

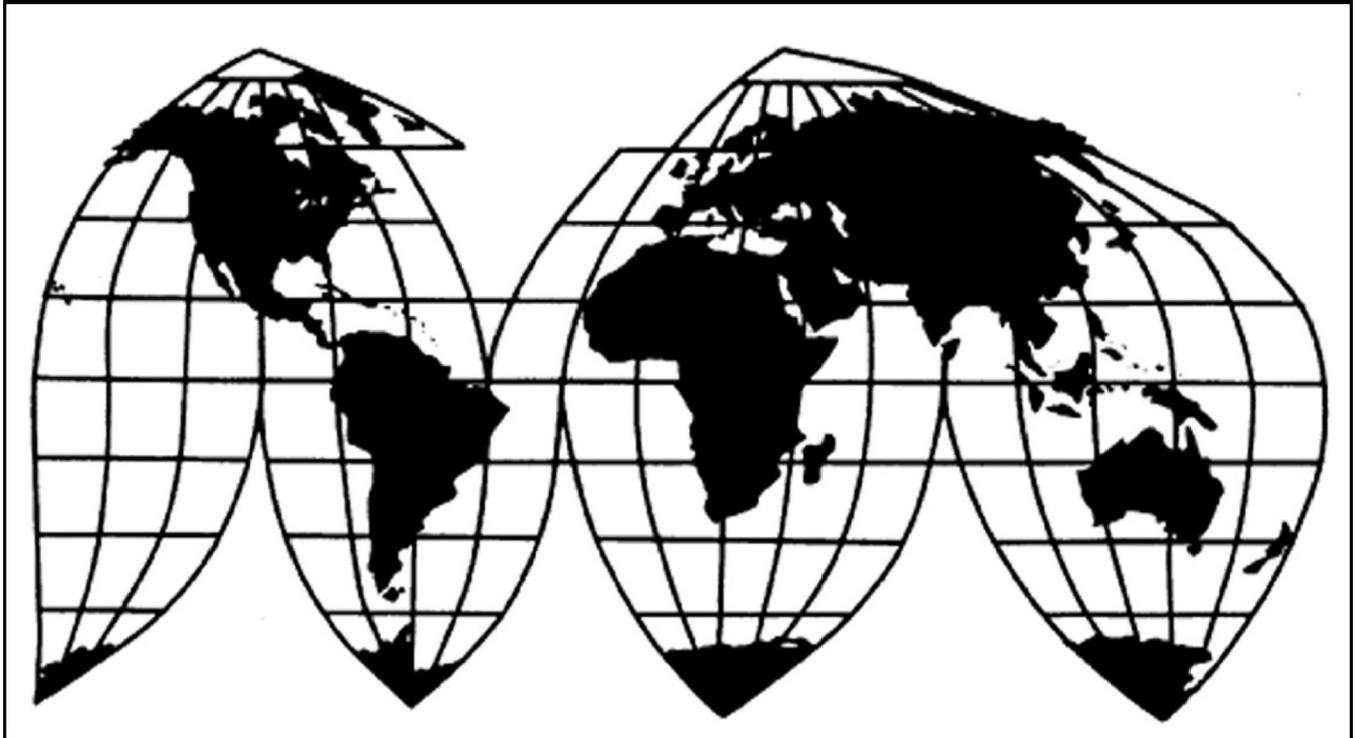
# **Raw Flexible Magnets from China and Taiwan**

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

**Publication 4030**

**August 2008**

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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**Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.**





## UNITED STATES INTERNATIONAL TRADE COMMISSION

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

### *RAW FLEXIBLE MAGNETS FROM CHINA AND TAIWAN*

#### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from China of raw flexible magnets, provided for in subheadings 8505.19.10 and 8505.19.20 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of China.<sup>2</sup> The Commission further determines, pursuant to section 735(b) of the Act (19 U.S.C. § 1673d(b)), that an industry in the United States is threatened with material injury by reason of imports from China and Taiwan of raw flexible magnets that have been found by Commerce to be sold in the United States at less than fair value (LTFV).<sup>3 4</sup> In addition, the Commission determines that it would not have found material injury but for the suspension of liquidation.

#### BACKGROUND

The Commission instituted these investigations effective September 21, 2007, following receipt of a petition filed with the Commission and Commerce by Magnum Magnetics Corp., Marietta, OH. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of raw flexible magnets from China were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)), and that imports of raw flexible magnets from China and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of May 8, 2008 (73 F.R. 26145). The hearing was held in Washington, DC, on July 10, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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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)).

<sup>2</sup> Commissioner Charlotte R. Lane determines that an industry in the United States is materially injured by reason of such imports.

<sup>3</sup> Commissioner Charlotte R. Lane determines that an industry in the United States is materially injured by reason of such imports.

<sup>4</sup> Vice Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of such imports from Taiwan.



## VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine that an industry in the United States is threatened with material injury by reason of imports of raw flexible magnets from China that the Department of Commerce (“Commerce”) has found are subsidized and by reason of imports of raw flexible magnets from China and Taiwan sold in the United States at less than fair value (“LTFV”).<sup>1 2</sup>

### I. BACKGROUND

Magnum Magnetics Corp. (“Magnum”), a U.S. producer of raw flexible magnets, filed the petition in these investigations on September 21, 2007.<sup>3</sup> Magnum participated in the July 10, 2008 hearing and filed briefs.<sup>4</sup> No party opposing imposition of antidumping or countervailing duties entered an appearance in the final phase of these investigations.<sup>5</sup> A panel of nonparty importers of the subject merchandise did participate at the hearing, however. One of the nonparty importers, Adams Magnetic Products Co. (“Adams”), also filed a posthearing statement.

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<sup>1</sup> Commissioner Lane determines that an industry in the United States is materially injured by reason of imports of raw flexible magnets from China that Commerce has found are subsidized and by reason of imports of raw flexible magnets from China and Taiwan sold in the United States at LTFV. See Separate Views of Commissioner Charlotte R. Lane. She joins sections I, II, III.A, and IV of these views.

<sup>2</sup> Vice Chairman Pearson and Commissioner Okun determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of imports of raw flexible magnets from Taiwan sold in the United States at LTFV. See Separate and Dissenting Views of Vice Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun. They join sections I, II, III.A., IV, and (except as noted) section V of these views.

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

<sup>4</sup> Magnum’s Final Comments contain new factual information in violation of 19 U.S.C. § 1677m(g) and 19 C.F.R. § 207.30(b). Accordingly, we have disregarded this new information, which appears in the first sentence and footnote 1 of page 1; footnote 24; and pages 2-4 of Exhibit H of the Final Comments.

The Commission received questionnaire responses from \*\*\* U.S. producers of raw flexible magnets that accounted for 95 percent of U.S. production of this product during 2007. CR at I-4, PR at I-3.

<sup>5</sup> The Commission did, however, receive usable questionnaire responses from 42 importers that are believed to account for more than 95 percent of U.S. imports of raw flexible magnets during the period of investigation, three producers of the subject merchandise in China, and two producers of the subject merchandise in Taiwan. CR at I-4, VII-1, VII-8, PR at I-3, VIII-1, VIII-4.

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>6</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Tariff Act”), defines the relevant domestic industry as the “producers as a {w}hole 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>7</sup> In turn, 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 ... .”<sup>8</sup>

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>9</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>10</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>11</sup> Although the Commission must accept Commerce’s determination as to the scope of the imported merchandise subsidized or sold at LTFV,<sup>12</sup> the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>13</sup>

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<sup>6</sup> 19 U.S.C. § 1677(4)(A).

<sup>7</sup> 19 U.S.C. § 1677(4)(A).

<sup>8</sup> 19 U.S.C. § 1677(10).

<sup>9</sup> 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); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>10</sup> See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

<sup>11</sup> Nippon, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

<sup>12</sup> See, e.g., USEC, Inc. v. United States, 34 Fed. Appx. 725, 730 (Fed. Cir. 2002) (“The ITC may not modify the class or kind of imported merchandise examined by Commerce.”); Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), aff’d, 865 F.3d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989).

<sup>13</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Cleo, 501 F.3d at 1298, n.1 (“Commerce’s {scope} finding does not control the Commission’s {like product} determination.”); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

## **B. Product Definition**

Commerce has defined the scope of the imported merchandise under investigation as follows: 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. The term “shape” includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section. Packaging includes retail or specialty packaging such as digital printer cartridges. 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.<sup>14</sup>

Commerce has excluded most types of printed flexible magnets from the scope of investigation.<sup>15</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.<sup>16</sup> Flexible magnets are used in a range of applications, including refrigerator door gaskets, magnetic car and safety signs, direct mail promotional items, calendars, nameplates, and toys and games.<sup>17</sup> There are two principal processes used to produce raw flexible magnets. In the calendaring process, the magnetic material is pressed through a machine between two large rotating steel rolls to create magnetic sheets or strips of uniform thickness and

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<sup>14</sup> 73 Fed. Reg. 39667 (July 10, 2008) (China CVD determination); 73 Fed. Reg. 39669, 39670 (July 10, 2008) (China AD determination), 73 Fed. Reg. 39673 (July 10, 2008) (Taiwan AD determination).

<sup>15</sup> The scope of this exclusion is as follows:

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

E.g., 73 Fed. Reg. at 39667.

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

<sup>17</sup> CR at I-11, PR at I-9.

surface finish. In the extrusion process, the magnetic material is forced through a shaped die to create rectangular or square sheets, strips, or profile shapes.<sup>18</sup>

### C. Domestic Like Product

In the preliminary determinations, the Commission defined the domestic like product to be raw flexible magnets, coextensive with the scope definition.<sup>19</sup> The Commission found that raw flexible magnets, regardless of their form or production process, were made from the same raw materials (a flexible binder, which is generally a polymer, and a powdered ferrite magnetic element), and that these raw materials distinguish raw flexible magnets from other permanent magnets. Additionally, regardless of form or production process, raw flexible magnets shared the same basic holding function while having the capability of being bent and flexed without affecting their performance.<sup>20</sup>

With respect to interchangeability, 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>21</sup> The Commission found that there was a significant overlap in channels of distribution for sheet and strip and some overlap for extruded product.<sup>22</sup> It also found that, whether made through the extrusion process or the calendaring process, raw flexible magnets are made in the United States in common facilities and share equipment and employees.<sup>23</sup> The Commission characterized Magnum's assertion that producers and purchasers generally perceive all flexible magnets to be a single product category to be largely undisputed.<sup>24</sup> It also found that raw flexible magnets were priced within a narrow range.<sup>25</sup> Based on these considerations, the Commission concluded that:

the record demonstrates 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>26</sup>

Magnum maintains that there is nothing in the record of the final phase of these investigations to warrant modification of the like product findings the Commission made in the preliminary

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<sup>18</sup> CR at I-12, PR at I-9.

<sup>19</sup> Raw Flexible Magnets from China and Taiwan, Inv. Nos. 701-TA-452, 731-TA-1129-1130 (Preliminary), USITC Pub. 3961 at 6 (Nov. 2007) (“Preliminary Determinations”).

<sup>20</sup> Preliminary Determinations, USITC Pub. 3961 at 6-7.

<sup>21</sup> Preliminary Determinations, USITC Pub. 3961 at 7.

<sup>22</sup> Preliminary Determinations, USITC Pub. 3961 at 8.

<sup>23</sup> Preliminary Determinations, USITC Pub. 3961 at 8.

<sup>24</sup> Preliminary Determinations, USITC Pub. 3961 at 8.

<sup>25</sup> Preliminary Determinations, USITC Pub. 3961 at 9.

<sup>26</sup> Preliminary Determinations, USITC Pub. 3961 at 9.

determinations.<sup>27</sup> We agree that the record contains no information pertinent to the definition of the domestic like product materially different from the information generated in the preliminary phase of these investigations.<sup>28</sup> Accordingly, we define a single domestic like product coextensive with the scope definition for the reasons stated in the preliminary determinations.

#### **D. Domestic Industry**

The domestic industry is defined as the domestic “producers as a [w]hole 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>29</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.

We first consider whether fabricator/converters of raw flexible magnets engage in sufficient production-related activities to be considered domestic producers.<sup>30</sup> Fabricators do not themselves produce raw flexible magnets; instead, they perform finishing operations on raw flexible magnets produced by others. These operations include cutting, slitting, scoring, die-cutting, and lamination.<sup>31</sup> In the preliminary determinations the Commission concluded that fabricators were not part of the domestic industry.<sup>32</sup> Magnum argues that the additional information collected in the final phase of these investigations continues to support such a conclusion.<sup>33</sup>

In the final phase of these investigations, three fabricators provided usable responses to the Commission’s questionnaire.<sup>34</sup> We examine below the factors the Commission generally considers in assessing whether the activity of entities such as these fabricators is sufficient to constitute domestic production.

*Source and Extent of Capital Investment.* The aggregate capital investment of the three responding fabricators for fabrication operations was \*\*\*.<sup>35</sup> The one responding fabricator that provided

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<sup>27</sup> Magnum Prehearing Brief at 12-13.

<sup>28</sup> See generally CR at I-9-16, PR at I-7-12.

<sup>29</sup> 19 U.S.C. § 1677(4)(A).

<sup>30</sup> To determine whether a firm is engaged in sufficient production-related activities to be considered a domestic producer of the like product, the Commission generally considers six factors: (1) source and extent of the firm's capital investment; (2) technical expertise involved in U.S. production activities; (3) value added to the product in the United States; (4) employment levels; (5) quantity and type of parts sourced in the United States; and (6) any other costs and activities in the United States directly leading to production of the like product. No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation. See, e.g., Diamond Sawblades and Parts Thereof from China and Korea, Inv. Nos. 731-TA-1092-1093 (Final), USITC Pub. 3862 at 11 (July 2006); Outboard Engines from Japan, Inv. No. 731-TA-1069 (Preliminary), USITC Pub. 3673 at 10-12 (Mar. 2004).

<sup>31</sup> CR at III-4-5, PR at III-2.

<sup>32</sup> The Commission deemed the available information “mixed,” and stated an intention to gather further information on this issue in the final phase of these investigations. Preliminary Determinations, USITC Pub. 3961 at 9-11.

<sup>33</sup> Magnum Prehearing Brief at 13-17.

<sup>34</sup> CR at III-5, PR at III-2.

<sup>35</sup> \*\*\* Producer Questionnaires, responses to question VI-3.

information regarding the source of its funding indicated that its capital investments were \*\*\*.<sup>36</sup> By contrast, the U.S. producers of raw flexible magnets reported the 2007 book value of their property, plant, and equipment as \*\*\*.<sup>37</sup>

*Technical Expertise in U.S. Production Activities.* Fabricators' responses regarding the technical expertise involved in their activities varied. One firm stated there was \*\*\*.<sup>38</sup> Another stated that \*\*\* were required.<sup>39</sup> The third simply identified the activities involved as \*\*\* without describing the technical expertise required to conduct the activities.<sup>40</sup>

*Value Added to the Product in United States.* The total value added by the three responding fabricators in 2007 was \*\*\* percent, based on the ratio of conversion costs to cost of goods sold ("COGS"). The ratio was \*\*\* percent based on the ratio of conversion costs to COGS and selling, general, and administrative ("SG&A") expenses.<sup>41</sup>

*Employment.* The three responding fabricators reported total employment of \*\*\* production and related workers ("PRWs") in 2007.<sup>42</sup> By contrast, U.S. producers of raw flexible magnets employed 328 PRWs in 2007.<sup>43</sup>

*Quantity and Types of Parts Sourced in the United States.* Fabricators' principal inputs are raw flexible magnets.<sup>44</sup> Because the scope definition does not contain any packaging, shape, or dimensional limitations, the raw flexible magnets that fabricators purchase can be the domestic like product or subject imports. In their questionnaire responses, the responding fabricators indicated that \*\*\* of the material they used in conversion was sourced in the United States during the period of investigation.<sup>45</sup>

*Analysis.* None of the factors unequivocally supports a conclusion that fabrication activities should be considered domestic production. Three factors are mixed or reflect ambiguous data. The value added by fabrication operations is moderate. While \*\*\* of the fabricators may suggest that fabrication operations require some degree of technical expertise, \*\*\* do not make such claims and \*\*\* expressly disclaims that special technical expertise is needed. While the fabricators claim that they source the great majority of their inputs domestically, these inputs are simply less processed versions of raw flexible magnets. By contrast, the remaining factors clearly support a conclusion that fabrication is not domestic production. The fabricators' capital investment and employment are quite small on an absolute basis, and are also much smaller than the comparable figures for U.S. producers, whether computed on an aggregate or a per-firm basis.

In light of these considerations and the failure of any entity – including the fabricators themselves – to argue that fabrication should be considered domestic production, we conclude that fabrication does

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<sup>36</sup> \*\*\* Producer Questionnaire, response to question VI-3. The other two responding firms appear to have provided the \*\*\*.

<sup>37</sup> CR/PR, Table VI-7.

<sup>38</sup> \*\*\* Producer Questionnaire, response to question VI-4.

<sup>39</sup> \*\*\* Producer Questionnaire, response to question VI-4.

<sup>40</sup> \*\*\* Producer Questionnaire, response to question VI-4.

<sup>41</sup> INV-FF-090 at VI-9 (July 31, 2008), PR at VI-5.

<sup>42</sup> CR at III-21 n.50, PR at III-10 n.50.

<sup>43</sup> CR/PR, Table III-7.

<sup>44</sup> See generally CR at I-12-13, III-4, PR at I-10-11, III-2.

<sup>45</sup> \*\*\* Producer Questionnaires, response to question VI-5. The reliability of the data provided by \*\*\* in response to this inquiry is uncertain, because \*\*\*. CR/PR, Table III-2; CR at IV-9 n.17, PR at IV-7 n.17.



not constitute domestic production of raw flexible magnets. Accordingly, we have not included the three reporting fabricators in the domestic industry.<sup>46</sup>

We therefore define a single domestic industry consisting of the U.S. producers of raw flexible magnets. Data on this industry are based on the information provided by the \*\*\* domestic raw flexible magnet producers that responded to the Commission's final phase questionnaire.<sup>47</sup>

### III. CUMULATION<sup>48</sup>

#### A. Cumulation for Material Injury Analysis

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(I) of the Tariff Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in

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<sup>46</sup> We also considered whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each investigation. The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include the following: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and (3) the position of the related producer vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161 (Ct. Int'l Trade 1992), *aff'd without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. These latter two considerations were cited as appropriate factors in *Allied Mineral Products, Inc. v. United States*, 28 CIT 1861, 1865 (2004) ("The most significant factor considered by the Commission in making the 'appropriate circumstances' determination is whether the domestic producer accrued a substantial benefit from its importation of the subject merchandise."); *USEC, Inc. v. United States*, 132 F. Supp.2d 1, 12 (Ct. Int'l Trade 2001) ("the provision's purpose is to exclude from the industry headcount domestic producers substantially benefitting from their relationships with foreign exporters."), *aff'd*, 34 Fed. Appx. 725 (Fed. Cir. 2002); S. Rep. No. 249, 96th Cong. 1st Sess. at 83 (1979) ("where a U.S. producer is related to a foreign exporter and the foreign exporter directs his exports to the United States so as not to compete with his related U.S. producer, this should be a case where the ITC would not consider the related U.S. producer to be a part of the domestic industry").

Domestic producer Magnet Technology is a related party because it imported subject merchandise from China during the period of investigation. *See* 19 U.S.C. § 1677(4)(B)(i). Whether appropriate circumstances exist to warrant Magnet Technology's exclusion from the domestic industry is \*\*\*. Magnet Technology \*\*\*. *See* CR/PR, Table III-5. \*\*\*. Accordingly, even assuming *arguendo* that appropriate circumstances exist to warrant excluding Magnet Technology from the domestic industry, \*\*\*.

<sup>47</sup> *See* CR/PR, Table III-1. These producers are \*\*\*.

<sup>48</sup> Negligibility under 19 U.S.C. § 1677(24) is not an issue in these investigations. During the most recent 12-month period prior to filing of the petition for which data are available, subject imports from China accounted for \*\*\* percent of total imports of raw flexible magnets and subject imports from Taiwan accounted for \*\*\* percent of total imports. CR at IV-5 n.9, PR at IV-4 n.9.

the U.S. market.<sup>49</sup> In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered four factors:

- (1) the degree of fungibility between the subject imports from different countries and between 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 geographic markets of subject 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 the subject imports are simultaneously present in the market.<sup>50 51</sup>

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.<sup>52</sup> Only a “reasonable overlap” of competition is required.<sup>53</sup>

The statutory threshold for cumulation is satisfied in these investigations, because all petitions were filed on the same day (September 21, 2007), and all investigations were initiated on the same day (October 18, 2007).<sup>54</sup> None of the statutory exceptions to cumulation is applicable.

Magnum argues that the Commission should cumulate subject imports from China and subject imports from Taiwan. No contrary arguments were asserted. We examine below the four considerations applicable to determining whether there is a reasonable overlap of competition.

*Fungibility.* The questionnaires asked market participants whether raw flexible magnets from different sources were interchangeable. 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.

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<sup>49</sup> 19 U.S.C. § 1677(7)(G)(i).

<sup>50</sup> See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

<sup>51</sup> Commissioner Lane notes with respect to the first factor that her analysis does not require such similarity of products that a perfectly symmetrical fungibility is required and that this factor would be better described as an analysis of whether subject imports from each country and the domestic like product could be substituted for each other. See Separate Views of Commissioner Charlotte R. Lane, Certain Lightweight Thermal Paper from China, Germany, and Korea, Inv. Nos. 701-TA-451 and 731-TA-1126-1128 (Preliminary), USITC Pub. 3964 (Nov. 2007).

<sup>52</sup> See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

<sup>53</sup> The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 848 (1994) (“SAA”) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA at 848 (citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988)), aff'd, 859 F.2d 915 (Fed. Cir. 1988). See Goss Graphic Sys., Inc. v. United States, 33 F. Supp. 2d 1082,1087 (Ct. Int'l Trade 1998) (“cumulation does not require two products to be highly fungible”); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

<sup>54</sup> CR at I-1, PR at I-1.

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>55</sup>

The domestic like product and subject imports from China and Taiwan each consist of sheeting, strips, and profile shapes. During all portions of the period of investigation, sheeting constituted a majority of U.S. producers' domestic shipments, of shipments of subject imports from China, and of shipments of subject imports from Taiwan.<sup>56</sup> Both the domestic like product and subject imports from each source consisted of both calendered and extruded material. During each portion of the period of investigation, a majority of U.S. producers' domestic shipments, subject imports from China, and subject imports from Taiwan were produced through the calendering process.<sup>57</sup>

*Geographic Overlap.* All five responding U.S. producers and 17 of 30 responding importers of subject merchandise reported selling nationwide.<sup>58</sup> Jasdi, the \*\*\* importer of subject merchandise from Taiwan during 2005-07, was located in California and reported selling to the \*\*\*.<sup>59</sup> The company reportedly had warehouse facilities in Baltimore, MD and Miami, FL, but its entries through these ports \*\*\*.<sup>60</sup> The purchasers of subject imports from Taiwan were principally located in the \*\*\*, with other customers located in the \*\*\*.<sup>61</sup>

*Channels of Distribution.* During 2007, the largest share of U.S. producers' shipments (42.8 percent) went to original equipment manufacturers (OEMs), and the second largest share (36.0 percent) went to printers. A majority (\*\*\*) percent) of shipments of subject imports from China went to printers, and the second largest share (\*\*\*) percent) went to OEMs. A majority (\*\*\*) percent) of shipments of subject imports from Taiwan went to printers.<sup>62</sup>

*Simultaneous Presence in Market.* The domestic like product and imports from both subject countries were present in the U.S. market throughout the period of investigation.<sup>63</sup>

*Analysis.* The record indicates significant fungibility among products from different sources. Market participants overwhelmingly find raw flexible magnets from different sources to be at least sometimes interchangeable. The domestic like product, subject imports from China, and subject imports from Taiwan are each primarily produced through the calendering process and sold in the form of sheeting.

While 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 record also indicates geographic overlap among products from different sources, at least in the multiple regions of the country where subject imports from Taiwan are sold. The domestic like

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<sup>55</sup> CR/PR, Table II-5.

<sup>56</sup> CR/PR, Table IV-3.

<sup>57</sup> CR/PR, Table IV-4.

<sup>58</sup> CR at II-1, II-3, PR at II-1.

<sup>59</sup> INV-FF-092 at II-3 n.5 (Aug. 1, 2008), PR at II-1 n.5.

<sup>60</sup> INV-FF-092 at II-3 n.5, PR at II-1 n.5.

<sup>61</sup> INV-FF-092 at IV-13, PR at IV-8.

<sup>62</sup> CR/PR, Table II-1. Most importers of the Chinese product imported that product exclusively. A majority of importers of the subject merchandise from Taiwan also imported small quantities of subject imports from China. CR/PR, Table IV-1.

<sup>63</sup> CR/PR, Table IV-2.

product, subject imports from China, and subject imports from Taiwan were simultaneously present in the U.S. market throughout the period of investigation.

Thus, based on the record, we conclude 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. We consequently cumulate subject imports from China and Taiwan for our analysis of material injury by reason of subject imports.

## **B. Cumulation for Threat Analysis**<sup>64</sup>

Because our determinations address the issue of threat of material injury by reason of subject imports, we must also consider whether to cumulate subject imports from China and Taiwan for purposes of our threat analysis. In contrast to cumulation for material injury, cumulation for threat analysis is discretionary. Under section 771(7)(H) of the Tariff Act, the Commission may “to the extent practicable” cumulatively assess the volume and price effects of subject imports from all countries as to which petitions were filed on the same day if the requirements for cumulation for material injury analysis are satisfied.<sup>65</sup>

We have already found that the requirements for cumulation for material injury analysis are satisfied. We further find that subject imports from China and Taiwan are likely to compete under similar conditions of competition in the U.S. market in the imminent future.<sup>66</sup> Imports from each subject country were present in the U.S. market throughout the period of investigation and will likely continue to be present in the market in the imminent future.<sup>67</sup> The industries in both countries are export-oriented.<sup>68</sup> Subject imports from China and Taiwan are generally good substitutes; at least a plurality of purchasers found them to be comparable with respect to each purchasing factor surveyed in the questionnaires.<sup>69</sup> Accordingly, we have exercised our discretion to cumulate subject imports from China and Taiwan for our analysis of threat of material injury by reason of subject imports.

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<sup>64</sup> Vice Chairman Pearson and Commissioner Okun do not join this section of the opinion. Their analysis of cumulation for threat is contained in their dissenting views. Commissioner Lane does not reach the issue of threat of material injury and also does not join this section of the opinion.

<sup>65</sup> 19 U.S.C. § 1677(7)(H).

<sup>66</sup> Although Commissioner Pinkert takes into account the conditions of competition discussed in the text, his analysis of conditions of competition for purposes of cumulation in a threat context focuses on volume and price trends. In this case, he finds that the evidence concerning volume and price trends does not militate against cumulation. Regarding volume trends, although the year-to-year changes in volume of subject imports from China and Taiwan are somewhat different, it is unclear how much of that difference is attributable to the \*\*\* Jasdi USA, \*\*\* importer from Taiwan during the period of investigation. Regarding price trends, the prices of subject imports from the two countries bore a stable relationship to prices of the domestic like product throughout the period of investigation: subject imports predominantly undersold the domestic like product by substantial margins.

<sup>67</sup> CR/PR, Table IV-2. \*\*\* of the reported subject imports from Taiwan during the period of investigation were imported by a single firm, Jasdi USA. Jasdi USA \*\*\* in January 2008 due to the \*\*\*. Subsequently, \*\*\* became the principal U.S. distributor of subject imports from Taiwan. CR at IV-2, PR at IV-4.

<sup>68</sup> Over the full years examined, reported exports accounted for between \*\*\* percent of total shipments by the Chinese industry, and between \*\*\* percent of total shipments by the industry in Taiwan. CR/PR, Tables VII-2, VII-4.

<sup>69</sup> CR/PR, Table II-4.

#### IV. CONDITIONS OF COMPETITION

##### A. Captive Production

Two domestic producers internally consume raw flexible magnets in their production of downstream products. Holm captively consumes raw flexible magnets for the production of gaskets for refrigerators and freezers. \*\*\* captively consumes raw flexible magnets for use in \*\*\*.<sup>70</sup> Consequently, we must decide whether the statutory captive production provision applies in these investigations. This provision, found in section 771(7)(C)(iv) of the Tariff Act, provides as follows:

If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that --

- (I) the domestic like product produced that is internally transferred for processing into the downstream article does not enter the merchant market for the domestic like product,
- (II) the domestic like product is the predominant material input in the production of that downstream article, and
- (III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,

then the Commission, in determining market share and the factors affecting financial performance ..., shall focus primarily on the merchant market for the domestic like product.<sup>71</sup>

In the preliminary determinations, the Commission found that the statutory captive production provision applied to these investigations. It stated that it would revisit the issue of captive production in any final phase of the investigations.<sup>72</sup> Magnum argues that the Commission should again apply the statutory captive production provision, although it maintains that application of the provision “is not of significant consequence for the outcome of these investigations.”<sup>73</sup> We examine each of the statutory criteria below.

*Threshold Criterion.* The captive production provision can be applied only if, as a threshold matter, significant production of the domestic like product is internally transferred and significant production is sold in the merchant market.<sup>74</sup> For the three calendar years within the period of

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<sup>70</sup> CR at III-15, PR at III-8.

<sup>71</sup> 19 U.S.C. § 1677(7)(C)(iv).

<sup>72</sup> Preliminary Determinations, USITC Pub. 3961 at 12-14.

<sup>73</sup> Magnum Prehearing Brief at 27.

<sup>74</sup> 19 U.S.C. § 1677(7)(C)(iv).

investigation, the percentage of U.S. producers' total shipments of raw magnets that were internally consumed ranged from a low of \*\*\* percent in 2007 to a high of \*\*\* percent in 2006. The percentage of shipments sold in the merchant market ranged from a low of \*\*\* percent in 2006 to a high of \*\*\* percent in 2005.<sup>75</sup> The percentages of shipments that are captively consumed and sold on the merchant market are each of sufficient magnitude to be significant. We consequently find the threshold criterion to be satisfied.

*First Statutory Criterion.* The first statutory criterion tests whether the domestic like product produced that is internally transferred for processing into a downstream article does not enter the merchant market for the domestic like product.<sup>76</sup> We focus on whether any of the domestic like product that is transferred internally for further processing is in fact sold on the merchant market.<sup>77</sup> Holm and \*\*\* each sells on the merchant market the same type of raw flexible magnets it consumes internally. No U.S. producer, however, reported diverting raw flexible magnets intended for internal consumption to the merchant market.<sup>78</sup> Consequently, we find that the first statutory criterion is satisfied.

*Second Statutory Criterion.* The second statutory criterion requires that “the domestic like product is the predominant material input of that downstream article.”<sup>79</sup> In analyzing this criterion, we generally consider whether the domestic like product is the predominant material input into a downstream product by referring to its share of the raw material costs of the downstream product.

Raw flexible magnets reportedly constitute \*\*\* percent of the finished cost of the \*\*\* captively produces and \*\*\* percent of the finished cost of Holm's refrigerator/freezer gaskets.<sup>80</sup> Based on the data provided by Holm and \*\*\*, in 2007 raw flexible magnets that were internally transferred constituted on an aggregate basis \*\*\* percent of the cost of the finished products they were used to produce.<sup>81</sup> Moreover, there is no information in the record that any other raw material accounts for a larger percentage of the costs of the finished products in which raw flexible magnets are captively consumed than the magnets themselves.<sup>82</sup> In light of these facts, we find that the second statutory criterion is satisfied.

*Third Statutory Criterion.* The third statutory criterion requires the Commission to consider whether “the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article.”<sup>83</sup> The Commission has focused on “whether the merchant

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<sup>75</sup> CR at III-14, PR at III-8.

<sup>76</sup> See 19 U.S.C. § 1677(7)(C)(iv)(I).

<sup>77</sup> This is the same approach followed in the preliminary determinations. Preliminary Determinations, USITC Pub. 3961 at 13.

<sup>78</sup> CR at III-15, PR at III-8.

<sup>79</sup> 19 U.S.C. 1677(7)(C)(iv)(II).

<sup>80</sup> CR at III-15, PR at III-8.

<sup>81</sup> Derived from \*\*\* Producer Questionnaires, responses to questions II-9, II-16.

<sup>82</sup> One other raw material, extruded flexible plastic, is used to produce refrigerator gaskets. A distributor of refrigerator gaskets reports that extruded flexible plastic can account for \*\*\* percent of the cost of the gasket, depending on design. CR at III-15-16, PR at III-8. Consequently, there are particular designs of refrigerator gaskets for which extruded flexible plastic can account for a greater percentage of raw material costs for the gasket than raw flexible magnets. Overall, however, the record does not indicate that extruded flexible plastic typically accounts for a greater percentage of raw material costs, and the information submitted by \*\*\* would appear to suggest otherwise.

<sup>83</sup> 19 U.S.C. § 1677(7)(C)(iv)(III).

market purchaser is generally using the domestic like product in the production of the same downstream article or articles as the integrated domestic producer.”<sup>84</sup>

Refrigerator/freezer gaskets were the downstream use for \*\*\* percent of the quantity of internally transferred raw flexible magnets in 2007, but accounted for only \*\*\* percent of merchant market sales of raw flexible magnets.<sup>85</sup> The remaining captively consumed raw flexible magnets were used to produce \*\*\*, and a substantial quantity of raw flexible magnets is also shipped to printers in the merchant market.<sup>86</sup> Because \*\*\* of the quantity of internally transferred magnets is used to produce refrigerator/freezer gaskets, on an aggregated basis the internally transferred product is not used to produce the same articles typically produced from raw flexible magnets sold in the merchant market. We therefore find the third statutory criterion is satisfied.

*Conclusion.* We conclude that the conditions for application of the statutory captive production provision are satisfied. The statute therefore directs us to “focus primarily on the merchant market for the domestic like product” in determining market share and the factors affecting financial performance when the provision is applicable.<sup>87</sup> We also, however, analyze these factors with respect to the total market as a condition of competition.

## **B. Other Conditions of Competition**

The following additional conditions of competition inform our analysis of whether there is material injury by reason of subject imports.

*Demand Conditions.* Apparent U.S. consumption of raw flexible magnets declined over the Commission’s period of investigation, which encompasses the period from January 1, 2005 to March 31, 2008. In the merchant market, apparent U.S. consumption declined from \*\*\* pounds in 2005 to \*\*\* pounds in 2006, and then to \*\*\* pounds in 2007. The \*\*\* pounds of apparent U.S. merchant market consumption during the first quarter of (“interim”) 2008 was lower than the \*\*\* pounds during the comparable period of 2007.<sup>88</sup> In the total market, apparent U.S. consumption increased from 85.6 million pounds in 2005 to 89.1 million pounds in 2006, and then declined to 78.4 million pounds in 2007. The 17.2 million pounds of apparent U.S. consumption in the total market in interim 2008 was lower than the 19.2 million pounds in interim 2007.<sup>89</sup>

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.<sup>90</sup> Magnum indicates 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.<sup>91</sup> 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 recent problems in the U.S. real estate market may help explain the recent declines in

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<sup>84</sup> Polyvinyl Alcohol from Taiwan, Inv. No. 731-TA-1088 (Preliminary), USITC Pub. 3732 at 16-17 (Oct. 2004).

<sup>85</sup> CR at III-16, PR at III-9.

<sup>86</sup> CR/PR, Table II-1.

<sup>87</sup> 19 U.S.C. § 1677(7)(C)(iv).

<sup>88</sup> CR/PR, Table IV-6.

<sup>89</sup> CR/PR, Table IV-5. Apparent consumption in the U.S. captive market increased from 2005 to 2006, and then declined in 2007 to a level below that of 2005. Apparent consumption in the captive market was higher in interim 2008 than in interim 2007. CR/PR, Table C-3.

<sup>90</sup> CR at II-6, PR at II-4.

<sup>91</sup> Magnum Posthearing Brief, ex. 6 at 49, 55.

apparent U.S. consumption for raw flexible magnets.<sup>92</sup> Magnum stated that the only time prior to the current period of investigation when it had suffered a sales decline was during the recession of 2001.<sup>93</sup> One nonparty importer stated that his firm's sales of raw flexible magnets were relatively flat.<sup>94</sup> Another nonparty importer characterized the market as maturing, but still having the prospect for future growth.<sup>95</sup>

OEMs accounted for the highest percentage of the domestic industry's shipments throughout the period of investigation and a lower, but not insubstantial, share of the shipments of the cumulated subject imports. The second largest percentage of the domestic industry's shipments and the highest percentage of the shipments of the subject imports were to printers.<sup>96</sup> Other channels of distribution for both the domestic like product and the subject imports include shipments to distributors and to retailers.<sup>97</sup> Distributors may resell and/or provide fabrication services. While distributors typically serve smaller volume customers than those served directly by the producers, there is some overlap in the customers of producers and distributors.<sup>98</sup>

*Supply.* The Commission identified seven U.S. producers of raw flexible magnets in the final phase investigations.<sup>99</sup> Both Magnum and the nonparty importers agree that only two domestic producers have a significant presence in the merchant market: Flexmag and petitioner Magnum.<sup>100</sup> Almost all of the production of another domestic producer, Holm, is captively consumed.<sup>101</sup> The remaining producers all sell exclusively in the merchant market.<sup>102</sup> The largest of these firms, however, was responsible for only \*\*\* percent of 2007 U.S. production.<sup>103</sup>

Magnum acquired what had been an additional significant producer participating in the merchant market, Magnetic Specialties, Inc. ("MSI"), in 2005.<sup>104</sup> Magnum stated that, at the time of the acquisition, MSI was struggling.<sup>105</sup> Magnum perceived that the acquisition would consolidate operations, increase efficiencies, reduce costs, and provide additional access to retail markets.<sup>106</sup> After Magnum acquired MSI, it moved the consolidated operations to a new, larger facility, purchased new equipment, and reduced the number of PRWs from the combined level of the separate firms.<sup>107</sup>

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<sup>92</sup> Tr. at 76, 79 (T. Love).

<sup>93</sup> Tr. at 77 (T. Love).

<sup>94</sup> Tr. at 188 (Lewis).

<sup>95</sup> Tr. at 191 (Gorgonne).

<sup>96</sup> CR/PR, Table II-1. Magnum, which identified itself as the largest U.S. producer of raw flexible magnets, stated that its largest customer segment was printers. Tr. at 12 (A. Love), 34-35 (T. Love).

<sup>97</sup> CR/PR, Table II-1.

<sup>98</sup> CR/PR at II-1 & n.3.

<sup>99</sup> CR/PR, Table III-1.

<sup>100</sup> Magnum Posthearing Brief, ex. 35; Tr. at 207 (Gorgonne), 207 (Lewis), 208 (Baird).

<sup>101</sup> CR/PR, Table III-1. \*\*\* also reported internal consumption. CR at III-14, PR at III-8.

<sup>102</sup> CR at III-14, PR at III-8.

<sup>103</sup> CR/PR, Table III-1.

<sup>104</sup> CR at III-2, PR at III-1.

<sup>105</sup> Tr. at 59 (T. Love).

<sup>106</sup> Tr. at 59-60 (T. Love), 60 (A. Love); Magnum Posthearing Brief, ex. 6 at 45-47, 56-57.

<sup>107</sup> Tr. at 93-94 (A. Love).



During the period of investigation, U.S. producers were the dominant suppliers of raw flexible magnets to the U.S. market. U.S. producers held a \*\*\* percent share of the U.S. merchant market in 2005, declining to \*\*\* percent in 2006 and \*\*\* percent in 2007.<sup>108</sup> In the total market, the share held by U.S. producers declined from 95.6 percent in 2005 to 93.9 percent in 2007 and then to 89.8 percent in 2007.<sup>109</sup> Virtually all of the market not supplied by the domestic industry was supplied by subject imports. Subject imports supplied an increasing share of the U.S. merchant market and the total market during the period of investigation.<sup>110</sup> Imports from nonsubject sources supplied minimal amounts to the U.S. market during the period of investigation, never accounting for more than \*\*\* percent of the merchant market or \*\*\* percent of the total market.<sup>111</sup>

*Other Conditions.* The record indicates that the domestic like product and the subject imports are generally substitutable. Purchasers were asked to compare raw flexible magnets from various sources with respect to numerous factors, including 14 non-price factors. In comparing subject imports from China with the domestic like product, pluralities or majorities reported the products were comparable with respect to seven non-price factors and that the domestically produced product was superior with respect to six factors. With respect to one factor, there was an equal number of purchasers finding the products comparable and finding the U.S. product superior.<sup>112</sup> In comparing subject imports from Taiwan with the domestic like product, pluralities or majorities reported that the products were comparable with respect to five non-price factors and that the domestically produced product was superior with respect to seven factors. With respect to two factors, there was an equal number of purchasers finding the products comparable and finding the U.S. product superior.<sup>113</sup>

Because the domestic like product and the subject imports are comparable in many respects, price plays an important role in purchasing decisions. In their questionnaire responses, 33 out of 39 purchasers identified price as a “very important” factor in purchasing decisions for raw flexible magnets. Price was one of the six factors purchasers most frequently cited as “very important.”<sup>114</sup> Price was also the factor that purchasers listed second most frequently (after quality) as the most important factor in purchasing decisions, and was the factor most frequently listed as the second most important factor in such decisions.<sup>115</sup>

Raw flexible magnets are sold in several forms. Throughout the period of investigation, sheeting constituted the \*\*\* of shipments of the domestic like product and imports from each of the subject countries. Strips constituted between \*\*\* percent of the domestic industry’s shipments from 2005 to 2007, but only between \*\*\* percent of shipments of the cumulated subject imports. Profile shapes

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<sup>108</sup> CR/PR, Table IV-8. U.S. producers’ share of the U.S. merchant market was \*\*\* percent in interim 2007 and \*\*\* percent in interim 2008. *Id.*

<sup>109</sup> CR/PR, Table IV-7. U.S. producers’ share of the total U.S. market was 92.6 percent in interim 2007 and 93.0 percent in interim 2008. *Id.*

<sup>110</sup> CR/PR, Tables IV-7, IV-8.

<sup>111</sup> CR/PR, Tables IV-7, IV-8.

<sup>112</sup> CR/PR, Table II-4. The six factors where pluralities or majorities of purchasers found the U.S. product superior were availability, delivery terms, delivery time, product consistency, quality exceeds industry standards, and technical support/service.

<sup>113</sup> CR/PR, Table II-4. The seven factors where pluralities or majorities of purchasers found the U.S. product superior were delivery terms, delivery time, product consistency, product range, quality exceeds industry standards, reliability of supply, and technical support/service.

<sup>114</sup> CR/PR, Table II-3.

<sup>115</sup> CR/PR, Table II-2.

constituted between \*\*\* percent of shipments of the domestic like product between 2005 and 2007 and between \*\*\* percent of shipments of the cumulated subject imports.<sup>116 117</sup>

## V. MATERIAL INJURY AND THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

### A. Legal Standards

#### 1. Material Injury by Reason of Subject Imports

In determining whether an industry in the United States is materially injured by reason of the imports under investigation, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>118</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>119</sup> In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>120</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>121</sup>

In evaluating the volume of subject imports, section 771(7)(C)(i) of the Tariff Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>122</sup>

In evaluating the price effects of the subject imports, section 771(7)(C)(ii) of the Tariff Act provides that the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>123</sup>

In examining the impact of subject imports, section 771(7)(C)(iii) of the Tariff Act provides that the Commission “shall evaluate all relevant economic factors which have a bearing on the state of the

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<sup>116</sup> CR/PR, Table IV-3.

<sup>117</sup> Commissioner Lane does not join the remainder of this opinion. See her Separate Views.

<sup>118</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also *Angus Chemical Co. v. United States*, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>119</sup> 19 U.S.C. § 1677(7)(A).

<sup>120</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>121</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>122</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>123</sup> 19 U.S.C. § 1677(7)(C)(ii).

industry.”<sup>124</sup> These factors include output, sales, inventories, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>125</sup>

## 2. Threat of Material Injury by Reason of Subject Imports

Section 771(7)(F) of the Tariff Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”<sup>126</sup> The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of subject imports would occur unless an order is issued.<sup>127</sup> In making our determination, we consider all statutory threat factors that are relevant to these investigations.<sup>128</sup>

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<sup>124</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 (“In material injury determinations, 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 also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”).

The statute additionally instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping investigation as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its antidumping investigation concerning subject imports from China, Commerce found a 105.00 percent dumping margin for Guangzhou Newlife Magnet Electricity Co. and a 185.28 percent PRC-wide rate. 73 Fed. Reg. at 39671-72. In its antidumping investigation concerning subject imports from Taiwan, Commerce found 38.03 percent dumping margins for three named respondents and a 31.20 percent margin for all others. 73 Fed. Reg. at 39674. The Commission may also consider the magnitude of countervailable subsidies. 19 U.S.C. § 1677(7)(C)(iii). In its countervailing duty investigation on subject imports from China, Commerce found a subsidy rate of 109.95 percent both for two named respondents and for all others. 73 Fed. Reg. at 39668.

<sup>125</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

<sup>126</sup> 19 U.S.C. § 1677(7)(F)(ii).

<sup>127</sup> 19 U.S.C. § 1677(7)(F)(ii).

<sup>128</sup> These factors are as follows:

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement) and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(continued...)

## **B. Volume of the Subject Imports**

### **1. Analysis of Material Injury by Reason of Subject Imports**

The volume of cumulated subject imports rose each year from 2005 to 2007. Cumulated subject imports increased from \*\*\* pounds in 2005 to \*\*\* pounds in 2006 and then to \*\*\* pounds in 2007.<sup>129</sup>

Because apparent U.S. consumption, particularly in the merchant market, declined from 2005 to 2007, the market penetration of the cumulated subject imports increased at an even greater rate than their increase in volume. In the merchant market, the market penetration of cumulated subject imports increased from \*\*\* percent in 2005 to \*\*\* percent in 2006 and then to \*\*\* percent in 2007.<sup>130</sup> In the total market, the market penetration of cumulated subject imports increased from \*\*\* percent in 2005 to \*\*\* percent in 2006 and then to \*\*\* percent in 2007.<sup>131</sup> We find the increase in subject imports, both on an absolute basis and relative to consumption, to be significant.

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<sup>128</sup> (...continued)

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

19 U.S.C. § 1677(7)(F)(i). To organize our analysis, we discuss the applicable statutory threat factors using the same volume/price/impact framework that applies to our material injury analysis. Statutory threat factors (I), (II), (III), and (V) are discussed in the analysis of subject import volume. Statutory threat factor (IV) is discussed in the price effects analysis, and statutory threat factor (IX) is discussed in the impact analysis. Statutory threat factor (VII) is inapplicable, as no imports of agricultural products are involved in these investigations. No argument has been asserted in these investigations that the statutory threat factor (VI) concerning product shifting is applicable to production of raw flexible magnets. There was also no argument that the industry is currently engaging or will imminently engage in any efforts to develop a derivative or more advanced version of the domestic like product, which would implicate statutory threat factor (VIII).

<sup>129</sup> CR/PR, Table IV-2. The value of subject imports also increased each year from 2005 to 2007. *Id.* The volume of cumulated subject imports, in terms of either quantity or value, was lower in interim 2008 than interim 2007. *Id.* Commerce imposed provisional duties in February 2008. *See* CR/PR, Table I-1. Particularly in light of the high provisional duty rates, the imposition of provisional duties likely restrained subject import volume during interim 2008. Indeed, nonparty importer witnesses testified at the hearing that their purchases of the subject imports essentially stopped upon imposition of provisional duties. Tr. at 178 (Gorgonne), 230 (Lewis). In light of this, we have reduced the weight we accord to the post-petition data for interim 2008 pursuant to 19 U.S.C. § 1677(7)(I).

<sup>130</sup> CR/PR, Table IV-8. Market penetration of subject imports in the merchant market was \*\*\* percent in interim 2007 and \*\*\* percent in interim 2008. *Id.*

<sup>131</sup> CR/PR, Table IV-7. Market penetration of subject imports in the total market was \*\*\* percent in interim 2007 and \*\*\* percent in interim 2008. *Id.*

## 2. Analysis of Threat of Material Injury by Reason of Subject Imports

In the absence of antidumping and countervailing duty orders, we find that substantially increased imports of the subject merchandise into the United States are imminent for a number of reasons. First, as previously stated, subject imports grew rapidly on both an absolute and relative basis until provisional duties were imposed in interim 2008.<sup>132</sup> Second, the industries producing subject merchandise have substantial unused capacity. The three producers of subject merchandise in China that responded to the Commission's foreign producer questionnaire, which Chinese producer Newlife stated account for an estimated \*\*\* percent of production of subject merchandise in China, reported \*\*\* pounds of unused capacity in 2007 and project that their excess capacity will exceed \*\*\* pounds in both 2008 and 2009.<sup>133</sup> The projected excess capacity in China might have been even higher but for the fact that \*\*\*.<sup>134</sup> <sup>135</sup> The two producers of subject merchandise in Taiwan that responded to the Commission's foreign producer questionnaire, which estimate they account for approximately \*\*\* percent of production of subject merchandise in that country, reported \*\*\* pounds of unused capacity in 2007 and project \*\*\* amounts of excess capacity in 2008 and 2009.<sup>136</sup> Consequently, the projected unused capacity of the reporting producers in the subject countries, which exceeds \*\*\* pounds, indicates that the subject industries are capable of increasing their shipments to the United States far in excess of the levels observed during the period of investigation.

Finally, the subject industries are highly export oriented, and exports to the United States grew at a \*\*\* rate from 2005 to 2007 than either exports to other markets or home market shipments.<sup>137</sup> In light of these patterns, we find that the producers of subject merchandise are likely to devote their unused capacity to continue to increase shipments to the United States rapidly in the absence of antidumping and countervailing duty orders. We further observe that, due to increases in inventories of subject merchandise from China, U.S. importers' inventories of cumulated subject imports increased \*\*\* from 2005 to 2007.<sup>138</sup>

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<sup>132</sup> CR/PR, Tables IV-2, IV-7, IV-8. Vice Chairman Pearson and Commissioner Okun, who consider solely subject imports from China in this threat analysis, note that this conclusion is equally applicable to subject imports from China considered separately. Subject imports from China accounted for \*\*\* percent of total U.S. imports in 2007, and steadily increased from \*\*\* pounds in 2005 to \*\*\* pounds in 2007. CR/PR, Table IV-2.

<sup>133</sup> CR/PR at VII-1, Table VII-2. Reported capacity in the Chinese industry increased from \*\*\* pounds in 2005 to \*\*\* pounds in 2007. Capacity is projected to increase to \*\*\* pounds by 2009. CR/PR, Table VII-2. Magnum contends that actual capacity in China is far greater than the capacity reported in the questionnaire responses. See CR at VII-13 & n.15, PR at VII-5 & n.15.

<sup>134</sup> CR at VII-6, PR at VII-3.

<sup>135</sup> Vice Chairman Pearson and Commissioner Okun do not join the remainder of this paragraph.

<sup>136</sup> CR/PR, Table VII-4, CR at VII-9, PR at VII-4. Reported capacity in Taiwan was stable from 2005 to 2007 and is projected to remain stable through 2009. CR/PR, Table VII-4.

<sup>137</sup> CR/PR, Table VII-5. Vice Chairman Pearson and Commissioner Okun note that the conclusions in this paragraph are equally applicable to subject imports from China considered separately. See CR/PR, Table VII-2.

<sup>138</sup> CR/PR, Table VII-6. By contrast, inventories of the subject merchandise held by the subject producers were at relatively modest levels relative to production or shipments throughout the period of investigation. CR/PR, Tables VII-2, VII-4.

We consequently conclude that the volume of subject imports, which was significant during the period of investigation, is likely to increase substantially in the imminent future.<sup>139</sup>

### **C. Price Effects of the Subject Imports**

#### **1. Analysis of Material Injury by Reason of Subject Imports**

As explained above in the discussion on conditions of competition, the domestic like product and the subject imports are generally substitutable. Purchasers report price is an important consideration in purchasing decisions.

The Commission collected quarterly pricing data on six products. The subject imports undersold the domestic like product in 72 out of 101 comparisons of quarterly sales data.<sup>140</sup> Many underselling margins were high, and the average underselling margin was 19.2 percent.<sup>141</sup> Indeed, for pricing product 6, which involved the highest quantities of domestically produced product for the most quarters throughout the period of investigation and the highest quantities of subject import sales for the most quarters beginning with the second quarter of 2006 (when importers began to sell subject imports of this product from China in appreciable quantities), underselling margins consistently exceeded \*\*\* percent.<sup>142</sup> We find the underselling during the period of investigation to be significant.<sup>143</sup>

Prices for all six of the domestically produced products were higher for the most recent quarter in 2007 for which data were reported than during the first quarter of 2005. For three of the six products,

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<sup>139</sup> We have also taken into consideration the nature of the subsidies Commerce found to be countervailable, pursuant to statutory threat factor (I). In its final countervailing duty determination concerning subject imports from China, Commerce found 19 countervailable subsidies, including five national income tax programs; a national income tax credit program; a national income tax refund program; two national value added tax refund or exemption programs; two national grant programs; four provincial income tax programs; two provincial and local direct grant programs; a provincial loan program; and a provincial program for provision of goods at less than adequate remuneration. Commerce Decision Memorandum C-570-923 from Stephen J. Clayes to David M. Spooner at 8 (July 2, 2008), (EDIS Doc. 305297). Commerce did not make a finding concerning whether any of the subsidy programs is a subsidy described in Article 3 or 6.1 of the WTO Agreement on Subsidies and Countervailing Measures.

We also note that there are no antidumping orders or investigations concerning the subject merchandise in other WTO member states. CR at VII-17, PR at VII-8.

<sup>140</sup> CR/PR, Table V-8. If data from the first quarter of 2008, which may be affected by imposition of provisional duties, were excluded, the subject imports undersold the domestic like product in 68 out of 94 comparisons. CR/PR, Tables V-1-6.

We have followed our typical methodology of focusing our underselling analysis on a comparison of selling prices charged by U.S. producers with selling prices charged by importers of the subject merchandise. Magnum suggests that we should also compare selling prices charged by U.S. producers with the landed duty prices importers paid to the exporters of subject merchandise, because it states it competes with those exporters for sales. Commission staff collected importers' purchase prices in these investigations to obtain pricing data concerning subject imports that are not sold as raw flexible magnets in the U.S. market, but instead are processed into products, such as printed magnets, falling outside the scope or like product definitions. See CR at V-6 n.17, PR at V-5 n.17. A comparison of these purchase prices with U.S. producers' sales prices leads us to the same conclusion of significant underselling as our typical methodology. See CR/PR, Tables V-1-6.

<sup>141</sup> CR/PR, Table V-8.

<sup>142</sup> CR/PR, Table V-6.

<sup>143</sup> There were also some instances of confirmed lost sales and lost revenues. All confirmed lost sales involved subject imports from \*\*\*; there was a single fully confirmed instance of lost revenue involving subject imports from \*\*\*. CR/PR, Tables V-9-10; CR at V-17-23, PR at V-7-9.

prices of the domestically produced product attained peak levels for the 2005-07 period during 2007; two of the remaining three products obtained prices in 2007 that were \*\*\* below peak values.<sup>144</sup> By contrast, the subject imports followed no clear price trend; prices for the subject imports rose for some products, declined for some, and fluctuated for others.<sup>145</sup> Because prices for the domestic like product generally increased during the period of investigation, we conclude that the subject imports did not have significant price-depressing effects.

There was some indication of price suppression during the period of investigation, as changes in prices the domestic industry charged during the period of investigation largely, but not entirely, tracked changes in the industry's costs in both the merchant market and the total market.<sup>146</sup> The industry's ratio of COGS to net sales increased by \*\*\* percentage points in the merchant market from 2005 to 2007.<sup>147</sup> When the presence of subject imports in the U.S. market increased from 2006 to 2007, however, the ratio of COGS to net sales in the merchant market declined.<sup>148</sup> In light of these facts, the record does not support a conclusion that the subject imports had significant price-suppressing effects during the period of investigation.<sup>149</sup>

## 2. Analysis of Threat of Material Injury by Reason of Subject Imports

The record indicates that several changes in the domestic industry's cost structure are likely in the imminent future. Because of these changes, increasing volumes of low-priced subject imports will likely negatively affect prices for the domestic like product in the imminent future, although subject imports did not do so in a significant manner during the period of investigation.

In 2007, particularly in the merchant market, the domestic industry faced fairly stable costs on a per unit basis.<sup>150</sup> During the same year, merchant market net sales values increased \*\*\* – mirroring the pricing data indicating that most pricing products were priced at or near peak levels during 2007.<sup>151</sup> As a result, gross profit and operating income increased on a per unit basis in both the merchant market and the total market.<sup>152</sup>

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<sup>144</sup> CR/PR, Tables V-1-6. As stated above, we have given limited weight to pricing data for the first quarter of 2008, because they may have been affected by the imposition of provisional duties.

<sup>145</sup> CR/PR, Tables V-1-6.

<sup>146</sup> CR/PR, Tables VI-2, VI-4.

<sup>147</sup> CR/PR, Table VI-4. By contrast, in the total market, the ratio of COGS to net sales declined from 2005 to 2007. CR/PR, Table VI-1. This decline is solely a function of \*\*\*. See INV-F-099, Supplemental Table 1 (Aug. 7, 2008).

<sup>148</sup> CR/PR, Table VI-4.

<sup>149</sup> Magnum requests that we conduct a price suppression analysis based on a set of hypothetical fixed costs, rather than the costs the domestic industry actually incurred. It has identified no prior instance where the Commission used such a methodology, cf. Tr. at 73, and we decline to adopt the requested methodology here.

<sup>150</sup> In the merchant market, both COGS and SG&A expenses on a per-unit basis \*\*\* from 2006 to 2007. CR/PR, Table VI-4. In the total market, COGS increased by \*\*\* and SG&A expenses increased by \*\*\* from 2006 to 2007. CR/PR, Table VI-1.

<sup>151</sup> CR/PR, Table VI-4. Overall and captive consumption net sales values also increased during 2007. CR/PR, Table VI-1.

<sup>152</sup> CR/PR, Tables VI-1, VI-4.

The stable cost environment the domestic industry experienced in 2007 is unlikely to continue in the imminent future. In both the merchant market and the overall market, unit COGS was \*\*\* higher in interim 2008 than in interim 2007.<sup>153</sup> This is largely due to an increase in per unit raw materials costs.<sup>154</sup>

The pervasive underselling of the subject imports at high margins observed during the period of investigation will likely continue in the imminent future.<sup>155</sup> Given increasing volumes of low-priced subject imports, the importance of price in purchasing decisions,<sup>156</sup> and recent declines in apparent U.S. consumption, we find that the domestic industry is unlikely to be able to raise prices in the imminent future commensurately with continuing cost increases of the magnitude observed during the latter portion of the period of investigation.<sup>157</sup> Thus, for purposes of our threat analysis, we conclude that the subject imports will likely continue their significant underselling, and will likely have significant price-suppressing effects, which will be likely to increase demand for further imports.

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<sup>153</sup> CR/PR, Tables VI-1, VI-4.

<sup>154</sup> CR/PR, Tables VI-1, VI-4. Information submitted by Magnum indicates that elements of the firm's raw materials costs \*\*\*. Magnum Posthearing Brief, ex. 27. Magnum asserts that it has continued to receive notices of cost increases from its suppliers through the third quarter of 2008. See id., ex. 5.

<sup>155</sup> Vice Chairman Pearson and Commissioner Okun note that this statement and the accompanying analysis of likely price effects are also applicable to subject imports from China considered separately. During the period of investigation, subject imports from China undersold the domestic like product in 24 out of 37 comparisons, with an average underselling margin of 23.3 percent. CR/PR, Table V-8.

<sup>156</sup> We do not agree with the nonparty importers that sales the domestic industry lost to subject imports during the period of investigation were exclusively a function of purchasers' dissatisfaction with Magnum for nonprice reasons. First, Magnum was not the sole domestic producer. To the contrary, the nonparty importers acknowledged that Magnum intensely competes with domestic producer Flexmag. Tr. at 183-84 (Lewis), 201 (Gorgonne), 201 (Nelleson). Consequently, although Magnum lost sales to the subject imports, see electronic mail message from \*\*\* to Olympia Hand (July 18, 2008) (EDIS Doc. 305836 at 36), sales lost by Magnum were not necessarily lost by the entire domestic industry. Cf. CR at V-21, PR at V-8-9. Second, the only nonparty exporter that attempted to document that it reduced purchases from Magnum for nonprice reasons was Adams, which was responsible for \*\*\* percent of subject imports from China and \*\*\* percent of cumulated subject imports in 2007, and thus was not responsible for a predominant share of subject imports. CR/PR, Table IV-1. Other nonparty importers that appeared at the hearing failed to document any complaints they asserted concerning Magnum. Moreover, they either conceded that they began their purchases from China before they experienced any difficulties with Magnum, Tr. at 175-76 (Gorgonne), 211 (Baird), or acknowledged that price played a central role in their purchasing decisions. See Tr. at 176 (Gorgonne), 176 (Nelleson), 205 (Baird).

<sup>157</sup> We acknowledge that the increase in per unit merchant market net sales value between interim 2007 and interim 2008 was even larger than the increase in per unit COGS. CR/PR, Table VI-4. The interim 2008 increase in net sales value, however, occurred while subject import volume was declining in light of the pendency of these investigations. Thus, the domestic industry's interim 2008 net sales value data do not indicate the industry's likely ability to respond to competition from increasing volumes of dumped and subsidized subject imports.



## **F. Impact of the Subject Imports on the Domestic Industry**

### **1. Analysis of Material Injury by Reason of Subject Imports**

The domestic industry's capacity increased from 131.0 million pounds in 2005 to 153.2 million pounds in 2006 and then to 154.7 million pounds in 2007.<sup>158</sup> \*\*\*.<sup>159</sup> Magnum contends that its capacity expansions were justified by prior increases in demand and by growth in new applications for raw flexible magnets.<sup>160</sup>

Notwithstanding increased capacity, the industry's output declined during the period of investigation. Production increased from 87.5 million pounds in 2005 to 88.4 million pounds in 2006, but then declined to 75.0 million pounds in 2007.<sup>161</sup> Capacity utilization declined from 66.8 percent in 2005 to 57.7 percent in 2006 and then to 48.5 percent in 2007.<sup>162</sup>

Commercial shipments fell during each year of the period of investigation. The quantity of U.S. producers' commercial shipments declined from \*\*\* pounds in 2005 to \*\*\* pounds in 2006 and then to \*\*\* pounds in 2007.<sup>163</sup> Total U.S. shipments followed the same trend as production, increasing from 81.8 million pounds in 2005 to 83.6 million pounds in 2006, and then declining to 70.4 million pounds in 2007.<sup>164</sup> Inventories declined on both an absolute and relative basis.<sup>165</sup>

The combination of falling quantities of shipments and rising volumes of subject imports led to declines in the domestic industry's market share. In the merchant market, the domestic industry's share of the quantity of apparent U.S. consumption declined from \*\*\* percent in 2005 to \*\*\* percent in 2006 and then to \*\*\* percent in 2007.<sup>166</sup> In the total market, the domestic industry's share of the quantity of apparent U.S. consumption declined from 95.6 percent in 2005 to 93.9 percent in 2006 and then to 89.8 percent in 2007.<sup>167</sup>

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<sup>158</sup> CR/PR, Table III-3. The 38.7 million pounds of capacity in interim 2008 slightly exceeded the 38.3 million pounds of capacity in 2007. Id.

<sup>159</sup> CR/PR, Table III-3.

<sup>160</sup> Tr. at 60 (A. Love); Magnum Posthearing Brief, ex. 33.

<sup>161</sup> CR/PR, Table III-3. The 16.6 million pounds produced during interim 2008 were less than the 18.9 million pounds produced during interim 2007. Id.

<sup>162</sup> CR/PR, Table III-3. Capacity utilization was lower in interim 2008 (43.0 percent) than in interim 2007 (49.3 percent). Id.

<sup>163</sup> CR/PR, Table III-4. The \*\*\* pounds of commercial shipments during interim 2008 were less than the \*\*\* pounds of such shipments during interim 2007. Id.

<sup>164</sup> CR/PR, Table III-4. The 16.0 million pounds of total U.S. shipments during interim 2008 were less than the 17.7 million pounds of such shipments during interim 2007. Id.

<sup>165</sup> Inventory levels declined from \*\*\* pounds in 2005 to \*\*\* pounds in 2007 and were lower in interim 2008 than interim 2007. The ratio of inventories to production and shipments also declined from 2005 to 2007 and was lower in interim 2008 than interim 2007. CR/PR, Table III-6.

<sup>166</sup> CR/PR, Table IV-8. The domestic industry's \*\*\* percent share of apparent U.S. consumption in the merchant market in interim 2008 was less than its \*\*\* percent share in interim 2007. Id.

<sup>167</sup> CR/PR, Table IV-7. The domestic industry's 93.0 percent share of apparent U.S. consumption in interim 2008 was higher than its 92.6 percent share in interim 2007. Id. All consumption in the captive market was attributable to the domestic industry. CR/PR, Table C-3.

Employment-related indicators were mixed. The number of PRWs increased from 386 in 2005 to 388 in 2006, and then declined to 328 in 2007.<sup>168</sup> Hourly wages increased each year during the period of investigation.<sup>169</sup> Productivity was slightly higher in 2007 at 107.4 pounds per hour than in 2005, when it was 103.1 pounds per hour.<sup>170</sup>

The industry's financial performance fluctuated during the period of investigation. The domestic industry's operating margin in the merchant market declined from \*\*\* percent in 2005 to \*\*\* percent in 2006, but increased to \*\*\* percent in 2007.<sup>171</sup> Magnum argues that the improved operating performance during 2007 was a function of cost control efforts by the domestic industry.<sup>172</sup> Indeed, notwithstanding lower sales quantities, per unit costs in the merchant market were \*\*\* from 2006 to 2007. Operating income increased because the industry was able to obtain higher net sales values, notwithstanding the reduction in sales quantities.<sup>173</sup> Nevertheless, because the industry was able to increase its operating margins and operating income during 2007 when subject import volume and market penetration increased, we cannot conclude that the subject imports are currently having a significant adverse impact on the domestic industry.

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<sup>168</sup> CR/PR, Table III-7. The 289 PRWs in interim 2008 were fewer than the 326 in interim 2007. Id.

<sup>169</sup> CR/PR, Table III-7. Hourly wages were higher in interim 2008 than in interim 2007. Id.

<sup>170</sup> CR/PR, Table III-7. Productivity of 96.8 pounds per hour in interim 2008 was lower than the 100.1 pounds per hour attained in interim 2007. Id.

<sup>171</sup> CR/PR, Table VI-4. The interim 2008 merchant market operating margin of \*\*\* percent was higher than the interim 2007 margin of \*\*\* percent. Id.

In the total market, the 2007 operating margin of 5.2 percent exceeded the 2005 operating margin of 0.6 percent and the 2006 operating margin of 3.7 percent. The interim 2008 overall industry operating margin of \*\*\* percent exceeded the interim 2007 margin of \*\*\* percent. CR/PR, Table VI-1. Captive producers' operating performance improved during the period of investigation. CR/PR, Table VI-5.

Because Magnum argues that the financial data submitted by U.S. producer \*\*\* are unreliable, we examined the financial data both including and excluding the data of this producer. See Magnum Final Comments at 4-6. Omitting this producer's data appreciably increases the industry's operating margin in the total market during 2005. Even when we excluded this producer's data, however, the remaining producers still had peak operating income margins in 2007, both in the merchant market and the total market. See INV-FF-099.

Magnum further argues that 2004 should be used as a baseline of "normal" profitability for the domestic industry. Magnum acknowledges that 2004 is not part of the period for which the Commission collected data during the final phase of these investigations, and it did not request the Commission to use a four-year period of investigation. Indeed, Magnum expressed no objection to the Commission's standard practice of using a period of investigation encompassing three calendar years and an interim period. Before we could ascertain that 2004 in fact represented a "normal" period of profitability, however, we would first need to examine whether other conditions of competition that year were also "normal." This would entail compiling additional data for 2004, something Magnum did not request and which we did not undertake during the final phase of these investigations. Consequently, we base our analysis of the industry's financial performance on the January 2005-March 2008 period of investigation.

<sup>172</sup> See Magnum Prehearing Brief at 45-46.

<sup>173</sup> CR/PR, Table VI-4. In the total market, both COGS and SG&A expenses increased on a per unit basis from 2006 to 2007, but net sales values increased by a greater amount. CR/PR, Table VI-1.

We also examined capital expenditures, which peaked in 2005 \*\*\* and declined each year thereafter. The industry's research and development expenditures, which rose during the period of investigation, were modest. CR/PR, Table VI-6.

## 2. Analysis of Threat of Material Injury by Reason of Subject Imports

As discussed above, we previously found that in the imminent future, the cumulated subject imports will continue to increase substantially in volume, will continue significantly to undersell the domestic like product, and will begin to have significant price-suppressing effects in light of very recent increases in the industry's costs.<sup>174</sup> The imminent substantial increase in subject import volume will accelerate the adverse trends the domestic industry experienced during the latter part of the period of investigation in production, shipments, market share, capacity utilization, and employment levels. The combination of reduced output and significantly suppressed prices will impair the industry's ability to maintain the operating margins it achieved during the period of investigation. In 2007, when the industry was largely able to maintain price levels, \*\*\* operating in the merchant market reported operating losses.<sup>175</sup> If, as we have found, the industry cannot recover increased costs in the imminent future, and continues to lose sales to subject imports, these losses will worsen and the financial performance of the domestic industry as a whole will deteriorate significantly.

In light of these considerations, we conclude that additional dumped and subsidized imports are imminent and that material injury by reason of subject imports would occur unless antidumping and countervailing orders are issued. Accordingly, we determine that the domestic industry is threatened with material injury by reason of cumulated subject imports from China and Taiwan.<sup>176 177</sup>

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<sup>174</sup> Vice Chairman Pearson and Commissioner Okun note that the observations in this section are equally applicable with respect to subject imports from China considered separately.

<sup>175</sup> CR/PR, Table VI-4.

<sup>176</sup> We have previously concluded that the requirements of Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006), are inapplicable to determinations of threat of material injury by reason of subject imports. As we have previously explained, Bratsk requires use of a retrospective analysis in the context of present material injury determinations and is inapplicable "to affirmative determinations based on threat of material injury, where a prospective (i.e., forward-looking) analysis is involved." Diamond Sawblades and Parts Thereof from China and Korea, Inv. Nos. 731-TA-1092-1093 (Final)(Remand), USITC Pub. 4007 (May 2008) at 24 n.152 (Commission Opinion), 48 n.144 (separate views of Vice Chairman Aranoff).

<sup>177</sup> Vice Chairman Pearson and Commissioner Okun do not join the preceding footnote. Vice Chairman Pearson and Commissioner Okun note that in two Federal Circuit decisions, Bratsk Aluminum Smelter et al. v. United States, 444 F.3d 1369 (Fed. Cir. 2006) ("Bratsk"), and Caribbean Ispat, Ltd. v. United States, 450 F.3d 1346 (Fed. Cir. 2006) ("Caribbean Ispat"), the Court reaffirmed that the requisite causal link to subject imports is not demonstrated if such imports contributed only "minimally or tangentially to the material harm." Bratsk, 444 F.3d at 1373 (Fed. Cir. 2006), quoting Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997). Under Bratsk, the Commission is directed to undertake an "additional causation inquiry" whenever certain triggering factors are met: "whenever the antidumping investigation is centered on a commodity product, and price-competitive non-subject imports are a significant factor in the market." Bratsk, 444 F.3d at 1375. The additional inquiry required by the Court, which the Commission refers to as the Bratsk replacement/benefit test, is "whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers." Id.

As a threshold matter, it is not immediately clear how the Commission should interpret the Bratsk opinion in terms of its effect on our analysis of causation in Title VII investigations. We discern at least two possible interpretations that differ substantially. The first interpretation is that Bratsk mandates application of an additional test apparently not contemplated by the statute (the so-called "replacement/benefit test"). Under this interpretation, Bratsk appears to require that the Commission apply an extra-statutory causation test with respect to non-subject imports and determine if the domestic industry will benefit from the anti-dumping duty or countervailing duty order. In response to the Federal Circuit's instructions in Caribbean Ispat, the Commission majority applied this test in the Caribbean Ispat remand and reversed its original decision, thereby reaching a negative determination, based on

(continued...)

We further determine, pursuant to 19 U.S.C. §§ 1671d(b)(4)(B) and 1673d(b)(4)(B), that we would not have made material injury determinations but for Commerce’s suspension of liquidation of subject imports in February 2008. We have reduced the weight we have accorded to interim 2008 data because the suspension of liquidation reduced subject import volumes, and we find that we would not make determinations of material injury by reason of subject imports on the basis of the data available immediately prior to suspension of liquidation. Accordingly, the suspension of liquidation did not materially affect our material injury analysis.

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<sup>177</sup> (...continued)

Bratsk. The Court of International Trade affirmed the Caribbean Ispat remand results in Mittal Steel Point Lisas, Ltd. v. United States, 495 F. Supp. 2d 1374 (Ct. Int’l Trade 2007), which has been appealed to the Federal Circuit. While we respectfully disagree with the Court that such a causation analysis is legally required, we perform the Bratsk replacement/benefit analysis below based on the record in these final investigations.

The second interpretation is that Bratsk is a further development of the causation approach prescribed by Gerald Metals. Under this interpretation, the Bratsk decision stands to remind the Commission of its obligation under Gerald Metals that the Commission may not satisfy the “by reason of” causation requirement by showing that subject imports contributed only “minimally or tangentially to the material harm.” In other words, the Bratsk Court’s relatively short discussion of the underlying determination may not have established a new and rigid replacement/benefit test. Rather, the Court may have discussed the triggering factors as a reminder that the Commission, before it makes an affirmative determination, must satisfy itself that it has not attributed material injury to factors other than subject imports. See Separate and Additional Views of Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun Concerning Bratsk Aluminum v. United States in Sodium Hexametaphosphate from China, Inv. No. 731-TA-1110 (Prelim.), USITC Pub. 3912 (Apr. 2007). We have included this analysis in the Commission’s affirmative causation analysis.

Moreover, it is unclear whether the Court intended its approach to apply to analyses of threat of material injury, or only to analyses of present material injury. Given that one of the Court’s formulations of the standard is framed in terms of likely future events, we have interpreted the Court’s decision as applying to the context of threat of material injury as well as present material injury. See Separate and Dissenting Views of Chairman Daniel R. Pearson and Commissioners Jennifer A. Hillman and Deanna Tanner Okun in Certain Line Paper School Supplies from China, India, and Indonesia, Inv. Nos. 701-TA-442-443 and 731-TA-1095-1097 (Final), USITC Pub. 3884 (Sept. 2006).

Having found that an industry in the United States is threatened with material injury by reason of subject imports from China, we now must assess whether the facts of these investigations trigger a Bratsk analysis under the “replacement/benefit test” interpretation of Bratsk. Bratsk requires a two step analysis. First, we must determine whether Bratsk is triggered (i.e., a “commodity product” is involved, and “price-competitive non-subject imports are a significant factor in the market”) based on the facts of these investigations. Second, if it is triggered, then we must consider whether the non-subject imports would replace the subject imports and continue to cause injury to the domestic industry. Based on the record in the final phase of these investigations, we conclude that Bratsk is not triggered.

Vice Chairman Pearson and Commissioner Okun note that petitioner concedes that raw flexible magnets are a commodity product, and therefore, the first triggering factor of the Bratsk test is satisfied. See Magnum Prehearing Brief at 64. The second triggering factor of the Bratsk test requires that non-subject imports are price-competitive and a significant factor in the U.S. market. While we have made a negative determination with respect to subject imports from Taiwan, such imports were subject to investigation at the time of our analysis and, accordingly, we continue to recognize Taiwan as a supply source for purposes of our Bratsk analysis. The record reflects that non-subject imports were not a significant factor in the U.S. market during the period of investigation, inasmuch as their U.S. market share never exceeded \*\*\* percent. CR/PR at Table IV-7. Moreover, non-subject imports accounted for only a very modest proportion of total imports, never exceeding \*\*\* percent of total imports for any calendar year in the period of investigation. *Id.* at Table IV-2. As non-subject imports were not a significant factor in the U.S. market, we find that the second triggering factor of the Bratsk test is not satisfied. Accordingly, it is unnecessary for us to conduct a “replacement/benefit test” under Bratsk.

## CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing raw flexible magnets is threatened with material injury by reason of dumped and subsidized imports from China and dumped imports from Taiwan.<sup>178</sup>

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<sup>178</sup> Vice Chairman Pearson and Commissioner Okun dissenting with respect to Taiwan, and Chairman Lane finding that the domestic industry is materially injured by reason of the subject imports from China and Taiwan.



## SEPARATE VIEWS OF COMMISSIONER CHARLOTTE R. LANE

Based on the record in the final phase of these investigations, I find that an industry in the United States is materially injured by reason of imports of raw flexible magnets from China that the U.S. Department of Commerce (“Commerce”) has found are subsidized and by reason of imports of raw flexible magnets from China and Taiwan sold in the United States at less than fair value.

I join with the majority Commission views with regard to: background, domestic like product and domestic industry, cumulation for material injury analysis, and conditions of competition. I write separately, however, with regard to material injury by reason of the subject imports and the application of the Bratsk Aluminum Smelter v. United States replacement benefit test.

### MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.<sup>1</sup> In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>2</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>3</sup> In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>4</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>5</sup>

For the reasons stated below, I determine that the domestic raw flexible magnet industry is materially injured by reason of subject imports from China and Taiwan.

#### Volume of the Subject Imports

Section 771(7)(c) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>6</sup>

Based on the record evidence, I find the volume of cumulated subject imports of raw flexible magnets is significant and increased significantly over the period of investigation. The volume of subject imports, measured by quantity, increased by \*\*\* percent between 2005 and 2007, from \*\*\* pounds in

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<sup>1</sup> 19 U.S.C. §§ 1671d(a) and 1673d(a).

<sup>2</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>3</sup> 19 U.S.C. § 1677(7)(A).

<sup>4</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>5</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>6</sup> 19 U.S.C. § 1677(7)(C)(i).

2005, to \*\*\* pounds in 2006 and \*\*\* pounds in 2007, an overall increase of more than \*\*\* pounds.<sup>7</sup> Subject imports surged into the U.S. market while apparent U.S. consumption in the merchant market declined \*\*\* from \*\*\* pounds in 2005, to \*\*\* pounds in 2006 and \*\*\* pounds in 2007.<sup>8</sup> Apparent U.S. consumption in the total market also declined sharply between 2005 and 2007, falling from 85.6 million pounds in 2005 to 78.4 million pounds in 2007.<sup>9</sup>

Subject import market share in the merchant market, measured by volume, increased from \*\*\* percent in 2005, to \*\*\* percent in 2006, and to \*\*\* percent in 2007.<sup>10</sup> Subject import market share in the total market, measured by quantity, increased over the period from \*\*\* percent in 2005, to \*\*\* percent in 2006, and to \*\*\* percent in 2007.<sup>11</sup> Subject imports grew at similar rates relative to U.S. production.<sup>12</sup>

For the foregoing reasons, I find that both the volume and increase of that volume are significant, both in absolute terms and relative to consumption and production in the United States.

### **Price Effects of Subject Imports**

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>13</sup>

I find that subject imports significantly undersold the domestic like product and suppressed domestic prices to a significant degree.

As discussed in the majority Views, the Commission's record in these investigations indicate that a raw flexible magnets are a commodity product, and that a high degree of fungibility exists between the domestic like product and subject imports. A majority of market participants found cumulated subject imports and the domestic like product to be always or frequently interchangeable.<sup>14</sup> Price plays an important role in sales of raw flexible magnets. The vast majority of purchasers stated that price was very

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<sup>7</sup> CR/PR at Table IV-2. The quantity of subject imports declined between interim periods, presumably as a result of the filing of the petition, the Commission's affirmative preliminary determination and the Commerce Department's affirmative preliminary determination. Id.

<sup>8</sup> CR/PR at Table IV-6.

<sup>9</sup> CR/PR at Table IV-5.

<sup>10</sup> CR/PR at Table IV-8. Subject import market share in the merchant market, measured by quantity, declined \*\*\* from \*\*\* percent in interim 2007 to \*\*\* percent in interim 2008. Id.

<sup>11</sup> CR/PR at Table IV-7. Subject import market share in the total market, measured by quantity, declined from \*\*\* percent in interim 2007 to \*\*\* percent in interim 2008. Id.

<sup>12</sup> CR/PR at Table IV-9.

<sup>13</sup> 19 U.S.C. §1677(7)(C)(ii).

<sup>14</sup> CR/PR at Table II-5. I recognize that the small number of market participants addressing the subject merchandise from Taiwan was less likely to view such imports as interchangeable with raw flexible magnets produced in the United States or imported from China.



important to their purchasing decisions, and the majority of purchasers listed price as either the number one or number two factor in purchasing decisions.<sup>15</sup>

The Commission gathered quarterly weighted-average price data from U.S. producers and importers on six different products.<sup>16</sup> Price comparisons between U.S.-produced raw flexible magnets and cumulated subject imports were possible in 101 quarters. In 72 quarters, cumulated subject imports undersold the domestic like product by margins of 0.1 percent to 45.2 percent.<sup>17</sup> The average margin of underselling for subject imports over the period of investigation was 19.2 percent.<sup>18</sup>

I find that there is strong evidence of a cost/price squeeze on the domestic industry, which indicates that needed domestic price increases were suppressed by low-priced subject imports. The domestic industry's cost of goods sold ("COGS") as a share of net sales, in the merchant market, increased from \*\*\* percent in 2005 to \*\*\* percent in 2007.<sup>19 20</sup> Both the unit cost of goods sold and the unit value of merchant market net sales for the domestic industry increased over the period 2005 - 2007, but the unit value of sales did not keep pace with the \*\*\* rising unit cost of goods sold. The unit value of COGS in the merchant market increased from \*\*\* in 2005 to \*\*\* in 2007, an increase of \*\*\*. The unit value of net sales in the merchant market increased from \*\*\* in 2005 to \*\*\* in 2007, an increase of only \*\*\*.<sup>21</sup>

The cost/price squeeze experienced by the domestic industry would have been more pronounced if not for the actions of domestic producers to consolidate, streamline production and increase efficiency over the period. I find that the domestic industry's inability to increase its unit value of sales to cover the increased cost of goods sold from 2005 to 2007 occurred concurrently with significant increases in the volume of subject imports that were underselling the domestic like product, thus indicating that subject imports restricted the U.S. producers' ability to raise prices to recover increased costs over this period.

The significance of the growing volume of subject imports sold at low prices is demonstrated by the confirmation by U.S. purchasers of approximately \*\*\* of lost sales and lost revenue allegations made by petitioners.<sup>22</sup>

In sum, the record indicates persistent and significant underselling by subject imports during the period of investigation, and that subject imports have suppressed domestic prices to a significant degree. Accordingly, I find that subject imports have had significant adverse effects on domestic prices during the period of investigation.

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<sup>15</sup> CR/PR at Tables II-3 and II-2.

<sup>16</sup> The six types of raw flexible magnets for which pricing data were requested are: Product 1 - Plain sheets in 12 mil thickness (tolerance on thickness measurements of +0.5 through -1 mil); Product 2 - Plain sheets in 13 mil thickness (tolerance on thickness measurements of +0.5 through -0.5 mil); Product 3 - Plain sheets in 15 mil thickness (tolerance on thickness measurements of +0.5 through -1 mil); Product 4 - Plain sheets in 20 mil thickness (including cut sheets and rolls) (tolerance on thickness measurements of +0.5 through -1 mil); Product 5 - Plain sheets in 30 mil thickness (including cut sheets and rolls) (tolerance on thickness measurements of +0.5 through -1 mil); and Product 6 - Sheets in 30 mil thickness, in rolls of 50' x 2' (nominal), with vinyl lamination (tolerance on thickness measurements of +0.5 through -1 mil).

<sup>17</sup> CR/PR at Table V-8.

<sup>18</sup> CR/PR at Table V-8.

<sup>19</sup> CR/PR at Table VI-4.

<sup>20</sup> While the ratio of COGS to net sales, in the total market, declined from 2005 to 2007 (CR/PR at Table VI-1), the decline reflects the reporting of \*\*\*. See INV-F-099, Supplemental Table 1 (Aug. 7, 2008).

<sup>21</sup> CR/PR at Table VI-4.

<sup>22</sup> CR/PR at Tables V-9 and V-10.

## Impact of Subject Imports on the Domestic Industry

The statute requires that the Commission, in examining the impact of the subject imports on the domestic industry, evaluate all relevant economic factors which have a bearing on the state of the industry. These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."

I find that subject imports had a significant adverse impact on the domestic industry during the period of investigation. As noted above, subject import market share in the merchant market, measured by quantity, increased by \*\*\* percentage points between 2005 and 2007, while domestic industry market share declined by \*\*\* percentage points.<sup>23</sup> Cumulated subject import market share in the merchant market, measured by quantity, increased from \*\*\* percent in 2005 to \*\*\* percent in 2006, and to \*\*\* percent in 2007, while domestic producers' market share fell from \*\*\* percent in 2005 to \*\*\* percent in 2006, and to \*\*\* percent in 2007.<sup>24 25</sup>

Domestic producers' operating income as a ratio to sales fluctuated, but remained low and relatively flat between 2005 and 2007.<sup>26 27</sup> However, domestic industry operating income as a ratio to sales would have been even lower if not for the domestic industry's reduced SG&A expenses. Domestic producers' unit SG&A expenses declined from \*\*\* in 2005 to \*\*\* in 2006 and 2007.<sup>2829</sup>

As the domestic industry's market share declined between 2005 and 2007, so too did its production, capacity utilization, shipments and inventories. U.S. production of raw flexible magnets fell irregularly from 87.5 million pounds in 2005 to 75.0 million pounds in 2007, and from 18.9 million pounds in interim 2007 to 16.6 million pounds in interim 2008.<sup>30</sup> Domestic producers' capacity utilization fell from 66.8 percent in 2005 to 48.5 percent in 2007, and declined from 49.3 percent in interim 2007 to 43 percent in interim 2008.<sup>31</sup> Domestic industry U.S. merchant market shipments fell by \*\*\* percent between 2005 and 2007, from \*\*\* pounds in 2005 to \*\*\* pounds in 2007, and declined from

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<sup>23</sup> CR/PR at Table IV-8.

<sup>24</sup> CR/PR at Table IV-8.

<sup>25</sup> Subject import market share to the total market, as measured by quantity, increased from \*\*\* percent in 2005, to \*\*\* percent in 2006 and \*\*\* percent in 2007, while domestic industry market share fell from 95.6 percent in 2005, to 93.9 percent in 2006, and to 89.8 percent in 2007. CR/PR at Table IV-7.

<sup>26</sup> Domestic producers' operating income as a ratio to sales, in the merchant market, fluctuated from \*\*\* percent in 2005, to \*\*\* percent in 2006, and to \*\*\* percent in 2007, and from \*\*\* percent in interim 2007 to \*\*\* percent in interim 2008. CR/PR at Table VI-4.

<sup>27</sup> Domestic producers' operating income as a ratio to sales, in the total market, rose from 0.6 percent in 2005, to 3.7 percent in 2006, and to 5.2 percent in 2007, and increased from \*\*\* percent in interim 2007 to \*\*\* percent in interim 2008. CR/PR at Table VI-1.

<sup>28</sup> CR/PR at Table VI-4.

<sup>29</sup> Unit value SG&A expenses in the total U.S. market declined irregularly from \$0.19 in 2005, \$0.17 in 2006 and \$0.18 in 2007. CR/PR at Table VI-1.

<sup>30</sup> CR/PR at Table III-3.

<sup>31</sup> CR/PR at Table III-3.

\*\*\* pounds in interim 2007 to \*\*\* pounds in interim 2008.<sup>32</sup> Domestic industry U.S. total market shipments declined by 13.9 percent between 2005 and 2007, falling from 81.8 million pounds in 2005 to 70.4 million pounds in 2007, and declined from 17.7 million pounds in interim 2007 to 16.0 million pounds in interim 2008.<sup>33</sup> Domestic producers' ending inventories of raw flexible magnets declined by \*\*\* percent between 2005 and 2007, and were \*\*\* percent lower in interim 2008 than in interim 2007.<sup>34</sup>

A number of employment-related indicators - including average number of production related workers, hours worked, and wages paid for producing raw flexible magnets - declined from 2005 to 2007 and between interim periods. The number of domestic industry production related workers declined from 386 in 2005 to 328 in 2007, a drop of 15 percent. Employment continued to decline in 2008, dropping from 326 in interim 2007 to 289 in interim 2008, a decline of 11 percent.<sup>35</sup> Domestic industry hours worked declined from 828,000 in 2005 to 674,000 in 2007, and from 184,000 in interim 2007 to 164,000 in interim 2008.<sup>36</sup> Domestic industry wages paid also declined from \$11.37 million in 2005 to \$10.48 million in 2007, and from \$2.68 million in interim 2007 to \$2.55 in interim 2008.<sup>37</sup>

The record further indicates that domestic producers \*\*\* reduced their capital expenditures over the period of investigation. Domestic industry capital expenditures declined \*\*\* over the period of investigation from \*\*\* in 2005, to \*\*\* in 2006 and \*\*\* in 2007, and fell from \*\*\* in interim 2007 to \*\*\* in interim 2008.<sup>38</sup>

As noted above, despite declining U.S. consumption over the period of investigation, the subject imports from China and Taiwan have increased in volume and market share, undersold the domestic like product, and suppressed domestic prices. These large and increasing volumes of low priced subject imports led to a cost/price squeeze and declines in many of the domestic industry's business indicators such as production, capacity utilization, shipments, employment, wages paid and capital expenditures.

Although nonsubject imports increased over the period of investigation, they were not significant.<sup>39</sup> Moreover, the average unit values of nonsubject imports were comparable to or exceeded the average unit values of domestic producers' U.S. shipments in 2006 and 2007.<sup>40</sup> Although the average unit value of nonsubject imports declined \*\*\* in 2007, they remained \*\*\* percent above the average unit values of cumulated subject imports.<sup>41</sup>

Consequently, based on the record in the final phase of these investigations, I find that subject imports of raw flexible magnets from China and Taiwan had an adverse impact on the condition of the

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<sup>32</sup> CR/PR at Table C-2.

<sup>33</sup> CR/PR at Table III-4.

<sup>34</sup> CR/PR at Table III-6.

<sup>35</sup> CR/PR at Table III-7.

<sup>36</sup> CR/PR at Table III-7.

<sup>37</sup> CR/PR at Table III-7.

<sup>38</sup> CR/PR at Table VI-6.

<sup>39</sup> The volume of nonsubject imports was \*\*\* pounds in 2005, \*\*\* pounds in 2006 and \*\*\* pounds in 2007. Nonsubject imports represented less than \*\*\* percent of total apparent U.S. consumption throughout the period of investigation in both the merchant market and the total market. CR/PR at Tables IV-2, IV-7, and IV-8.

<sup>40</sup> The average unit value of nonsubject imports fluctuated from \*\*\* in 2005, to \*\*\* in 2006 and \*\*\* in 2007 while the average unit value of domestic producers' U.S. shipments increased from \*\*\* in 2005, to \*\*\* in 2006 and \*\*\* in 2007. CR/PR at Table C-2.

<sup>41</sup> CR/PR at Table C-2.

domestic industry during the period of investigation. In particular, I find that the absolute and relative volume of subject imports, and the increase in those volumes, are significant and that subject imports have undersold the domestic product, suppressing domestic prices to a significant degree. The pattern of consistent underselling by the subject imports caused declines in the domestic industry's relevant economic factors and inhibited domestic producers from raising sales prices commensurate with increasing costs over the period of investigation.

#### **APPLICATION OF THE *BRATSK ALUMINUM SMELTER v. UNITED STATES* REPLACEMENT/BENEFIT TEST**

Having reached an affirmative determination by application of the statutorily mandated factors, the Federal Circuit's decision in Bratsk Aluminum Smelter v. United States requires that I make an additional analysis which can, in some circumstances, negate an affirmative determination.<sup>42</sup> The Federal Circuit directed the Commission to undertake an "additional causation inquiry" whenever certain triggering factors are met: "whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market."<sup>43</sup> The additional inquiry required by Bratsk, which is referred to as the Bratsk replacement/benefit test, is "whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers."<sup>44</sup>

As noted in other investigations, I respectfully disagree with Bratsk that the statute requires any analysis beyond that already included in the discussion of volume, price, and impact above. The Commission has a well established approach to addressing causation.<sup>45</sup> However, I apply the Bratsk replacement/benefit test to my analysis because the Federal Circuit has directed this test, even though I do not believe that it is required by, or consistent with, the statute.

Petitioner asserts that the Bratsk benefit/replacement analysis is not applicable to these investigations. Petitioner does not dispute that raw flexible magnets are a commodity product. However, it asserts that the record indicates that nonsubject imports are not a significant factor in the market, observing that nonsubject imports accounted for a very small share of apparent U.S. consumption, in both the merchant market and the total U.S. market, throughout the period of investigation.<sup>46</sup>

As discussed below, while I find that the first Bratsk triggering factor is satisfied, I find that the second triggering factor is not met.

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<sup>42</sup> 444 F.3d at 1369 (Fed. Cir. 2006).

<sup>43</sup> Bratsk, 444 F.3d at 1375.

<sup>44</sup> Bratsk, 444 F.3d at 1375.

<sup>45</sup> See Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand), USITC Pub. 3910 (Mar. 2007), at 3-8 (articulating in detail the Commission's long-standing interpretation of the "by reason of" causation standard).

<sup>46</sup> Magnum Prehearing Brief at 64.

## Triggering Factors

I find that raw flexible magnets qualify as a commodity product based upon Bratsk's definition of "commodity product" as "meaning that it is generally interchangeable regardless of its source."<sup>47</sup> No party argues otherwise.<sup>48</sup> The record supports the conclusion that raw flexible magnets are broadly interchangeable for the same uses regardless of where they are produced. A majority of purchasers and producers found the domestic like product, subject imports from China, and subject imports from Taiwan at least frequently interchangeable, and a majority of importers found products from each of these sources at least somewhat interchangeable.<sup>49</sup> All producers and importers found nonsubject imports at least sometimes interchangeable with the domestic like product, subject imports from China, or subject imports from Taiwan.<sup>50</sup> A majority of U.S. producers found nonsubject imports at least frequently interchangeable with the domestic like product and purchasers' perceptions of the interchangeability of nonsubject imports and subject imports from China or Taiwan were mixed.<sup>51</sup>

With respect to the second triggering factor (whether price-competitive nonsubject imports are a significant factor in the U.S. market), nonsubject imports of raw flexible magnets were never a significant factor in the U.S. market during the period of investigation. Nonsubject imports in the merchant market never exceeded \*\*\* percent of apparent U.S. consumption, while nonsubject imports in the total market peaked at \*\*\* percent of apparent U.S. consumption in 2007.<sup>52</sup> Furthermore, nonsubject imports accounted for only a very modest proportion of total imports, never exceeding \*\*\* percent of total imports for any calendar year during the period of investigation.<sup>53</sup> Accordingly, I find that the second Bratsk triggering factor is not satisfied and that I therefore need not apply the Bratsk "replacement/benefit" analysis in these final phase investigations.

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<sup>47</sup> I note that it is improper to assume that simply because goods are generally interchangeable for purposes of the "reasonable overlap of competition" analysis for cumulation, or are interchangeable for purposes of defining the domestic like product, that they are necessarily "commodities" for purposes of assessing causation, which is the function of the Bratsk "test." See Silicon Metal from Russia, USITC Pub. 3910 at 10-11 (footnotes omitted), citing BIC Corp. v. United States, 964 F. Supp. 391, 397, 399 (Ct. Int'l Trade 1997) ([L]ike product, cumulation and causation are functionally different inquiries because they serve different statutory purposes . . . . As a result, each inquiry requires a different level of fungibility. Hence the record may contain substantial evidence that two products are fungible enough to support a finding in one context (e.g., one like product), but not in another (e.g., cumulation or causation.")).

<sup>48</sup> Magnum does not dispute that raw flexible magnets are a "commodity product" for purposes of Bratsk. Magnum Prehearing Brief at 64.

<sup>49</sup> CR/PR at Table II-5.

<sup>50</sup> CR/PR at Table II-5.

<sup>51</sup> CR/PR at Table II-5.

<sup>52</sup> CR/PR at Tables IV-7 and IV-8.

<sup>53</sup> CR/PR at Table IV-2.



**SEPARATE AND DISSENTING VIEWS OF  
VICE CHAIRMAN DANIEL R. PEARSON AND  
COMMISSIONER DEANNA TANNER OKUN**

**I. INTRODUCTION**

Based on the record in these investigations, we determine that an industry in the United States is threatened with material injury by reason of imports of raw flexible magnets (“magnets”) from China that the Department of Commerce (“Commerce”) has found are subsidized and sold in the United States at less than fair value (“LTFV”). We also determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of imports of magnets from Taiwan sold in the United States at LTFV.

We join sections I, II, III.A., IV, and (except as noted) section V of the Views of the Commission concerning background, domestic like product and industry, cumulation for material injury analysis, conditions of competition, the legal standard concerning material injury and threat of material injury by reason of subject imports, the affirmative threat of material injury determination with respect to subject imports from China, and the negative material injury determinations with respect to subject imports from China and Taiwan.

**II. CUMULATION FOR THREAT OF MATERIAL INJURY ANALYSIS**

For a determination of threat of material injury by reason of subject imports, section 771(7)(H) of the Tariff Act of 1930 provides that to the extent practicable, the Commission may cumulatively assess the volume and price effects of imports of the subject merchandise from all countries with respect to which –

- (i) petitions were filed under section 1671a(b) or 1673a(b) of this title on the same day.
- (ii) investigations were initiated under section 1671a(a) or 1673a(a) of this title on the same day, or
- (iii) petitions were filed under section 1671a(b) or 1673a(b) of this title and investigations were initiated under section 1671a(a) or 1673a(a) of this title on the same day,

if such imports compete with each other and with domestic like products in the United States market.<sup>1</sup>

Cumulation for determining threat of material injury, in contrast to cumulation for material injury, is within the discretion of the Commission. In exercising that discretion, the Commission has traditionally considered factors such as (1) whether the imports are increasing at similar rates in the same markets, (2) whether the imports have similar margins of underselling, and (3) the probability that imports will enter the United States at prices that would have a depressing or suppressing effect on domestic prices of that merchandise.<sup>2</sup> In these investigations, examination of these factors lead us to conclude that

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<sup>1</sup> 19 U.S.C. 1677(7)(H) (emphasis added).

<sup>2</sup> See Torrington Co. v. United States, 790 F. Supp. 1161, 1172 (Ct. Int’l Trade 1992) (affirming Commission’s determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries), aff’d

we should not exercise our discretion to cumulate subject imports from China with subject imports from Taiwan.

First, subject imports from China and Taiwan are not increasing at similar rates in the U.S. market. Subject imports from China increased \*\*\* from 2005 to 2007.<sup>3</sup> Subject imports from Taiwan, on the other hand, increased only \*\*\* between 2005 and 2006, and then declined \*\*\* in 2007.<sup>4</sup> Subject imports from China accounted for \*\*\* percent of total U.S. imports in 2007 whereas such imports from Taiwan only accounted for \*\*\* percent.<sup>5</sup> These differing import levels and trends indicate that, in the absence of antidumping and countervailing duty orders in these investigations, imports from subject sources would likely compete differently in the U.S. market.

Magnum argues that the decline in subject imports from Taiwan in 2007 reflects unique management issues at Jasdi USA, specifically \*\*\*. It contends that this decline should not be viewed as indicating the likely trend in imports from Taiwan going forward.<sup>6</sup> As discussed below, while the decline may be lessened or reversed as \*\*\*, there is no evidence to suggest that import levels from Taiwan would substantially exceed those entering in 2005 or 2006 in the imminent future.

With regard to the second factor, it is clear that both countries undersold the domestic product.<sup>7</sup> The average margins of underselling, however, were consistently smaller for Taiwan.<sup>8</sup> Magnum has argued that a comparison of selling prices charged by U.S. producers with landed duty prices importers paid to the exporters of subject merchandise (“purchase prices”) better reflects its competition with those exporters for sales.<sup>9</sup> While we followed our typical methodology of focusing our analysis on a comparison of selling prices charged by U.S. producers with selling prices charged by importers of the subject merchandise, we also considered the data collected by staff using Magnum’s proposed methodology. We found that when purchase prices are used for the Chinese price comparisons, the difference between the average margins for China and Taiwan are even more apparent.<sup>10</sup> These widely different underselling margins suggest that imports from China and Taiwan likely had differing effects on the U.S. industry during the period examined.

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without opinion, 991 F.2d 809 (Fed. Cir. 1993); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int’l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int’l Trade 1988).

<sup>3</sup> CR/PR at Table IV-2. Subject imports from China increased from \*\*\* pounds in 2005 to \*\*\* pounds in 2006, or by \*\*\* percent, and then increased further to \*\*\* pounds in 2007, or by \*\*\* percent.

<sup>4</sup> CR/PR at Table IV-2. Subject imports from Taiwan increased from \*\*\* pounds in 2005 to \*\*\* pounds in 2006, or by \*\*\* percent, and then declined by \*\*\* percent in 2007 to \*\*\* pounds.

<sup>5</sup> CR/PR at Table IV-2.

<sup>6</sup> See, e.g., Magnum posthearing brief at 10.

<sup>7</sup> CR/PR at Table V-8. Subject imports from China undersold the domestic product in 24 of 37 possible quarterly price comparisons. Subject imports from Taiwan undersold the domestic product in 48 of 64 possible quarterly price comparisons. Id.

<sup>8</sup> CR at Tables V-1-V-6, & V-8.

<sup>9</sup> Magnum posthearing brief at Exhibit 6, pp. 29-38.

<sup>10</sup> CR/PR at Table V-8; data on China derived from CR/PR at Tables V-1-V-6. On that basis, the average margin of underselling for subject imports from China was 33.8 percent, compared to only 17.1 percent for subject imports from Taiwan; thus, the average margin at which imports from China undersold the U.S. industry was nearly double that at which imports from Taiwan undersold the industry. In contrast, based on a comparison of importers’ sales prices to U.S. producers’ sales prices, the average underselling margin for subject imports from China was 23.3 percent.



Finally, with regard to the third factor, although there were no clear trends among the products, price trends are not very different for the countries, as for the most part there was very little movement in the prices of subject imports during the period examined. The record indicates, however, that during the period examined, subject imports from China occupied one price point, the U.S. industry a much higher one, and subject imports from Taiwan a price point in between.<sup>11</sup> Moreover, although imports from both China and Taiwan undersold the domestic product, the significantly different volume trends between those two subject sources outweighs any potential similarity in pricing effects in our analysis. Hence, in considering whether imports will enter the United States at prices that would have a depressing or suppressing effect on domestic prices of the merchandise, we conclude that imports from China, given their significantly greater volume and much lower prices, would likely have a significant depressing or suppressing effect on domestic prices and such imports from Taiwan likely would not.

Accordingly, for the reasons stated above, in determining whether an industry in the United States is threatened with material injury by reason of subject imports, we do not exercise our discretion to cumulate subject imports from China with subject imports from Taiwan, and conduct separate threat of material injury analyses regarding each of these subject countries.<sup>12</sup>

### **III. NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM TAIWAN<sup>13</sup>**

Based on an evaluation of the statutory threat factors that are relevant to this investigation, we determine that the domestic industry producing raw flexible magnets is not threatened with material injury by reason of subject imports from Taiwan. In the absence of an antidumping duty order, we find that substantially increased imports of the subject merchandise from Taiwan into the United States are not imminent for a number of reasons.

First, subject imports from Taiwan did not increase at a significant rate on either an absolute or relative basis during the period of investigation.<sup>14</sup> While the volume of subject imports from Taiwan increased \*\*\* from 2005 to 2006, it declined \*\*\* from 2006 to 2007. Subject imports increased from \*\*\* pounds in 2005 to \*\*\* pounds in 2006 and then declined to \*\*\* pounds in 2007.<sup>15</sup> As apparent U.S. consumption, particularly in the merchant market, declined from 2005 to 2007, so did the market penetration of the subject imports from Taiwan. In the merchant market, the market penetration of subject imports from Taiwan increased from \*\*\* percent in 2005 to \*\*\* percent in 2006 and then

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<sup>11</sup> CR/PR at figure V-2.

<sup>12</sup> See section V of the Views of the Commission for our analysis and determination with respect to subject imports from China. The statutory threat factors inapplicable to our analysis of subject imports from China also are inapplicable to our analysis of subject imports from Taiwan. In addition, statutory threat factor (I) also is inapplicable here because there was no countervailing duty investigation on subject imports from Taiwan.

<sup>13</sup> See section V of the Views of the Commission for our analysis and no material injury determination with respect to cumulated subject imports from China and Taiwan.

<sup>14</sup> CR/PR, Tables IV-2, IV-7, IV-8.

<sup>15</sup> CR/PR, Table IV-2. The volume of subject imports from Taiwan was lower in interim 2008 than interim 2007. Id.

declined to \*\*\* percent in 2007.<sup>16</sup> In the total market, the market penetration of subject imports from Taiwan was \*\*\* percent in both 2005 and 2006 and then declined to \*\*\* percent in 2007.<sup>17</sup>

We recognize that the decline in subject imports from Taiwan from 2006 to 2007 may have foreshadowed the \*\*\*.<sup>18</sup> Even though a new distributor (\*\*\*) for subject imports from Taiwan \*\*\* and the 2006-2007 decline in such imports may accordingly be reversed, there is no evidence to suggest that subject imports from Taiwan would increase substantially in the imminent future so as to exceed import levels in 2005 and 2006.<sup>19</sup>

Second, reported capacity in Taiwan was stable from 2005 to 2007 and is projected to remain stable through 2009.<sup>20</sup> Moreover, the industry in Taiwan producing subject merchandise does not have substantial unused capacity. The two producers of subject merchandise in Taiwan that responded to the Commission's foreign producer questionnaire, who apparently account for approximately \*\*\* of production of subject merchandise and virtually all imports from Taiwan, reported unused capacity ranging from \*\*\* in 2007 and project \*\*\* amounts of excess capacity in 2008 and 2009.<sup>21</sup> Consequently, the projected unused capacity of the reporting producers in Taiwan does not indicate that the subject industry is capable of increasing its shipments to the United States far in excess of the levels observed during the period of investigation.

Finally, we recognize that the subject industry in Taiwan is relatively export oriented, with its exports accounting for about \*\*\* of its total shipments during each year in the period of investigation.<sup>22</sup> Its shipments to the U.S. market have consistently accounted for about \*\*\* of its total shipments.<sup>23</sup> \*\*\* of the Taiwan industry's export shipments, however, are directed to non-U.S. markets including \*\*\*.<sup>24</sup> In light of these patterns, we do not find that the producers of subject merchandise in Taiwan are likely to devote their unused capacity or shift their consistent shipment patterns to substantially increase shipments to the United States in the absence of an antidumping duty order. We further observe that, although U.S. importers' inventories of subject imports were \*\*\* as a share of imports, their level declined from 2005 to 2007.<sup>25</sup> Consequently, we conclude that the volume of subject imports, which was declining and not

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<sup>16</sup> CR/PR, Table IV-8. Market penetration of subject imports from Taiwan in the merchant market was \*\*\* percent in interim 2007 and \*\*\* percent in interim 2008. *Id.*

<sup>17</sup> CR/PR, Table IV-7. Market penetration of subject imports from Taiwan in the total market was \*\*\* percent in interim 2007 and \*\*\* percent in interim 2008. *Id.*

<sup>18</sup> CR at IV-2, PR at IV-1.

<sup>19</sup> According to official Customs data, \*\*\* of raw flexible magnets from \*\*\* in Taiwan in April 2008. CR/PR at Table VII-7, n. 1. This volume of imports calculated on an annual basis is similar to annual import levels for Taiwan in 2005 and 2006. Moreover, \*\*\* which only became the U.S. distributor of \*\*\* raw flexible magnets in 2008, only imported \*\*\* of \*\*\* in interim 2008 (*i.e.*, in February 2008). CR at IV-1, n.2, IV-2, PR at IV-1, n. 2, and Table IV-2.

<sup>20</sup> CR/PR at Table VII-4. Reported production capacity in Taiwan remained at \*\*\* through the period of investigation.

<sup>21</sup> CR/PR at Table VII-4; CR at VII-9; PR at VII-4.

<sup>22</sup> CR/PR at Table VII-4.

<sup>23</sup> CR/PR at Table VII-4.

<sup>24</sup> CR at VII-11, PR at VII-5.

<sup>25</sup> CR/PR at Table VII-6. \*\*\*. CR at VII-15, PR at VII-6.

significant during the period of investigation, is not likely to increase substantially in the imminent future.<sup>26</sup>

As explained above in our discussion on cumulation for threat, we recognize that subject imports from Taiwan undersold the domestic product in the majority of possible quarterly price comparisons.<sup>27</sup> As discussed in the Views of the Commission, because prices for the domestic like product generally increased during the period of investigation, we conclude that the subject imports did not have significant price-depressing effects.<sup>28</sup> We also recognized that there was some indication of price suppression during the period of investigation, as changes in prices the domestic industry charged during the period of investigation largely, but not entirely, tracked changes in the industry's costs in both the merchant market and the total market.<sup>29</sup> We also found, however, that the record does not support a conclusion that the subject imports had significant price-suppressing effects during the period of investigation. While the record also indicates, as discussed in the Views of the Commission, that several changes in the domestic industry's cost structure are likely in the imminent future, we find that subject imports from Taiwan likely will not increase substantially and thus will likely not negatively affect prices for the domestic like product in the imminent future, as subject imports did not do so in a significant manner during the period of investigation. Therefore, we conclude that subject imports from Taiwan will likely not have significant price-suppressing effects, and which would be likely to increase demand for further imports.

In evaluating the likely impact on the domestic industry of subject imports from Taiwan, we note, as explained in detail in the Views of the Commission, that we cannot conclude that the cumulated subject imports, let alone subject imports from Taiwan, are currently having a significant adverse impact on the domestic industry. Moreover, as discussed above, given we have not found that in the imminent future the subject imports from Taiwan likely will increase substantially in volume or will begin to have significant price-suppressing effects, we find that further imports from Taiwan are not imminent and that material injury by reason of subject imports from Taiwan would not occur in the absence of an antidumping duty order. Accordingly, we determine that the domestic industry is not threatened with material injury by reason of subject imports from Taiwan.

## CONCLUSION

For the foregoing reasons, we determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of imports of magnets from Taiwan sold in the United States at LTFV.

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<sup>26</sup> We also note that there are no antidumping orders or investigations concerning the subject merchandise in other WTO member states. CR at VII-17, PR at VII-8.

<sup>27</sup> CR/PR at Table V-8. Two importers and purchasers testified at the Commission hearing that prices from the Taiwan producer were much higher than the Chinese prices. CR at IV-9, n. 20, PR at IV-8, n. 20; Hearing Tr. at 176. A representative from a U.S. purchaser and importer, Magnet LLC ("Magnet"), also testified that imports from Taiwan producer Jasdi were concentrated in the sign-making business, and that Jasdi concentrated in small orders of 100 foot rolls at higher margins. According to Magnet, Jasdi was not interested in the high-volume business that would result in orders from Magnet. CR at IV-9, PR at IV-8 and Hearing Tr. 177.

<sup>28</sup> CR/PR at Tables V-1-6.

<sup>29</sup> CR/PR at Tables VI-2, VI-4.



## PART I: INTRODUCTION

### BACKGROUND

These investigations result from a petition filed with the U.S. Department of Commerce (“Commerce”) and the U.S. International Trade Commission (“Commission” or “USITC”) on September 21, 2007, by Magnum Magnetics Corp. (“Magnum”), Marietta, OH, alleging that an industry in the United States is materially injured and threatened with further material injury by reason of less-than-fair-value (“LTFV”) imports of raw flexible magnets<sup>1</sup> from China and Taiwan. The petition further alleged that an industry in the United States is materially injured and threatened with further material injury by reason of subsidized imports of raw flexible magnets from China. Information relating to the background of these investigations is provided below.<sup>2</sup>

Effective date	Action
September 21, 2007	Petition filed with Commerce and the Commission; institution of the Commission's investigations
October 18, 2007	Commerce's notice of initiation
November 9, 2007	Commission's preliminary determinations
February 25, 2008 (CVD) and April 25, 2008 (AD)	Commerce's preliminary determinations (73 FR 9998 (China CVD); 73 FR 22327 (China AD); and 73 FR 22332 (Taiwan AD)); scheduling of final phase of Commission investigations (73 FR 26145, May 8, 2008)
July 10, 2008	Commerce's final determinations (73 FR 39667 (China CVD); 73 FR 39669 (China AD); and 73 FR 39673 (Taiwan AD))
July 10, 2008	Commission's hearing <sup>1</sup>
August 12, 2008	Commission's vote
August 25, 2008	Commission's determinations transmitted to Commerce
<sup>1</sup> App. B contains a list of witnesses who appeared at the hearing.	

### STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

#### Statutory Criteria

Section 771(7)(B) of the Tariff Act of 1930 (the “Act”) (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--  
*shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and . . .*

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<sup>1</sup> A complete description of the imported product subject to these investigations is presented in *The Subject Merchandise* section located in Part I of this report. The merchandise subject to these investigations is currently classified in the Harmonized Tariff Schedule of the United States (“HTS”) under subheadings 8505.19.10 and 8505.19.20. The normal trade relations tariff rate on raw flexible magnets, applicable to imports from China and Taiwan, is 4.9 percent *ad valorem*.

<sup>2</sup> *Federal Register* notices cited in the tabulation are presented in app. A.

*may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.*

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

*In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.*

...

*In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether . . . (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.*

...

*In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to*

...

*(I) actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.*

### **Organization of the Report**

*Part I* of this report presents information on the subject merchandise, subsidy and dumping margins, and domestic like product. *Part II* of this report presents information on conditions of competition and other relevant economic factors. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. *Parts IV and V* present the volume and pricing of imports of the subject merchandise, respectively. *Part VI* presents information on the financial experience of U.S. producers. *Part VII* presents the statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury.

## U.S. MARKET SUMMARY

Raw flexible magnets are generally used as refrigerator magnets, magnets for promotional applications, and as gaskets for refrigerator and shower doors. The leading U.S. producers of raw flexible magnets are Flexmag Industries Inc. (“Flexmag”), Holm Industries, Inc. (“Holm”), and Magnum, while leading producers of raw flexible magnets outside the United States include Cixi City Magnetic Materials Co., Ltd. (“Cixi City”), Guangzhou Newlife Magnet Electricity Co., Ltd. (“Newlife”), and Polyflex Magnets Ltd. (“Polyflex”) of China and Jasdi Magnet Co., Ltd. (“Jasdi”) and Magruba Flexible Magnets Co. Ltd. (“Magruba”) of Taiwan. The leading U.S. importers of raw flexible magnets from China during 2007 are 10 firms: \*\*\*. One firm, Jasdi USA in California, affiliated with Taiwan producer Jasdi, accounted for \*\*\* reported U.S. imports of raw flexible magnets from Taiwan during the period for which data were collected. The only importer of raw flexible magnets from nonsubject countries (specifically Vietnam and Japan) was \*\*\*.

The majority of the purchasers of raw flexible magnets (27 of 42 firms) are end users. Nearly one-half of these firms (18 of 42) identify themselves as importers and 11 of these firms submitted both importer and purchaser questionnaires. Questionnaires were received from purchasers from 18 states, including Illinois (6); California (5); Minnesota and Virginia (4); and Kansas, Florida, New York, and Pennsylvania (3).

Apparent U.S. consumption of raw flexible magnets totaled approximately 78.4 million pounds (\$86.7 million) in 2007. Currently, seven firms are known to produce raw flexible magnets in the United States, of which \*\*\* provided full or partial data. U.S. producers’ U.S. shipments of raw flexible magnets totaled 70.4 million pounds (\$79.2 million) in 2007, and accounted for 89.8 percent of apparent U.S. consumption by quantity and 91.4 percent by value. U.S. shipments of imports from subject sources totaled \*\*\* pounds (\$\*\*\*) in 2007 and accounted for \*\*\* percent of apparent U.S. consumption by quantity and \*\*\* percent by value (\*\*% percent by quantity in the merchant market and \*\*\* percent by value). U.S. shipments of imports from nonsubject sources totaled \*\*\* pounds (\$\*\*\*) in 2007 and accounted for \*\*\* percent of apparent U.S. consumption by quantity and value (\*\*% percent by quantity and value in the merchant market).

## SUMMARY DATA AND DATA SOURCES

A summary of data collected in the investigations is presented in appendix C, tables C-1 (data concerning raw flexible magnets), C-2 (data concerning the merchant market for raw flexible magnets), and C-3 (data concerning the captive market for raw flexible magnets). Except as noted, U.S. industry data are based on questionnaire responses of \*\*\* firms that accounted for 95 percent of U.S. production of raw flexible magnets during 2007. U.S. imports are based on questionnaire responses of 42 importers that provided usable data and are believed to account for more than 95 percent of U.S. imports of raw flexible magnets during the period examined.<sup>3</sup> Data on apparent U.S. consumption of raw flexible magnets were compiled using shipment data from questionnaire responses of the \*\*\* responding U.S. producers and shipments of imports data reported in the usable questionnaire responses of the 42 firms that imported the subject product during the period examined.

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<sup>3</sup> January-March 2008 imports from Taiwan are based on official Customs data for imports from \*\*\*, which did not supply an importers’ questionnaire response. In addition, imports attributable to \*\*\* during 2005-06 from Taiwan were derived from official Customs data because the firm did not supply an importers’ questionnaire response.

## NATURE AND EXTENT OF SUBSIDIES AND SALES AT LTFV

### Subsidies

On July 10, 2008, Commerce published a notice in the *Federal Register* of its final determination of countervailable subsidies for producers and exporters of raw flexible magnets from China.<sup>4</sup> Table I-1 presents Commerce's findings of subsidization of raw flexible magnets in China.

**Table I-1**  
**Raw flexible magnets: Commerce's final subsidy determination with respect to imports from China**

Entity	Final countervailable subsidy margin (percent)
China Ningbo Cixi Import Export Corp.	109.95
Polyflex Magnets Ltd.	109.95
All others	109.95

Source: 73 FR 39667, July 10, 2008.

### Sales at LTFV

On July 10, 2008, Commerce published a notice in the *Federal Register* of its final determinations of sales at LTFV with respect to imports from China<sup>5</sup> and Taiwan.<sup>6</sup> Tables I-2 and I-3 present Commerce's dumping margins with respect to imports of raw flexible magnets from China and Taiwan.

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<sup>4</sup> *Raw Flexible Magnets From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 39667, July 10, 2008. Countervailable subsidies were based on adverse facts available for the following programs: preferential tax policies for Foreign Invested Enterprises (FIEs); preferential tax policies for export-oriented FIEs; tax subsidies to FIEs based in specially designated areas; tax credits on domestic equipment purchases; reinvestment tax benefits for FIEs; reduced income tax rate for new high-technology FIEs; reduced income tax rate for technology and knowledge intensive FIEs; Value Added Tax (VAT) refunds on exports; VAT and tariff exemptions on imported equipment; Chinese government payment of legal fees; local and provincial programs in the Anhui province, the Zhejiang province, the Shanghai municipality, and the Beijing municipality; preferential loan programs and interest rates in the Guangdong province; provincial and local direct grants in the Guangdong and Zhejiang provinces; and provision of goods for less than adequate remuneration in Zhejiang province. *Issues and decision memorandum for final determination in the countervailing duty investigation of raw flexible magnets from the People's Republic of China*, July 2, 2008.

<sup>5</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.

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



**Table I-2**  
**Raw flexible magnets: Commerce’s final weighted-average LTFV margins with respect to imports from China**

Exporter	Producer	Final dumping margin ( <i>percent</i> )
Guangzhou Newlife Magnet Co., Ltd.	Guangzhou Newlife Magnet Co., Ltd.	105.00
PRC-wide entity (including Polyflex)		185.28
Source: 73 FR 39669, July 10, 2008.		

**Table I-3**  
**Raw flexible magnets: Commerce’s final weighted-average LTFV margins with respect to imports from Taiwan**

Exporter	Producer	Final dumping margin ( <i>percent</i> )
Kin Fong	Kin Fong	38.03
Magruba	Magruba	38.03
JASDI	JASDI	38.03
All others		31.20
Source: 73 FR 39673, July 10, 2008.		

## THE SUBJECT MERCHANDISE

### Commerce’s Scope

Commerce has defined the scope of these investigations as follows:

The products covered by this investigation are certain flexible magnets regardless of shape,<sup>7</sup> color, or packaging.<sup>8</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.

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<sup>7</sup> The term “shape” includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

<sup>8</sup> Packaging includes retail or specialty packaging such as digital printer cartridges.

Specifically excluded from the scope of this investigation are printed flexible magnets, defined as flexible magnets (including individual magnets) that are laminated or bonded with paper, plastic, or other material if such paper, plastic, or other material bears printed text and/or images, including but not limited to business cards, calendars, poetry, sports event schedules, business promotions, decorative motifs, and the like. This exclusion does not apply to such printed flexible magnets if the printing concerned consists of only the following: a trade mark or trade name; country of origin; border, stripes, or lines; any printing that is removed in the course of cutting and/or printing magnets for retail sale or other disposition from the flexible magnet; manufacturing or use instructions (e.g., “print this side up,” “this side up,” “lamine here”); 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 the subject merchandise that are not specifically excluded are within the scope of this investigation.<sup>9</sup>

In its preliminary affirmative countervailing duty determination on February 25, 2008, Commerce reported that it received scope comments from SH Industries, LLC on November 7, 2007, arguing that magnetic photo pockets, which are flexible magnets with clear plastic laminations that 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 China and Taiwan. On November 13, 2007, the petitioner filed a response arguing that magnetic photo pockets are properly within the scope of the investigations.<sup>10</sup> On April 11, 2008, the petitioner submitted additional comments regarding its contention that photo pockets are properly within the scope of the investigations. Parties were invited to submit further comments.<sup>11</sup> On May 2, 2008, All Magnetics submitted comments arguing that the scope of the investigations should be limited to the products that the petitioner manufactures. The comments did not address photo pockets. On May 9, 2008, the petitioner filed additional comments arguing that photo pockets are properly included in the scope of the investigations. Finally, on May 9, 2008, Target Corp. (“Target”) filed comments arguing that photo pockets should not be included in the scope of the investigations.<sup>12</sup>

Commerce did not exclude photo pockets from the scope of its final determinations because: (1) it does not generally define subject merchandise by end-use application; (2) the original scope definition stipulated that flexible magnets may be partially laminated or fully or partially bonded with paper, plastic or other material, thus ensuring that the plastic laminate fusing the sides to the flexible magnet does not

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<sup>9</sup> *Raw Flexible Magnets From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 39667, July 10, 2008.

<sup>10</sup> *Raw Flexible Magnets From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 73 FR 9998, February 25, 2008.

<sup>11</sup> *Preliminary Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from the People’s Republic of China*, 73 FR 22327, April 25, 2008.

<sup>12</sup> \*\*\*.

remove the photo pockets from the scope of the investigations; and (3) the issue of whether the item appears on the petitioner’s website is not relevant to Commerce’s analysis.<sup>13</sup>

### Tariff Treatment

The merchandise subject to these investigations is currently classified in 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*, as presented in table I-4. These subheadings were created specifically for flexible magnets at the request of the U.S. industry<sup>14</sup> and have been in place since December 18, 2004. Previously, imports of raw flexible magnets were covered by statistical reporting number 8505.19.0040.

**Table I-4**  
**Raw flexible magnets: Tariff treatment, 2007**

HTS provision	Article description	General <sup>1</sup>	Special <sup>2</sup>	Column 2 <sup>3</sup>
		Rates (percent <i>ad valorem</i> )		
8505.19	Permanent magnets and articles intended to become permanent magnets after magnetization (other than of metal):			
8505.19.10	Flexible magnets . . . . .	4.9	Free (A, AU, BH, CA, CL, E, IL, J, JO, MA, MX, P, SG)	45.0
8505.19.20	Composite good containing flexible magnets . . . . .	4.9		45.0
<sup>1</sup> Normal trade relations, formerly known as the most-favored-nation duty rate. <sup>2</sup> See general note 3(c)(i) for list of symbols. China and Taiwan are not eligible for special tariff rates. <sup>3</sup> Applies to imports from a small number of countries that do not enjoy normal trade relations duty status.  Note.—Prior to December 18, 2004, the relevant HTS statistical reporting number was 8505.19.0040.  Source: Harmonized Tariff Schedule of the United States (2008).				

## THE PRODUCT

### Description and Applications

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<sup>15</sup> 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 the petitioner Magnum.

<sup>13</sup> Issues and decision memorandum for final determination in the countervailing duty investigation of raw flexible magnets from the People’s Republic of China, July 2, 2008.

<sup>14</sup> Staff field trip report, \*\*\*, October 2, 2007.

<sup>15</sup> “Raw flexible magnets” is a term adopted for the purposes of these investigations to distinguish between the unprinted products of raw magnet producers such as Magnum, Flexmag, and Holm, and the printed magnets and other products of their non-distributor customers. Hearing transcript, p. 14 (A. Love).

**Figure I-1**  
**Raw flexible magnets: Product forms**



**Source:** Magnum Magnetics' website at <http://www.magnummagnetics.com>, retrieved October 1, 2007.

Magnetic sheet is characterized as “(s)heets of material that are highly flexible and have permanent magnetic properties.”<sup>16</sup> Sheet, which is generally (but not exclusively) produced by the calendaring process described below, is the widest form of raw flexible magnet, typically available from U.S. suppliers in widths up to approximately 24 inches.<sup>17</sup> Sheets in larger widths are available from foreign suppliers.<sup>18</sup> Raw flexible magnetic strips are dimensionally narrower than sheet. According to testimony at the hearing, “(s)trips can be produced by cutting sheeting into narrower products, or they can be extruded. Extrusion is usually used for thicker strips.”<sup>19</sup> Finally, profile shapes are flexible magnets that are not square or rectangular in cross section.<sup>20</sup> Thermoplastic profile shapes are manufactured exclusively by the extrusion method.<sup>21</sup>

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<sup>16</sup> Hearing transcript, p. 15 (A. Love). Mr. Love defined “permanent magnetic properties” as “capable of being permanently magnetized by exposure to a strong magnetic field.” Ibid. Mr. Love had previously observed that “. . . when the field is removed the material retains the magnetic force, enabling the material to hold itself to a metallic surface.” Conference transcript, p. 25 (A. Love).

<sup>17</sup> See, e.g., Master Magnetics, “Solutions,” found at [www.magnetsource.com](http://www.magnetsource.com), retrieved on October 15, 2007.

<sup>18</sup> Hearing Statement of Scott Lewis, p. 2. Mr. Lewis asserted in his statement that U.S. suppliers were not capable of producing the wide format (meter-wide) flexible sheet that Adams imported from Polyflex (China). Ibid. Long-time Magnum customer Rochester Magnet Company reportedly had to import meter-wide rolls from China to meet the special requirements of a customer. Hearing transcript, p. 51 (Dennis).

<sup>19</sup> Hearing transcript, p. 15 (A. Love).

<sup>20</sup> Hearing transcript, p. 15 (A. Love). Mr. Love described examples such as label holders on metal shelving or magnetic pencil holders with a slot for the pencil. Ibid.

<sup>21</sup> Conference transcript, p. 27 (A. Love).

In general, flexible magnets are used in a range of applications, including refrigerator door gaskets; magnetic car and safety signs; direct mail promotional items; magnetic business cards; advertising signs; calendars; nameplates; medical applications;<sup>22</sup> and toys and games. The key physical 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 typically are used to produce refrigerator magnets, magnetic photo pockets,<sup>23</sup> magnetic business cards (such as those used by real-estate agents in promotional applications), label holders for metal shelving,<sup>24</sup> and magnetic signage on the doors of cars or vans.<sup>25</sup>

### **Manufacturing Process**

Raw flexible magnets are manufactured by consolidating a mixture (in either granular or slurry form) of magnetic ferrite powders such as strontium or barium<sup>26</sup> with a flexible resin binder (polymer), then transferring the mixture to one of several varieties of forming processes (namely calendering, 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).<sup>27</sup>

In the calendering process, the magnetic particulate (a mixture of ferrite metals and resins) is fed through a calender,<sup>28</sup> where it is pressed between two large rotating steel rolls to create magnetic sheets or strips 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.

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<sup>22</sup> BIOflex Medical Magnets Inc. (BIOflex) designs and markets imported flexible magnets “that are intended to alleviate pain through application of static magnetic fields.” BIOflex’s prehearing statement. According to Allen Love, Magnum formerly produced flexible magnets for customers that further processed the magnets to make articles used in pain-relief applications, but the entire market has been taken by foreign suppliers. Hearing transcript, p. 94 (A. Love).

<sup>23</sup> “Magnetic photo pockets are a laminated vinyl plastic pocket attached to a magnetic sheet, designed to protect the photo from dust, dirt, and the harmful effects of UV light.” Letter from SH Industries to Commerce, November 6, 2007. According to Magnum, photo pockets also enable customers to attach other ‘loose’ materials to metal surfaces, serving the same function as a refrigerator magnet. Petitioner’s letter to Commerce, November 13, 2007.

<sup>24</sup> Petition, Volume I, p. 13; petitioner’s postconference brief, p. 11; Magnet Technology’s postconference brief, p. 2; and petitioner’s letter to Commerce, dated November 13, 2007, pp. 1-2.

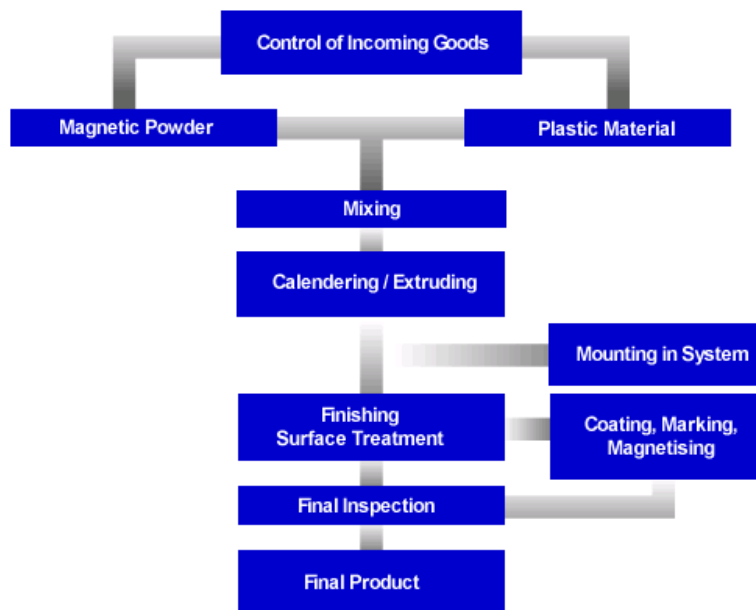
<sup>25</sup> Hearing transcript, p. 16 (A. Love).

<sup>26</sup> U.S. production of flexible magnets consists chiefly of strontium ferrites due to the low-cost and toxicity associated with barium ferrites. Conference transcript, p. 26 (A. Love), and staff field trip report, \*\*\*, October 2, 2007. Other magnetic material can be substituted for the strontium or barium ferrites if significantly higher energy is required. Electrodyne, a U.S. producer, specializes in these products. Hearing transcript, p. 16 (A. Love).

<sup>27</sup> Petition, Volume I, pp. 5-6.

<sup>28</sup> A calender is a machine consisting of metal rolls in a stack that are used for applying pressure to smooth paper and other materials. Petition, Volume I, pp. 5-6.

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



Source: AMF Magnetics at <http://www.amfmagnetics.com>, retrieved October 15, 2007.

Subsequent to calendering and extrusion, 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,<sup>29</sup> scored,<sup>30</sup> slit,<sup>31</sup> or die-cut<sup>32</sup> into many different sizes. Some types of flexible magnet sheeting are laminated<sup>33</sup> 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.<sup>34</sup> According to Magnum, a minority of flexible magnets is

<sup>29</sup> Cutting typically involves large sheets or rolls and is customarily performed on a punch press. Petition, Volume I, pp. 5-6.

<sup>30</sup> Scoring a magnet takes place when a cut is not made through the entire magnet, enabling it to remain in a larger piece or roll for packaging and ease of process for the customer. This process typically takes place via a punch press and is considered a value-added service. Petition, Volume I, pp. 5-6.

<sup>31</sup> Slitting refers to slicing the magnet along the length of the roll. Slitting is not always considered a value added service by the manufacturer. Petition, Volume I, pp. 5-6.

<sup>32</sup> Die-cutting typically is performed on a punch press with a steel rule die. A die-cut is employed in individual magnet pieces cut into precise dimensions. Die-cutting can also create “score” lines within the die cut piece to permit easy removal of separate magnet pieces after further processing by the customer. The use of die-cutting is a value added service employed by the producer. Petition, Volume I, pp. 5-6.

<sup>33</sup> Laminating typically is completed by the magnet producer or by a printer and refers to the process for adhering any flat film, paper, or adhesive to the magnet. Petition, Volume I, pp. 5-6.

<sup>34</sup> Flexible magnets may be “back coated” with a smooth substance in order to cause sheets of the material to pass more readily over each other when being fed into printing equipment and also to prevent blocking or “bricking” of stacks of raw flexible magnetic sheets in the printing process. Petition, Volume I, pp. 5-6. Blocking or bricking occurs when “the magnet, or part of a roll or stack of raw flexible magnet sheets, does not feed smoothly into

(continued...)

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.<sup>35</sup>

According to Magnum, slitting might add approximately \*\*\* percent value to the product by a converter; however, Magnum typically charges customers \*\*\* for most of its slitting. Although Magnum typically charges \*\*\* for cutting operations, converters might add \*\*\* percent of the value in their cutting operations. For extrusions and small pieces of sheeting, cutting takes place 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 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 in 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. Further value can be added by processing the raw flexible magnets into photo pockets.<sup>36</sup> Die-cutting, meanwhile, typically is not combined with any other type of converting.<sup>37</sup>

According to Magnum’s description of 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.<sup>38</sup>

Raw flexible magnets can be magnetized by the producer at various stages of the manufacturing process or by the customer, depending on the particular customer’s material handling needs.<sup>39</sup> Flexible magnets require no particular handling precautions because they are relatively weak magnetically, are not brittle, and can be used in temperatures of \*\*\* degrees centigrade or more.<sup>40</sup>

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<sup>34</sup> (...continued)

printing, cutting, or feeding equipment, but, instead, the layers or sheets stick together, causing interruption of the process.” Causes include storage in conditions of elevated heat or humidity, use of a binder polymer that may cause some adherence of the sheets to each other, and the cumulative weight of stacked magnets may press individual sheets together. Hearing transcript, pp. 20-21 (A. Love). Although back coating is relatively inexpensive compared with the cost of laminating or applying an adhesive (hearing transcript, p. 17 (A. Love)), some customers may prefer delivery of the raw flexible magnets without a back coating because back coating may not be compatible with the adhesive or laminate preferred by the customer. Hearing transcript, p. 215 (Lewis).

<sup>35</sup> Petition, Volume I, pp. 5-6.

<sup>36</sup> Magnetic photo pockets are formed by “bonding two different pieces of plastic material to the flexible magnet substrate to form a pocket into which a photograph may be inserted.” Petitioner’s letter to Commerce, November 13, 2007, pp. 1-2.

<sup>37</sup> Petitioner’s postconference brief, exh. 1, pp. 4-5.

<sup>38</sup> Ibid.

<sup>39</sup> Petition, Volume I, pp. 5-6.

<sup>40</sup> Staff field trip report, \*\*\*, October 2, 2007.

## DOMESTIC LIKE PRODUCT ISSUES

The Commission's decision regarding the appropriate domestic product(s) that are "like" the subject imported product is based on a number of factors including: (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and (6) price. Information regarding these factors is discussed below.

In the preliminary phase of these investigations, one responding party, Magnet Technology, appeared to dispute the petitioner's definition of the domestic like product, "all raw flexible magnets produced in the United States."<sup>41</sup> Magnet Technology testified that extruded magnets for use in refrigerator gaskets and shower doors are a "different industry," manufacturing raw flexible magnets using different facilities, different employees, serving different customer bases, and producing a product that is very distinct from the sheet and strip produced using the calender method. It asserted that extruded strips are very narrow strips of material of an eighth to three-eighths of an inch in width, manufactured to very tight tolerances of magnetic properties as an engineered product, which are very different from the sheets and strips using the calender methods, which are not manufactured to any standard specifications.<sup>42</sup> Counsel for petitioner and counsel for importers urged the Commission to adopt the petitioner's definition of the domestic like product.<sup>43</sup>

In the preliminary phase of the investigations, the Commission found the domestic like product to be raw flexible magnets, co-extensive with the scope of the investigations.<sup>44</sup> Information concerning like product issues collected during the preliminary phase of these investigations can be found in the staff report from the preliminary phase investigations, Part I, *Like Product Issues*.<sup>45</sup> No party requested that the Commission address domestic like product issues in their comments on draft questionnaires for the final phase of these investigations, the petitioner's prehearing or posthearing briefs, nor at the hearing.<sup>46</sup>

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<sup>41</sup> Conference transcript, pp. 168-170 (Mosteller and Donohue).

<sup>42</sup> Ibid.

<sup>43</sup> Ibid., p. 117 (Levinson) and petitioner's postconference brief, pp. 10-14.

<sup>44</sup> *Raw Flexible Magnets from China and Taiwan, Inv. No. 701-TA-452 and 731-TA-1129 and 1130 (Preliminary)*, USITC Publication 3961, November 2007, p. 9.

<sup>45</sup> *Raw Flexible Magnets from China and Taiwan, Inv. No. 701-TA-452 and 731-TA-1129 and 1130 (Preliminary)*, USITC Publication 3961, November 2007, pp. I-11-13.

<sup>46</sup> Petitioners' prehearing brief, p. 12 and hearing transcript, p. 53 (Thomas). Magnet Technology did not participate in the final phase investigations. At the hearing, petitioner responded to a question as to why it believes that extruded magnets for refrigerator gaskets and shower doors should be considered to be the same like product as raw flexible magnets, by observing that "a magnet that is extruded, as compared with a magnet which is calendered, can have some of the very same applications in kind of the middle of the product mix. For example, talking about flexible magnet strips, a flexible magnet strip can be made either by slitting magnet sheeting into thinner strips, or it can be extruded using an extrusion process. So there is a very significant overlap between the products of the two production methods. At the far end, where you have an extruded profile shape, certainly that is very different from a magnetic sheet, but that's at the far end of a spectrum of products. So, in our view, there is a very substantial overlap. It is a product spectrum, and they are all essentially one product." Hearing transcript, p. 107 (Thomas). During these final phase investigations, foreign producer Newlife argued that the scope of the petition was too broad, encompassing products that the petitioner did not produce. The products included super high energy magnetic sheets, wide format flexible magnets (over 40 inches in width), flexible neo magnets, super high energy magnetic strips, super low energy magnetic sheets, and foreign patented products. Newlife pleading, May 12, 2008. The scope request was not submitted to Commerce. Moreover, the petitioner contends that the domestic industry manufactures all products but the wide format raw flexible magnets in the United States. Petitioner's prehearing brief, p. 22 and hearing transcript, p. 53 (Thomas).



## PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

### MARKET CHARACTERISTICS

Raw flexible magnets are used in a wide variety of applications. Uses cited by questionnaire respondents included promotional business cards, car signs, craft magnets, original equipment manufacturer (OEM) equipment,<sup>1</sup> advertising/holding applications, motors, sensors, calendars, business cards, coupons, magnetic photo pockets, shower door enclosures, vehicle door signs, and pain relief supports.

The majority of shipments by both U.S. producers and U.S. importers of raw flexible magnets from China and Taiwan are to end users (i.e. printers and OEMs) rather than distributors or retailers (table II-1). Petitioner Magnum estimated that only \*\*\* percent of sales were to distributors and \*\*\* percent were to retailers (craft and discount stores), while \*\*\* percent of sales were to printers (companies that print content on the magnets) and \*\*\* percent of sales were to OEMs (companies incorporating the magnets into finished goods).<sup>2,3</sup>

All five responding producers sell raw flexible magnets nationwide, while U.S. importers are dispersed throughout the country, but with concentrations in California, Florida, and New Jersey/New York/Pennsylvania. Seventeen of 30 responding U.S. importers reported selling nationwide, while an additional four reporting importers sell raw flexible magnets to two different geographic areas.<sup>4,5</sup>

U.S. inland shipping distances for U.S.-produced raw flexible magnets and imports from China and Taiwan were reported by U.S. producers and U.S. importers. All five responding producers reported that the majority of their raw flexible magnets was sold within distances of 101 to 1,000 miles from their facilities. Among the responding 24 importers, 5 firms reported that the majority of their sales of raw flexible magnets was sold within 100 miles of their storage facilities (4 of these firms reported that 100 percent of their raw flexible magnets were sold within 100 miles of their storage facilities). Eleven firms sold the majority of their raw flexible magnets within distances of 101 to 1,000 miles of their storage facilities (2 of these firms reported that 100 percent of their raw flexible magnets were sold within

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<sup>1</sup> “In the OEM channel, raw flexible magnets are sold to manufacturers of such items as shower-door gaskets or \*\*\*. Other examples of products in this market include \*\*\*.” Petitioner’s posthearing brief, exhibit 6, p. 3, n. 5.

<sup>2</sup> See “Raw Flexible Magnets: Market Distribution Chart” submitted by Magnum.

<sup>3</sup> The petitioner also noted that “printers are the largest segment of the market. Printers come in all sizes. Magnum typically serves the large-lot customers. Flexible magnet distributors typically serve the small ones...Distributors purchase for stock and resale, as well as for direct drop shipments for customers who typically purchase in smaller lots. Some perform a conversion function, making smaller raw flexible magnets out of larger sheets and rolls...Under pressure from low-priced imported raw flexible magnets from China and Taiwan, the hazy line between higher volume users being served by raw flexible manufacturers, such as Magnum, and smaller users being served by magnet distributors is becoming ever less distinct.” Hearing transcript, pp. 34-36 (T. Love).

<sup>4</sup> Some importers of raw flexible magnets import the product and resell it as a raw flexible magnet, while others transform the product and then sell a finished (printed) item.

<sup>5</sup> The \*\*\* importer of raw flexible magnets from Taiwan during the period for which data were collected, Jasdi USA, was located in California and reported selling to the \*\*\* and \*\*\*. Witness testimony indicated that Jasdi had a warehouse in Miami, FL. Hearing transcript, p. 140 (T. Love). The petition indicated that Jasdi had a warehouse in Baltimore, MD. Petition, exh. 32A. According to official Customs data, Jasdi USA imported \$\*\*\* of raw flexible magnets through \*\*\* in 2006-07 (\*\*\* percent of Jasdi’s recorded imports during that period) and \$\*\*\* through \*\*\* (\*\*\* percent of Jasdi’s recorded imports during that period). During 2005 and January-March 2008, all imports entered through the port of \*\*\*, as did the majority of such imports in 2006-07, although Jasdi did import \$\*\*\* of raw flexible magnets through \*\*\* in 2006-07 (\*\*\* percent of Jasdi’s recorded imports during 2006-07) and \$\*\*\* through \*\*\* (\*\*\* percent of Jasdi’s recorded imports during 2006-07).

Table II-1

Raw flexible magnets: U.S. producers' and U.S. importers' shares of reported U.S. shipments, by sources and channels of distribution, 2005-07, January-March 2007, and January-March 2008

Item				January-March	
	2005	2006	2007	2007	2008
	Share of reported shipments ( <i>percent</i> )				
<b>Domestic producers' shipments:</b>					
To distributors	17.9	17.3	17.7	19.5	17.7
To printers	38.5	35.4	36.0	37.4	35.3
To retailers	2.2	2.0	3.3	3.1	2.9
To OEMs	41.4	45.3	42.8	40.0	44.1
To others	0.1	0.1	0.1	0.1	0.1
<b>Shipments of imports from China:</b>					
To distributors	***	***	***	***	***
To printers	***	***	***	***	***
To retailers	***	***	***	***	***
To OEMs	***	***	***	***	***
To others	***	***	***	***1	***
<b>Shipments of imports from Taiwan:<sup>2</sup></b>					
To distributors	***	***	***	***	***
To printers	***	***	***	***	***
To retailers	***	***	***	***	***
To OEMs	***	***	***	***	***
To others	***	***	***	***	***
<b>Shipments of imports from subject sources:</b>					
To distributors	***	***	***	***	***
To printers	***	***	***	***	***
To retailers	***	***	***	***	***
To OEMs	***	***	***	***	***
To others	***	***	***	***	***
<b>Shipments of imports from nonsubject sources:<sup>3</sup></b>					
To distributors	***	***	***	***	***
To printers	***	***	***	***	***
To retailers	***	***	***	***	***
To OEMs	***	***	***	***	***
To others	***	***	***	***	***
<b>Total imports:</b>					
To distributor	12.9	10.5	12.5	10.5	17.3
To printers	43.7	44.7	55.4	35.8	63.5
To retailers	4.8	5.4	3.0	3.7	4.8
To OEMs	22.5	25.3	15.9	12.0	9.3
To others	16.0	14.1	13.2	38.1	5.0
<sup>1</sup> First quarter of 2007 shipments to "other" purchasers represent non-distributor sales by ***. <sup>2</sup> ***, and accordingly characterized these sales as shipments to 'other' customers. <sup>3</sup> Nonsubject sources represent a small share of the total imports.					
Source: Compiled from data submitted in response to Commission questionnaires.					

distances of 101 to 1,000 miles of their storage facilities). Seven importers sold the majority of their raw flexible magnets to distances over 1,000 miles of their storage facility (1 of these firms reported that 100 percent of its raw flexible magnets were sold to distances over 1,000 miles of its storage facility). One importer sold half of its raw flexible magnets within 100 miles of its storage facilities and half within distances of 101 to 1,000 miles of its facilities.

Delivery lead times for product from inventory varied for both U.S.-produced and imported raw flexible magnets. For U.S. producers, lead times ranged from 1 to 7 days. Importers generally reported lead times ranging from 1 to 10 days. Delivery lead times for produced-to-order raw flexible magnets ranged from 7 to 45 days for U.S. producers and from 3 days to 120 days for importers. The majority of the U.S. producers' products were produced to order. Approximately one-half of responding importers reported that most or all of their products were produced to order while one-half reported that most or all of their products were sold from inventory.<sup>6</sup>

## **SUPPLY AND DEMAND CONSIDERATIONS**

### **U.S. Supply**

Generally, factors such as relatively low levels of capacity utilization, relatively high inventory levels, and the existence of alternate markets indicate a relatively strong supply responsiveness. Alternate markets include export shipments, home market commercial sales, and internal consumption (for the production of downstream products). Of these three factors, the existence of exports is generally the most important contributing factor to supply responsiveness, as it indicates the subject country's degree of export orientation and experience in export marketing. The second most important contributing factor is generally home market commercial sales, which could be diverted to export markets, especially if the industry in the subject country is already experienced in exporting. Internal consumption is most likely the least easily diverted because such diversion could require scaling back or idling production of downstream products. However, the ease of diverting internal consumption may increase if the subject country has developed export markets and home market commercial sales. Factors contributing to the supply responsiveness are discussed below.

### **Domestic Production**

The responsiveness of the domestic supply of raw flexible magnets to changes in price depends on several factors including the level of excess capacity, the availability of alternate markets for U.S.-produced raw flexible magnets, inventory levels, and the ability to shift to the manufacture of other products. Information obtained in the final phase of these investigations suggests that U.S. producers have a high degree of flexibility in expanding output and U.S. shipments in response to an increase in price, chiefly due to low industry capacity utilization rates. U.S. producers' capacity utilization declined from 66.8 percent in 2005 to 48.5 percent in 2007, and was 43.0 percent during January-March 2008. Exports, as a percentage of total shipments, ranged between \*\*\* percent and \*\*\* percent during 2005-07, and were \*\*\* percent during January-March 2008. The ratio of U.S. producers' end-of-period inventories to their total shipments ranged from \*\*\* to \*\*\* percent during 2005-07, and was \*\*\* percent during January-March 2008.

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<sup>6</sup> Importer Adams Magnetics testified that it keeps high inventory levels because, although it comes with a cost, it has distributor mentality and has become accustomed to high levels of inventory. Hearing transcript, p. 169 (Lewis).

## **Supply of Subject Imports to the U.S. Market**

The responsiveness of the supply of imports from subject countries to changes in prices in the U.S. market is affected by such factors as capacity utilization rates, the availability of home markets and other export markets, and inventories. Based on available information, suppliers of subject imports have the ability to respond in changes in demand with moderate to high changes in the quantity of shipments of raw flexible magnets to the U.S. market.

### ***Subject Imports from China***

During 2005-07, the capacity utilization rates for Chinese producers of raw flexible magnets were between \*\*\* and \*\*\* percent; rates are estimated to be \*\*\* percent in 2008 and \*\*\* percent in 2009. Chinese producers' inventories, as a percentage of total shipments, ranged between \*\*\* and \*\*\* percent during 2005-2007; they are estimated to be \*\*\* percent in 2008 and \*\*\* percent in 2009. Commercial shipments of raw flexible magnets sold in the Chinese home market accounted for \*\*\* percent of Chinese producers' total shipments in 2005, \*\*\* percent in 2006, and \*\*\* percent in 2007. During 2005-07, internal consumption ranged from \*\*\* percent to \*\*\* percent of total shipments. Chinese raw flexible magnets producers' exports to the United States, as a percentage of total shipments, ranged between \*\*\* percent in 2006 and \*\*\* percent in 2007. Chinese raw flexible magnets producers' exports to other markets, as a percentage of total shipments, ranged between \*\*\* percent in 2006 and \*\*\* percent in 2007. Therefore, suppliers of raw flexible magnets from China have the capability to respond to changes in demand with large changes in the quantity shipped to the U.S. market. Supply responsiveness is increased by the existence of non-U.S. markets, existence of excess capacity, and existence of a strong home market.

### ***Subject Imports from Taiwan***

Capacity utilization rates for the responding producers of raw flexible magnets in Taiwan were between \*\*\* and \*\*\* percent during 2005-07; rates are projected to \*\*\* in 2008 and \*\*\* in 2009. Inventories, as a percentage of total shipments, ranged between \*\*\* percent and \*\*\* percent during 2005-07. The share of total shipments sold into the Taiwan home market ranged from \*\*\* percent to \*\*\* percent during 2005-07. Exports to the United States, as a percentage of total shipments, declined from \*\*\* percent to \*\*\* percent during 2005-07. Exports to non-U.S. markets, as a percentage of total shipments, increased from \*\*\* percent in 2005 to \*\*\* percent in 2007. Therefore, suppliers of raw flexible magnets from Taiwan have the capability to respond to changes in demand with moderate changes in the quantity shipped to the U.S. market. Supply responsiveness is enhanced by high levels of exports to non-U.S. markets and the existence of home market sales; however, \*\*\* inventories and relatively low levels of available extra capacity may constrain Taiwan's ability to increase exports to the U.S. market.

## **U.S. Demand**

### **Demand Characteristics**

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 closely linked to the demand for those end-use products. The price elasticity of demand for raw flexible magnets is likely to be moderate since raw flexible magnet products have substitutes for some applications and they often account for a substantial share of the final cost of products in which they are used as inputs.

## Demand Trends

Demand for raw flexible magnets tends to fluctuate from period to period. Magnum reported there is 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>7</sup>

When asked how the U.S. demand for raw flexible magnets had changed since January 1, 2005, responses from U.S. producers were mixed: two producers reported that demand had increased, two reported that demand decreased, and one reported that demand did not change. \*\*\* attributed the rise in demand to “increased use on cars, in magazines, billboards, direct mail, and advertising specialities.” \*\*\* attributed the increase in demand to the mass mailing inserts that started in 2005. \*\*\* attributed the decrease in demand to a decline in U.S. manufacturing and an increase in imports. \*\*\* attributed the decrease in demand to the slowdown in the housing market.

Magnum anticipated increasing demand at the time it acquired MSI. In response to a question regarding recent demand trends, however, witnesses attributed decreasing demand to the drop in real estate sales activity: “competition between realtors was very strong, and realtors are one of the large users of the printed magnets, printed calendars, and such products,”<sup>8</sup> but while real estate “accounted for 30 to 40 percent” of TradeNet’s business, “we’ve seen that drop to about 10 percent of our business.”<sup>9</sup>

Eight importers reported that demand increased, three importers reported that demand decreased, and 15 importers reported either no change or fluctuation in demand since January 1, 2005. The importers reporting increased demand attributed the rise to the spike in demand in 2005 due to the Capital One project<sup>10</sup> that lasted for about 18 months,<sup>11</sup> increased demand for various general magnets, increased

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<sup>7</sup> Conference transcript, p. 97 (T. Love).

<sup>8</sup> Hearing transcript, p. 60 (A. Love).

<sup>9</sup> Hearing transcript, p. 61 (Fixsen). *See also* p. 71 (T. Love, Malashevich).

<sup>10</sup> In its questionnaire response from the preliminary phase of these investigations, \*\*\* reported that during the Capital One national marketing campaign, both Magnum and Flexmag competed for this business “at the expense of longer lead times for all of their regular and preferred customers and lower overall margins for themselves. Lead times went out to 7 weeks from a normal lead time of 1 to 2 weeks or less. Many of their customers and ours decided at that time to explore the only other option to purchase ‘Raw Flexible Magnets’ from offshore. Also, on September 28, 2005, Magnum, Inc. had a huge price increase further reducing demand for their products.”

Magnum reported that it supplied materials to the Capital One campaign only for “a brief period of a few months” and then stopped due to “other equipment issues” and lack of capacity. Conference transcript, pp. 91-92 (A. Love). \*\*\*, Magnum reported that the purchase of MSI resulted in short-term production declines, a series of challenges and external pressures, a complicated combined production facility, and the need to order and install new equipment. All of these difficulties produced longer delivery dates, a poorer quality, and the need to put the distributors on allocation. However, Magnum indicated that by November 2005, the lead times dropped and the quality was again at the required levels. Conference transcript, pp. 38-39 (A. Love).

One U.S. purchaser of raw flexible magnets noted that “this spike had a dramatic impact on Magnum...they sold so much material during 2005 that they felt the need to expand their production capacity and that when the demand went back to previous levels, they found themselves in a position where there was huge amounts of excess capacity...by purchasing MSI.” Correspondence from \*\*\*, October 15, 2007.

Importer Adams Magnetics noted that during the Capital One campaign, it experienced increases in lead times from Magnum from 10 days to about 3-4 weeks. The company also reportedly experienced quality problems such as blocking and bricking. Its customers complained about these problems and Adams Magnetic reported incurring over \$100,000 in customer credits as well as the potential loss of accounts. After it tried to remedy the problems for two years, Adams Magnetic states that it decided to buy from Flexmag and import from China.

(continued...)

demand for “support the troops” yellow ribbons, and increased use of vehicle advertisements, as well as internet or home-based businesses. Similar to the producers’ responses, the importers reported decreased demand due to U.S. companies moving and sourcing overseas and to costly inland freight.

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.<sup>12</sup> One importer reported that the magnet industry is a maturing industry, but it has not yet matured, and demand will continue to grow.<sup>13</sup>

Purchasers who are end users were asked if the demand for their firm’s final product incorporating raw flexible magnets has changed since January 1, 2005. Six purchasers reported that demand has increased, 11 reported that demand has decreased, and 9 reported that demand for their final products either fluctuated or remained the same.

When asked how the demand for raw flexible magnets outside the United States had changed since January 1, 2005, information from the responding U.S. producers was mixed: two producers reported that demand had increased and one reported that demand did not change. Similarly, 7 importers reported that demand outside the United States has increased, 1 reported that it decreased, and 12 reported that demand has either fluctuated or remained the same.

Apparent U.S. consumption of raw flexible magnets increased from 85.6 million pounds in 2005 to 89.1 million pounds in 2006, but then decreased to 78.4 million pounds in 2007. During January-March 2008, apparent U.S. consumption was 17.2 million pounds as compared to 19.2 million pounds during January-March 2007.

## **Substitute Products**

U.S. producers and importers were asked to list any products that may be substituted for raw flexible magnets and the relevant applications and end uses; firms were also asked to indicate whether changes in the prices of the substitutes affected the price for raw flexible magnets. Three producers mentioned substitute products for different end uses: sintered ferrite, plain paper, premium coated paper, injection molded ferrite, static cling labels, stickers (metallic and foil paper), and other print media. Only one of these three producers reported that the price of sintered ferrite can affect the price of raw flexible magnets, noting that the price of sintered ferrites can drive down the price of flexible magnets. Eight importers reported substitutes including velcro, vinyl, printed magnets, static, adhesives, non-permanent tape, pressure sensitive label, bag clips with magnets, letter openers, PVC with static cling, and removable glue.

Two purchasers reported that they are not aware of any substitutes, while seven purchasers reported substitutes for raw flexible magnets: hard magnets, pressure sensitive products, plastic, paper, vinyl sticker, plastisol, static cling vinyl, low tack adhesive vinyl and polypropylene, and adhesive backed products.

## **Cost Share**

Producers, importers, and purchasers were asked to estimate the cost of raw flexible magnets as a share of the cost of the end-use products in which they are used as inputs. Three producers and 13

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<sup>10</sup> (...continued)

Conference transcript, pp. 130-131 (Lewis). \*\*\*.

<sup>11</sup> Conference transcript, pp. 91-92 (A. Love).

<sup>12</sup> Hearing transcript, pp. 83-84 (T. Love).

<sup>13</sup> Hearing transcript, p. 191 (Gorgonne).

importers provided estimates for various products. These firms reported that raw flexible magnets often account for a substantial share of the final product cost, although the cost share varies widely. A summary of the share of total cost of the end-use products which is accounted for raw flexible magnets is presented below in the following tabulation.

<b>End use</b>	<b>Share of total cost of end-use product (in percent)</b>
Advertisements for refrigerators	***
Appliance timer	***
Calendars/promotional business cards	***
Counter toppers	***
Craft magnets	***
Diecut promotional printed magnets	***
Magnetic holders and display	***
Magnetic memo boards	***
Menu boards	***
Pain relief supports	***
Promotional decor	***
Refrigerator badge/acrylic magnets	***
Sensors	***
Vehicle door signs	***
Vent covers	***

### **SUBSTITUTABILITY ISSUES**

The degree of substitutability between domestic products and subject and nonsubject imports, between subject imports from different sources, and between subject and nonsubject imports is examined in this section. The discussion is based upon the results of questionnaire responses from producers, importers, and purchasers.

#### **Factors Affecting Purchasing Decisions**

Table II-2 summarizes the purchasers' responses concerning the top three factors they reported using in their purchasing decisions.<sup>14</sup> Quality was cited most frequently as the primary factor in buying decisions and price was the most frequently cited second factor and third factor. Other factors frequently reported among the top three include availability, traditional supplier/contract, and delivery.

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<sup>14</sup> Questionnaires were sent to 133 purchasers, of which 43 responded.

**Table II-2****Raw flexible magnets: Ranking factors used in purchasing decisions by U.S. purchasers**

Factor	Number of firms reporting		
	Number one factor	Number two factor	Number three factor
Quality	16	7	6
Price	10	12	10
Availability	4	8	2
Traditional supplier/contract	4	0	1
Product consistency	2	0	0
Delivery	1	8	7
Reliability of supply/reliability	1	1	0
Production time	0	0	2
Service/technical service	0	0	2
Other <sup>1</sup>	2	2	7

<sup>1</sup> Other factors include product functionality and products not yet on the market for first factor; sign making grade standards and range of product line for second factor; and reputation in the industry, suppliers that support us not compete with us, stable pricing structure, meets product safety standards, range of product line, terms, and ability to produce prototypes quickly for third factor.

Source: Compiled from data submitted in response to Commission questionnaires.

Purchasers were asked to rate the importance of 15 factors in their purchasing decisions for raw flexible magnets (table II-3). Availability and reliability of supply were reported most frequently as “very important” (38 firms). Other factors that were listed by a majority of purchasers as being “very important” included delivery time (37 firms), product consistency (37 firms), price (33 firms), quality meets industry standards (33 firms), delivery terms (27 firms), and U.S. transportation costs (22 firms).

Purchasers were asked for a country-by-country comparison on the same 15 factors (table II-4). Most purchasers reported that U.S. product was superior in terms of availability and delivery time, and that the Chinese product was superior to U.S. product in terms of price.

Most responding purchasers reported that the U.S. product was superior to product from Taiwan for delivery time, product consistency, product range, quality exceeds industry standards, reliability of supply and technical support/service; while the majority response for minimum quantity requirements and packaging was that product from the United States and from Taiwan was comparable. Three firms each reported that U.S. product was superior to Taiwan and that they were comparable in availability and quality meets industry standards. The most common response for price was that U.S. product was inferior.

Six firms compared product from China and Taiwan on these factors, with most reporting that they were comparable with regard to availability, delivery terms, delivery time, discounts offered, extension of credit and U.S. transportation costs. For minimum quantity requirements, one firm reported that China was superior, three that China and Taiwan were comparable and two that China was inferior. For all other factors, two purchasers reported that China was superior, three stated that China and Taiwan were comparable, and one reported that China was inferior.



**Table II-3**  
**Raw flexible magnets: Importance of purchase factors, as reported by U.S. purchasers**

Factor	Very important	Somewhat	Not important
	<i>Number of firms responding</i>		
Availability	38	2	0
Delivery terms	27	13	0
Delivery time	37	3	0
Discounts offered	9	21	8
Extension of credit	20	10	9
Minimum quantity requirements	12	14	11
Packaging	16	17	5
Price	33	5	1
Product consistency	37	0	1
Product range	7	23	7
Quality exceeds industry standards	15	17	4
Quality meets industry standards	33	4	1
Reliability of supply	38	1	0
Technical support/service	19	16	4
U.S. transportation costs	22	15	1
Note.--Not all purchasers responded for each factor.			
Source: Compiled from data submitted in response to Commission questionnaires.			

When asked if certain grades/types/sizes of raw flexible magnets were available from only a single source, three purchasers reported that some types of magnets were only available from only one source or not available from U.S. sources. One firm reported that raw flexible magnets over 40" wide, high energy raw flexible magnets, and super thin flexible magnets are only available from NewLife. Another purchaser reported that wide format (meter-wide) magnetic sheet is not available in the United States, although Polyflex and NewLife can produce this product. One additional purchaser reported that varying thickness, substrate applied, and magnet application forms were available from a single source but it did not report the source.

Purchasers were also asked if they or their customers ever specifically requested product from one country over other possible sources. Twenty of the 37 responding purchasers reported that they did not purchase from only one source; 13 reported that they purchased product from the United States only; 3 purchasers reported that they order only from China; 1 reported ordering only from China and Taiwan; and 1 did not report its source.

**Table II-4**  
**Raw flexible magnets: Comparisons of product by source country, as reported by**  
**U.S. purchasers**

Factor	U.S. vs China			U.S. vs Taiwan			China vs Taiwan		
	S	C	I	S	C	I	S	C	I
	<i>Number of firms responding</i>								
Availability	13	9	1	3	3	1	1	4	1
Delivery terms	11	9	3	3	2	2	0	5	1
Delivery time	18	4	1	4	2	1	0	4	2
Discounts offered	3	9	6	1	3	2	1	4	1
Extension of credit	8	12	2	2	3	1	0	5	1
Price <sup>1</sup>	3	3	16	2	2	3	2	3	1
Minimum quantity requirements	10	10	2	1	4	1	1	3	2
Packaging	7	14	1	3	4	0	2	3	1
Product consistency	11	9	3	5	2	0	2	3	1
Product range	3	16	2	4	2	0	2	3	1
Quality exceeds industry standards	11	7	4	4	2	0	2	3	1
Quality meets industry standards	5	16	0	3	3	0	2	3	1
Reliability of supply	8	13	1	4	2	0	2	3	1
Technical support/service	10	9	2	4	2	0	2	3	1
U.S. transportation costs <sup>1</sup>	6	10	3	1	3	2	0	5	1
<sup>1</sup> A rating of superior means that price/U.S. transportation cost is generally lower. For example, if a firm reported "U.S. superior", it meant that the price of U.S. product was generally lower than the price of the imported product.  Note.--S=first listed country's product is superior; C=both countries' products are comparable; I=first listed country's product is inferior. Data shown only for comparisons made by at least 3 purchasers.  Source: Compiled from data submitted in response to Commission questionnaires.									

When asked how often their firm purchases raw flexible magnets that are offered at the lowest price, 2 purchasers indicated "always," 9 indicated "usually," 9 indicated "sometimes," and 20 purchasers indicated "never."

Purchasers were also asked if they are aware if the product that they purchase is U.S.-produced or imported, if they know the manufacturer of their product, and if their buyers are aware or interested in the country of origin of raw flexible magnets. Responses presented in the following tabulation.

Item	Always	Usually	Sometimes	Never
Purchaser aware if product is U.S.-produced or imported	36	2	1	1
Purchaser knows manufacturer	37	2	1	1
Buyers aware or interested in country of origin of products supplied by purchaser	10	7	18	5

Most purchasers (21 of 40) reported that they required their suppliers to be certified or pre-qualified with respect to the quality or other performance characteristics of the raw flexible magnets that

they purchase. Nineteen reported requiring certified or pre-qualified for all of the products that they purchase. One purchaser reported that all new products are tested, another reported that samples are assessed, and the remaining purchaser requires no certification.

When qualifying a new supplier, most purchasers take into consideration the quality of the product, price, and reliability/delivery time. Other requirements were material printed or worked in machines, consistency, service, safety, the producers capacity, willingness to stand behind the product, audit of producer, supplier's reputation, U.S. produced, and effectiveness in test sample. One purchaser reported that it required reliability in the market (delivery and quality), good financial standing, structured quality systems and process, business recovery program, recycling programs and initiatives, and pricing. Another purchaser noted that it required product that increased its product line.

Six purchasers estimated the time that was required to qualify a supplier, which ranged from 20 hours to eight months. Three of these firms reported that qualification times vary but most noted times less than 6 months. When asked if any new suppliers failed certification, 5 firms reported that they have had suppliers that failed new certifications, and 33 reported no new failed certifications. Four of these provided additional details: two reported that Chinese firms did not meet quality requirements and two reported that the petitioner Magnum lost its certification \*\*\*.

Adams Magnetic (MAI) provided additional documentation concerning the quality problems it experienced with Magnum/MSI post acquisition (Magnum acquired MSI in 2005). Adams Magnetic reported providing various credits of over \$140,000 to their customers and receiving credits of \$159,000 from Magnum due to "blocking of material on rolls and bricking of product that has been die cut and stacked," product curling, assistance with an adhesive system, product internal mixing, and failing of longer roll testing. Unable to resolve these issues successfully between April 2005 and July 2007, Adams Magnetic stopped purchasing from Magnum, opting instead to place its orders with Polyflex and Flexmag.<sup>15,16</sup>

\*\*\* also provided additional comments concerning the issue of quality \*\*\*.<sup>17</sup>

Purchasers reported numerous characteristics that they consider when determining the quality of raw flexible magnets including: factors relating to its magnetic properties, adhesion to metal, lay flat, consistency; factors relating to printing such as ink adherence, adhesive backing, surface tension, and vinyl adhesion; size factors such as thickness, roll width compliance, and sheet size; other physical properties such as cleanness, clean edges, no powder residual, flexibility, and finish; consistency of product; safety including product liability and lack of heavy metals; working in production process; durability; and cost.

### **Comparisons of Domestic Products, Subject Imports, and Nonsubject Imports**

Producers, importers, and purchasers were asked whether the U.S., Chinese, and Taiwan raw flexible magnets can "always," "frequently," "sometimes," or "never" be used interchangeably and if these were interchangeable with product from Japan, Vietnam, and other countries (table II-5). Three of the four responding U.S. producers, 16 of the 24 responding importers, and 20 of the 23 responding purchasers reported that U.S. and Chinese product were either always or frequently interchangeable.

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<sup>15</sup> Adams Magnetic's posthearing submission, July 17, 2008.

<sup>16</sup> Magnum reported that it does not dispute that "MAI had periodic issues with some Magnum material. Occasional product issues are inherent in the use of flexible magnets and MAI experienced its share" and "Magnum offered assistance with MAI's perceived problems at every step of the relationship...by providing, free of charge, equipment that would help the roll tearing reported by MAI" but "MAI declined the help." Petitioners' posthearing brief, exhibit 6, pp. 15-20.

<sup>17</sup> Correspondence from \*\*\*, June 27, 2008.

Two of three responding U.S. producers and four of seven responding purchasers reported that U.S. and Taiwan products were always or frequently interchangeable; six of nine responding importers reported that they were only sometimes interchangeable. All three responding U.S. producers, and six of the seven responding purchasers reported that Chinese and Taiwan products were always or frequently interchangeable; five of the six responding importers reported that products from China and from Taiwan were only sometimes interchangeable. Differences reported included: material from Taiwan adversely affects car paint so we do not use it for outdoor car magnets; Chinese product is more consistent than that from Taiwan; the quality of Chinese products varies so greatly from manufacturer to manufacturer; Taiwan material has lower price than that from United States and other countries; patented products were available from Taiwan but not U.S. producers; wide material (40" or wider) is available from China but not from the United States; some environmental materials are available from China but not the United States, some proprietary coatings can not be produced either by U.S. or other Chinese producers; Chinese magnets lack consistency in cutting and printing; differences in scope; Chinese product quality is not reliable; U.S. producers compete directly for customer sales; and different characteristics and chemical makeup.

**Table II-5**  
**Raw flexible magnets: Interchangeability of product from different sources<sup>1</sup>**

Country comparison	U.S. producers				U.S. importers				U.S. purchasers			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. China	1	2	1	0	11	5	7	1	13	7	1	2
U.S. vs. Taiwan	1	1	1	0	2	1	6	0	3	1	0	3
U.S. vs. Japan	1	1	1	0	3	0	3	0	3	0	0	1
U.S. vs. Vietnam	0	1	0	0	3	0	2	0	2	1	0	1
U.S. vs. other nonsubject countries	0	1	1	0	1	0	2	0	2	0	0	0
China vs. Taiwan	2	1	0	0	1	0	5	0	4	2	0	1
China vs. Japan	1	1	1	0	2	0	3	0	1	0	0	2
China vs. Vietnam	0	1	0	0	1	0	3	0	0	2	0	1
China vs. other nonsubject countries	0	1	1	0	1	0	2	0	0	0	0	1
Taiwan vs. Japan	1	1	1	0	1	0	4	0	1	0	0	2
Taiwan vs. Vietnam	0	1	0	0	2	0	4	0	0	1	0	1
Taiwan vs. other nonsubject countries	0	1	1	0	1	0	3	0	0	0	0	0

<sup>1</sup> Firms were asked if raw flexible magnets produced in the United States and in other countries are used interchangeably.

Note.-- "A" = Always, "F" = Frequently, "S" = Sometimes, and "N" = Never.

Source: Compiled from data submitted in response to Commission questionnaires.

Producers, importers, and purchasers were also asked whether U.S.-produced products and imports from the same countries had differences other than price which were always, frequently, sometimes, or never significant (table II-6). All responding U.S. producers reported that there were sometimes differences in factors other than price for product from the United States and China and the United States and Taiwan. Most responding importers reported that there were always or frequently

differences other than price for product from the United States and China and the United States and Taiwan. While 12 of 22 responding purchasers reported that there were always or frequently non-price differences between U.S. and Chinese product, four out of five responding purchasers reported that there were sometimes or never such differences between the U.S. and the Taiwan products. Most responding producers (2 out of 3) reported that Chinese and Taiwan products never had differences other than price, while importers responding were evenly divided among always, frequently and sometimes.

**Table II-6**  
**Raw flexible magnets: Differences other than price between products from different sources<sup>1</sup>**

Country comparison	U.S. producers				U.S. importers				U.S. purchasers			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. China	0	0	4	0	10	2	8	3	7	5	6	4
U.S. vs. Taiwan	0	0	3	0	3	1	1	0	1	0	2	2
U.S. vs. Japan	0	0	3	0	2	1	1	1	1	0	1	0
U.S. vs. Vietnam	0	0	1	0	1	1	1	0	1	0	1	0
U.S. vs. other nonsubject countries	0	0	2	0	1	1	1	1	1	0	0	0
China vs. Taiwan	0	0	1	2	1	1	1	0	1	0	2	2
China vs. Japan	0	0	1	1	0	1	1	1	0	0	1	0
China vs. Vietnam	0	0	1	0	0	1	1	0	0	0	1	0
China vs. other nonsubject countries	0	0	1	1	0	1	1	0	0	0	0	0
Taiwan vs. Japan	0	0	1	1	0	1	1	0	1	0	1	0
Taiwan vs. Vietnam	0	0	1	0	0	1	1	0	0	0	1	0
Taiwan vs. other nonsubject countries	0	0	1	1	0	1	1	0	0	0	0	0

<sup>1</sup> Firms were asked if differences other than prices between raw flexible magnets produced in the United States and in other countries was a significant factor in their sales of the products.

Note.-- "A" = Always, "F" = Frequently, "S" = Sometimes, and "N" = Never.

Source: Compiled from data submitted in response to Commission questionnaires.

One of the five responding purchasers reported that there were always differences other than price, while two each reported there were sometimes or never differences other than price.

Producers, importers and purchasers noted such factors such as: different lead times for non-standard products; Chinese product lacks quality and is usable in only some applications; differences in scope, size, and availability of environmentally friendly materials; differences in quality strength, product range, technical support, and research and development; poor U.S. customer service; Chinese product superior in quality, service, and price; U.S. has quick delivery, specialized products, and consistent quality; want a product which has been FDA approved as non-toxic; better size roll; and long term, dynamic business relationship with current U.S. supplier.

## **ELASTICITY ESTIMATES**

This section discusses elasticity estimates. Parties were requested to provide comments in their prehearing briefs; no comments were received.

### **U.S. Supply Elasticity**

The domestic supply elasticity for raw flexible magnets measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price for raw flexible magnets. The elasticity of domestic supply depends on several factors, including the level of excess capacity, the existence of inventories, and the availability of alternate markets for U.S.-produced raw flexible magnets. Available information on these factors indicates that the U.S. industry has the ability to increase or decrease shipments to the U.S. market; an estimate in the range of 5 to 10 is suggested.

### **U.S. Demand Elasticity**

The U.S. demand elasticity for raw flexible magnets measures the sensitivity of the overall quantity demanded to changes in the U.S. market price for raw flexible magnets. This estimate depends on the factors discussed earlier, such as the existence, availability, and commercial viability of substitute products and the relative cost share of raw flexible magnets. Based on available information, a demand elasticity in the range of -0.75 to -1.25 is reasonable.

### **Substitution Elasticity**

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products. Product differentiation, in turn, depends upon such factors as quality and conditions of sale. Based on available information, the elasticity of substitution between U.S.-produced raw flexible magnets and raw flexible magnets imported from China and Taiwan is estimated to be in the range of 2 to 4.

### **PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT**

Except where noted, information presented in this section of the report is based on the questionnaire responses of the \*\*\* responding firms (out of seven companies known to produce raw flexible magnets on a non-toll basis). These firms are believed to account for 95 percent of the U.S. production of raw flexible magnets during the period for which data were collected (January 2005-March 2008).

#### **U.S. PRODUCERS**

The Commission sent producers' questionnaires to all 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. \*\*\* of the six firms that participated in the preliminary phase of these investigations provided questionnaire responses, in addition to \*\*\* producing \*\*\*.<sup>1</sup>

The U.S. flexible magnet industry was developed in the 1950s by BF Goodrich at its facility in Marietta, OH, in what appears to have been a response to demand for magnetic refrigerator gaskets, first developed by General Electric as a method of closure for refrigerator doors that would not trap children playing inside abandoned refrigerators.<sup>2</sup> That facility eventually became the firm that would be known as Magnetic Specialties, Inc. ("MSI"). Flexmag was founded as an offshoot of MSI, also in Marietta. In 1991, Magnum was founded in Marietta by Allen Love, \*\*\*, and his brother, Tom Love, on land that had been part of their family farm.<sup>3</sup>

In the spring of 2005, Magnum acquired the assets of MSI (which was the high-cost producer at the time), reduced the workforce by \*\*\* employees, and moved some of the MSI equipment to its plant in Ohio. Magnum reportedly made the purchase because MSI was "a good buy" and because MSI, unlike Magnum, "was in the retail market" (described as a "higher-added-value market").<sup>4</sup> Magnum also acquired \*\*\*. Magnum receives \*\*\*.<sup>5</sup> Magnum also produces photo pockets.

Magnum and Flexmag produce a range of sheets, strips, and to a lesser degree, profile shapes, using primarily the calender method, but also, to a lesser extent, the extrusion method. Holm produces extruded strips primarily for internal consumption for its refrigerator gasket product line. \*\*\*.<sup>6</sup> Electrodyne produces sheets, strips, and mainly profile shapes using the calender process only, and

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<sup>1</sup> \*\*\* (which accounted for \*\*\* percent of production in 2006, responded in the preliminary phase of the investigations but did not respond in the final phase of the investigations). The following firms did not respond in the preliminary phase of these investigations and may be producers of raw flexible magnets: Eneflux Armtek, Inc. (dba Magnet Kingdom), Newtown, PA; and Polymag, Inc., Belport, NY (\*\*\*). These two latter non-responding firms are estimated to produce raw flexible magnets accounting for less than \*\*\* percent of U.S. production in 2007. \*\*\* originally believed to produce photo pockets, \*\*\*, responded that it did not produce raw flexible magnets.

<sup>2</sup> Hearing transcript, p. 18 (A. Love).

<sup>3</sup> Hearing transcript, p. 18 (A. Love) and staff field trip report, \*\*\*, October 2, 2007.

<sup>4</sup> Hearing transcript, p. 38 (T. Love) and p. 60 (A. Love); and petitioner's posthearing brief, exh. 6, p. 3. According to Magnet LLC, MSI was the only unionized producer and that "caused Gary Murphy, the owner of MSI, a great deal of pain over the years." Hearing transcript, p. 237 (Gorgonne).

<sup>5</sup> \*\*\*, correspondence from \*\*\*, October 16, 2007; Magnum's questionnaire response in these final-phase investigations at II-14; and petitioner's posthearing brief, exh. 6, p. 46, and exh. 30.

<sup>6</sup> Staff telephone interview with \*\*\*, October 15, 2007.

specializes in high energy magnets.<sup>7</sup> Magnet Technology uses only extrusions to produce its raw flexible magnets for refrigerator gaskets and shower doors. Magnet Technology reportedly competes with Holm from time to time.<sup>8</sup> Magtech produces only photo pockets, which are made from sheets of raw flexible magnets using the calender process. Finally, P.H. Glatfelter sells magnetized paper produced by the calendering process.<sup>9</sup>

A \*\*\* purchaser and importer, Adams, testified at the staff conference that historically there were three main suppliers of raw flexible magnets in the United States. According to Adams, MSI's relative strength was its customer service, Magnum's relative strength was as a low-cost producer, and Flexmag's was its product offerings. The witness for Adams identified Magnum's "business practices" and Flexmag's customer service as relative weaknesses for the respective companies.<sup>10</sup> At the hearing, a witness for converter and importer Master Marketing also indicated that MSI was known for its service and Magnum was initially known for being the low-cost producer.<sup>11</sup>

Table III-1 presents the list of U.S. producers with each company's production location, share of reported U.S. production in 2007, and position on the petition.

As discussed earlier in this section, petitioner Magnum engages in a range of finishing activities. However, value-added operations such as slitting, scoring, cutting, die-cutting, and laminating of raw flexible magnets are performed by independent firms as well.<sup>12</sup> In addition to questionnaires sent to producers of raw flexible magnets, questionnaires were issued to seven firms believed to be small fabricators/converters of raw flexible magnets. Three small fabricator firms provided usable questionnaire responses.<sup>13</sup> Adams, a self-described distributor/fabricator, is also a \*\*\* importer and purchaser. Adams provides value-added services for a small amount of its raw flexible magnet business.<sup>14</sup> At the hearing, a witness for Magnum testified that Adams was expanding its converting operations in March 2008 by opening a new production line in Sonoma, CA, "in order to offer West Coast customers production and converting capabilities."<sup>15</sup> A second converter, Master Magnetics, which has been in business for 32 years, provides cutting and slitting operations for its customers.<sup>16</sup> A third converter is Rochester Magnet Co., which is a converter of flexible magnet material and also distributes hard magnet materials and magnetic assemblies.<sup>17</sup> These three companies are believed to be the primary active non-toll converters of raw flexible magnets in the United States,<sup>18</sup> and collectively converted approximately \*\*\* pounds of raw flexible magnets in 2007, equivalent to \*\*\* percent of U.S. production of raw flexible magnets in that year.<sup>19</sup>

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<sup>7</sup> Hearing transcript, p. 16 (A. Love) and p. 96 (T. Love).

<sup>8</sup> Conference transcript, p. 149 (Mosteller).

<sup>9</sup> \*\*\*.

<sup>10</sup> Conference transcript, p. 137 (Lewis).

<sup>11</sup> Hearing transcript, pp. 170-171 (Nellessen).

<sup>12</sup> The description of conversion activities in this section of the report relates to firms that provide value-added services for raw flexible magnets; it does not relate to value-added activities in the production of downstream products. *See, e.g.*, hearing transcript, pp. 162 (Lewis), discussing the nature of Magnetic Attractions' downstream operations.

<sup>13</sup> One \*\*\* firm, All Magnetics, Inc., \*\*\*. Two firms, \*\*\*, did not respond to the Commission's questionnaire. One firm, \*\*\*, responded that it did not fabricate raw flexible magnets.

<sup>14</sup> Hearing transcript, p. 162 (Lewis).

<sup>15</sup> Hearing transcript, p. 38 (T. Love). \*\*\*. Email from \*\*\*, July 17, 2008.

<sup>16</sup> Hearing transcript, p. 160 (Nellessen).

<sup>17</sup> Hearing transcript, p. 51 (Dennis).

<sup>18</sup> All Magnetics \*\*\*.

<sup>19</sup> More limited operations reportedly take place on a toll basis on behalf of \*\*\*. According to information provided by \*\*\*, it has tolling agreements with \*\*\*. Only \*\*\* provided a questionnaire response.



**Table III-1**

**Raw flexible magnets: U.S. producers, U.S. production locations, shares of reported U.S. production in 2007, and positions on the petition**

Firm	Production location(s)	Share of reported production (percent)	Position on the petition
Electrodyne Co., Inc.	Batavia, OH	***	***
Flexmag <sup>1</sup>	Marietta, OH Norfolk, NE	***	***
Holm, Inc. <sup>2</sup>	Scottsburg, IN	***	***
Magnet Technology, Inc. <sup>3</sup>	Lebanon, OH	***	***
Magnum	Caldwell, OH Marietta, OH	***	Petitioner
Magtech Ltd. <sup>4</sup>	Dallas, TX	***	***
P.H. Glatfelter Co. <sup>5</sup>	Chillicothe, OH West St. Paul, MN	***	***

<sup>1</sup> Owned by Arnold Magnetic Technologies Corp., Rochester, NY. Although \*\*\*.  
<sup>2</sup> Owned by ILPEA Parent, Inc., Scottsburg, IN. Related to Industrial ILPEA SpA, Italy, a foreign producer of raw flexible magnets. Production is \*\*\* captive, and is used in the production of its refrigerator gasket line of products.  
<sup>3</sup> \*\*\*. Imported raw flexible magnets from China. \*\*\*.  
<sup>4</sup> Produces photo pockets only. \*\*\*.  
<sup>5</sup> \*\*\*. \*\*\* with respect to the petition.

Source: Compiled from data submitted in response to Commission questionnaires.

Table III-2 provides information regarding U.S. fabricators/converters.<sup>20</sup> In its preliminary determinations, the Commission did not include converters in the domestic industry, citing that the “available information on production-related activities of converters appeared mixed, but that based on the limited record in the preliminary phase investigations, the Commission found that the converters were not part of the domestic industry.”<sup>21</sup> In its prehearing brief, petitioner argued to exclude converters from the domestic industry, based on “little capital investment, little or no technical expertise, only moderate value added, very low employment levels, significant import sourcing and no change from non-subject to subject merchandise; and no other significant costs or activities in the United States leading to production

<sup>20</sup> The Commission generally considers six factors in assessing the domestic production activity associated with a particular operation and whether it constitutes sufficient activity to bring that operation within the meaning of domestic industry for purposes of the Act: (1) source and extent of the firm’s capital investment; (2) technical expertise involved in U.S. production activities; (3) value added to the product in the United States; (4) employment levels; (5) quantity and type of parts sourced in the United States; and (6) any other costs and activities in the United States directly leading to production of the like product. No single factor is determinative, and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation. Information regarding factors one, three, five, and six are presented in part VI of this report. Information concerning factors two and four is presented in the employment section of part III.

<sup>21</sup> *Raw Flexible Magnets from China and Taiwan, Inv. No. 701-TA-452 and 731-TA-1129 and 1130 (Preliminary)*, USITC Publication 3961, November 2007, p. 11.

of the like product.”<sup>22</sup> At the hearing, counsel for the petitioner argued against including converters in the domestic industry.<sup>23</sup>

**Table III-2**  
**Raw flexible magnets: U.S. fabricators/converters, U.S. fabrication locations, shares of U.S. fabrication in 2007, and positions on the petition**

Firm	Fabrication location(s)	Share of reported raw flexible magnet fabrication ( <i>percent</i> ) <sup>1</sup>	Position on the petition
Adams <sup>2</sup>	Elmhurst, IL Sonoma, CA	***	***
All Magnetics <sup>3</sup>	Anaheim, CA	***	***
Master Magnetics <sup>4</sup>	Castle Rock, CO Marietta, OH	***	***
Rochester Magnet <sup>5</sup>	East Rochester, NY	***	***

<sup>1</sup> Collectively, the U.S. fabricators converted approximately \*\*\* pounds of raw flexible magnets in 2007, equivalent to \*\*\* percent of U.S. production of raw flexible magnets in that year.  
<sup>2</sup> Owns Magnetic Attractions, Durham, NC, and Dowling Magnets, Sonoma, CA. Imports raw flexible magnets from China. In 2007, its imports from China were \*\*\* pounds, and its fabrication/conversion quantity was \*\*\* pounds.  
<sup>3</sup> \*\*\*.  
<sup>4</sup> Imports raw flexible magnets from China. In 2007, its imports from China were \*\*\* pounds, and its fabrication/conversion quantity was \*\*\* pounds.  
<sup>5</sup> Owned by the Denn Corp., dba Rochester Magnet. In 2007, its fabrication/conversion quantity was \*\*\* pounds.

Source: Compiled from data submitted in response to Commission questionnaires.

### U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

In response to a question about changes to plant operations since January 1, 2005, firms provided the following information. Flexmag stated that it \*\*\*. \*\*\*.<sup>24</sup> Flexmag noted \*\*\*.

Holm reported \*\*\*. It reported constraints on its capacity to be “\*\*\*.”

Magnum noted its acquisition and relocation of MSI in April 2005 in its questionnaire response. It testified at the hearing that it embarked on a large capacity expansion during 2005-06, which resulted in some episodes of supply shortages, long lead times, and allocations (at 120 percent of the previous year’s allotments) for its customers for a period during 2005. Magnum reported that \*\*\*. According to Magnum, it only supplied the Capital One-related business for a short time and then opted out of the project because it added to its lead times (at a time when it was struggling with adapting to the acquisition of MSI) and because it was a non-repeating project with “low margins.”<sup>25</sup> Magnum identified its capacity constraint as “\*\*\*.” It explained the limitations of switching production to rubber steel, which accounted for \*\*\* percent of its production in 2007.

<sup>22</sup> Petitioner’s prehearing brief, pp. 13-17.

<sup>23</sup> Hearing transcript, p. 53 (Thomas).

<sup>24</sup> Correspondence from \*\*\*, October 18, 2007.

<sup>25</sup> Petitioner’s prehearing brief, p. 42, fn. 164, hearing transcript, p. 41 (T. Love), p. 82 (A. Love), p. 88 (T. Love), and p. 93 (A. Love), and petitioner’s posthearing brief, exh. 6, p. 54.

Data on U.S. producers' capacity, production, and capacity utilization are presented in table III-3. Capacity in the United States increased noticeably between 2005 and 2006, and continued to grow at a slower rate in 2007 and into 2008. Production increased slightly between 2005 and 2006, decreased between 2006 and 2007, and was lower in January-March 2008 than in January-March 2007. Accordingly, capacity utilization declined throughout the period for which data were collected.

**Table III-3**  
**Raw flexible magnets: U.S. producers' capacity, production, and capacity utilization, 2005-07, January-March 2007, and January-March 2008**

Item	Calendar year			January-March	
	2005	2006	2007	2007	2008
Capacity (1,000 pounds)	131,003	153,196	154,696	38,292	38,672
Production (1,000 pounds)	87,527	88,385	75,007	18,859	16,626
Capacity utilization (percent)	66.8	57.7	48.5	49.3	43.0
Note.—Individual company data have been suppressed.					
Source: Compiled from data submitted in response to Commission questionnaires.					

When asked about the reasons for the loss of volume between 2006 and 2007, \*\*\* responded that “\*\*\*.” \*\*\* responded that “\*\*\*.” \*\*\* replied that “\*\*\*.”<sup>26</sup>

The trends experienced by the major firms during the period were not the same: \*\*\*.

Moreover, \*\*\*.<sup>27</sup>

### U.S. PRODUCERS' U.S. SHIPMENTS AND EXPORT SHIPMENTS

U.S. producers' total shipments are presented in table III-4. The values of \*\*\* for January-March 2007 and January-March 2008 do not appear to be reliable because they are dominated by \*\*\*, which submitted revised data in the final phase of these investigations that were not reconcilable, as shown below:<sup>28</sup>

	<u>January-March data reported in--</u>	
	<u>2007</u>	<u>2008</u>
Commercial shipment quantities ( <i>pounds</i> )	***	***
Commercial shipment values ( <i>dollars</i> )	***	***
Commercial shipment average unit values ( <i>dollars</i> )	***	***
Internal consumption quantities ( <i>pounds</i> )	***	***
Internal consumption value ( <i>dollars</i> )	***	***
Internal consumption shipment average unit values ( <i>dollars</i> )	***	***

<sup>26</sup> Email from \*\*\*, June 25, 2008; email from \*\*\*, June 25, 2008; and staff interview with \*\*\*, June 25, 2008.

<sup>27</sup> According to Magnum, when looking at capacity utilization, “\*\*\*.” Email from \*\*\*, June 6, 2008.

<sup>28</sup> \*\*\*.

Table III-4

Raw flexible magnets: U.S. producers' shipments, by type, 2005-07, January-March 2007, and January-March 2008

Item	Calendar year			January-March	
	2005	2006	2007	2007	2008
<b>Quantity (1,000 pounds)</b>					
Commercial shipments	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	81,765	83,637	70,401	17,739	16,016
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
<b>Value (\$1,000)</b>					
Commercial shipments	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	87,351	89,235	79,216	18,405	17,132
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
<b>Unit value (per pound)</b>					
Commercial shipments	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	\$1.07	\$1.07	\$1.13	\$1.04	\$1.07
Export shipments	***	***	***	***	***
Average	***	***	***	***	***
<b>Share of shipment quantity (percent)</b>					
Commercial shipments	***	***	***	***	***
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0

Source: Compiled from data submitted in response to Commission questionnaires.

While the quantities reported appear to reconcile, the reported values \*\*\*. The issue with the value of \*\*\* also affects the value of U.S. shipments for January-March 2007 and January-March 2008.

\*\*\*.<sup>29</sup>

The average unit values of commercial shipments trended upward during the period. This increase, especially toward the latter part of the period in 2007 and 2008, may be attributable in part to efforts by the domestic industry to pass on an increase in raw materials and energy costs, according to the petitioner.<sup>30</sup>

Export shipments were accounted for primarily by \*\*\*.<sup>31</sup> Transfers to related firms were accounted for by \*\*\*.<sup>32</sup>

## CAPTIVE CONSUMPTION

Section 771(7)(C)(iv) of the Act states that—

*If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that—*

- (I) *the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,*
- (II) *the domestic like product is the predominant material input in the production of that downstream article, and*
- (III) *the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,*

*then the Commission, in determining market share and the factors affecting financial performance . . . , shall focus primarily on the merchant market for the domestic like product.*<sup>33</sup>

In its preliminary determinations, the Commission concluded that all elements of the statutory captive production provision were met and that the statute therefore directed the Commission to focus primarily on the merchant market for the domestic like product in determining market share and factors affecting financial performance, although the Commission also analyzed these factors with respect to the total market as a condition of competition.<sup>34</sup> In its prehearing brief and at the hearing, petitioner argued that the Commission should focus on the merchant market in these final phase investigations.<sup>35</sup>

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<sup>29</sup> \*\*\*. Emails from \*\*\*, June 3, 2008, and June 23, 2008. Commission staff did not estimate the value of \*\*\*.

<sup>30</sup> Hearing transcript, p. 12 (Thomas) and pp. 42-43 (T. Love).

<sup>31</sup> \*\*\*. Correspondence from \*\*\*, October 23, 2007; and \*\*\*.

<sup>32</sup> Correspondence from \*\*\*, October 11, 2007. \*\*\*.

<sup>33</sup> 19 U.S.C. § 1677(7)(C)(iv).

<sup>34</sup> *Raw Flexible Magnets from China and Taiwan, Inv. No. 701-TA-452 and 731-TA-1129 and 1130 (Preliminary)*, USITC Publication 3961, November 2007, p. 14.

<sup>35</sup> Petitioner's prehearing brief, pp. 26-29 and hearing transcript, pp. 54-55 (Thomas).

## **Transfer and Sale of Significant Production of the Domestic Like Product**

Between 2005 and 2006, internal consumption accounted for an increasing share of the reported quantity of U.S. producers' total shipments of raw flexible magnets, rising from \*\*\* percent in 2005 to \*\*\* percent in 2006 before decreasing to \*\*\* percent in 2007. Between January-March 2007 and January-March 2008, internal consumption accounted for an increasing share of the reported quantity of U.S. producers' total shipments (from \*\*\* percent to \*\*\* percent). Conversely, merchant shipments accounted for \*\*\* percent of the reported quantity of U.S. producers' total shipments of raw flexible magnets in 2005, \*\*\* percent in 2006, \*\*\* percent in 2007, and \*\*\* percent in January-March 2008. \*\*\* of the \*\*\* reporting U.S. producers – \*\*\* and Holm – reported both internal consumption and merchant shipments, while \*\*\* of the U.S. producers reported no internal consumption.<sup>36</sup>

### **The First Statutory Criterion**

The first requirement for application of the captive consumption provision is that the domestic like product that is internally transferred for processing into that downstream article not enter the merchant market for the domestic like product. U.S. producers reported internal consumption of raw flexible magnets for the production of vinyl magnetic seals for refrigeration (in the case of Holm) and for \*\*\* in the case of \*\*\*.<sup>37</sup> With respect to Holm and \*\*\*, the types of raw flexible magnets used in captive production are \*\*\* that they sell on the merchant market.<sup>38</sup> No U.S. producer, however, reported diverting raw flexible magnets intended for internal consumption to the merchant market.

### **The Second Statutory Criterion**

The second criterion of the captive consumption provision concerns whether the domestic like product is the predominant material input in the production of the downstream article that is captively produced. With respect to the downstream articles resulting from captive production, raw flexible magnets reportedly comprise \*\*\* percent of the finished cost of refrigerator/freezer gaskets<sup>39</sup> and an estimated \*\*\* percent of \*\*\*'s costs for producing \*\*\*.<sup>40</sup> According to a distributor of refrigerator gaskets, the only other component of a refrigerator gasket is extruded flexible plastic, which accounts for \*\*\* percent of the cost of the gasket, depending on design.<sup>41</sup>

### **The Third Statutory Criterion**

The third criterion of the captive consumption provision is that the production of the domestic like product sold in the merchant market is not generally used in the production of the downstream article produced from the domestic like product that is internally transferred for processing (captively produced), that is, \*\*\* and interior refrigerator/freezer magnets. According to \*\*\*, direct sales to printers account

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<sup>36</sup> For purposes of the above calculation, transfers to a related company by \*\*\*, which consistently accounted for less than \*\*\* percent of the quantity of reported shipments, are treated as non-captively consumed. These transfer shipments had \*\*\*. Correspondence with \*\*\*, October 11, 2007. \*\*\*.

<sup>37</sup> Questionnaire responses of Holm and \*\*\*, II-17 and II-18.

<sup>38</sup> Correspondence from \*\*\*, October 17, 2007, and email from \*\*\*, June 3, 2008. Reportedly \*\*\* percent of the raw flexible magnets sold by Holm on the open market are the same as those internally consumed.

<sup>39</sup> Holm's producers' questionnaire, II-16.

<sup>40</sup> \*\*\* producers' questionnaire, II-16.

<sup>41</sup> Staff telephone interview with \*\*\*, July 17, 2008.

for \*\*\* percent of all sales (with up to an additional \*\*\* percent sold to printers via distributors).<sup>42</sup> Sales of raw flexible magnets for use in refrigerators, however, are far more limited - only \*\*\* percent of merchant sales were reportedly for use in refrigerator/freezer gaskets.<sup>43</sup> In contrast to merchant market sales, raw flexible magnets captively produced by Holm for use in the production of refrigerator/freezer gaskets accounted for \*\*\* percent of internal consumption reported by U.S. producers in 2007, with the remaining \*\*\* percent used by \*\*\* for the production of \*\*\*.<sup>44</sup>

### U.S. PRODUCERS' IMPORTS

One of the U.S. producers, Magnet Technology, reported \*\*\* that it directly imported extruded magnetic strips from China during the period for which data were collected; \*\*\*.<sup>45</sup> Reasons for importing the subject product from China included capacity considerations, mechanical characteristics of the compound, magnetic characteristics of the ferrite, and price.<sup>46</sup> \*\*\*. \*\*\* was the only domestic producer purchasing raw flexible magnets from another domestic producer.<sup>47</sup> Table III-5 presents direct imports from Magnet Technology's importer questionnaire during the final phase of these investigations along with Magnet Technology's U.S. production.

**Table III-5**  
**Raw flexible magnets: Magnet Technology's production and imports, 2005-07, January-March 2007, and January-March 2008**

\* \* \* \* \*

### U.S. PRODUCERS' INVENTORIES

Data on end-of-period inventories of raw flexible magnets for the period for which data were collected are presented in table III-6. A substantial portion of the quantity of inventories held by U.S. producers was accounted for by \*\*\*, equivalent to \*\*\* percent of its production in 2007. \*\*\* also held high inventories relative to production (\*\*\* percent, \*\*\* percent, and \*\*\* percent respectively in 2007). \*\*\* had low inventory holdings throughout the period.

**Table III-6**  
**Raw flexible magnets: U.S. producers' end-of-period inventories, 2005-07, January-March 2007, and January-March 2008**

\* \* \* \* \*

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<sup>42</sup> See \*\*\*. In its questionnaire response, it indicated that it sold approximately \*\*\* percent of its 2007 shipments to printers and \*\*\* percent to distributors. \*\*\* producers' questionnaire, II-9.

<sup>43</sup> \*\*\*. Even when combined with the merchant shipments of \*\*\*, these sales of \*\*\* were equivalent to only \*\*\* percent of non-internally consumed shipments by all U.S. producers in 2006. Correspondence from \*\*\*, October 29, 2007, and correspondence from \*\*\*, October 29, 2007. Note that \*\*\*.

<sup>44</sup> \*\*\* estimates that \*\*\* percent of the volume of its merchant market sales of raw flexible magnets in 2007 was used by its customers (the largest of which were \*\*\*) in the production of the same downstream products that it produces from captively produced raw flexible magnets (\*\*\*). \*\*\*.

<sup>45</sup> Conference transcript, p. 182 (Mosteller).

<sup>46</sup> Ibid., p. 192 (Mosteller).

<sup>47</sup> \*\*\*, II-11. Its purchases were \*\*\*.

## U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Data provided by five U.S. producers on the number of production and related workers (“PRWs”) engaged in the production of raw flexible magnets, the total hours worked by such workers, and wages paid to such workers during the period for which data were collected in these investigations are presented in table III-7.<sup>48</sup> Overall, the industry experienced a slight increase in employment during 2005-06 and a decrease from 2006 to 2007. Employment was lower in January-March 2008 than in January-March 2007.

**Table III-7**

**Raw flexible magnets: Average number of production and related workers producing raw flexible magnets, hours worked, wages paid to such employees, and hourly wages, productivity, and unit labor costs, 2005-07, January-March 2007, and January-March 2008**

Item	Calendar year			January-March	
	2005	2006	2007	2007	2008
PRWs ( <i>number</i> )	386	388	328	326	289
Hours worked ( <i>1,000</i> )	828	750	674	184	164
Wages paid ( <i>\$1,000</i> )	11,370	11,546	10,479	2,679	2,553
Hourly wages	\$13.73	\$15.39	\$15.54	\$14.56	\$15.52
Productivity ( <i>pounds per hour</i> )	103.1	113.7	107.4	100.1	96.8
Unit labor costs ( <i>per pound</i> )	\$0.13	\$0.14	\$0.14	\$0.15	\$0.16

Note.—Data do not include information from \*\*\*. Ratios are calculated using data from firms that provided both employment and production data.

Source: Compiled from data submitted in response to Commission questionnaires.

The larger firms’ experience differed during the period, as shown in the following tabulation of selected 2007 employment indicators.

\*   \*   \*   \*   \*   \*   \*

\*\*\*.  
 \*\*\*.  
 \*\*\*.<sup>49</sup>   \*\*\*.<sup>50</sup>

<sup>48</sup> \*\*\*.

<sup>49</sup> Staff inquired about \*\*\*, July 15, 2008. \*\*\*.

<sup>50</sup> Combined, the three converters reported \*\*\* employees in 2007. In terms of the technical expertise involved in their conversion activities, Adams Magnetic characterized the operation of equipment as “\*\*\*.” Master Magnetics described the expertise needed as “\*\*\*.” Rochester Magnetic reported expertise needed as “\*\*\*.”



## **PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES**

### **U.S. IMPORTERS**

The Commission sent importer questionnaires to 117 firms believed to be importers of raw flexible magnets from all countries, as well as to 19 firms believed to be U.S. producers.<sup>1</sup> Questionnaire responses were received from 43 firms (with usable data from 42 firms) that are believed to account for over 95 percent of total U.S. imports of raw flexible magnets.<sup>2</sup> The coverage estimate is based on the close relationship between the quantities of imports reported by U.S. importers of raw flexible magnets from China and Taiwan and the quantities of exports to the United States reported by the foreign exporters in China and Taiwan. During the period for which data were collected (January 2005 through March 2008), the quantity of imports from China reported by U.S. importers was \*\*\* percent of the quantity of exports from China reported by foreign producers.<sup>3</sup> The quantity of imports from Taiwan reported by U.S. importers was \*\*\* percent of the quantity of exports reported by Jasdi and Magruba for the period.<sup>4</sup> Questionnaire respondents are listed in table IV-1, with their locations, origin of imports, and shares of reported imports from China and Taiwan during 2007.

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<sup>1</sup> The Commission sent questionnaires to those firms identified in the petition that had not supplied a negative questionnaire response in the preliminary phase of these investigations, and that had verified address information. Questionnaires were also sent to firms identified as importers in responses to foreign producers' questionnaires. Questionnaires were not sent to firms that simply imported products under HTS subheadings 8505.19.10 or 8505.19.20, as responses during the preliminary phase of these investigations supported the proposition that the vast majority of the value of such imports comprised printed magnets, which are outside the scope of these investigations.

<sup>2</sup> Negative questionnaire responses were received from 13 firms that certified that they did not import raw flexible magnets, nor did they import any products under the HTS numbers under consideration. Six importers' questionnaires were returned or not deliverable due to firms moving with no forwarding addresses or the firms being otherwise unreachable. No responses were received from 56 firms (or 47.9 percent of those to which questionnaires were issued). It is believed that the vast majority of those firms did not import any products under the HTS subheadings in question or imported nonsubject products under the HTS subheadings under consideration. One firm, \*\*\*, submitted questionnaire data but its imports, most of which did not enter U.S. customs territory, were subsequently re-exported. Accordingly, its data were not usable. It imported the following quantities from Taiwan: \*\*\* pounds in 2005, \*\*\* pounds in 2006, and \*\*\* pounds in 2007. One firm, \*\*\*, did not respond to the Commission's questionnaire but began importing from \*\*\* in Taiwan with \*\*\* in the first quarter of 2008 of \*\*\* pounds (calculated from the shipment weight in kilograms from official Customs data), valued at \$\*\*\*. Its data are included in the data presented for imports and shipments of imports in this report section. Another importer, \*\*\* also did not respond, and imported raw flexible magnets from \*\*\* in Taiwan in 2005 (\*\*\* pounds (calculated from the shipment weight in kilograms from official Customs data) valued at \$\*\*\*) and in 2006 (\*\*\* pounds valued at \$\*\*\*). \*\*\* was importing \*\*\*. Email from \*\*\*, July 22, 2008 and \*\*\*. Its data are included in the data presented for imports and shipments of imports in this report section.

<sup>3</sup> In 2005 the reported quantity imported from China was \*\*\* percent of the reported quantity exported; in 2006 it was \*\*\* percent, and in 2007 it was \*\*\* percent. The differences in coverage are attributed to the lag time between exportation and importation.

<sup>4</sup> Including imports from Taiwan in 2005, 2006, and in January-March 2008 from official Customs data.

**Table IV-1**

**Raw flexible magnets: Reporting U.S. importers, parent companies, sources of imports, locations, and shares of reported U.S. imports, 2007**

Firm	Parent	Source(s)	Location(s)	Share of reported 2007 U.S. imports from--		
				China (percent)	Taiwan (percent)	Subject sources (percent)
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
Adams Magnetic <sup>1</sup>	***	***	Durham, NC Elmhurst, IL Sonoma, CA	***	***	***
***2	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
Graphic Business Solutions	***	***	El Cajon, CA	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
Jasdi USA <sup>4</sup>	***	***	Chino, CA	***	***	***
***	***	***	***	***	***	***
Magnet Sales	Integrated Technologies Group	***	Culver City, CA	***	***	***

Table continued on next page.

**Table IV-1--Continued**

**Raw flexible magnets: Reporting U.S. importers, parent companies, sources of imports, locations, and shares of reported U.S. imports, 2007**

Firm	Parent	Source(s)	Location(s)	Share of reported 2007 U.S. imports from--		
				China (percent)	Taiwan (percent)	Subject sources (percent)
***5	***	***	***	***	***	***
Magnet Technology <sup>6</sup>	***	***	Lebanon, OH	***	***	***
***7	***	***	***	***	***	***
***8	***	***	***	***	***	***
***	***	***	***	***	***	***
Master Magnetics	***	***	Castle Rock, CO	***	***	***
***9	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***10	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
***	***	***	***	***	***	***
Total				100.0	100.0	100.0
<sup>1</sup> Owns Magnetic Attractions, Durham, NC, and Dowling Magnets, Sonoma, CA. <sup>2</sup> *** <sup>3</sup> *** <sup>4</sup> *** <sup>5</sup> *** <sup>6</sup> Produces raw flexible magnets (extruded profile shapes for refrigerator gaskets) in the United States. <sup>7</sup> *** <sup>8</sup> *** <sup>9</sup> *** <sup>10</sup> ***						
Source: Compiled from data submitted in response to Commission questionnaires.						

During 2007, U.S. imports of raw flexible magnets from China generally were distributed among 10 top importers – \*\*\*.<sup>5</sup> Three firms, \*\*\*, accounted for \*\*\* percent of imports from China in 2007. Three firms, \*\*\*, Master Magnetics,<sup>6</sup> and \*\*\*, imported from both China and Taiwan. All other firms imported from a single source, predominantly from China.

One firm, Jasdi USA, affiliated with Jasdi Magnet Co. Ltd. in Taiwan, accounted for \*\*\* reported imports from Taiwan of raw flexible magnets during the period for which data were collected. Jasdi USA \*\*\* in January 2008, due to \*\*\*.<sup>7</sup> \*\*\* became the U.S. distributor of \*\*\*’s raw flexible magnets in 2008.<sup>8</sup>

## U.S. IMPORTS<sup>9</sup>

The volume of imports as measured in these investigations is based on responses to importers’ questionnaires, which are believed to exceed 95 percent of the value of imports. The quantity and the value of such imports are presented in table IV-2.<sup>10</sup>

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<sup>5</sup> These firms accounted for approximately \*\*\* percent of the quantity of reported imports. Firms that were prominent earlier in the period for which data were collected include \*\*\*.

<sup>6</sup> Hearing transcript, p. 176 (Nellessen). Master Magnetics “only purchased one item from Taiwan and it’s a patented magnetic product that’s not produced in the U.S. So other than that, all we have is quotations from them. But, like they say, their prices were too high.”

<sup>7</sup> Emails from \*\*\*, May 31, 2008 and June 15, 2008.

<sup>8</sup> Email from \*\*\*, July 2, 2008.

<sup>9</sup> The statute provides for the termination of an investigation if imports of the subject product from a country are less than 3 percent of total imports, or, if there is more than one such country, their combined share is less than or equal to 7 percent of total imports, during the most recent 12 months for which data are available preceding the filing of the petition—in this case July 2006 through June 2007. The shares of the total quantity of U.S. imports for each of the countries for the period of July 2006 through June 2007 (6.6 million pounds) are the following: China, \*\*\* percent (\*\*\* pounds); Taiwan, \*\*\* percent (\*\*\* pounds); all other sources, \*\*\* percent (\*\*\* pounds). These data were collected during the preliminary phase of these investigations.

<sup>10</sup> The petition alleged that imports of raw flexible magnets could be estimated using official Commerce statistics under HTS subheadings 8505.19.10 and 8505.19.20, the former covering flexible magnets, and the latter covering composite products containing flexible magnets. Importers’ questionnaires were issued to the leading importers of products in these categories, and responses were received from 20 leading importers of products not subject to these investigations, which, when combined with importers of the subject raw flexible magnets, accounted for between \*\*\* percent and \*\*\* percent of imported products in these HTS subheadings during the period for which data were collected. The large majority of imports in the HTS subheadings under consideration were reported to be printed flexible magnets, which are excluded from the scope of the investigations. Firms responding in the preliminary phase of these investigations but not in the final phase with questionnaire data included nine firms: \*\*\*. In aggregate, these firms accounted for approximately \*\*\* percent of reported imports from China in 2006, and \*\*\* percent of reported imports from Taiwan in 2006. One non-responding firm from the preliminary- and final-phase investigations was \*\*\*.

**Table IV-2**  
**Raw flexible magnets: U.S. imports, by source, 2005-07, January-March 2007, and January-March 2008**

Source	Calendar year			January-March	
	2005	2006	2007	2007	2008
<b>Quantity (1,000 pounds)</b>					
China	***	***	***	***	***
Taiwan	***	***	***	***	***
Subtotal	***	***	***	***	***
All others	***	***	***	***	***
Total	3,863	5,757	8,536	1,385	778
<b>Value (\$1,000)<sup>1</sup></b>					
China	***	***	***	***	***
Taiwan	***	***	***	***	***
Subtotal	***	***	***	***	***
All others	***	***	***	***	***
Total	3,749	5,159	6,727	1,393	586
<b>Unit value (per pound)</b>					
China	***	***	***	***	***
Taiwan	***	***	***	***	***
Average	***	***	***	***	***
All others	***	***	***	***	***
Average	\$0.97	\$0.90	\$0.79	\$1.01	\$0.75

Table continued on next page.

**Table IV-2--Continued**  
**Raw flexible magnets: U.S. imports, by source, 2005-07, January-March 2007, and January-March 2008**

Source	Calendar year			January-March	
	2005	2006	2007	2007	2008
<b>Share of quantity (percent)</b>					
China	***	***	***	***	***
Taiwan	***	***	***	***	***
Subtotal	***	***	***	***	***
All others	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0
<b>Share of value (percent)</b>					
China	***	***	***	***	***
Taiwan	***	***	***	***	***
Subtotal	***	***	***	***	***
All others	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0
<sup>1</sup> Landed, duty-paid.  Source: Compiled from data submitted in response to Commission questionnaires and official Customs data for small portions the import data from Taiwan for 2005-06 and all import data from Taiwan for January-March 2008.					

The small quantity of imports from all other sources is mainly from \*\*\*. According to a purchaser who testified at the hearing, MagX produces 500 foot rolls, and Magnet LLC usually purchases 2,500 to 4,000 foot rolls, so in addition to the much higher pricing of the Japanese material, the roll length was not comparable to Chinese imports.<sup>11</sup> Additional testimony indicated potential suppliers in Brazil and India, but also raised questions regarding the quality of product available from these suppliers.<sup>12</sup>

### CUMULATION CONSIDERATIONS

In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors: (1) fungibility, (2) presence of sales or offers to sell in the same geographical market, (3) common or similar channels of distribution, and (4) simultaneous presence in the market.

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<sup>11</sup> Hearing transcript, p. 220 (Gorgonne).

<sup>12</sup> *Ibid.*, pp. 220 (Baird) and 221 (Gorgonne).

## Fungibility

Magnum contends that all raw flexible magnets from the two subject countries and domestically produced raw flexible magnets are generally fungible or “broadly substitutable,” and that only the 40-inch wide product is not made by the U.S. industry. All other product variations, such as very thin, ultra thin, and high energy ferrite magnets, are manufactured by the U.S. industry in competition with subject imports.<sup>13</sup> At the hearing, a witness from TradeNet Publishing, Inc. (“TradeNet”), a purchaser of raw flexible magnets and a printer, testified that the domestic and Chinese material was interchangeable, and the difference was “just that the price of the Chinese product is quite a bit less.”<sup>14</sup> That same witness later in the proceeding testified that the Chinese material had an “odor” that rendered it somewhat difficult to market to its customers, possibly emanating from chlorine used to manufacture the product.<sup>15</sup> A witness from Adams stated that there had never been a problem with odor in the Chinese product.<sup>16</sup>

At the hearing, a witness from Adams testified that the quality of imports from China surpasses that of petitioner Magnum’s products, and that the domestic raw flexible magnets from Magnum had problems with blocking (when sheets or rolls stick together), and that such blocking problems eventually led to the issue of credits of \$100,000-\$150,000 to Adams from Magnum and to its customers from Adams, as well as a switch from Magnum to “splitting its business between Flexmag and Polyflex.”<sup>17</sup> A witness from Magnum testified that a “short-term” problem with blocking experienced with Adams’ subsidiary Magnetic Attractions, Inc. (MAI) could have been quickly fixed with back coating, but the firm refused to accept that solution because the blocking complaint was “an excuse for breaking their contract with Magnum in order to buy cheaper imports from China.” In general, Magnum questioned the nature and extent of the blocking problems reported by Adams.<sup>18</sup> A witness from Rochester testified that blocking problems “have always been a part of the flexible magnet business, but, as heard earlier, that has been pretty much resolved.” He further noted that the meter wide rolls from China that he purchased also had blocking problems.<sup>19</sup>

With respect to U.S. imports from Taiwan, a witness from purchaser and importer Magnet LLC testified that imports from Taiwan producer Jasdi were concentrated in the sign-making business, and that

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<sup>13</sup> Petitioner’s prehearing brief, p. 21, hearing transcript, p. 16 (A. Love), and petitioner’s posthearing brief, p. 8. A witness from Adams argued that the U.S. industry does not produce certain products in addition to the wide format rolls that are being imported from the Chinese suppliers. Hearing transcript, p. 154 (Lewis).

<sup>14</sup> Hearing transcript, p. 57 (Fixsen).

<sup>15</sup> Ibid., pp. 64 and 74 (Fixsen).

<sup>16</sup> Ibid., p. 233 (Lewis).

<sup>17</sup> Hearing transcript, pp. 155-156 (Lewis) and posthearing statement of Adams, p. 1. According to Mr. Lewis, the credit in question was partially satisfied by allowing Adams to keep inventory from Magnum. Hearing transcript, p. 217 (Lewis). In its posthearing statement, Adams referred to the post-Magnum split as \$396,700 in orders placed with Polyflex and \$1,714,610 in orders placed with Flexmag between June 18, 2007 and July 11, 2008. In response to a request by Commission staff, Adams provided the following data concerning shipments received (rather than orders placed) from the two suppliers during July-December 2007 and January-June 2008:

	<b>July-December 2007</b>	<b>Value (dollars)</b>	<b>January-June 2008</b>	<b>Value (dollars)</b>
<b>Firm:</b>	<b>Quantity (pounds)</b>	<b>Value (dollars)</b>	<b>Quantity (pounds)</b>	<b>Value (dollars)</b>
Polyflex	***	***	***	***
Flexmag	***	***	***	***

Email from \*\*\*, July 18, 2008.

<sup>18</sup> Hearing transcript, p. 22 (A. Love) and p. 87 (A. Love and T. Love) and petitioner’s posthearing brief, exh. 6, pp. 15-16, and exh. 12. Although Magnum argues that \*\*\*. Petitioner’s posthearing brief, exh. 12.

<sup>19</sup> Hearing transcript, p. 51 (Dennis).

Jasdi concentrated in small orders of 100 foot rolls at higher margins and was not interested in high-volume business that would result in orders from Magnet LLC.<sup>20</sup>

Further information concerning quality issues among the raw flexible magnets manufactured by U.S. producers and imported from China and Taiwan by U.S. importers is presented in Part II of this report.

The majority of U.S. producers' shipments of raw flexible magnets were comprised of magnetic sheeting, followed closely by strips (a very small amount was classified as profile shapes), as presented in table IV-3. The distribution was more pronounced with regard to imports of raw flexible magnets from China and Taiwan, with the vast majority of imports consisting of magnetic sheeting.<sup>21</sup>

**Table IV-3**

**Raw flexible magnets: U.S. producers' and U.S. importers' U.S. shipments, by product form, 2005-07, January-March 2007, and January-March 2008**

\* \* \* \* \*

The majority of U.S. producers' shipments of raw flexible magnets was manufactured using the calender method, which accounted for approximately \*\*\* percent of U.S. producers' U.S. shipments throughout the period for which data were collected (January 2005 through March 2008), as presented in table IV-4. The distribution was more pronounced with regard to exports of raw flexible magnets from China and Taiwan, with generally over \*\*\* percent of exports manufactured using the calender method.

**Table IV-4**

**Raw flexible magnets: U.S. producers' U.S. shipments and foreign producers' exports to the United States, by type of production, 2005-07, January-March 2007, and January-March 2008**

\* \* \* \* \*

Additional information on interchangeability and fungibility may be found in Part II of this report.

### **Geographical Markets**

Magnum has stated that it markets its products nationwide, and that imports are competing with it on a national basis, through warehouses established throughout the country by foreign suppliers.<sup>22</sup> In addition, importers of raw flexible magnets from China are geographically distributed throughout the country. The major importer of raw flexible magnets from Taiwan, Jasdi USA, was located in California (\*\*\*) and reported that it marketed to \*\*\*. The ten major customers listed in its questionnaire were located in the following states: four in \*\*\*, two in \*\*\*, one in \*\*\*, one in \*\*\*, one in \*\*\*, and one in \*\*\*. As discussed in part II, Jasdi USA reportedly maintained warehouses in Baltimore, MD and Miami, FL. The new major importer of raw flexible magnets from Taiwan, \*\*\*, is also located in \*\*\*, but did not provide a questionnaire response, although according to official Customs data, imports from \*\*\* entered through the port of \*\*\* during January-March 2008. Additional information on geographic markets may be found in Part II of this report.

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<sup>20</sup> Ibid., p. 177 (Gorgonne). In addition, Mr. Gorgonne testified that the prices from the Taiwan producer were much higher than the Chinese prices. The witness from Master Marketing agreed. Hearing transcript, p. 176 (Nellessen).

<sup>21</sup> \*\*\* imports of raw flexible magnets from other sources were magnetic sheeting.

<sup>22</sup> Conference transcript, p. 53 (Button); see also *ibid.*, pp. 113-114 (T. Love and A. Love), noting that Magnum maintains warehouses in Minneapolis and in Las Vegas, and has a full-time sales agent in California.



### **Common or Similar Channels of Distribution**

Imports from the subject countries and domestic production of raw flexible magnets are primarily sold directly to end users, either printers, OEMs, or other non-distributor customers. Further information on channels of distribution may be found in Part II of this report.

### **Simultaneous Presence in the Market**

Imports generally have been simultaneously present in the U.S. market throughout the period examined. Imports of raw flexible magnets from China and Taiwan entered the United States in every period examined.

### **APPARENT U.S. CONSUMPTION**

Consistent with the increase in demand arising from the Capital One campaign in 2005, apparent U.S. consumption increased between 2005 and 2006.<sup>23</sup> Apparent U.S. consumption decreased in 2007, as reflected in a decrease in U.S. producers' shipments, and, to a lesser extent, a decrease in shipments of imports from Taiwan. At the hearing, a witness for Magnum testified that he believed the recession in the housing industry played a role in the decline in apparent consumption, in addition to the industry trend toward thinner material. Counsel for Magnum noted that free advertising give-aways are the first to get cut from corporate budgets during a recession. In addition, a purchaser testified that the decline in real estate hurt the printed magnet business because realtors accounted for about 30-40 percent of the printed magnet portion of TradeNet's business, and it is down to 10 percent currently.<sup>24</sup> Data on apparent U.S. consumption of raw flexible magnets are presented in table IV-5.

Data on apparent U.S. consumption of raw flexible magnets in the merchant market are presented in table IV-6.<sup>25</sup> The quantity of apparent U.S. consumption declined steadily throughout the period for which data were collected, as reflected in a decline in U.S. producers' shipments, and, to a lesser extent, a decline in the shipments of imports from Taiwan.

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<sup>23</sup> According to a purchaser and importer who participated in the Capital One campaign, \*\*\*, the campaign involved \*\*\*. According to Magnet Street, the Capital One project was partially responsible for the growth in apparent consumption during 2004 and 2005. For Magnet Street, approximately \$1 million in business was attributed to the Capital One project, and they were a "small player." Hearing transcript, p. 161 and p. 194 (Baird).

<sup>24</sup> Hearing transcript, p. 61 (A. Love and Fixsen), pp. 79-81 (Malashevich and A. Love), and p. 97 (A. Love) and petitioner's posthearing brief, exh. 6, p. 50.

<sup>25</sup> "Merchant market" shipments reflect U.S. producers' U.S. commercial shipments plus transfers but include all U.S. shipments by U.S. importers, many of which are printers or other end users that consume a substantial share of their imports internally.

**Table IV-5****Raw flexible magnets: U.S. shipments of domestic product, U.S. shipments of imports by source, and apparent U.S. consumption, 2005-07, January-March 2007, and January-March 2008**

Item	Calendar year			January-March	
	2005	2006	2007	2007	2008
<b>Quantity (1,000 pounds)</b>					
U.S. producers' U.S. shipments	81,765	83,637	70,401	17,739	16,016
U.S. shipments of imports from—					
China	***	***	***	***	***
Taiwan	***	***	***	***	***
Subtotal, subject	***	***	***	***	***
All other countries	***	***	***	***	***
Total	3,806	5,473	7,997	1,413	1,196
Apparent U.S. consumption	85,571	89,110	78,399	19,152	17,213
<b>Value (\$1,000)</b>					
U.S. producers' U.S. shipments	87,351	89,235	79,216	18,405	17,132
U.S. shipments of imports from—					
China	***	***	***	***	***
Taiwan	***	***	***	***	***
Subtotal, subject	***	***	***	***	***
All other countries	***	***	***	***	***
Total	4,518	6,230	7,482	1,751	1,165
Apparent U.S. consumption	91,869	95,465	86,699	20,156	18,298
Note.—***.					
Source: Compiled from data submitted in response to Commission questionnaires and official Customs data for small portions of the import data for Taiwan for 2005-06 and all import data for Taiwan for January-March 2008.					

**Table IV-6****Raw flexible magnets: U.S. merchant market shipments of domestic product, U.S. shipments of imports by source, and apparent U.S. consumption in the merchant market, 2005-07, January-March 2007, and January-March 2008**

\* \* \* \* \*

**U.S. MARKET SHARES**

Data on market shares in the U.S. market for raw flexible magnets are presented in table IV-7.

Table IV-7

Raw flexible magnets: Apparent U.S. consumption and market shares, 2005-07, January-March 2007, and January-March 2008

Item	Calendar year			January-March	
	2005	2006	2007	2007	2008
<b>Quantity (1,000 pounds)</b>					
Apparent U.S. consumption	85,571	89,110	78,399	19,152	17,213
<b>Value (\$1,000)</b>					
Apparent U.S. consumption	91,869	95,465	86,699	20,156	18,298
<b>Share of quantity (percent)</b>					
U.S. producers' U.S. shipments	95.6	93.9	89.8	92.6	93.0
U.S. shipments of imports from—					
China	***	***	***	***	***
Taiwan	***	***	***	***	***
Subtotal, subject	***	***	***	***	***
All other countries	***	***	***	***	***
Total	4.4	6.1	10.2	7.4	7.0
<b>Share of value (percent)</b>					
U.S. producers' U.S. shipments	95.1	93.5	91.4	91.3	93.6
U.S. shipments of imports from—					
China	***	***	***	***	***
Taiwan	***	***	***	***	***
Subtotal, subject	***	***	***	***	***
All other countries	***	***	***	***	***
Total	4.9	6.5	8.6	8.7	6.4
Note.—***.					
Source: Compiled from data submitted in response to Commission questionnaires and official Customs data for small portions of the import data for Taiwan for 2005-06 and all import data for Taiwan for January-March 2008.					

The market share for subject imports increased steadily during 2005-07, led by imports from China. The share held by subject imports from Taiwan declined \*\*\* and \*\*\* during that period. Overall, subject import penetration reached \*\*\* percent of the quantity of U.S. apparent consumption in 2007. Between January-March 2007 and January-March 2008, the share of subject imports declined due to a decrease in U.S. shipments of imports from both China and Taiwan.

Data on market shares in the U.S. merchant market for raw flexible magnets are presented in table IV-8. The largest market share achieved by subject imports occurred in 2007 (\*\*\*) percent of the quantity of apparent U.S. consumption).

**Table IV-8**  
**Raw flexible magnets: Apparent U.S. consumption and market shares in the merchant market, 2005-07, January-March 2007, and January-March 2008**

\* \* \* \* \*

**RATIOS OF IMPORTS TO U.S. PRODUCTION**

Data on the ratio of U.S. imports to U.S. production of raw flexible magnets are presented in table IV-9.

**Table IV-9**  
**Raw flexible magnets: U.S. production, U.S. imports, and ratios of imports to production, 2005-07, January-March 2007, and January-March 2008**

Item	Calendar year			January-March	
	2005	2006	2007	2007	2008
<b>Quantity (1,000 pounds)</b>					
U.S. production	87,526	88,385	75,007	18,859	16,626
U.S. imports from—					
China	***	***	***	***	***
Taiwan	***	***	***	***	***
Subtotal, subject	***	***	***	***	***
All other countries	***	***	***	***	***
Total	3,863	5,757	8,536	1,385	778
<b>Ratio of imports to U.S. production (percent)</b>					
U.S. imports from—					
China	***	***	***	***	***
Taiwan	***	***	***	***	***
Subtotal, subject	***	***	***	***	***
All other countries	***	***	***	***	***
Total	4.4	6.5	11.4	7.3	4.7
Source: Compiled from data submitted in response to Commission questionnaires and official Customs data for small portions of the import data for Taiwan for 2005-06 and all import data for Taiwan for January-March 2008.					

## **PART V: PRICING AND RELATED INFORMATION**

### **FACTORS AFFECTING PRICES**

#### **Raw Material Costs**

The major costs in manufacturing raw flexible magnets are raw materials, energy, and labor.<sup>1</sup> Raw materials (primarily manufactured ferrite powders combined with polymer binders) account for the largest share of the cost of producing raw flexible magnets. Other raw materials include iron-chromium-cobalt, alnico, chromium steel, cobalt steel, vicalloy, remalloy, and cunife. More costly magnetic materials can be used to produce higher energy magnets.<sup>2</sup> As discussed in part VI of this report, during January 2005-March 2008, raw materials costs accounted for slightly more than one-half of the cost of goods sold and have decreased slightly over this period.<sup>3</sup>

#### **Transportation Costs to the U.S. Market**

Transportation costs, as a ratio to the customs value, from subject countries to the United States (excluding U.S. inland costs) in 2007 were 7.4 percent for Chinese raw flexible magnets and 9.0 percent for Taiwan raw flexible magnets. These estimates are derived from official import data and represent the transportation and other charges on imports.<sup>4</sup>

#### **U.S. Inland Transportation Costs**

Transportation costs for U.S. inland shipments of raw flexible magnets generally vary for both the producers and the importers as a share of the delivered price of these products. Two U.S. producers' reported costs ranged from \*\*\* percent of the delivered price, and while a third estimated a cost share of \*\*\* percent of the delivered price. For importers that provided estimates, U.S. inland transportation costs typically ranged between 8.0 and 20.0 percent, although one importer reported costs of up to 50 percent of the delivered price.

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<sup>1</sup> Petition, p. 41.

<sup>2</sup> Petition, pp. 5-6.

<sup>3</sup> Petitioner provided information indicating an increase in raw materials costs in late 2007 and into 2008. Petitioners' posthearing brief, exhibit 27. At least one other U.S. producer has made a similar observation regarding raw material price increases in 2008. E-mail from \*\*\*, July 11, 2008.

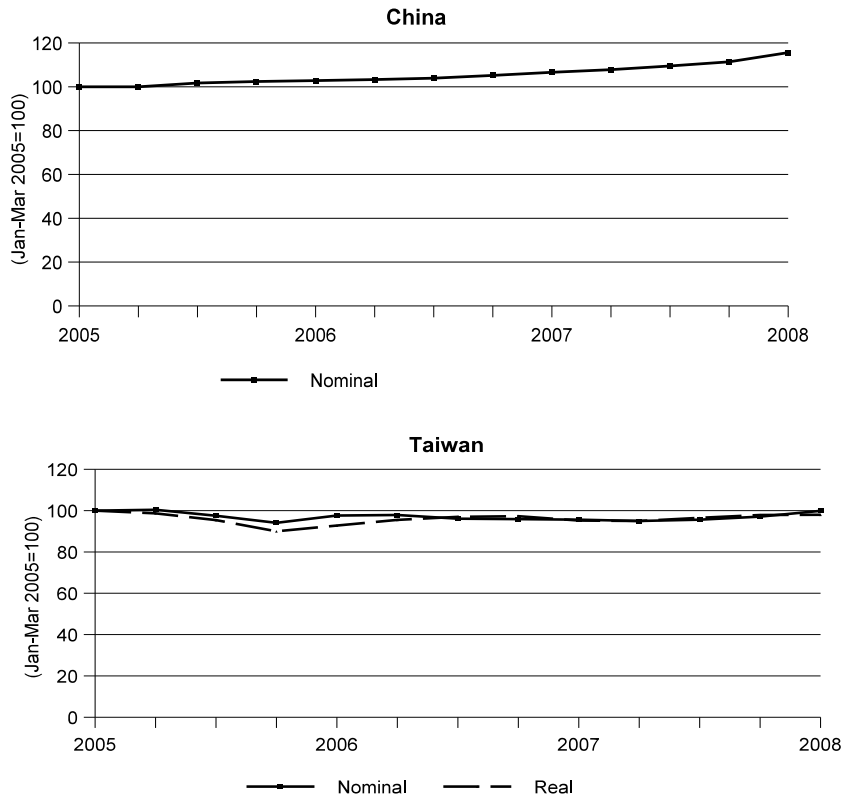
<sup>4</sup> Transportation costs were obtained by subtracting the customs value from the c.i.f. value of the imports for 2007 and then dividing by the customs value (based on import entries under HTS subheadings 8505.19.10 and 8505.19.20). Since raw flexible magnets are in a broad HTS category, these transportation costs are estimates based on the whole basket of goods. While over-inclusive, these data are believed to provide a reasonable basis for estimating transportation costs.

## Exchange Rates

Nominal and real exchange rate data for China and Taiwan are presented in figure V-1.<sup>5</sup>

**Figure V-1**

**Exchange rates: Indexes of nominal and real values of the currencies of China and Taiwan relative to the U.S. dollar, by quarters, January 2005-March 2008**



Source: China: International Monetary Fund, *International Financial Statistics*. Taiwan: St. Louis Federal Reserve and Taiwan National Statistics.

<sup>5</sup> Real exchange rates are calculated by adjusting the nominal rates for movements in producer prices in the United States and each of the subject countries. The Chinese government effectively pegged the yuan to the U.S. dollar at 8.28 yuan per dollar during the early part of this period. On July 21, 2005, the Chinese government announced that it would no longer peg the yuan to the U.S. dollar but would tie the yuan to a basket of currencies. Within this new basket, the yuan was revalued upward against the U.S. dollar by 2.1 percent, or from 8.28 yuan per dollar under the old peg to 8.11 yuan per dollar under the new exchange rate policy. The Chinese government has not disclosed which currencies are in the new basket, but indicated that the weight of the U.S. dollar represented less than 50 percent of the new basket of currencies.

## PRICING PRACTICES

### Pricing Methods

Firms reported that prices of raw flexible magnets are determined in a variety of ways. Three U.S. producers cited transaction-by-transaction negotiations and another producer uses an internal price book for standard items. The importers were also mixed in their answers: 12 firms cited transaction-by-transaction negotiations, six firms cited price lists, one cited individual contracts, and two use a “cost plus” method for arriving at prices.

### Sales Terms and Discounts

Discount policies vary widely among U.S. producers and importers of raw flexible magnets. One producer reported both quantity and annual volume discounts. \*\*\* stated that prices are negotiated with a beginning price that is determined by quantity or market conditions; some accounts might have rebate programs or a special cash discount. One producer reported having no formal standard discount policy. Nine importers reported quantity discounts, one importer reported annual volume discounts, and two importers reported both quantity and total annual volume discounts. Sixteen other importers reported no discounts. Importer Adams Magnetic noted that “selling practices” are volume driven: if a customer represents a large share of sales volume it has a greater bargaining power.<sup>6</sup>

The majority of U.S. producers (3 of 5) and importers (15 of 27) quote prices on an f.o.b. basis.<sup>7</sup> The other 2 U.S. producers and 12 importers reportedly quote prices on a delivered basis.

Raw flexible magnets are commonly sold on a spot basis. Three producers reported that they sell all of their raw flexible magnets on a spot basis. One producer sells only on a short term basis. In addition, one producer sells \*\*\* percent of its raw flexible magnets on a long-term basis, \*\*\* percent on a short-term basis, and \*\*\* percent on a spot basis. Of the responding importers, 25 firms sell the majority of the subject product on a spot sale basis. Five firms reported selling on a short-term contract basis, and one importer reported that it sells \*\*\* of its sales on a long-term contract basis.

Producers and importers reported similar short-term contract characteristics. The two producers that reported using short-term contracts, \*\*\*. One of these two producers stated that the duration of its short-term contracts is less than one year. Of the importers that reported using short-term contracts, four firms reported that both price and quantity are fixed and one firm reported that only price is fixed. Four importers reported that the duration of their short-term contracts are one year, and two importers noted that contracts are 3 months in duration. Only one importer’s short-term contracts permit renegotiation. Three out of six importers reported that contracts have meet-or-release provisions.

The petitioner Magnum testified at the hearing that exclusivity contracts “are not uncommon in the industry” and asking for one is part of the standard negotiation: “you would ask for it in a sales negotiation, if you could get it.” Magnum also testified that “we have exclusivity agreements and sales agreements with most of our major supply lines, and it’s a really good idea to have that because if you’re partnering with somebody, and you’re getting innovations, and you want to keep those innovations, you work some sort of agreement like that.”<sup>8</sup>

One \*\*\* U.S. producer, \*\*\*, reported long-term contracts with durations of more than one year, and it noted that renegotiation of contracts occurs on a case-by-case basis. Of the importers that reported

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<sup>6</sup> Hearing transcript, p. 165 (Lewis).

<sup>7</sup> Producers making f.o.b. quotes reported, among others, f.o.b. warehouse, f.o.b. \*\*\* or f.o.b. \*\*\*. Importers making f.o.b. quotes usually quote f.o.b. warehouse or their facility.

<sup>8</sup> Hearing transcript, pp. 99-100 (T. Love, A. Love).

long-term contracts, one reported that both price and quantity are fixed and one reported that only price is fixed. Two importers have long-term contracts of \*\*\* which cannot be renegotiated - one reported that both price and quantity are fixed, and one reported that only price is fixed.

## PRICE DATA

The Commission requested price data from U.S. producers and U.S. importers.<sup>9</sup> U.S. producers and importers of raw flexible magnets were asked to provide quarterly data for the total quantity and f.o.b. (U.S. point of shipment) value of selected products that were shipped to unrelated customers in the U.S. market during January 2005-March 2008. The products for which pricing data were requested were as follows:<sup>10</sup>

**Product 1.** — **Plain sheets in 12 mil thickness** (tolerance on thickness measurements of +0.5 through -1 mil).

**Product 2.** — **Plain sheets in 13 mil thickness** (tolerance on thickness measurements of +0.5 through -0.5 mil).

**Product 3.** — **Plain sheets in 15 mil thickness** (tolerance on thickness measurements of +0.5 through -1 mil).

**Product 4.** — **Plain sheets in 20 mil thickness (including cut sheets and rolls)** (tolerance on thickness measurements of +0.5 through -1 mil).

**Product 5.** — **Plain sheets in 30 mil thickness (including cut sheets and rolls)** (tolerance on thickness measurements of +0.5 through -1 mil).

**Product 6.** — **Sheets in 30 mils thickness, in rolls of 50' x 2' (nominal), with vinyl lamination** (tolerance on thickness measurements of +0.5 through -1 mil).

Two U.S. producers<sup>11</sup> and seven importers<sup>12</sup> provided usable sales price data, and eight importers provided usable Chinese purchase price data.<sup>13,14</sup> Seven firms reported sales price data for imports from China, and two firms reported sales price data for imports from Taiwan.<sup>15</sup> Substantial amounts of mis-specified price data had to be excluded from analysis.<sup>16</sup> Usable sales pricing data accounted for 13.3

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<sup>9</sup> U.S. purchasers, however, were also requested to characterize prices from different sources of supply in the U.S. market. As discussed in Part II of this report, the substantial majority of purchasers reported that the prices of raw flexible magnets from China were lower than prices for comparable U.S. products. Responding purchasers were more evenly divided regarding product from Taiwan.

<sup>10</sup> The pricing items suggested in the petition included a mis-specified factor for conversion area to weight. However, staff contacted the responding U.S. importers and producers and confirmed or corrected the data where necessary.

<sup>11</sup> \*\*\*.

<sup>12</sup> \*\*\*.

<sup>13</sup> \*\*\*.

<sup>14</sup> Six importers \*\*\* reported both purchase and sales prices. Importers \*\*\* are distributors and their sales prices are reported in this section. Importers \*\*\* are retailers and their purchase prices are included in the pricing data in tables V-1 through V-6.

<sup>15</sup> Two firms reported pricing data for sales of raw flexible magnets imported from Taiwan. One firm, \*\*\*, accounted for the vast majority of the reported data during the period for which it reported data. \*\*\* accounted for only \*\*\* quarters of data - \*\*\*.

<sup>16</sup> Importer \*\*\* provided its top 6 selling products in the pricing section of the questionnaire. According to \*\*\*'s products description, product 1 is actually product 6 and is included in the pricing data. \*\*\*'s products 2-6 were not  
(continued...)



percent of the quantity of U.S. producers' commercial shipments during January 2005-March 2008, 9.4 percent of shipments of U.S. imports from China, and 35.4 percent of shipments of U.S. imports from Taiwan.

Purchase price data for China accounted for 10.1 percent of shipments of imports from China.<sup>17</sup> Quarterly weighted-average sales prices and purchase prices for the above products are shown in tables V-1 through V-6 and figure V-2.<sup>18</sup> A summary of price trends is shown in table V-7 and a summary of underselling/overselling is shown in table V-8.<sup>19</sup>

**Table V-1**

**Raw flexible magnets: Weighted-average f.o.b. selling prices (except as noted) and quantities for product 1 and margins of underselling/(overselling), January 2005-March 2008**

\* \* \* \* \*

**Table V-2**

**Raw flexible magnets: Weighted-average f.o.b. selling prices (except as noted) and quantities for product 2 and margins of underselling/(overselling), January 2005-March 2008**

\* \* \* \* \*

**Table V-3**

**Raw flexible magnets: Weighted-average f.o.b. selling prices (except as noted) and quantities for product 3 and margins of underselling/(overselling), January 2005-March 2008**

\* \* \* \* \*

**Table V-4**

**Raw flexible magnets: Weighted-average f.o.b. selling prices (except as noted) and quantities for product 4 and margins of underselling/(overselling), January 2005-March 2008**

\* \* \* \* \*

**Table V-5**

**Raw flexible magnets: Weighted-average f.o.b. selling prices (except as noted) and quantities for product 5 and margins of underselling/(overselling), January 2005-March 2008**

\* \* \* \* \*

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<sup>16</sup> (...continued)

used as they do not meet the product definitions as used in the questionnaires. One U.S. producer \*\*\* and another 10 importers \*\*\* reported unusable pricing data for products other than the ones requested in section III and IV, respectively, of the producer and importer questionnaire.

<sup>17</sup> The staff collected separate purchase price data to capture subject imports of raw flexible magnets that are not sold as raw flexible magnets in the U.S. market, but as value added products (e.g., printed magnets). The responding importers submitted purchase prices from China that are presented in tables V-1 through V-6.

<sup>18</sup> As shown in tables V-1 through V-6, in several instances the volumes of domestic product and imported product sold in a given quarter are substantially different. In these quarters, subject import prices frequently tend to be higher than domestic prices. This appears to be consistent with the previously-noted questionnaire responses regarding the use of quantity/volume discounts.

<sup>19</sup> Petitioner argued that \*\*\*. Petitioners' posthearing brief, p. 31. However, staff notes that this is frequently true for pricing products 2-5, but not for products 1 and 6. In the aggregate, the Chinese volume sold at the "purchase price" (\*\*\*) is larger than the volume sold at the "sales price" (\*\* lbs).

**Table V-6**

**Raw flexible magnets: Weighted-average f.o.b. selling prices (except as noted) and quantities for product 6 and margins of underselling/(overselling), January 2005-March 2008**

\* \* \* \* \*

**Figure V-2**

**Raw flexible magnets: Weighted-average f.o.b. selling prices (except as noted) for products 1-6, January 2005-March 2008**

\* \* \* \* \*

### **Price Trends**

Overall, prices for both U.S.-produced and imported raw flexible magnets fluctuated during the period January 2005-March 2008. A summary of price trends is shown in table V-7.

**Table V-7**

**Raw flexible magnets: Summary of weighted-average sales prices, by country and by product**

\* \* \* \* \*

Purchasers were also asked if there has been a change in the price of raw flexible magnets since 2005. Fifteen of 38 responding purchasers reported that prices of raw flexible magnets increased, 4 firms reported that prices decreased, and 19 firms reported that prices either fluctuated or stayed the same. Of the purchasers that reported increases in prices, 12 attributed the rise to increase in raw material prices, transportation, labor, and energy costs. One purchaser, \*\*\*, attributed the rise to the fact that there are only two U.S. manufacturers of raw flexible magnets in the United States, and another purchaser, \*\*\*, reported that \*\*\*.

When purchasers were asked if there was a price leader in the raw flexible magnets industry, 18 of the responding 28 purchasers reported “yes,” with the vast majority citing Magnum. Most purchasers reported that these firms exhibited price leadership by being the first to announce changes in price.

### **Price Comparisons**

Prices for imported raw flexible magnets from subject countries were lower than those for U.S.-produced raw flexible magnets in the majority (72 percent) of instances where comparisons were possible. A summary of margins of underselling and overselling are presented in table V-8.

**Table V-8**

**Raw flexible magnets: Instances of underselling/overselling and the range and average of margins for products 1-6, January 2005-March 2008**

Source	Underselling				Overselling			
	Number of instances	Quantity (pounds)	Range (percent)	Average margin (percent)	Number of instances	Quantity (pounds)	Range (percent)	Average margin (percent)
China <sup>1</sup>	24	***	0.1 to 45.2	23.3	13	***	4.2 to 88.1	31.0
Taiwan	48	***	0.7 to 32.0	17.1	16	***	1.6 to 72.3	20.6
<b>Total</b>	<b>72</b>	<b>2,740,236</b>	<b>0.1 to 45.2</b>	<b>19.2</b>	<b>29</b>	<b>87,080</b>	<b>1.6 to 88.1</b>	<b>25.2</b>

<sup>1</sup> Purchase prices for direct imports from China reported by printers were lower than sales prices for comparable U.S. products in 42 of 46 instances.

Note. -- "Quantity" is based on sales of imported product.

Source: Compiled from data submitted in response to Commission questionnaires.

**LOST SALES AND LOST REVENUES**

In the preliminary phases of these investigations, the Commission requested U.S. producers of raw flexible magnets to report any instances of lost sales or revenues they experienced due to competition from imports from China and Taiwan from January 2004 to June 2007. U.S. producers provided 36 lost sales allegations and 19 lost revenue allegations. The 33 lost sales allegations regarding China totaled \$\*\*\*; 1 lost sale regarding Taiwan totaled \$\*\*\*; and 2 lost sales listed both China and Taiwan and totaled \$\*\*\*. The 15 lost revenue allegations regarding China totaled \$\*\*\* and the 4 regarding Taiwan totaled \$\*\*\*. Staff contacted the purchasers cited in the allegations, of which 22 responded and discussed lost sales allegations totaling \$\*\*\* and lost revenues totaling \$\*\*\*.<sup>20</sup> Six agreed with the allegations, 11 disagreed with the allegations, and 6 neither agreed nor disagreed.<sup>21</sup> Tables V-9 and V-10 summarize the results of purchasers that responded to staff requests for confirmation.

**Table V-9**

**Raw flexible magnets: U.S. producers' lost sales allegations**

\* \* \* \* \*

**Table V-10**

**Raw flexible magnets: U.S. producers' lost revenue allegations**

\* \* \* \* \*

<sup>20</sup> Purchaser \*\*\* responded to one lost sale allegation and one lost revenue allegation.

<sup>21</sup> Listed as "neither agreed nor disagreed" is one purchaser that agreed to a lost sales allegation but disagreed with a lost revenue allegation, and another purchaser that agreed with respect to some products listed in the allegation but did not know with respect to other products.

In the final phase of these investigations, the Commission requested U.S. producers of raw flexible magnets to report any instances of lost sales or revenues they experienced due to competition from imports from China and Taiwan from January 2005 to March 2008. U.S. producers provided lost sales allegations involving 10 firms and lost revenue allegations involving 4 firms. The 11 lost sales allegations regarding China totaled \$\*\*\*; the 1 lost sale regarding Taiwan totaled \$\*\*\*. The 5 lost revenue allegations regarding China totaled \$\*\*\*; and there were no listed lost revenue allegations regarding Taiwan.<sup>22</sup> Staff contacted the purchasers cited in the allegations; 1 purchaser responded and disagreed with the \*\*\* allegations totaling \$\*\*\*.<sup>23,24</sup>

\*\*\* agreed with the \*\*\* allegations. It stated, “We did not order any magnets in \*\*\*. We placed an order in \*\*\* for quantities written in above. To my knowledge, the pricing I have written in is the most updated from \*\*\*.”

\*\*\* disagreed with the \*\*\* allegations. It stated, “Due to significant and ongoing quality issues, our firm shifted business to new suppliers both domestic and foreign. The majority of our purchases remain with a domestic supplier of raw magnetic materials. The quality of the material we are now receiving is markedly improved from former supplier.”

\*\*\* disagreed with the \*\*\* allegation, stating “From \*\*\* our total purchases from \*\*\* were \$\*\*\*,” and “from \*\*\* we had no purchases from \*\*\*.”

\*\*\* reported that the vendor matched the price of \$\*\*\* each. It further stated, “Product purchased is made of \*\*\* shipped from \*\*\* to \*\*\* and \*\*\*, made in \*\*\*, shipped to \*\*\* and later applied to the flexible magnet. The product is converted and packaged in \*\*\*, shipped to \*\*\*. We feel that this complaint has no merit and should be disallowed.”

\*\*\* could not fully verify the allegation. The company typically deals with \*\*\*, and only purchased magnets on one occasion.

\*\*\* agreed with the \*\*\* allegations.

\*\*\* partly agreed with the \*\*\* allegations but was not sure of \*\*\* of the \*\*\* products referred to in the allegations. It stated that the pricing provided in the allegations was incorrect. It also stated that imported product included freight costs whereas U.S. product did not include freight.

\*\*\* disagreed with the \*\*\* allegation, stating “we purchase fewer \*\*\* because we manufacture fewer \*\*\*.”

\*\*\* disagreed with the \*\*\* allegation, and stated that it has never been quoted nor purchased imported magnets.

\*\*\* reported that it did have sufficient information to respond to the allegation, but that it had no recollection of a quote involving magnets during or around \*\*\*.

\*\*\* stated that it purchased magnets from \*\*\* for many years at \$\*\*\* per sheet. However, in \*\*\*, \*\*\* tried to “price gouge,” \*\*\* its price to \$\*\*\* per sheet. The purchaser searched for other sources and found \*\*\* product priced at \$\*\*\* per sheet. \*\*\* said it could reduce the price to \$\*\*\* per sheet, and so \*\*\* agreed to purchase from \*\*\*. However, \*\*\* was not able to deliver, so \*\*\* purchased the \*\*\*.

\*\*\* agreed with the \*\*\* allegation. It stated, “I do agree that the material is less costly, though I cannot say that the \*\*\* is selling it for less than \*\*\*. The reason I purchase the \*\*\* material is that it usually stocked in \*\*\* and I can receive it in \*\*\*. If a U.S. manufacturer would stock it locally I would

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<sup>22</sup> U.S. producer \*\*\* did not report complete lost revenue allegations, hence the staff was not able to calculate the dollar value of the allegations.

<sup>23</sup> The only responding purchaser is \*\*\*. In the final phase of these investigations, \*\*\* was quoted \*\*\* as it purchased material from \*\*\*, unlike the preliminary phase of these investigations when it was quoted in \*\*\* from \*\*\*.

<sup>24</sup> Two allegations \*\*\* were not contacted by the staff because of insufficient customer contact information.

consider using their material since the cost difference would not affect the cost of my product enough for \*\*\* to not make the sale. On time delivery is the big factor in our sales.”

\*\*\* agreed with the \*\*\* allegation. It stated that while the lower price of the \*\*\* product was a factor in its purchase decision, it also trusted the \*\*\* supplier more than \*\*\*. It added that “since that time, we have found that for this particular product it works well to have a U.S. supplier. \*\*\* provided us with a quote that allowed us to move the production of this product back to the U.S. \*\*\* has lost this business but not to a \*\*\* supplier as they think, it has \*\*\*.” \*\*\* disagreed with the \*\*\* allegations, reporting that it did not purchase from \*\*\* during 2004-07.

\*\*\* disagreed with the \*\*\* allegation. It stated, “To date, we have not purchased even \*\*\* of the amount from \*\*\* that they are claiming was lost. We have not sold \*\*\* material to any of \*\*\*’s customers, and as of now, hardly any customers of our own. We have imported new to the market products mostly, and have tried to get sales on these items but it has not been easy. Therefore, \*\*\* did not have any \*\*\* for any part of 2004-2006 or in 2007, so far. The only lost \*\*\* had from us went to \*\*\*. Our total purchases of ‘Raw Flexible Magnets’ for 2006 were about \$\*\*\*. Our total purchases for 2007 will be about \$\*\*\* from U.S. producers and \$\*\*\* from \*\*\*. We have lost \*\*\* of our previous sales because of what we believe to be the arrogance and greed of \*\*\*. They did not lose any of our business to \*\*\* or \*\*\*. Their business practices, poor quality, slow delivery and huge price increases are responsible for the decline of their once well run company. Most of the product we are importing is material that is not offered by U.S. producers.”

\*\*\* disagreed with the \*\*\* allegation stating, “U.S. material is not as compatible to our production process as imported material.” \*\*\* agreed with \*\*\* allegations. It stated, “We feel that the manufacturer in question has a monopoly on raw magnetic material produced in the United States. This allows them to control the pricing structure of what they sell.”

\*\*\* stated, regarding the \*\*\* allegation, “We do not recall receiving a quote for domestic magnetic material of \$\*\*\* per roll. However, we do pay \$\*\*\* per roll from \*\*\*. We also buy material from two other sources in the United States that import their material for approximately \$\*\*\* per roll. We are no longer importing our own material since \*\*\*.”

\*\*\* disagreed with the \*\*\* allegations submitted in the preliminary phase of these investigations from \*\*\*, stating “we often get quotes that do not turn into orders. As you can see, they have indicated a loss of over \$\*\*\* in sales when our actual purchases of these \*\*\* producers were \$\*\*\* total” and that “there are only two raw material manufacturers in the U.S. and when Magnum ‘merged’ with MSI their prices increased and service declined. To compete we had no other choice but to find alternate manufacturers.” It further stated that it began importing from \*\*\* because it had issues getting product from U.S. manufacturers as it was not perceived as a “big player.”

\*\*\* disagreed with the \*\*\* allegations submitted in the final phase of these investigations from \*\*\*, noting that it had asked \*\*\* for pricing on \*\*\* sheets of this material \*\*\*, but did not get the job. Moreover, \*\*\* indicated that it purchased \*\*\*.

\*\*\* disagreed with the \*\*\* allegation, stating “according to \*\*\*’s representative, \*\*\*, the magnetic sign material rolls that we purchase from \*\*\*, is manufactured in \*\*\*. We started to carry the \*\*\* product because of better product performance and cost. We were having 4-6 complaints per year of our \*\*\* product. So far we have had only (1) minor complaint of \*\*\* product. The cost per \*\*\* roll of \*\*\* is \$\*\*\* per roll less.”

\*\*\* disagreed with \*\*\* allegations. It stated, “Early in 2007 \*\*\* requested quotes from \*\*\* domestic U.S. suppliers of flexible magnets,” and that “the incumbent domestic supplier retained the business based on price and service.” It stated, “\*\*\* continues to source all flexible magnet sheeting referenced in your letter, from a single domestic U.S. manufacturer.”

\*\*\* disagreed with the \*\*\* allegation, saying it never solicited such a quote from \*\*\*. It stated that the price for the product listed is \$\*\*\* and that the “difference between imported material and domestic is approximately \*\*\* percent.”



## PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

### BACKGROUND

Petitioner Magnum<sup>1</sup> and U.S. producers \*\*\* provided useable financial data on their operations producing or (in the case of \*\*\*) selling raw flexible magnets.<sup>2</sup> \*\*\*, which accounted for \*\*\* percent of the domestic industry's reported sales values in 2006 and provided financial data in the preliminary phase of these investigations, did not provide financial data in this final phase. \*\*\* reported \*\*\* that \*\*\*; the ratio of its \*\*\* to its net sales was \*\*\* percent in 2004, \*\*\* in 2005, \*\*\* percent in 2006, and \*\*\* percent during January-March 2007. Inclusion of \*\*\* data in with the 2005 and 2006 data in table VI-1 \*\*\* the operating margin by \*\*\* percentage point.<sup>3</sup>

\*\*\* financial data were not included in the prehearing report because at that time there were serious unexplained differences between the financial data it reported in the preliminary phase of these investigations and the data it originally reported in the final phase.<sup>4</sup> \*\*\* has since amended its financial data. Although Commission staff still has concerns with \*\*\* interim financial data and is therefore not including such data in the final staff report, \*\*\* full-year data are included.

While \*\*\* are engaged in the production and sale of raw flexible magnets, \*\*\* is not. Instead, \*\*\*, as a tollee, purchases the materials necessary to produce raw flexible magnets (such as ferrite powder and base paper) and provides these materials to outside processors (tollers) who convert the raw materials into raw flexible magnets. The tollers then ship the finished raw flexible magnets back to \*\*\*, which sells them to outside parties. Because \*\*\* tollers have not provided financial data, Commission staff has utilized \*\*\* data in tables VI-1, VI-2, VI-3, VI-4, VI-6, and VI-7. Abbreviated financial data are also provided in tables VI-1 and VI-4 in order for the Commission to evaluate the performance of the domestic industry excluding \*\*\*.

Consistent with the presentation in other parts of this report, data are presented on the domestic producers' combined (merchant market and captive consumption) operations (tables VI-1, VI-2, VI-3, VI-6, and VI-7); the domestic producers' merchant market only operations (VI-4); and, on the domestic producers' captive consumption only operations (VI-5).

In addition to commercial sales, \*\*\* reported large amounts and \*\*\* reported moderate amounts of internal consumption, and \*\*\* reported minuscule amounts of transfers to related parties. Transfers, which accounted for between \*\*\* percent of the industry's total sales quantities and \*\*\* percent of total sales values every period, are presented together with commercial sales as merchant market sales in this section. Internal consumption, which accounted for between \*\*\* percent of the industry's total sales quantities and \*\*\* percent of total sales values every full-year period, is presented as captive consumption sales in this section. Internal consumption accounted for a much smaller share of sales in the interim periods, between \*\*\* percent of sales quantities and values, because \*\*\* interim financial data were not included with the results of the other domestic producers.

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<sup>1</sup> Commission staff \*\*\* data on July 22-23, 2008. The minimal changes to \*\*\* are included in this report.

<sup>2</sup> All companies have a December 31 fiscal year end.

<sup>3</sup> \*\*\*.

<sup>4</sup> Prehearing report at VI-1.

## OPERATIONS ON RAW FLEXIBLE MAGNETS

Aggregate income-and-loss data for the producers on their total operations producing raw flexible magnets are presented in table VI-1.

**Table VI-1**

**Raw flexible magnets: Results of U.S. producers<sup>1</sup> on their merchant market and captive consumption market operations combined, fiscal years 2005-07, January-March 2007, and January-March 2008**

Item	Fiscal year			January-March	
	2005	2006	2007	2007	2008
	<b>Quantity (1,000 pounds)</b>				
Net sales quantities:					
Merchant market <sup>2</sup>	***	***	***	***	***
Captive consumption <sup>2</sup>	***	***	***	***	***
Total net sales quantities <sup>3</sup>	86,610	89,077	75,119	***	***
	<b>Value (1,000 dollars)</b>				
Net sales values:					
Merchant market <sup>2</sup>	***	***	***	***	***
Captive consumption <sup>2</sup>	***	***	***	***	***
Total net sales values <sup>3</sup>	93,670	96,738	85,819	***	***
Cost of goods sold:					
Raw materials	38,971	40,503	35,504	***	***
Direct labor	9,071	7,965	7,262	***	***
Other factory costs	26,228	26,112	21,016	***	***
Tolling expenses	2,252	3,427	4,213	***	***
Total cost of goods sold	76,522	78,007	67,995	***	***
Gross profit	17,148	18,731	17,824	***	***
SG&A expenses	16,629	15,111	13,354	***	***
Operating income <sup>3</sup>	519	3,620	4,470	***	***
Net other income/expense	3,581	6,705	2,603	***	***
Net (loss) before income taxes	(3,062)	(3,085)	1,867	***	***
Depreciation/amortization	3,557	4,695	4,307	***	***
Estimated cash flow	495	1,610	6,174	***	***
	<b>Number of firms reporting</b>				
Operating losses	3	4	2	***	***
Data	6	6	6	***	***

Table continued on next page.



**Table VI-1--Continued**

**Raw flexible magnets: Results of U.S. producers<sup>1</sup> on their merchant market and captive consumption market operations combined, fiscal years 2005-07, January-March 2007, and January-March 2008**

Item	Fiscal year			January-March	
	2005	2006	2007	2007	2008
	<b>Unit value (per pound)</b>				
Net sales values:					
Merchant market <sup>2</sup>	***	***	***	***	***
Captive consumption <sup>2</sup>	***	***	***	***	***
Total net sales values <sup>2</sup>	\$1.08	\$1.09	\$1.14	***	***
Cost of goods sold:					
Raw materials	0.45	0.45	0.47	***	***
Direct labor	0.10	0.09	0.10	***	***
Other factory costs	0.30	0.29	0.28	***	***
Tolling expenses	0.03	0.04	0.06	***	***
Total cost of goods sold	0.88	0.88	0.91	***	***
Gross profit	0.20	0.21	0.24	***	***
SG&A expenses	0.19	0.17	0.18	***	***
Operating income	0.01	0.04	0.06	***	***
	<b>Ratio to net sales (percent)</b>				
Cost of goods sold:					
Raw materials	41.6	41.9	41.4	***	***
Direct labor	9.7	8.2	8.5	***	***
Other factory costs	28.0	27.0	24.5	***	***
Tolling expenses	2.4	3.5	4.9	***	***
Total cost of goods sold	81.7	80.6	79.2	***	***
Gross profit	18.3	19.4	20.8	***	***
SG&A expenses	17.8	15.6	15.6	***	***
Operating income <sup>3</sup>	0.6	3.7	5.2	***	***
<p><sup>1</sup> The producers are ***.</p> <p><sup>2</sup> Merchant market sales are commercial sales and transfers to related parties, and captive consumption sales are internal consumption.</p> <p><sup>3</sup> Absent the effects of *** tollee revenues and costs, sales quantities, sales values, operating income, and operating income as a percentage of net sales values are as follows:</p> <p style="text-align: center;">*   *   *   *   *   *   *</p>					
Source: Compiled from data submitted in response to Commission questionnaires.					

Net sales quantities and values both declined irregularly from 2005 to 2007, increasing modestly in 2006 and then decreasing by 15.7 to 11.3 percent, respectively, in 2007. Operating income continually increased, representing between 0.6 and 5.2 percent of net sales values. Per-unit sales values increased moderately from period to period, and per-unit cost of goods sold increased by an even lesser amount, while per-unit SG&A expenses declined marginally. As a result, the per-unit operating income increased from \$0.01 to \$0.06 per pound.

Comparing interim (January to March) 2008 to interim 2007, net sales quantities and values again declined, by \*\*\* percent, respectively. On the other hand, operating income was higher, and expressed as a percentage of net sales value was \*\*\* percent during January-March 2008 as opposed to \*\*\* percent during the same time period in 2007. The increase was the result of noticeable increases in per-unit sales values that outpaced smaller increases in per-unit cost of goods sold and per-unit SG&A expenses.

Selected financial data on a company-by-company basis are presented in table VI-2. Magnum, the \*\*\*, reported decreased \*\*\* period. Magnum reported \*\*\* (because of increases in petroleum-related costs<sup>5</sup> and because it produced \*\*\* products), increases in \*\*\*, and increases in \*\*\*. From 2005 to 2006, part of the reason for increases in Magnum's \*\*\* appears to have been the purchase of Magnet Specialty, Inc. (MSI) by Magnum in April 2005 and the subsequent consolidation of MSI's operations into those of Magnum. As described by the industry witnesses, MSI was the high cost domestic producer,<sup>6</sup> and Magnum invested in additional equipment to increase the efficiency of the firm's magnetic compounding and blending operations.<sup>7</sup> From 2006 to 2007, and comparing interim 2008 to interim 2007 data, even as Magnum \*\*\*.

**Table VI-2**  
**Raw flexible magnets: Selected financial data of producers on their merchant market and captive consumption operations, fiscal years 2005-07, January-March 2007, and January-March 2008**

\*       \*       \*       \*       \*       \*       \*

Flexmag \*\*\*. Flexmag's \*\*\* expressed as a share of net sales \*\*\*.

Holm, the \*\*\* producer, largely \*\*\* the magnets it produced using the \*\*\*. Holm, which reported \*\*\* in 2005 and \*\*\* in 2006 and 2007, reported \*\*\* per-unit revenues and costs.

Glatfelter reported data on its operations on a proprietary product, MagneCote®. As previously discussed, Glatfelter \*\*\*. In the earlier periods, Glatfelter reported \*\*\* and \*\*\* expenses, resulting in \*\*\*.<sup>8</sup> In the later periods, \*\*\*.

Magtech, which \*\*\*, reported \*\*\*. \*\*\*, which as previously discussed has \*\*\* in this final phase of the investigations, reported \*\*\*.

The Commission also gathered financial data on the domestic industry's non-toll fabricating operations. In terms of sales, three primary non-toll fabricators (\*\*\*) reported annual sales of \$\*\*\* in 2005, decreasing to \$\*\*\* in 2007. The converters' primary raw materials are \*\*\*, mostly purchased exclusively from \*\*\*. Other parts \*\*\* include adhesives, tools and dies, packaging, and cores. Total

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<sup>5</sup> Hearing transcript, pp. 42-43 (T. Love).

<sup>6</sup> Hearing transcript, pp. 37-38 (T. Love). Some of these aspects of MSI's cost structure are shown by the \*\*\*, Magnum's postconference brief, exh. 1, pp. 10-11, and producer questionnaire, question III-14.

<sup>7</sup> Conference transcript, p. 24 (A. Love). However, there were difficulties encountered during the consolidation phase that lasted from April 2005 to December 2005, including the departure of several key senior personnel, redesign of the plant's layout, and the installation of new equipment. Conference transcript, p. 39 (T. Love). One of MSI's customers described a decline in quality and extended lead times following Magnum's acquisition of MSI. Hearing transcript, pp. 152-153, 155, and 157 (Lewis).

<sup>8</sup> Glatfelter explained its \*\*\*. Correspondence from \*\*\*, October 19, 2007.

value added by the three fabricators together in 2007 was calculated to be \*\*\* percent, based on the ratio of conversion costs (direct labor plus other factory costs) to cost of goods sold (COGS). Based on the ratio of conversion costs plus selling, general, and administrative (SG&A) expenses to COGS plus SG&A expenses, the ratio was \*\*\* percent.

The variance analysis showing the effects of prices and volume on the producers' revenues, and of expenses, costs, and volume on their total cost, is shown in table VI-3. The analysis illustrates that the increase in operating profitability from 2005 to 2007 was largely the result of a large positive price variance (an increase in per-unit revenues) more than offsetting a moderate negative net cost/expense variance (an increase in per-unit costs and expenses). The increase in profitability in January-March 2008 relative to January-March 2007 was for the same reasons, although the magnitudes of each variance component (positive price and negative net cost/expense) were much closer.

Table VI-4 presents data for the reporting U.S. firms' merchant market sales and costs, and table VI-5 presents data in a similar format for their captive consumption.

### **CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES**

Domestic raw flexible magnet producers' capital expenditures and research and development (R&D) expenses are presented in table VI-6. \*\*\* accounted for the majority of the capital expenditures from 2005 through the first quarter of 2008.<sup>9</sup>

\*\*\* R&D expenses, the overall level was low.

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<sup>9</sup> \*\*\* reported capital investment on their non-toll fabricator operations. From 2005 through March 31, 2008, such expenditures totaled \*\*\*, with most funds coming from \*\*\*, although some were \*\*\*.

**Table VI-3**

**Raw flexible magnets: Variance analysis of U.S. producers' merchant market and captive consumption operations, fiscal years 2005-07, January-March 2007, and January-March 2008**

Item	Between fiscal years			Between Jan-Mar
	2005-07	2005-06	2006-07	2007-08
	Value (\$1,000)			
Net sales:				
Commercial sales:				
Price variance	***	***	***	***
Volume variance	***	***	***	***
Sub-total	***	***	***	***
Non-commercial sales:				
Price variance	***	***	***	***
Volume variance	***	***	***	***
Sub-total	***	***	***	***
Total sales:				
Price variance	4,577	400	4,239	***
Volume variance	(12,428)	2,668	(15,158)	***
Total net sales variance	(7,851)	3,068	(10,919)	***
Cost of goods sold:				
Cost variance	(1,626)	695	(2,211)	***
Volume variance	10,153	(2,180)	12,223	***
Total COGS variance	8,527	(1,485)	10,012	***
Gross profit variance	676	1,583	(907)	***
SG&A expense:				
Expense variance	1,069	1,992	(611)	***
Volume variance	2,206	(474)	2,368	***
Total SG&A variance	3,275	1,518	1,757	***
Operating income variance	3,951	3,101	850	***
Summarized as:				
Price variance	4,577	400	4,239	***
Net cost/expense variance	(557)	2,686	(2,822)	***
Volume variance	(69)	15	(567)	***
Source: Compiled from data submitted in response to Commission questionnaires.				

**Table VI-4**

**Raw flexible magnets: Results of U.S. producers on their merchant market only (commercial sales and transfers to related parties) operations, fiscal years 2005-07, January-March 2007, and January-March 2008**

\* \* \* \* \*

**Table VI-5**

**Raw flexible magnets: Results of U.S. producers on their captive consumption (internal consumption) only operations, fiscal years 2005-07, January-March 2007, and January-March 2008**

\* \* \* \* \*

**Table VI-6**

**Raw flexible magnets: U.S. producers' capital expenditures and research and development expenditures, fiscal years 2005-07, January-March 2007, and January-March 2008**

\* \* \* \* \*

**ASSETS AND RETURN ON INVESTMENT**

Data on the domestic producers' assets and their return on investment (defined as operating income divided by total assets) are presented in table VI-7. Even though the cost of the producers' property, plant, and equipment increased from period to period, the overall value of assets declined. The return on investment was approximately double the operating income margins in table VI-1.

Table VI-7

Raw flexible magnets: U.S. producers'<sup>1</sup> assets and return on assets, fiscal years 2005-07

Item	Fiscal year		
	2005	2006	2007
	<b>Value (1,000 dollars)</b>		
Total assets (company-by-company):	***	***	***
Total	48,446	43,199	40,137
Total assets (aggregate industry):			
Current assets:			
Cash	* * *	* * *	* * *
Accounts receivable	* * *	* * *	* * *
Inventories (total)	* * *	* * *	* * *
All other current assets	* * *	* * *	* * *
Total current assets	16,225	14,813	15,643
Non-current assets:			
Property, plant, and equipment at cost	37,494	43,018	43,538
Less: accumulated depreciation	10,376	15,533	19,938
Equals: book value	27,118	27,485	23,600
Other non-current assets	5,103	901	894
Total non-current assets	32,221	28,386	24,494
Total assets	48,446	43,199	40,137
Operating income	519	3,620	4,470
	<b>Ratio of operating income to total assets (percent)</b>		
Return on investment	1.1	8.4	11.1
<sup>1</sup> *** reported asset data.			
Source: Compiled from data submitted in response to Commission questionnaires.			

**CAPITAL AND INVESTMENT**

The Commission requested U.S. firms to describe any actual or potential negative effects of imports of raw flexible magnets from China and Taiwan on the firms' growth, investment, and ability to raise capital or development and production efforts (including efforts to develop a derivative or more advanced version of the product). Their responses are shown below.

**Actual Negative Effects**

\* \* \* \* \*

**Anticipated Negative Effects**

\* \* \* \* \*





## **PART VII: THREAT CONSIDERATIONS AND *BRATSK* INFORMATION**

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(I)). Information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V, and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.<sup>1</sup>

### **THE INDUSTRY IN CHINA**

#### **Overview**

The petition alleged that there are approximately 58 producers/exporters of raw flexible magnets in China. Foreign producer questionnaires were issued to producers with contact information in the petition, plus 12 additional firms identified by Commission staff. Cixi City, Newlife, and Polyflex provided questionnaire responses.

Newlife submitted a survey that it performed at the request of the China Chamber of Commerce for Import & Export of Machinery & Electronic Products ("CCCME") after the filing of the countervailing and antidumping duty petitions.<sup>2</sup> According to Newlife, there are approximately \*\*\* companies in China that produce raw flexible magnets, and the three responding firms account for approximately \*\*\* percent of production in China. According to Newlife, trading firms that export raw flexible magnets to the United States include \*\*\*.

According to CCCME, it conducted a survey using the HTS subheading 8505.19 to contact exporters of raw flexible magnets by telephone. It concluded that most of the raw flexible magnets exported to the United States from China are produced by Cixi City, Newlife, and Polyflex.<sup>3</sup>

The survey revealed approximately 19 firms manufacturing raw flexible magnets, six of which exported to the United States in 2007. The total exports in 2007 from the six firms was \$\*\*\*. U.S. importers reported imports valued at \$\*\*\* in that year, but the valuation of imports is expected to be

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<sup>1</sup> As discussed in detail infra, in the preliminary phase of these investigations, the Commission concluded that it "need not apply the analysis dictated by *Bratsk*." *Raw Flexible Magnets from China and Taiwan, Inv. No. 701-TA-452 and 731-TA-1129 and 1130 (Preliminary)*, USITC Publication 3961, November 2007, p. 20, fn. 126. As discussed further below, no party presented an alternative view when commenting upon draft questionnaires or when presenting arguments in the final phase of these investigations.

<sup>2</sup> On April 29, 2008, the CCCME commissioned Newlife to survey the export data of raw flexible magnets from China to the United States. Newlife performed a telephone survey of firms listed in the petition. Email from \*\*\*, May 14, 2008.

<sup>3</sup> Email from \*\*\*, May 13, 2008.

higher than exports because import values reflect additional costs, such as ocean freight and regular customs duties.<sup>4 5</sup>

In its posthearing brief, the petitioner listed several Chinese producers and their information from correspondence:<sup>6</sup>

\*\*\*  
\*\*\*  
\*\*\*  
\*\*\*  
\*\*\*,<sup>7</sup> \*\*\*.  
\*\*\*  
\*\*\*  
\*\*\*  
\*\*\*

Table VII-1 presents company-by-company data for 2007 for the responding Chinese producers' capacity, production, capacity utilization, and exports:

**Table VII-1**  
**Raw flexible magnets: Selected data on reporting Chinese producers, by firm, 2007**

\* \* \* \* \*

**Raw Flexible Magnet Operations**

Cixi City accounted for \*\*\* percent of reported 2007 production in China. Capacity fluctuated upward during 2005-07, but was lower in January-March 2008 than in January-March 2007. Capacity utilization generally decreased \*\*\*, however, there was \*\*\* unused capacity in each period after 2005. Cixi City expects to continue its capacity \*\*\* in 2008-09 (\*\* in 2008 and \*\*\* in 2009). Exports to the United States decreased in every year, and were lower in January-March 2008 than in January-March 2007. Cixi City projected a \*\*\* in exports to the United States during 2008 and an \*\*\* in exports in 2009. Its other export markets are \*\*\*. Cixi City's exports to the United States in 2007 were \*\*\* percent magnetic sheeting, manufactured using the calender method. Cixi City did not produce any other products using the same production equipment it used to produce raw flexible magnets.

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<sup>4</sup> In addition to the questionnaire respondents, there were \*\*\* exports (\*\* in January-June 2007) reported by Earth Wind Advance Magnetic Material Co., Foshan Shunde Baling Group. Ltd., and Hengdian Group KMEGC Magnetics Co., Ltd. The total of all 19 firms' exports to the United States during January-June 2007 according to Chinese Customs data was \*\*\*, which included some quantity of nonsubject products according to the survey. Email from \*\*\*, May 14, 2008.

<sup>5</sup> In addition to the three respondents, importer questionnaire responses from the preliminary- and final-phase investigations identified the following 17 suppliers during the period for which data were gathered: AIC Magnets Ltd.; AMC Industries Co., Ltd.; Atlas Magnetics Manufacturing Ltd.; BGRIMM; CDOB Beijing Import Export Co., Ltd.; Chance Best; International Writing Instrument; Magtek; Marketa Magnet Ltd.; Polymagnets, Ltd.; Qualita Magnets; Sunfirst Manufacturing; UMAG; United Magnets Co., Ltd.; Xiamen One Magnet Electronic Co., Ltd.; Xiangying Magnetic Materials; and Zhejiang Kaihua Foreign Economic Trade Co., Ltd. However, most of the firms identified as suppliers are assumed to be exporters but not producers of raw flexible magnets.

<sup>6</sup> Petitioner's posthearing brief, exh. 4.

<sup>7</sup> \*\*\*.

Newlife accounted for \*\*\* percent of reported production in China in 2007. Capacity grew during 2005-07, and remained steady between January-March 2007 and January-March 2008. Capacity utilization generally remained constant, with a \*\*\* projected in 2009. However, there was \*\*\* unused capacity in each period. Newlife expects its capacity to \*\*\* during 2008 and 2009. Exports to the United States increased in every year, and were higher in January-March 2008 than in January-March 2007. Newlife projected \*\*\* exports to the United States during 2008 after the first quarter, and \*\*\* exports in 2009. Its other export markets are \*\*. Newlife's exports to the United States in 2007 were \*\*\* percent magnetic sheeting, \*\*\* percent strips, and \*\*\* percent profile shapes. The majority of these raw flexible magnets, \*\*\* percent, were manufactured using the calender method. Newlife is \*\*. Newlife did not produce any other products using the same production equipment it used to produce raw flexible magnets.

Polyflex accounted for \*\*\* percent of reported production in China in 2007. Capacity grew during 2005-07 (\*\*\*), but remained steady between January-March 2007 and January-March 2008. \*\*. Capacity utilization increased during the period, reaching a high in 2007. Capacity utilization was higher in January-March 2008 than in January-March 2007, and was projected to \*\*\* in 2008-09, however, there was \*\*\* unused capacity in each period. Polyflex provided conflicting statements regarding projected capacity: according to the data provided, Polyflex reported that it would \*\*\* in 2008, \*\*. However, the accompanying explanation stated that "\*\*\*\*." <sup>8</sup> Exports to the United States increased in every year, but were lower in January-March 2008 than in January-March 2007. \*\*, so it projected \*\*\* exports to the United States during 2008 after the first quarter, and \*\*\* exports in 2009. Its other export markets are \*\*. Polyflex's exports to the United States in 2007 were \*\*\* percent magnetic sheeting, manufactured using the calender method. Polyflex did not produce any other products using the same production equipment it used to produce raw flexible magnets.

Table VII-2 presents data for reported production and shipments of raw flexible magnets in China by Cixi City, Newlife, and Polyflex. Cixi City accounted for \*\*\* percent, Newlife for \*\*\* percent, and Polyflex for \*\*\* percent of reported 2007 exports to the United States.

**Table VII-2**

**Raw flexible magnets: Chinese industry's reported production capacity, production, shipments, and inventories, 2005-07, January-March 2007, January-March 2008, and projections for 2008 and 2009**

\* \* \* \* \*

Inventories were low compared to total shipments. This was attributable in part to \*\*\*.<sup>9</sup> \*\*\*.<sup>10</sup>

## THE INDUSTRY IN TAIWAN

### Overview

The petition alleged that there are approximately six producers/exporters of raw flexible magnets in Taiwan. Foreign producer questionnaires were issued to producers with contact information in the petition, plus four identified by Commission staff. Negative questionnaire responses were received from two firms, \*\*, certifying that they did not produce raw flexible magnets during the time period under

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<sup>8</sup> Questionnaire response of Polyflex, II-10a. Polyflex reported a capacity of \*\*\* pounds in 2007 and projected a capacity of \*\*\* pounds in \*\*.

<sup>9</sup> \*\*.

<sup>10</sup> Email from \*\*, July 26, 2008.

consideration (\*\*\*)<sup>11</sup> Jasdi and Magruba provided questionnaire responses, and those two firms were the only firms identified by importer questionnaire responses as their supplier during the period for which data were gathered.<sup>12</sup> In its posthearing brief, petitioner identified Magmate Taiwan Ltd. (“Magmate”) as a substantial Taiwan producer that had not supplied a foreign producers’ questionnaire response.<sup>13</sup> Magmate’s foreign producer questionnaire response, submitted on July 31, 2008, indicated that it was not a producer of raw flexible magnets. According to the firm, it \*\*\*.

Table VII-3 presents company-by-company data for 2007 for the reporting Taiwan producers’ capacity, production, capacity utilization, and exports. As alluded to earlier in this section, several companies identified as Taiwan producers in the petition did not respond to the Commission’s questionnaire (e.g., \*\*\*), although these companies were \*\*\* as \*\*\*.

**Table VII-3**  
**Raw flexible magnets: Selected data on known Taiwan producers, by firm, 2007**

\* \* \* \* \*

Jasdi claimed to account for \*\*\* percent of the production of raw flexible magnets in Taiwan and \*\*\* percent of the exports to the United States. Compared with reported imports of the subject product from Taiwan in 2007, Jasdi’s exports to the United States were equivalent to \*\*\* percent of imports, suggesting that Jasdi’s estimates of its share of exports to the United States are \*\*\*.<sup>14</sup> Jasdi has a distribution warehouse in British Columbia, Canada. As discussed previously, Jasdi USA reportedly had distribution warehouses in Baltimore, MD, and Miami, FL, during the period for which data were collected. Magruba claimed to account for \*\*\* percent of the production in Taiwan and \*\*\* percent of exports to the United States in 2007. Together, the responding Taiwan firms claim to account for \*\*\* percent of the production of raw flexible magnets in Taiwan in 2007.

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<sup>11</sup> Email from \*\*\*, May 28, 2008.

<sup>12</sup> During the preliminary phase investigations, two additional importers reported imports from Taiwan without identifying a supplier. \*\*\* reported \*\*\* pounds of imports in 2006 and \*\*\* pounds of imports in January-June 2007.

<sup>13</sup> Posthearing brief of the petitioner, p. 11, fn. 54 and exh. 2. Magmate’s website is [www.magmate-magnets.com](http://www.magmate-magnets.com), retrieved July 28, 2008. It lists total capacity as 13 million pounds per year, which appears to include primarily flexible magnets according to the web site, but its questionnaire response and correspondence indicated that it had never produced raw flexible magnets in Taiwan. Email from \*\*\*, July 31, 2008. No U.S. importer reported importing raw flexible magnets from Magmate, although the firm on its website claims to have exported flexible magnets to the United States, and it is unclear what portion of those products were printed magnets.

From official Customs data, subject imports manufactured by Magmate were made by \*\*\* in 2005 (\*\*\* pounds valued at \$\*\*\*) and in 2006 (\*\*\* pounds valued at \$\*\*\*), and imports of nonsubject magnets were made by \*\*\* (which certified that its imports were printed magnets) in 2006 (\*\*\* pounds valued at \$\*\*\*) and in 2007 (\*\*\* pounds valued at \$\*\*\*). \*\*\* was importing \*\*\*. Email from \*\*\*, July 22, 2008 and \*\*\*.

<sup>14</sup> According to Jasdi, its estimates were “\*\*\*.” Email from \*\*\*, May 29, 2008.

## Raw Flexible Magnet Operations

Table VII-4 presents data for Jasdi and Magruba's reported production and shipments of raw flexible magnets in Taiwan.

**Table VII-4**

**Raw flexible magnets: Responding Taiwan producers' reported production capacity, production, shipments, and inventories, 2005-07, January-March 2007, January-March 2008, and projections for 2008 and 2009**

\* \* \* \* \*

Most of Jasdi's non-U.S. exports are directed to markets in \*\*\*. Although capacity utilization was \*\*\* during 2005-07, Jasdi expects to have \*\*\* in 2008-09. Its exports to the United States, however, are projected to \*\*\*. Jasdi's exports to the United States were \*\*\* percent magnetic sheeting, \*\*\* percent manufactured using the calender method. Jasdi did produce rubber steel (less than \*\*\* percent of its total production in 2007) using the same production equipment it used to produce raw flexible magnets.

Most of Magruba's non-U.S. exports are directed to markets in \*\*\*. Capacity utilization was \*\*\* during 2005-07, and Magruba expects to have \*\*\* in 2008-09. Its exports to the United States (\*\* pounds between 2005 and 2007), however, are projected to \*\*\*. Magruba did not report whether its exports to the United States were magnetic sheeting, strips, or profiles; however, its importer, \*\*\*, reported that it imported \*\*\* from Magruba. Magruba did produce raw flexible steel (\*\* percent of its total production in 2007) using the same production equipment it used to produce raw flexible magnets.

## THE INDUSTRIES IN CHINA AND TAIWAN COMBINED

Table VII-5 presents reported data on the raw flexible magnet industries in China and Taiwan combined. The reported combined capacity of Cixi City, Newlife, Polyflex, Jasdi, and Magruba was equivalent to \*\*\* percent of U.S. producers' capacity in 2007. Those firms in China and Taiwan had \*\*\* pounds of excess capacity in 2007.

**Table VII-5**

**Raw flexible magnets: China's and Taiwan's combined reported production capacity, production, shipments, and inventories, 2005-07, January-March 2007, January-March 2008, and projections for 2008 and 2009**

\* \* \* \* \*

According to the \*\*\*.<sup>15</sup> Accordingly, if the quantity of \*\*\*. This total is \*\*\* percent of U.S. producers' production of raw flexible magnets in 2007.

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<sup>15</sup> Petitioner's posthearing brief, exh. 4. \*\*\*.

## U.S. IMPORTERS' INVENTORIES

Reported inventories held by U.S. importers of subject merchandise from China and Taiwan are shown in table VII-6. Inventory levels of imported Chinese merchandise were \*\*\* as of December 31, 2007 and March 31, 2008, primarily accounted for by \*\*\*. According to Scott Lewis of Adams, inventories rose “because of the lead times involved in getting the material from China, we felt it was important. With the job shop nature of our business, we could walk in tomorrow and have a million piece order sitting on our desk. So we needed to be able to respond to that.”<sup>16</sup> According to Jack Nellessen of Master Magnetics, “our inventories increased from January of 2008 to April of 2008, and then that was it; and we still have most of that inventory. We haven't passed that on to many of our customers. Because we're afraid to start them out with the Chinese material, and then have to switch them back to domestic suppliers.”<sup>17</sup>

Inventory levels were \*\*\* during most portions of the period for shipments of imports from Taiwan, which are attributable to \*\*\*. \*\*\*. Finally, inventory levels of imported raw flexible magnets from other sources were \*\*\*.

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<sup>16</sup> Ibid., pp. 228-229 (Lewis).

<sup>17</sup> Ibid., p. 229 (Nellessen).

**Table VII-6**  
**Raw flexible magnets: U.S. importers' end-of-period inventories of imports, by source, 2005-07,**  
**January-March 2007, and January-March 2008**

Source	Calendar year			January-March	
	2005	2006	2007	2007	2008
Imports from China:					
Inventories ( <i>1,000 pounds</i> )	***	***	***	***	***
Ratio to imports ( <i>percent</i> )	***	***	***	***	***
Ratio to U.S. shipments of imports ( <i>percent</i> )	***	***	***	***	***
Imports from Taiwan:					
Inventories ( <i>1,000 pounds</i> )	***	***	***	***	***
Ratio to imports ( <i>percent</i> )	***	***	***	***	***
Ratio to U.S. shipments of imports ( <i>percent</i> )	***	***	***	***	***
Imports from all subject countries:					
Inventories ( <i>1,000 pounds</i> )	***	***	***	***	***
Ratio to imports ( <i>percent</i> )	***	***	***	***	***
Ratio to U.S. shipments of imports ( <i>percent</i> )	***	***	***	***	***
Imports from nonsubject countries:					
Inventories ( <i>1,000 pounds</i> )	***	***	***	***	***
Ratio to imports ( <i>percent</i> )	***	***	***	***	***
Ratio to U.S. shipments of imports ( <i>percent</i> )	***	***	***	***	***
Imports from all sources:					
Inventories ( <i>1,000 pounds</i> )	969	1,153	2,041	1,130	1,122
Ratio to imports ( <i>percent</i> )	25.6	20.1	23.9	20.4	37.7
Ratio to U.S. shipments of imports ( <i>percent</i> )	26.0	21.1	25.5	20.0	24.1
Note.—January-March ratios are calculated using annualized import data. Also, all ratios were calculated only for firms that provided both import and inventory data.					
Note.—***.					
Source: Compiled from data submitted in response to Commission questionnaires.					

## U.S. IMPORTERS' IMPORTS SUBSEQUENT TO MARCH 31, 2008

The Commission requested importers to indicate whether they imported or arranged for the importation of raw flexible magnets from China or Taiwan after March 31, 2008. Very few responding importers reported that they had arranged for the importation of raw flexible magnets from China subsequent to March 31, 2008, and none had arranged to import from Taiwan. Table VII-7 presents orders of imports subsequent to March 31, 2008, by quarter of expected importation.

**Table VII-7**  
**Raw flexible magnets: Subject U.S. imports scheduled for delivery after March 31, 2008**

\* \* \* \* \*

## ANTIDUMPING DUTY INVESTIGATIONS IN THIRD-COUNTRY MARKETS

There were no antidumping duty investigations on raw flexible magnets reported in third-country markets.

### NONSUBJECT SOURCES

#### “Bratsk” Considerations

As a result of the Court of Appeals for the Federal Circuit (“CAFC”) decision in *Bratsk Aluminum Smelter v. United States* (“Bratsk”), the Commission is directed to:

*undertake an “additional causation inquiry” whenever certain triggering factors are met: “whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market.” The additional inquiry required by the Court, which we refer to as the Bratsk replacement/benefit test, is “whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers.”*<sup>18 19</sup>

In its preliminary determinations, the Commission stated that

“As noted above, the parties agree and the record reflects that raw flexible magnets are a commodity product. See, e.g., Tr. at 48 (Mr. Button), 178 (Ms. Levinson); Respondent Magnet Technology’s Postconf. Brief at 12. Therefore, one of the predicates for application of the Bratsk “replacement/benefit” test is met. See Bratsk Aluminium

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<sup>18</sup> *Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand)*, USITC Publication 3910, March 2007, p. 2; citing *Bratsk Aluminum Smelter v. United States*, 444 F.3d at 1375.

<sup>19</sup> In the silicon metal remand, Chairman Pearson noted “consistent with his views in *Lined Paper School Supplies From China, India, and Indonesia, Inv. Nos. 701-TA-442-443 and 731-TA-1095-1097 (Final)*, USITC Pub. 3884 (Sept. 2006) at 51, that while he agrees with the Commission that the Federal Circuit’s opinion suggests a replacement/benefit test, he also finds that the Federal Circuit’s opinion could be read, not as requiring a new test, but rather as a reminder that the Commission, before it makes an affirmative determination, must satisfy itself that it has not attributed material injury to factors other than subject imports.” *Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand)*, USITC Publication 3910, March 2007, p. 2, fn. 17. Commissioner Okun joined in those separate and dissenting views in *Lined Paper*.



Smelter v. United States, 444 F.3d 1369, 1375 (Fed. Cir. 2006). However, the information collected in these investigations indicates that the presence of non-subject imports is not a significant factor in the U.S. market...Accordingly, we need not apply the analysis dictated by Bratsk because the second predicate of that analysis (i.e., that imports from non-subject countries are a significant factor in the U.S. market) is not present here. In any final phase investigations, any party holding a contrary view should so indicate, and provide the basis for its view, when providing written comments on the draft questionnaires. If warranted, we will reconsider the applicability of Bratsk in any final phase investigations.”<sup>20</sup>

The petitioner was the only party providing comments on the draft questionnaires, and did not provide written comments on the *Bratsk* issue in its comments.<sup>21</sup> Accordingly, there is no further analysis of *Bratsk* issues in this report.

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<sup>20</sup> *Raw Flexible Magnets from China and Taiwan, Inv. No. 701-TA-452 and 731-TA-1129 and 1130 (Preliminary)*, USITC Publication 3961, November 2007, p. 20, fn. 126.

<sup>21</sup> It took the position in its prehearing brief that Bratsk is inapplicable for the reasons stated in the preliminary determinations. Petitioner’s prehearing brief, p. 54. Importers of raw flexible magnets did not provide comments on the draft questionnaires, but did testify at the hearing that they did not encounter imports from nonsubject countries. Hearing transcript, pp. 219-220 (Nellesen, Lewis, Gorgonne, and Baird).



**APPENDIX A**  
***FEDERAL REGISTER* NOTICES**



**INTERNATIONAL TRADE  
COMMISSION**

[Investigations Nos. 701–TA–452 (Final) and  
731–TA–1129 and 1130 (Final)]

**Raw Flexible Magnets From China and  
Taiwan**

**AGENCY:** United States International  
Trade Commission.

**ACTION:** Scheduling of the final phase of  
countervailing duty and antidumping  
investigations.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–452 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigations Nos. 731–TA–1129 and 1130 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from China and Taiwan of raw flexible magnets, provided for in subheadings 8505.19.10 and 8505.19.20 of the Harmonized Tariff Schedule of the United States.<sup>1</sup>

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**DATES:** *Effective Date:* April 25, 2008.

**FOR FURTHER INFORMATION CONTACT:** Olympia Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

<sup>1</sup> For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "certain flexible magnet sheeting, strips, and profile shapes."

**SUPPLEMENTARY INFORMATION:**

*Background.*—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China and Taiwan of raw flexible magnets, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on September 21, 2007, by Magnum Magetics Corp., Marietta, OH.

*Participation in the investigations and public service list.*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on June 25, 2008, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on July 10, 2008, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 2, 2008. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 3, 2008, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

*Written submissions.*—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is July 2, 2008. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is July 17, 2008; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before July 17, 2008. On August 5, 2008, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 7, 2008, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the

Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: May 2, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8-10177 Filed 5-7-08; 8:45 am]

**BILLING CODE 7020-02-P**

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time. *Requests for a public hearing should contain:* (1) Party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: June 30, 2008.

**David M. Spooner,**  
Assistant Secretary for Import  
Administration.

[FR Doc. E8-15733 Filed 7-9-08; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration (C-570-923)

#### Raw Flexible Magnets from the People's Republic of China: Final Affirmative Countervailing Duty Determination

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

**SUMMARY:** The Department of Commerce (the Department) has made a final determination that countervailable subsidies are being provided to producers and exporters of raw flexible magnets (RFM) from the People's Republic of China (PRC). For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice.

**EFFECTIVE DATE:** July 10, 2008.

**FOR FURTHER INFORMATION CONTACT:**  
Kristen Johnson, AD/CVD Operations,  
Office 3, Import Administration,  
International Trade Administration,  
U.S. Department of Commerce, Room  
4012, 14th Street and Constitution  
Avenue, NW, Washington, DC 20230;  
telephone: 202-482-4793.

#### SUPPLEMENTARY INFORMATION:

##### Petitioner

The petitioner in this investigation is Magnum Magnetics Corporation (petitioner).

##### Period of Investigation

The period for which we are measuring subsidies, or period of investigation (POI), is January 1, 2006, through December 31, 2006.

##### Case History

On February 25, 2008, the Department published in the **Federal Register** its preliminary affirmative determination in the countervailing duty (CVD) investigation of RFM from the PRC. *See Raw Flexible Magnets from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 9998 (February 25, 2008) (*RFM Preliminary Determination*).

On April 29, 2008, we received a case brief from the Government of the People's Republic of China (GOC). Petitioner submitted a rebuttal brief on May 5, 2008. Neither the GOC nor petitioner requested a hearing.

##### Scope of Investigation

The products covered by this investigation are certain flexible magnets regardless of shape,<sup>1</sup> color, or packaging.<sup>2</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.

<sup>1</sup> The term "shape" includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

<sup>2</sup> Packaging includes retail or specialty packaging such as digital printer cartridges.

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

##### Scope Comments

Interested parties submitted comments on the scope of investigation. Those comments are fully addressed in the Decision Memorandum, which is hereby adopted by this notice.

##### Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended, (the Act), section 701(a)(2) of the Act applies to this investigation. Accordingly, the International Trade Commission (ITC) must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to a U.S. industry. On November 9, 2007, the ITC published its preliminary determination 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 from the PRC of subject merchandise. *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).

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Decision Memorandum. Attached to this notice as an Appendix is a list of the issues that parties raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit (CRU). In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the Decision Memorandum are identical in content.

#### Application of Facts Available, Including the Application of Adverse Inferences

For purposes of this final determination, we have relied on facts available and have used adverse inferences to determine the countervailable subsidy rates for the two mandatory respondents: China Ningbo Cixi Import Export Corporation (Cixi) and Polyflex Magnets Ltd. (Polyflex), in accordance with sections 776(a) and (b) of the Act. A full discussion of our decision to apply adverse facts available (AFA) is presented in the Decision Memorandum in the section "Application of Facts Available and Use of Adverse Inferences" and in "Analysis of Comments" at Comment 6.

#### Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for the companies under investigation, Cixi and Polyflex. With respect to the all-others rate, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated. In this case,

the rate calculated for the two investigated companies is based entirely on facts available under section 776 of the Act. There is no other information on the record upon which we could determine an all-others rate. As a result, we have used the AFA rate calculated for Cixi and Polyflex as the all-others rate. This method is consistent with the Department's past practice. *See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Argentina*, 66 FR 37007, 37008 (July 16, 2001); *see also Final Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand From India*, 68 FR 68356, 68357 (December 8, 2003).

Producer/Exporter	Subsidy Rate
China Ningbo Cixi Import Export Corporation .....	109.95 percent <i>ad valorem</i>
Polyflex Magnets Ltd. ....	109.95 percent <i>ad valorem</i>
All Others .....	109.95 percent <i>ad valorem</i>

As a result of our *RFM Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed the U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of RFM from the PRC which were entered or withdrawn from warehouse, for consumption on or after February 25, 2008, the date of the publication of the *RFM Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered on or after June 24, 2008, but to continue the suspension of liquidation of entries made from February 25, 2008, through June 24, 2008.

We will issue a CVD order and reinstate the suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

#### ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-

privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Import Administration.

#### Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: July 2, 2008.

**David M. Spooner,**  
Assistant Secretary for Import Administration.

#### Appendix

*List of Comments and Issues in the Decision Memorandum*

*Comment 1: Application of CVD Law to China*

*Comment 2: Imposition of CVD Law on China and Administrative Procedures Act*

*Comment 3: Specificity of Tax Programs to Foreign-Invested Enterprises*

*Comment 4: Countervailability of Value Added Tax (VAT) Export Rebates*

*Comment 5: VAT and Import Duty Exemptions on Imported Equipment Are One Program*

*Comment 6: AFA Rates for Provincial Programs*

[FR Doc. E8-15735 Filed 7-9-08; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Exporters' Textile Advisory Committee; Solicitation for Members

The Secretary of Commerce initially established the Exporters' Textile Advisory Committee ("Committee") on March 24, 1966. The Committee's



Charter was last extended for two years on October 30, 2006 and will expire on October 30, 2008. It is anticipated that the Committee will be renewed for another term, from October 31, 2008 through October 30, 2010. Therefore, the Committee is seeking additional new members.

The Committee shall consist of approximately 35 members appointed by the Secretary of Commerce to ensure a balanced representation of textile and apparel products. Representatives of small, medium and large firms with broad geographical distribution in exporting shall be included on the Committee. Members shall represent the views of their companies, trade associations and other entities on matters that affect their business interest in exporting.

The Committee shall function solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act.

Persons interested in becoming members are invited to submit a letter to R. Matthew Priest, Deputy Assistant Secretary for Textiles and Apparel, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-3737. Letters must include the applicant's social security number, date of birth, place of birth and home address. This information is required to process a records check to determine suitability for membership.

Announcement closing date is August 5, 2008.

Dated: July 2, 2008.

**R. Matthew Priest,**

*Deputy Assistant Secretary for Textiles and Apparel.*

[FR Doc. E8-15755 Filed 7-9-08; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Import Administration

[A-552-801]

#### **Certain Frozen Fish Fillets From Vietnam: Extension of Time Limit for Final Results of Changed Circumstances Review**

**DATES:** *Effective Date:* July 10, 2008.

**FOR FURTHER INFORMATION CONTACT:** Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-2243.

**SUPPLEMENTARY INFORMATION:** On August 10, 2007, the Department of Commerce (the Department) issued its preliminary results for the changed circumstances review of the antidumping duty order of certain frozen fish fillets from Vietnam. *See Certain Frozen Fish Fillets from Vietnam: Notice of Initiation and Preliminary Results of Changed Circumstances Review*, 72 FR 46604 (August 21, 2007) (*Preliminary Results*). On May 6, 2008, the Department published a notice extending the time limits for the changed circumstances review of the antidumping duty order of certain frozen fish fillets from Vietnam. *See Certain Frozen Fish Fillets from Vietnam: Extension of Time Limit for Final Results of Changed Circumstances Review*, 73 FR 28100 (May 15, 2008) (*"First Extension"*). The current deadline for the final results of this review is July 7, 2008.

#### **Extension of Time Limits for Final Results**

In our *Preliminary Results*, we indicated we would issue the final results in the instant review within 270 days after the date on which the changed circumstances review is initiated. In the *First Extension*, we stated that it was not practicable to complete the review within this time period. Accordingly, pursuant to 19 CFR 351.302(b), we extended the time limit by 60 days.

The Department finds that it is not practicable to complete this review by the current deadline. Subsequent to the *Preliminary Results*, and receipt of Vinh Hoan Co., Ltd./Corp.'s and Petitioners' (the Catfish Farmers of America and individual U.S. catfish processors) case briefs, the Department requested and received new information from Vinh Hoan on which the Department provided interested parties an opportunity to comment. Based on Vinh Hoan's submission and parties' additional comments, the Department intends to request additional information from Vinh Hoan. Consequently, in accordance with 19 CFR 351.302(b), the Department is extending the time period for issuing the final results in the instant review by 90 days. Therefore, the final results will be due no later than October 5, 2008. As October 5, 2008, falls on a Sunday, our final results will be issued no later than Monday, October 6, 2008.

This notice is published in accordance with section 771(i) of the Tariff Act of 1930, as amended.

Dated: July 2, 2008.

**Gary S. Taverman,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. E8-15760 Filed 7-9-08; 8:45 am]

BILLING CODE 3610-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

A-570-922

#### **Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from the People's Republic of China**

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**EFFECTIVE DATE:** July 10, 2008.

**SUMMARY:** The Department of Commerce (the "Department") has determined that raw flexible 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 final dumping margins for this investigation are listed in the "Final 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 and (202) 482-0679, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Case History**

On April 25, 2008, the Department published in the **Federal Register** its preliminary determination that raw flexible magnets from the PRC are being, or are likely to be, sold in the United States at LTFV, as provided in the Act. *See Preliminary Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from the People's Republic of China*, 73 FR 22327 (April 25, 2008) (*"Preliminary Determination"*). For the *Preliminary Determination*, the Department assigned a 185.28 percent dumping margin to the PRC-wide entity – including Polyflex Magnets Ltd. ("Polyflex") – and a 105.00 percent dumping margin to Guangzhou Newlife Magnet Co., Ltd. ("Newlife"), a separate rate applicant. In May and June 2008, Magnum Magnetics Corporation ("Petitioner"), Target Corporation ("Target"), A-L-L Magnetics LLP ("A-L-L"), and SH Industries, LLC ("SH Industries") filed comments regarding

the scope of the investigation, pursuant to the Department's request for scope comments contained in the *Preliminary Determination*. See "Scope Comments" section below. No party submitted case briefs.

#### Changes since the Preliminary Determination

As discussed below, we have made certain changes to the language describing the scope of this investigation. Otherwise, because no party submitted case briefs and there are no other circumstances which warrant the revision of our *Preliminary Determination*, we have not made changes to our analysis or the dumping margins assigned in the *Preliminary Determination*.

#### Period of Investigation

The period of investigation ("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 magnets regardless of shape,<sup>1</sup> color, or packaging.<sup>2</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 investigation are printed flexible magnets, defined as flexible magnets (including individual magnets) that are

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

#### Scope Comments

In the *Preliminary Determination*, the Department explained that, 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 PRC and Taiwan. On November 13, 2007, Petitioner filed a response to the request by SH Industries, arguing that magnetic photo pockets are within the scope of the investigations. On April 11, 2008, Petitioner submitted additional arguments concerning this issue. Because we received this letter only four business days before the statutory deadline for the *Preliminary Determination*, we did not have an

opportunity to consider it prior to issuance of the *Preliminary Determination*.

In the *Preliminary Determination*, 73 FR at 22333, the Department invited interested parties to submit comments on 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 stated 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," the Department encouraged interested parties to comment on whether the plastic photo pocket fused to the flexible magnet satisfies this description. In addition, the Department stated that interested parties could submit information that would be relevant in an analysis conducted pursuant to 19 CFR 351.225(k)(2).

In May and June 2008, Petitioner, Target, A-L-L, and SH Industries filed comments and rebuttal comments regarding the scope of the investigations and magnetic photo pockets. On June 9, 2008, officials from the Department met with representatives of Target to discuss the scope of the investigations. See "Memorandum to the File," dated June 10, 2008. On June 13, 2008, counsel for Petitioner met with officials from the Department to discuss the scope of the investigations. See "Memorandum to the File," dated June 16, 2008.

The Department has analyzed the comments submitted by SH Industries, Target, A-L-L, and Petitioner and has determined that magnetic photo pockets are within the scope of the investigations. The Department has also modified the language describing the scope of these investigations to clarify the product coverage. In its request, SH Industries acknowledges that its magnetic photo pockets consist of flexible magnet material with a layer of plastic laminate fused along the sides of the flexible magnet. At no point does SH Industries argue that the flexible magnetic material in its photo pockets does not meet the physical description of the flexible magnets covered by the scope of the investigations. Rather, SH Industries argues that the attachment of a layer of clear plastic to the flexible magnet results in a product that is outside the scope of the investigations because the purpose of the product is to protect photographs.

Similarly, Target asserts that, rather than being a raw flexible magnet, magnetic photo pockets are properly

<sup>1</sup> The term "shape" includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

<sup>2</sup> Packaging includes retail or specialty packaging such as digital printer cartridges.

characterized as finished retail products which use magnetic sheeting as an input. Target also argues that the clear plastic laminate is neither bonded nor laminated to the magnetic sheeting.

A-L-L argues that the scope should be limited to products produced by the Petitioner as evidenced by inclusion on the Petitioner's website.

As an initial matter, the Department does not generally define subject merchandise by end-use application. Moreover, because the language of the scope stated originally that "{s}ubject 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," *Preliminary Determination*, 73 FR at 22332, the plastic laminate fused to the sides of the flexible magnet does not remove the photo pockets from the scope of the investigations. Finally, the issue of whether an item appears on the Petitioner's website is not relevant to our analysis. For these reasons, we have determined that the magnetic photo pockets described by SH Industries are within the scope of the investigations. In addition, we have clarified that "{s}ubject 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." Finally, because we have received inquiries concerning the terminology in the scope language and product coverage, we have clarified product coverage by reordering the scope language and including certain explanatory definitions. Our revised scope language neither enlarges nor contracts product coverage. See "Scope of Investigation" section above.

The Department received a scope-ruling request from Magnet LLC on May 21, 2008. Because this request was made after the *Preliminary Determination*, the Department has not addressed this request in this final determination. The Department will consider Magnet LLC's scope-ruling request in the event the Department publishes an antidumping duty order in this proceeding.

#### Non-Market Economy Treatment

In the *Preliminary Determination*, the Department considered 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, 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 *Tapered Roller Bearings and Parts Thereof, 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). No party has commented on the Department's classification of the PRC as an NME. Therefore, for the final determination, we continue to consider the PRC to be an NME.

#### Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *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), and 19 CFR 351.107(d).

In the *Preliminary Determination*, we found that Newlife demonstrated its eligibility for separate-rate status. Since the publication of the *Preliminary Determination*, no party has commented on Newlife's eligibility for separate-rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by Newlife demonstrates both a *de jure* and *de facto* absence of government control with respect to its respective exports of the merchandise under investigation. Thus, we continue to find that Newlife is eligible for separate-rate status. Normally the separate rate is determined based on the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding *de minimis* margins or margins based entirely on adverse facts available ("AFA"). See section 735(c)(5)(A) of the Act. In this case, given the absence of participating respondents and having calculated no margins, we have assigned to Newlife the simple average of the margins alleged in the petition, *i.e.*, 105.00

percent. See section 735(c)(5)(B) of the Act and *Preliminary Determination*, 73 FR at 22329-30.

We determined in the *Preliminary Determination* that because Polyflex withdrew from the investigation, thus preventing the Department from asking additional questions on its separate rate status and preventing the Department from verifying its responses, the Department has no basis upon which to grant Polyflex a separate rate. We received no comments on this denial of a separate rate. Although Polyflex remains a mandatory respondent, the Department will continue to consider Polyflex part of the PRC-wide entity because it failed to demonstrate that it qualifies for a separate rate.

#### The PRC-Wide Rate

In the *Preliminary Determination*, the Department found that certain companies did not respond to our requests for information. See *Preliminary Determination*, 73 FR at 22330. We treated these PRC producers/exporters as part of the PRC-wide entity because they did not demonstrate that they operate free of government control over their export activities. *Id.* In addition, in the *Preliminary Determination*, the Department applied total AFA to Polyflex. We determined, as AFA, that Polyflex was not eligible for a separate rate and we are treating Polyflex as part of the PRC-wide entity. No additional information was placed on the record with respect to any of these companies after the *Preliminary Determination*. Therefore, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC-wide rate.

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 *Notice of 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). See also "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 103-316, vol. 1, at 870 (1994). We determine that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity.

Because we begin with the presumption that all companies within an NME country are subject to government control, and because only Newlife has overcome that presumption, we are applying a single antidumping rate (*i.e.*, the PRC-wide entity rate) to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. *See, e.g., Synthetic Indigo From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000). The PRC-wide entity rate applies to all entries of subject merchandise except for entries from Newlife.

In the *Preliminary Determination*, we assigned to the PRC-wide entity the highest margin alleged in the petition, as revised in Petitioner's supplemental responses, *i.e.*, 185.28 percent. *See Preliminary Determination*, 73 FR at 22331. We received no comments on this rate. For the final determination, we have continued to assign to the PRC-wide entity the rate of 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 Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 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).

Because there are no cooperating mandatory respondents, to corroborate the 105.00 and 185.28 percent margins used as facts available for Newlife and as AFA for the PRC-wide entity, respectively, we relied upon our pre-initiation analysis of the adequacy and accuracy of the information in the petition. *See* "Import Administration AD Investigation Initiation Checklist: Raw Flexible Magnets from the People's Republic of China," (October 11, 2007). During the initiation stage, we examined evidence supporting the calculations in

the petition and the supplemental information provided by Petitioner 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 ("EP") and normal value ("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 EP and NV calculations. *Id.* We received no comments as to the relevance or probative value of this information. Therefore, for the final determination, the Department finds that the rates derived from the petition for purposes of initiation have probative value for the purpose of being selected as the facts available rate for Newlife and the AFA rate assigned to the PRC-wide entity.

#### Final Determination Margins

We determine that the following percentage dumping margins exist for the POI:

Manufacturer/Exporter	Margin (Percent)
Guangzhou Newlife Magnet Electricity Co., Ltd. <sup>3</sup> .....	105.00
PRC-wide Entity (including Polyflex) .....	185.28

<sup>3</sup>Newlife both manufactures and exports subject merchandise.

#### Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

#### Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection ("CBP") to continue 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 April 25, 2008, the date of publication of the *Preliminary Determination* 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 final 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 entity 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.

#### International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

#### Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 2, 2008.

**David M. Spooner,**  
Assistant Secretary for Import Administration.

[FR Doc. E8-15732 Filed 7-9-08; 8:45 am]

BILLING CODE 3510-DS-S

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-583-842]

**Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets From Taiwan**

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

**DATES:** *Effective Date:* July 10, 2008.

**SUMMARY:** The Department of Commerce determines 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 735 of the Tariff Act of 1930, as amended (the Act). The final weighted-average dumping margins are listed below in the section entitled "Final Determination of Investigation."

**FOR FURTHER INFORMATION CONTACT:** Kristin Case or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-3174 and (202) 482-4477, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On April 25, 2008, the Department of Commerce (the Department) published the preliminary determination of sales at less than fair value (LTFV) in the antidumping investigation of raw flexible magnets from Taiwan. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan*, 73 FR 22332 (April 25, 2008) (*Preliminary Determination*). Interested parties were invited to comment on our Preliminary Determination.

**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 magnets regardless of shape,<sup>1</sup> color, or packaging.<sup>2</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,

<sup>1</sup> The term "shape" includes, but is not limited to profiles, which are flexible magnets with a non-rectangular cross-section.

<sup>2</sup> Packaging includes retail or specialty packaging such as digital printer cartridges.

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

**Scope Comments**

In the *Preliminary Determination*, the Department explained that, 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, Magnum Magnetics Corporation (Petitioner) filed a response to the request by SH Industries, arguing that magnetic photo pockets are within the scope of the investigations. On April 11, 2008, Petitioner submitted additional arguments concerning this issue. Because we received this letter only four business days before the statutory deadline for the *Preliminary Determination*, we did not have an opportunity to consider it prior to issuance of the *Preliminary Determination*.

In the *Preliminary Determination*, 73 FR at 22333, the Department invited interested parties to submit comments on 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 stated 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," the Department encouraged interested parties to comment on whether the plastic photo pocket fused to the flexible magnet satisfies this description. In addition, the Department stated that interested parties could submit information that would be relevant in an analysis conducted pursuant to 19 CFR 351.225(k)(2).

In May and June 2008, Petitioner, Target, A-L-L, and SH Industries filed comments and rebuttal comments regarding the scope of the investigations and magnetic photo pockets. On June 9, 2008, officials from the Department met with representatives of Target to discuss the scope of the investigations. See Memorandum to the File, dated June 10, 2008. On June 13, 2008, counsel for Petitioner met with officials from the Department to discuss the scope of the investigations. See Memorandum to the File, dated June 16, 2008.

The Department has analyzed the comments submitted by SH Industries, Target, A-L-L, and Petitioner and has determined that magnetic photo pockets are within the scope of the investigations. The Department has also modified the language describing the scope of these investigations to clarify the product coverage. In its request, SH Industries acknowledges that its magnetic photo pockets consist of flexible magnet material with a layer of plastic laminate fused along the sides of the flexible magnet. At no point does SH Industries argue that the flexible magnetic material in its photo pockets does not meet the physical description of the flexible magnets covered by the scope of the investigations. Rather, SH Industries argues that the attachment of a layer of clear plastic to the flexible magnet results in a product that is outside the scope of the investigations because the purpose of the product is to protect photographs.

Similarly, Target asserts that, rather than being a raw flexible magnet, magnetic photo pockets are properly characterized as finished retail products which use magnetic sheeting as an input. Target also argues that the clear plastic laminate is neither bonded nor laminated to the magnetic sheeting.

A-L-L argues that the scope should be limited to products produced by the Petitioner as evidenced by inclusion on the Petitioner's Web site.

As an initial matter, the Department does not generally define subject merchandise by end-use application. Moreover, because the language of the scope stated originally that "{s}ubject 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," *Preliminary Determination*, 73 FR at 22332, the plastic laminate fused to the sides of the flexible magnet does not remove the photo pockets from the scope of the investigations. Finally, the issue of whether an item appears on the Petitioner's Web site is not relevant to our analysis. For these reasons, we have determined that the magnetic photo pockets described by SH Industries are within the scope of the investigations. In addition, we have clarified that "{s}ubject 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." Finally, because we have received inquiries concerning the terminology in the scope language and product coverage, we have

clarified product coverage by reordering the scope language and including certain explanatory definitions. Our revised scope language neither enlarges nor contracts product coverage. See *Scope of Investigation* section above.

The Department received a scope-ruling request from Magnet LLC on May 21, 2008. Because this request was made after the *Preliminary Determination*, the Department has not addressed this request in this final determination. The Department will consider Magnet LLC's scope-ruling request in the event the Department publishes an antidumping duty order in this proceeding.

**Changes Since Preliminary Determination**

As discussed above, we have made certain changes to the language describing the scope of this investigation. Otherwise, because no party submitted case briefs and there are no other circumstances which warrant the revision of our *Preliminary Determination*, we have not made changes to our analysis or the dumping margins assigned in the *Preliminary Determination*.

**Adverse Facts Available**

For the final determination, we continue to find that, by failing to provide information we requested, Kin Fong Magnets Co., Ltd. (Kin Fong), Magruba Flexible Magnets Co., Ltd. (Magruba), and JASDI Magnet Co., Ltd. (JASDI), all mandatory respondents, did not act to the best of their ability in responding to our requests for information. Thus, the Department continues to find that the use of adverse facts available is warranted for these companies under sections 776(a)(2) and (b) of the Act. See *Preliminary Determination*, 73 FR at 22334. As we explained in *Preliminary Determination*, the rate of 38.03 percent we selected as the adverse facts-available rate is the highest margin alleged in the petition. *Id.* 73 FR at 22335. See also *Antidumping Duty Investigation Initiation Checklist: Raw Flexible Magnets from Taiwan* (October 18, 2007) (*Taiwan Initiation Checklist*). We included the range of margins from our Taiwan Initiation Checklist in *Notice of Initiation of Antidumping Duty Investigations: Raw Flexible Magnets from the People's Republic of China and Taiwan*, 72 FR 59071, 59075 (October 18, 2007). Further, as discussed in *Preliminary Determination*, we corroborated the adverse facts-available rate pursuant to section 776(c) of the Act.

**All-Others Rate**

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-averaged 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 Cartsos to File entitled "Antidumping Duty Investigation on Raw Flexible Magnets from Taiwan—Analysis Memo for All-Others Rate," dated April 18, 2008.

**Final Determination of Investigation**

We determine that the following weighted-average dumping margins exist for the period July 1, 2006, through June 30, 2007:

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

**Continuation of Suspension of Liquidation**

Pursuant to section 735(c)(1)(B) of the Act and 19 CFR 351.211(b)(1), we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of subject merchandise from Taiwan entered, or withdrawn from warehouse, for consumption on or after April 25, 2008, the date of the publication of *Preliminary Determination*. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margin, as indicated in the chart above, as follows: (1) The rate for the mandatory respondents will be the rates we have determined in this

final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 31.20 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

#### International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

#### Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: July 2, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-15743 Filed 7-9-08; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Notice of Request for Public Comment

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

**ACTION:** Notice of request for public comment.

**SUMMARY:** The Department of Commerce's International Trade Administration is seeking industry's involvement in providing information to inform the work program of the recently established Trilateral Committee on Transborder Data Flows under the Security and Prosperity Partnership of North America (SPP). In advance of its inaugural stakeholders' forum, tentatively scheduled for September 2008, the Committee is soliciting assistance in identifying and analyzing impediments to transborder data flows that impact on commercial activities. The Committee, composed of government representatives of each of the three countries, will work in consultation with the business community to identify and address impediments to electronic information flows across borders that impact economic growth. The Committee will also look at regulatory uncertainties related to the transborder flow of data and analyze the impact that they are having on the marketplace. The objective is to foster an integrated approach to information flows in North America while supporting regulatory cooperation to remove barriers to electronic information flows. Specifically, the Department is seeking: (1) A description of your company's activities. (2) How your company's activities involve cross-border data transfers and computerized information flows. (3) Impediments to cross-border data transfers and information flows. Impediments include legislative and regulatory requirements and other barriers. (4) Implications and costs for the company of these impediments (trade and investment). Business proprietary information should be marked accordingly.

Once this process has been completed, the Committee will make recommendations to Ministers responsible for SPP on how to solve identified impediments to such information flows.

**DATES:** August 18, 2008.

**ADDRESSES:** Input on the Committee's work program or inquiries about participation in the forum should be addressed to the contact below, and

received by close of business on Monday, August 18, 2008.

**FOR FURTHER INFORMATION CONTACT:** Joshua Harris, U.S. Department of Commerce, Office of Technology and Electronic Commerce, 1401 Constitution Avenue, NW., Room 2003, Washington, DC 20230; Telephone: 202-482-0142; e-mail: [joshua.harris@mail.doc.gov](mailto:joshua.harris@mail.doc.gov).

**SUPPLEMENTARY INFORMATION:** The SPP was launched in March of 2005 to increase security and enhance prosperity among the United States, Canada and Mexico through greater cooperation and information sharing. Consistent with those goals, and to serve as a catalyst for the development of electronic commerce and online business in North America, officials from Industry Canada, Mexico's Ministry of the Economy, and the United States Department of Commerce recently signed the Statement on the Free Flow of Information and Trade in North America ([http://spp.gov/pdf/Eng\\_Statement\\_of\\_Free\\_Flow.pdf](http://spp.gov/pdf/Eng_Statement_of_Free_Flow.pdf)), which formally established the Trilateral Committee. The Statement was announced at the SPP Leaders meeting April 21-22 in New Orleans.

Dated: July 2, 2008.

**Robin Layton,**

*Director, Office of Technology and Electronic Commerce.*

[FR Doc. E8-15626 Filed 7-9-08; 8:45 am]

BILLING CODE 3510-DR-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-X191

#### Marine Mammals; File Nos. 848-1695 and 932-1489

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of permit amendments.

**SUMMARY:** Notice is hereby given that the NMFS Pacific Islands Fisheries Science Center, Marine Mammal Research Program (MMRP) has been issued an amendment to scientific research and enhancement Permit No. 848-1695; and Dr. Teri Rowles, NMFS Marine Mammal Health and Stranding Response Program, has been issued an amendment to scientific research and enhancement Permit No. 932-1489.

**ADDRESSES:** The amendment and related documents are available for review upon written request or by appointment





**APPENDIX B**  
**LIST OF WITNESSES**



## CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

**Subject:** Raw Flexible Magnets from China and Taiwan  
**Inv. Nos.:** 701-TA-452 and 731-TA-1129-1130 (Final)  
**Date and Time:** July 10, 2008 - 9:30 a.m.

Sessions were held in connection with these investigations in the Main Hearing Room (room 101), 500 E Street, SW, Washington, D.C.

### **OPENING REMARKS:**

Petitioner (**Ritchie T. Thomas**, Squire, Sanders & Dempsey LLP)

### **In Support of the Imposition of Antidumping and Countervailing Duties:**

Squires, Sanders & Dempsey LLP  
Washington, D.C.  
on behalf of

Magnum Magnetics Corporation ("Magnum")

**Allen Love**, President, Magnum

**Tom Love**, Vice President, Magnum

**Gary Murphy**, Consultant, Magnum (former  
President, Magnetic Speciality, Inc.)

**Bruce Malashevich**, President, Economic Consulting  
Services, LLC

**In Support of the Imposition of  
Antidumping and Countervailing Duties (continued):**

**Robert R. Dennis**, President, Rochester Magnet Co.

**Brandon Fixsen**, Vice President, Operations,  
TradeNet Publishing, Inc.

**Ritchie T. Thomas** )  
 ) – OF COUNSEL  
**Iain R. McPhie** )

**Non-Parties In Opposition to the Imposition of  
Antidumping and Countervailing Duties:**

**Scott Lewis**, President, Adams Magnetic Products

**Thomas J. Gorgonne**, Chief Operating Officer and  
Vice President, The Magnet Group

**Brian Baird**, Purchasing Manager, Magnet  
Street Inc.

**Jack Nellessen**, President, Master Magnetics

**CLOSING REMARKS:**

Petitioner (**Ritchie T. Thomas**, Squires, Sanders & Dempsey LLP)

**APPENDIX C**  
**SUMMARY DATA**



Table C-1

## Raw flexible magnets: Summary data concerning the U.S. market, 2005-07, January-March 2007, and January-March 2008

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

Item	Reported data					Period changes			
	2005	2006	2007	January-March		2005-07	2005-06	2006-07	Jan-Mar.
				2007	2008				2007-08
U.S. consumption quantity:									
Amount	85,571	89,110	78,399	19,152	17,213	-8.4	4.1	-12.0	-10.1
Producers' share (1)	95.6	93.9	89.8	92.6	93.0	-5.8	-1.7	-4.1	0.4
Importers' share (1):									
China	***	***	***	***	***	***	***	***	***
Taiwan	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total imports	4.4	6.1	10.2	7.4	7.0	5.8	1.7	4.1	-0.4
U.S. consumption value:									
Amount	91,869	95,465	86,699	20,156	18,298	-5.6	3.9	-9.2	-9.2
Producers' share (1)	95.1	93.5	91.4	91.3	93.6	-3.7	-1.6	-2.1	2.3
Importers' share (1):									
China	***	***	***	***	***	***	***	***	***
Taiwan	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total imports	4.9	6.5	8.6	8.7	6.4	3.7	1.6	2.1	-2.3
U.S. shipments of imports from:									
China:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Taiwan:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Subtotal:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
All other sources:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
All sources:									
Quantity	3,806	5,473	7,997	1,413	1,196	110.2	43.8	46.1	-15.3
Value	4,518	6,230	7,482	1,751	1,165	65.6	37.9	20.1	-33.4
Unit value	\$1.19	\$1.14	\$0.94	\$1.24	\$0.97	-21.2	-4.1	-17.8	-21.4
Ending inventory quantity	969	1,153	2,041	1,130	1,122	110.7	19.0	77.0	-0.7
U.S. producers:									
Average capacity quantity	131,003	153,196	154,696	38,292	38,672	18.1	16.9	1.0	1.0
Production quantity	87,527	88,385	75,007	18,859	16,626	-14.3	1.0	-15.1	-11.8
Capacity utilization (1)	66.8	57.7	48.5	49.3	43.0	-18.3	-9.1	-9.2	-6.3
U.S. shipments:									
Quantity	81,765	83,637	70,401	17,739	16,017	-13.9	2.3	-15.8	-9.7
Value	87,351	89,235	79,217	18,405	17,133	-9.3	2.2	-11.2	-6.9
Unit value	\$1.07	\$1.07	\$1.13	\$1.04	\$1.07	5.3	-0.1	5.5	3.1
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Inventories/total shipments (1)	***	***	***	***	***	***	***	***	***
Production workers	386	388	329	326	289	-14.9	0.5	-15.3	-11.3
Hours worked (1,000s)	828	750	674	184	165	-18.6	-9.4	-10.1	-10.6
Wages paid (\$1,000s)	11,370	11,546	10,479	2,679	2,553	-7.8	1.5	-9.2	-4.7
Hourly wages	\$13.73	\$15.39	\$15.54	\$14.56	\$15.52	13.2	12.1	1.0	6.6
Productivity (pounds per hour)	103.1	113.7	107.4	100.1	96.8	4.2	10.3	-5.6	-3.3
Unit labor costs	\$0.13	\$0.14	\$0.14	\$0.15	\$0.16	8.7	1.6	6.9	10.3
Net sales:									
Quantity	86,609	89,077	75,118	***	***	-13.3	2.8	-15.7	***
Value	93,670	96,738	85,819	***	***	-8.4	3.3	-11.3	***
Unit value	\$1.08	\$1.09	\$1.14	***	***	5.6	0.4	5.2	***
Cost of goods sold (COGS)	76,522	78,008	67,995	***	***	-11.1	1.9	-12.8	***
Gross profit or (loss)	17,148	18,730	17,823	***	***	3.9	9.2	-4.8	***
SG&A expenses	16,629	15,111	13,354	***	***	-19.7	-9.1	-11.6	***
Operating income or (loss)	519	3,619	4,470	***	***	762.0	598.1	23.5	***
Capital expenditures	13,879	7,026	1,856	***	***	-86.6	-49.4	-73.6	***
Unit COGS	\$0.88	\$0.88	\$0.91	***	***	2.4	-0.9	3.4	***
Unit SG&A expenses	\$0.19	\$0.17	\$0.18	***	***	-7.4	-11.6	4.8	***
Unit operating income or (loss)	\$0.01	\$0.04	\$0.06	***	***	893.9	578.7	46.4	***
COGS/sales (1)	81.7	80.6	79.2	***	***	-2.5	-1.1	-1.4	***
Operating income or (loss)/ sales (1)	0.6	3.7	5.2	***	***	4.7	3.2	1.5	***

(1) "Reported data" are in percent and "period changes" are in percentage points.

Note.—Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from data submitted in response to Commission questionnaires.

**Table C-2**

**Raw flexible magnets: Summary data concerning the U.S. merchant market, 2005-07, January-March 2007, and January-March 2008**

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

Item	Reported data					Period changes			
	2005	2006	2007	January-March		2005-07	2005-06	2006-07	Jan.-Mar. 2007-08
				2007	2008				
<b>U.S. consumption quantity:</b>									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Importers' share (1):	***	***	***	***	***	***	***	***	***
China	***	***	***	***	***	***	***	***	***
Taiwan	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
<b>U.S. consumption value:</b>									
Amount	***	***	***	***	***	***	***	***	***
Producers' share (1)	***	***	***	***	***	***	***	***	***
Importers' share (1):	***	***	***	***	***	***	***	***	***
China	***	***	***	***	***	***	***	***	***
Taiwan	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total imports	***	***	***	***	***	***	***	***	***
<b>U.S. shipments of imports from:</b>									
<b>China:</b>									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
<b>Taiwan:</b>									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
<b>Subtotal:</b>									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
<b>All other sources:</b>									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
<b>All sources:</b>									
Quantity	3,806	5,473	7,997	1,413	1,196	110.2	43.8	46.1	-15.3
Value	4,518	6,230	7,482	1,751	1,165	65.6	37.9	20.1	-33.4
Unit value	\$1.19	\$1.14	\$0.94	\$1.24	\$0.97	-21.2	-4.1	-17.8	-21.4
Ending inventory quantity	969	1,153	2,041	1,130	1,122	110.7	19.0	77.0	-0.7
<b>U.S. producers:</b>									
<b>U.S. merchant market shipments:</b>									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
<b>Net sales:</b>									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Cost of goods sold (COGS)	***	***	***	***	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***	***	***	***	***
SG&A expenses	***	***	***	***	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***	***	***	***	***
Unit COGS	***	***	***	***	***	***	***	***	***
Unit SG&A expenses	***	***	***	***	***	***	***	***	***
Unit operating income or (loss)	***	***	***	***	***	***	***	***	***
COGS/sales (1)	***	***	***	***	***	***	***	***	***
Operating income or (loss)/ sales (1)	***	***	***	***	***	***	***	***	***

(1) "Reported data" are in percent and "period changes" are in percentage points.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from data submitted in response to Commission questionnaires.



**Table C-3**  
**Raw flexible magnets: Summary data concerning the U.S. captive market, 2005-07, January-March 2007, and January-March 2008**

\* \* \* \* \*

