). If, however, the estimated weighted average margins for all individually investigated respondents are *de minimis* or based entirely on AFA, the Department may use any reasonable method. *See* section 735(c)(5)(B). In this investigation, the only other margin is the PRC-wide entity margin which is based on AFA. *See* "Adverse Facts Available" section below. Because the rate for all individually investigated respondents is based on AFA and the only other information on the record concerning dumping rates is contained in the petition, we have relied on information from the petition to determine a rate to be applied to the respondent that has demonstrated entitlement to a separate rate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan*, 72 FR 67271 (November 28, 2007) (citing *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand*, 65 FR 5520, 5527–28 (February 4, 2000) and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada*, 64 FR 15457 (March 31, 1999)). *See also Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China*, 73 FR 6479 (February 4, 2008). Therefore, in this case, we have assigned to Newlife the

simple average of the margins alleged in the petition, *i.e.*, 105.00 percent. *See* Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Antidumping Duty Investigation of Raw Flexible Magnets from the People's Republic of China (PRC): Calculation of Margin Applied to Separate Rate Applicant," dated April 18, 2008 ("Separate Rate Calculation Memorandum").

Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party: (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On February 12, 2008, counsel for Polyflex informed the Department that it would not continue participation in the instant investigation. *See* Polyflex Withdrawal Letter. Because Polyflex ceased participation in the instant investigation prior to submitting responses to the Department's sections C and D supplemental questionnaires, the Department was unable to obtain information necessary to complete the investigation. Furthermore, by ending its participation, Polyflex denied the

Department the ability to ask additional section A supplemental questions, and conduct its verification of Polyflex's responses. Verification is integral to the Department's analysis because it allows the Department to validate that it is relying upon accurate information and calculating dumping margins as accurately as possible. By withdrawing from the investigation, and thereby not allowing verification, Polyflex prevented the Department from corroborating its reported information, including separate rates information, and significantly impeded the proceeding. Moreover, by not allowing verification, Polyflex failed to demonstrate that it operates free of government control and that it is entitled to a separate rate. Therefore, we find that Polyflex is part of the PRC-wide entity. Moreover, because the PRC-wide entity, including Polyflex, failed to respond to our questionnaires, we find that the use of facts available, pursuant to sections 776(a)(2)(A), (C), and (D), is appropriate in determining the applicable dumping margin for the PRC-wide entity.

The Department attempted to identify additional mandatory respondents by issuing shipment letters to Marketa and Logimag on November 15, 2007, and November 29, 2007, respectively. The Department issued a second shipment questionnaire to Marketa on November 28, 2007, and to Logimag on December 12, 2007. These companies did not respond to the Department's requests for information. We have treated the non-responsive PRC producers/exporters as part of the PRC-wide entity because they did not qualify for a separate rate. Since the PRC-wide entity withheld information requested by the Department, we find that the use of facts available is appropriate to determine the PRC-wide rate, pursuant to section 776(a)(2)(A) of the Act. *See Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Final*

Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation, 65 FR 5510, 5518 (February 4, 2000); *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997); *Crawfish Processors Alliance v. United States*, 343 F. Supp. 2d 1242 (CIT 2004) (approving use of AFA when respondent refused to participate in verification); *see also Statement of Administrative Action*, accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103–316, 870 (1994) ("SAA"). Polyflex's withdrawal from participation, non-cooperation in submitting requested information, and the fact that its withdrawal prevents the Department from conducting verification, constitute a failure to cooperate by not acting to the best of its ability to comply with requests for information in accordance with section 776(b) of the Act. Concerning the PRC exporters that refused to respond to the Department's shipment letters, because these exporters failed to respond to the Department's request for information, the Department concludes that these companies have failed to cooperate to the best of their abilities. Since Polyflex and the other PRC exporters did not receive separate rates, the Department considers all of these companies as part of the PRC-wide entity. Therefore, the Department preliminarily finds that the PRC-wide entity has not cooperated to the best of its ability. In selecting from among the facts available, an adverse inference is appropriate, pursuant to section 776(b) of the Act.

Section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for AFA, the Department selects one that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate for any respondent in the investigation. *See Final Determination of Sales at Less*

Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From the People's Republic of China, 65 FR 34660 (May 21, 2000) and accompanying Issues and Decision Memorandum, at "Facts Available". In this case, as adverse facts available, the Department has selected the highest margin alleged in the petition, 185.28 percent.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted "corroborate" to mean that we will, to the extent practicable, examine the reliability and relevance of the information submitted. See *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 5554, 5568 (February 4, 2000); see, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996).

To corroborate the 105.00 and 185.28 percent margins used as facts available for Newlife and as adverse facts available for the PRC-wide entity, respectively, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis. See "Import Administration AD Investigation Initiation Checklist: Raw Flexible Magnets from the People's Republic of China," ("Initiation Checklist") (October 11, 2007). We examined evidence supporting the calculations in the petition and the Pre-initiation Supplemental Response to determine the probative value of the margins alleged in the petition. During our pre-initiation analysis, we examined the information used as the basis of export price and NV in the petition, and the calculations used to derive the alleged margins. Also during our pre-initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, which corroborated key elements of the export price and NV calculations. See *id.* We received no comments as to the

relevance or probative value of this information. Therefore, the Department finds that the rates derived from the petition for purposes of initiation are reliable for the purpose of being selected as the facts available and adverse facts available rates assigned to Newlife and the PRC-wide entity, respectively.

Preliminary Determination Margins

The Department has determined that the following preliminary dumping margins exist for the POI:

Manufacturer/Exporter	Margin (Percent)
Guangzhou Newlife Magnet Co., Ltd. ¹	105.00
PRC-wide Entity (including Polyflex)	185.28

¹ Newlife both manufactures and exports subject merchandise.

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days after the date of publication of these preliminary results.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of raw flexible magnets from the PRC, as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin amount by which the NV exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of

sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of magnets, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Submission of New Factual Information

19 CFR 351.301(b)(1) states that new factual information must be submitted no later than seven days before the date on which verification is to commence.² The Department will not verify Polyflex's responses because it has withdrawn from participating in this investigation, as discussed above in the Adverse Facts Available section of this notice. Therefore, the deadline for submission of factual information in 19 CFR 351.301(b)(1) is not applicable. Instead, the deadline for submission of factual information in this investigation will be seven days after the date of publication of this notice.

Public Comment

Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. See 19 CFR 351.309(c)(1)(i) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a disk containing the public version of those comments.

Any interested party may request a hearing within 21 days of publication of this notice. See 19 CFR 351.310(c). Interested parties that wish to request a hearing or to participate if one is

² In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the briefs.

Unless the deadline is extended pursuant to section 735(a)(2) of the Act, the Department will make its final determination within 75 days after the date of this preliminary determination, pursuant to section 735(a)(1) of the Act.

Dated: April 18, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

(A-583-842)

Notice of Preliminary Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan

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

EFFECTIVE DATE: April 25, 2008.

SUMMARY: We preliminarily determine that imports of raw flexible magnets from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended. Interested parties are invited to comment on this preliminary determination. We will make our final determination within 75 days after the date of this preliminary determination.

FOR FURTHER INFORMATION CONTACT: Catherine Cartos or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1757 and (202) 482-4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 2007, the Department of Commerce (the Department) published in the **Federal Register** the initiation of an antidumping investigation on raw flexible magnets from Taiwan. See *Notice of Initiation of Antidumping Duty Investigations: Raw Flexible Magnets from the People's*

Republic of China and Taiwan, 72 FR 59071 (October 18, 2007) (*Initiation Notice*). In accordance with the Preamble to the Department's regulations (see *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (Preamble)), in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.

On November 5, 2007, the International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of raw flexible magnets from the People's Republic of China and Taiwan. See *Raw Flexible Magnets from China and Taiwan*, 72 FR 63629 (November 9, 2007).

On December 11, 2007, we selected Kin Fong Magnets Co., Ltd. (Kin Fong), Magruba Flexible Magnets Co., Ltd. (Magruba), and JASDI Magnet Co., Ltd. (JASDI), as the mandatory respondents in this investigation. See the Memorandum from Laurie Parkhill to Stephen J. Claeys entitled "Antidumping Duty Investigation on Raw Flexible Magnets from Taiwan - Selection of Respondents," December 11, 2007.

On March 13, 2008, the petitioner alleged that JASDI made home-market sales of raw flexible magnets at prices below the cost of production during the period of investigation. On March 26, 2008, we initiated an investigation to determine whether JASDI made home-market sales of raw flexible magnets at prices below the cost of production during the period of investigation. See Memorandum from Richard Rimlinger to Laurie Parkhill entitled "Raw Flexible Magnets from Taiwan: Request to Initiate Cost Investigation of JASDI Magnet Co., Ltd.," dated March 26, 2008.

Period of Investigation

The period of investigation is July 1, 2006, through June 30, 2007.

Scope of Investigation

The products covered by this investigation are certain flexible magnet sheeting, strips, and profile shapes. Subject flexible magnet sheeting, strips, and profile shapes are bonded magnets composed (not necessarily exclusively) of (i) any one or combination of various flexible binders (such as polymers or co-polymers, or rubber) and (ii) a magnetic element, which may consist of a ferrite permanent magnet material

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

Specifically excluded from the scope of this investigation is retail printed flexible magnet sheeting, defined as flexible magnet sheeting (including individual magnets) that is laminated with paper, plastic or other material if such paper, plastic, or other material bears printed text and/or images, including but not limited to business cards, calendars, poetry, sports event schedules, business promotions, decorative motifs, and the like. This exclusion does not apply to such printed flexible magnet sheeting if the printing concerned consists of only 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 sheeting; manufacturing or use instructions (e.g., "print this side up," "this side up," "lamine here"); printing on adhesive backing (that is, material to be removed in order to expose adhesive for use, such as application of laminate) or on any other covering that is removed from the flexible magnet sheeting prior or subsequent to final printing and before use; non-permanent printing (that is, printing in a medium that facilitates easy removal, permitting the flexible magnet sheeting to be re-printed); printing on the back (magnetic) side; or any combination of the above.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope. The products subject to the investigation are currently

classifiable principally under subheadings 8505.19.10 and 8505.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided only for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

On November 7, 2007, SH Industries, a U.S. importer of subject merchandise, argued that magnetic photo pockets, which are flexible magnets with clear plastic material fused to the magnet to form a pocket into which photographs and other items may be inserted for display, should be excluded from the scope of the antidumping and countervailing duty investigations on raw flexible magnets from the People's Republic of China and Taiwan. On November 13, 2007, the petitioner filed a response to the request by SH Industries, arguing that magnetic photo pockets are properly within the scope of the investigations. On April 11, 2008, the petitioner submitted additional argument concerning this issue. Because we received this letter only four business days before the statutory deadline for this preliminary determination, we did not have an opportunity to consider it prior to issuance of this preliminary determination.

We invite interested parties to submit comments on the petitioner's April 11, 2008, submission and to present evidence concerning the meaning of the terms "sheeting, strips, and profiles" as those terms are used within the industry. Additionally, because the scope language also states that "subject merchandise may be of any color and may or may not be laminated or bonded with paper, plastic or other material, which paper, plastic or other material may be of any composition and/or color," we encourage interested parties to comment on whether the plastic photo pocket fused to the flexible magnet satisfies this description.

Finally, interested parties may submit information that would be relevant in an analysis conducted pursuant to section 351.225(k)(2) of our regulations. The deadline for such comments will be 14 days after the publication of this notice. Rebuttal comments must be filed within five days thereafter. Comments should be addressed to Import Administration's Central Records Unit (CRU), Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Issuance of Questionnaire

On December 11, 2007, we issued Sections A, B, C, D, and E¹ of the antidumping questionnaire to Kin Fong, Magruba, and JASDI. We received a timely response from JASDI. We did not receive a response from Kin Fong or Magruba by the close of business on January 2, 2008, the established deadline for Section A of our questionnaire. On January 8, 2008, we sent Kin Fong and Magruba a letter notifying them that we had not received a response to our Section A questionnaire. In our January 8, 2008, letters to Kin Fong and Magruba, we also informed them that any submissions that were not filed in accordance with 19 CFR 351.303 and 304 of our regulations would be deemed untimely filed pursuant to 19 CFR 351.302 and that we may use facts otherwise available for Kin Fong's and Magruba's antidumping margin in this investigation pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act).

We have not received any response to our questionnaire or any other communication from Kin Fong since we issued the questionnaire to it. Magruba made attempts to respond to our January 8, 2008, letter claiming that it had not made sales during the POI as we discuss below. Although JASDI responded to Sections A, B, and C of our antidumping questionnaire initially, it did not respond to our March 11, 2008, supplemental questionnaire. Additionally, even though we informed JASDI that we had initiated an investigation to determine whether JASDI made sales of raw flexible magnets in Taiwan at prices that were below the cost of production and requested that JASDI respond to Section D of our antidumping questionnaire by April 10, 2008, JASDI did not respond to our request.

Finally, the Department rejected JASDI's request to withhold certain information from disclosure under the administrative protective order (APO). The Department requested that JASDI

resubmit this information, protected under the APO. Due to timing issues, the Department also requested written authorization to share this information protected under the terms of the APO with the petitioners. JASDI did not resubmit the information as requested and did not respond to the Department's request for authorization to release the information under the APO.

Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to Kin Fong, Magruba, and JASDI.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this case, Kin Fong, Magruba, and JASDI did not provide essential information we requested that is necessary to calculate an antidumping margin for the preliminary determination. Specifically, Kin Fong and Magruba failed to respond to all of our questionnaires, thereby withholding information that is necessary for reaching the applicable determination, pursuant to section 776(a)(2)(A) of the Act. Also, because JASDI failed to

¹ Section A of the antidumping duty questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all of the company's home-market sales of the foreign like product or, if the home market is not viable, of sales of the foreign like product in the most appropriate third-country market. Section C requests a complete listing of the company's U.S. sales of subject merchandise. Section D requests information of the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further-manufacturing activities.

respond to Section D of our questionnaire and to supplement its section A, B, and C responses, we preliminarily find that the information submitted is not verifiable, that it is incomplete and cannot serve as a reliable basis for reaching our determination, and that we cannot use the information without undue difficulties. Specifically, despite our initiation of a cost investigation, we have no information on the record regarding JASDI's cost of production. Additionally, in our supplemental questionnaire we requested additional information necessary for us to make our determination. Thus, with respect to our preliminary determination, pursuant to sections 776(a)(2)(A), (B), (C), and (D) of the Act, we have based the antidumping margin on facts otherwise available for Kin Fong, Magruba, and JASDI.

B. Application of Adverse Inferences for Facts Available

In applying the facts otherwise available, section 776(b) of the Act provides that, if the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, in reaching the applicable determination under this title, the administering authority may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination: Certain Circular Welded Carbon-Quality Line Pipe From Mexico*, 69 FR 59892 (October 6, 2004).

Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol.1 (1994) at 870 (SAA). Further, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

Kin Fong

With respect to Kin Fong, although the Department provided it with notice informing it of the consequences of its failure to respond adequately to the Department's questionnaire in this case pursuant to section 782(d) of the Act, Kin Fong did not respond to the

questionnaire. This constitutes a failure on the part of Kin Fong to cooperate to the best of its ability to comply with a request for information by the Department within the meaning of section 776(b) of the Act. Because Kin Fong did not provide the information requested, section 782(e) of the Act is not applicable. Based on the above, the Department has preliminarily determined that Kin Fong failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

Magruba

With respect to Magruba, although the Department provided it with notice informing it of the consequences of its failure to respond adequately to the questionnaire in this case pursuant to section 782(d) of the Act, Magruba did not file a proper response to the questionnaire.

On December 11, 2007, we sent Magruba a questionnaire. The response to Section A of our questionnaire was due on January 2, 2008. The response to sections B through D of our questionnaire was due on January 22, 2008. Because Magruba did not submit a Section A questionnaire response by the due date, we sent Magruba a follow-up letter on January 8, 2008, in which we repeated the consequences of its failure to respond adequately to our questionnaire.

On January 9, 2008, Magruba transmitted to the Department a letter in which it claimed it did not sell subject merchandise to the United States during the POI. Magruba did not file its January 9, 2008, letter in accordance to our regulations. On January 19, 2008, we sent Magruba a letter in which we identified the filing, service, and certification deficiencies of Magruba's January 9, 2008, submission. Namely, Magruba did not mail the letter to the Department of Commerce in accordance with 19 CFR 351.303(b) but faxed and e-mailed the letter, which are not acceptable methods for filing purposes. In addition, Magruba did not file the requisite number of copies in accordance with 19 CFR 351.303(c), did not provide the proper specifications on its cover letter in accordance with 19 CFR 351.303(d)(2)(v), did not include a certification that it served a copy of its submission on interested parties in

accordance with 19 CFR 351.303(f), and, finally, did not include a certificate of accuracy in accordance with 19 CFR 351.303(g). Also in our January 19, 2008, letter we enclosed a copy of the pertinent regulations (19 CFR 351.303) and a copy of the public service list. Finally, in our January 19, 2008, letter we informed Magruba that we had placed a copy of its January 9, 2008, on the record but requested that Magruba refile its January 9, 2008, letter in accordance with 19 CFR 351.303 by the close of business on January 22, 2008. We emphasized that, if Magruba did not file future submissions within the set deadline and in accordance with our regulations, we would reject the submission which may result in our use of adverse facts available. Magruba did not refile its January 9, 2008, letter.

On January 18, 2008, the petitioner filed comments on Magruba's January 9, 2008, letter. The petitioner claimed that Magruba had in fact made sales of subject merchandise to the United States during the POI and supported its claim with import data sourced from the "PIERS" database.

On February 19, 2008, Magruba faxed and e-mailed a second letter to the Department repeating the same filing, service, and certification deficiencies of its January 9, 2008, letter. The February 19, 2008, letter had different content than the January 8, 2008, letter and thus was not an attempt to refile the January 9, 2008, letter. On March 3, 2008, we sent a letter to Magruba in which we rejected its February 19, 2008, letter due to its filing deficiencies. In the letter we identified the deficiencies and again included a copy of the pertinent regulations and public service list. We allowed Magruba a chance to remedy the deficiencies and refile its February 19, 2008, letter by March 10, 2008. Magruba did not refile the letter.

Information we obtained from the U.S. Customs and Border Protection (CBP) supports the petitioner's allegation that entries of subject merchandise from Magruba entered the United States during the POI. *See* Memorandum from Catherine Cartsos through Richard Rimlinger to the File, Less-Than-Fair-Value Investigation On Raw Magnets from Taiwan: Customs and Border Protection Entry Data for Magruba Flexible Magnets Co., Ltd., dated April 18, 2008 (Magruba CBP Data Memorandum).

Magruba did not respond to our questionnaire. Even if Magruba believed that it did not sell merchandise covered by the scope of the investigation to the United States during the POI, Magruba still should have submitted a questionnaire response in which it

could have argued before us its position and provide factual support to its argument. Magruba chose not to do so. When Magruba did attempt to communicate with the Department, it failed to follow the regulatory filing requirements. Moreover, Magruba failed to resubmit its defective submissions twice in accordance with the Department's instructions. Although Magruba contends in its January 9, 2008, letter that it had no shipments of subject merchandise, information on the record supports the petitioner's claim that Magruba did indeed sell subject merchandise to the United States during the POI. Accordingly we preliminarily find that Magruba failed to cooperate to the best of its ability and therefore it is appropriate to apply an adverse inference in selecting from among the facts available.

JASDI

As explained above, JASDI failed to provide pertinent information we requested that is necessary to calculate an antidumping margin for the preliminary determination. Specifically, JASDI withheld information concerning its sales practices and cost-of-production information, which is necessary for reaching the applicable determination. See section 776(a)(2)(A) of the Act. These actions constitute a failure on the part of JASDI to cooperate to the best of its ability to comply with a request for information by the Department within the meaning of section 776(b) of the Act. Accordingly, the Department has preliminarily determined that JASDI failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine From India*, 72 FR 62827 (November 7, 2007) (unchanged in *Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Glycine From India*, 72 FR 62826 (November 7, 2007)), and *Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India*, 73 FR 16640 (March 28, 2008).

Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability by complying with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other

information placed on the record. See also 19 CFR 351.308(c) and the SAA at 829–831. It is the Department's practice to use the highest calculated rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information and there are no other respondents. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)). In this case, because we are unable to calculate a margin for Kin Fong, Magruba, and JASDI and because an adverse inference is warranted, we have assigned to these firms a margin of 38.03 percent, the highest margin alleged in the petition. See *Antidumping Duty Petition on Raw Flexible Magnets from the People's Republic of China and Taiwan* (September 21, 2007) and its September 27, 2007, October 1, 2007, October 9, 2007, October 10, 2007, and October 11, 2007, supplements (collectively *Petition*) filed on behalf of Magnum Magnetics Corporation (the petitioner).

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably available at its disposal.

The SAA clarifies that "corroborate" means the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. As stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11843 (March 13, 1997)), to corroborate secondary information, the Department

will examine, to the extent practicable, the reliability and relevance of the information used. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See 19 CFR 351.308(d) and the SAA at 870.

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the *Petition* during our pre-initiation analysis and for purposes of this preliminary determination. See *Antidumping Duty Investigation Initiation Checklist: Raw Flexible Magnets from Taiwan* (October 18, 2007) (Taiwan Initiation Checklist). We also examined evidence supporting the calculations in the *Petition* to determine the probative value of the margins alleged in the *Petition*. In addition, we examined the key elements of the constructed export-price (CEP) and normal-value calculations used in the *Petition* to derive antidumping margins. Our examination also included information from various independent sources provided either in the *Petition* or, based on our requests, in supplements to the *Petition*. These data corroborate key elements of the CEP and normal-value calculations.

The petitioner calculated CEP using two price offers from the U.S. affiliated reseller of JASDI, a Taiwanese producer of raw flexible magnets. The petitioner provided an affidavit from the employee who obtained the price offers. The petitioner deducted amounts for foreign inland-freight costs, international freight costs, U.S. inland-freight costs, U.S. operating expenses (as indirect selling expenses), inventory carrying costs, and CEP profit. The petitioner used publicly available data, such as import statistics from the Bureau of Census, to estimate charges for freight expenses and marine-insurance expenses. Due to the payment terms described in the price offers, the petitioner made no adjustments for imputed credit expense. See *Taiwan Initiation Checklist* at 6. We obtained no other information that would make us question the reliability of the pricing information provided in the *Petition*. Based on our examination of the aforementioned information, we consider the petitioner's calculation of net U.S. prices corroborated.

With respect to normal value, the petitioner calculated normal value using six price quotes, obtained by a market

researcher, from JASDI, the Taiwanese producer of the subject merchandise. The petitioner did not make any adjustment for packing because the packing expenses were included in the price quotes and, therefore, the petitioner was unable to quantify the exact difference in packing materials and costs. In addition, because of the sale and payment terms described in the price quote, the petitioner made no adjustments for freight or imputed credit expense. See *Taiwan Initiation Checklist* at 6. We consider the petitioner's calculation of normal value to be corroborated because the calculations relied on actual price quotes obtained from a Taiwanese respondent manufacturer of subject merchandise.

Therefore, because we confirmed the accuracy and validity of the information underlying the derivation of margins in the *Petition* by examining source documents as well as publicly available information, we preliminarily determine that the margins in the *Petition* are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin as "best information available" (the predecessor to "facts available") because the margin was based on another company's uncharacteristic business expense that resulted in an unusually high dumping margin.

In *Am. Silicon Techs. v. United States*, 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court found that the AFA rate bore a "rational relationship" to the respondent's "commercial practices" and was, therefore, relevant. In the pre-initiation stage of this investigation, we confirmed that the calculation of margins in the *Petition* reflects commercial practices of the particular industry during the POI. Further, no information has been presented in the investigation that calls into question the relevance of this information.

As such, we preliminarily determine that the highest margin in the *Petition*, which we determined during our pre-initiation analysis was based on adequate and accurate information and

which we have corroborated for purposes of this preliminary determination, is relevant as the AFA rate for Kin Fong, Magruba, and JASDI in this investigation.

Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405 (September 11, 2006) (unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982 (January 17, 2007)), because this is the first proceeding involving Kin Fong, Magruba, and JASDI there are no probative alternatives. Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation and preliminarily determined to be relevant to these firms in this investigation, we have corroborated the AFA rate "to the extent practicable." See section 776(c) of the Act, 19 CFR 351.308(d), and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating, "pursuant to the to the extent practicable" language the corroboration requirement itself is not mandatory when not feasible"). Therefore, we find that the estimated margin of 38.03 percent in the *Initiation Notice* has probative value. Consequently, in selecting AFA with respect to Kin Fong, Magruba, and JASDI, we have applied the margin rate of 38.03 percent, the highest estimated dumping margin set forth in the notice of initiation. See *Initiation Notice*.

All-Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign, as the all-others rate, the simple average of the margins in the petition. See *Notice of Final Determination of Sales at Less Than Fair Value: Glycine from the Republic of Korea*, 72 FR 67275 (November 28, 2007); see also *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan*, 72 FR 67271 (November 28, 2007). Consistent with our practice we calculated a simple average of the rates in the *Petition*, as listed in the *Initiation*

Notice, and assigned this rate to all other manufacturers/exporters. For details of these calculations, see the memorandum from Catherine Cartos to File entitled "Antidumping Duty Investigation on Raw Flexible Magnets from Taiwan - Analysis Memo for All-Others Rate," dated April 18, 2008.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of raw flexible magnets from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the margins, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

Manufacturer or Exporter	Margin (percent)
Kin Fong	38.03
Magruba	38.03
JASDI	38.03
All Others	31.20

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination of sales at less than fair value. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threatening material injury to, the U.S. industry. The deadline for the Commission's determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than 30 days after the publication of this notice. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested

party. If a request for a hearing is made in an investigation, the hearing normally will be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. See 19 CFR 351.310(d)(1). Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. See 19 CFR 351.310(c). Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will not be conducting verifications of Kin Fong, Magruba, and JASDI because they have failed to file responses to all of our questionnaires, as discussed above in the Use of Facts Available section of this notice. Therefore, the deadline for submission of factual information in 19 CFR 351.301(b)(1) is not applicable. Thus, the deadline for submission of factual information in this investigation will be seven days after the date of publication of this notice.

We will make our final determination within 75 days after the date of this preliminary determination, pursuant to section 735(a)(1) of the Act.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 18, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8-9141 Filed 4-24-08; 8:45 am]

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