

73 FR 9998, February 25, 2008

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-923]

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

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

SUMMARY: The Department of Commerce (the Department) preliminarily
determines 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.

DATES: Effective Date: February 25, 2008.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Eric Greynolds, AD/
CVD Operations, Office 3, Import Administration, U.S. Department of
Commerce, Room 4014, 14th Street and Constitution Avenue, NW.,
Washington, DC 20230; telephone: (202) 482-4793 and (202) 482-6071,
respectively.

SUPPLEMENTARY INFORMATION:

[[Page 9999]]

Case History

On September 21, 2007, the Department received the petition filed
in proper form by Magnum Magnetics Corporation (petitioner). This
investigation was initiated on October 11, 2007. See Raw Flexible
Magnets from the People's Republic of China: Notice of Initiation of
Countervailing Duty Investigation, 72 FR 59076 (October 18, 2007)
(Initiation Notice), and accompanying Initiation Checklist.\1\ On
November 8, 2007, petitioner timely requested a 65-day extension of the
preliminary determination in this investigation, pursuant to section
703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR
351.205(e). On November 26, 2007, the Department postponed the deadline
for the preliminary determination by 65 days to no later than February
19, 2008. See Raw Flexible Magnets from the People's Republic of China:
Postponement of Preliminary Determination in the Countervailing Duty
Investigation, 72 FR 67911 (December 3, 2007).

\1\ A public version of this and all public Departmental
memoranda is on file in the Central Records Unit (CRU), room 1117 in
the main building of the Commerce Department.

Due to the large number of producers and exporters of RFM in the PRC, we determined that it is not possible to investigate individually each producer or exporter and, therefore, selected three producers/exporters of RFM to be mandatory respondents: China Ningbo Cixi Import Export Corporation (Cixi), Polyflex Magnets Ltd. (Polyflex), and Qualita Magnets Ltd. (Qualita) (collectively, respondents). See Memorandum from the Team, through Melissa Skinner, Director, Office 3, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, regarding Respondent Selection (October 24, 2007).\2\

\2\ A public version of this memorandum is available in the CRU.

On October 25, 2007, we issued our initial countervailing duty (CVD) questionnaire to the Government of the People's Republic of China (the GOC) and the mandatory respondents. On October 25, 2007, we also issued directly to the three mandatory respondents an export shipment questionnaire. Polyflex and Qualita submitted their respective responses to the export shipment questionnaire on November 8, 2007. Polyflex reported that it exported subject merchandise that entered the United States during the period of investigation. Qualita reported that it did not export to the United States merchandise covered under the scope of the CVD investigation, which entered the United States during the period of investigation. Cixi did not submit a response to either the October 25, 2007, export shipment questionnaire or the initial CVD questionnaire.

On December 14, 2007, the GOC and Polyflex submitted their respective responses to the initial CVD questionnaire. On January 11, 2008, we issued a supplemental questionnaire to Polyflex and the GOC. Polyflex submitted its supplemental questionnaire response on February 1, 2008. On February 4, 2008, the GOC submitted its supplemental questionnaire response. On February 7, 2008, we issued a second supplemental questionnaire to Polyflex and the GOC, respectively. On February 12, 2008, Polyflex submitted a letter stating that it will no longer be participating in the CVD investigation on raw flexible magnets from the PRC.

Scope of the Investigation

The products covered by this investigation are certain flexible magnet sheeting, strips, and profile shapes. Subject flexible magnet sheeting, strips, and profile shapes are bonded magnets composed (not necessarily exclusively) of (i) any one or combination of various flexible binders (such as polymers or co-polymers, or rubber) and (ii) a magnetic element, which may consist of a ferrite permanent magnet material (commonly, strontium or barium ferrite, or a combination of the two), a metal alloy (such as NdFeB or Alnico), any combination of the foregoing with each other or any other material, or any other material capable of being permanently magnetized. Subject flexible magnet sheeting, strips, and profile shapes are capable of being permanently magnetized, but may be imported in either magnetized or unmagnetized (including demagnetized) condition. Subject merchandise

may be of any color and may or may not be laminated or bonded with paper, plastic or other material, which paper, plastic or other material may be of any composition and/or color. Subject merchandise may be uncoated or may be coated with an adhesive or any other coating or combination of coatings. Subject merchandise is within the scope of this investigation whether it is in rolls, coils, sheets, or pieces, and regardless of physical dimensions or packaging, including specialty packaging such as digital printer cartridges.

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

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

Scope Comments

In accordance with the Preamble to the Department's regulations (see Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997) (Preamble)), in our Initiation Notice, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the Initiation Notice. On November 7, 2007, SH Industries, an interested party, submitted timely scope comments.\3\ In its comments, SH Industries argues that magnetic photo pockets, which are flexible magnets with clear plastic laminations that form a pocket into

[[Page 10000]]

which photographs and other items may be inserted for display, should be excluded from the scope of the antidumping (AD) and CVD investigations on RFM from the PRC and Taiwan. On November 13, 2007,

petitioner filed a response to SH Industries' comments arguing that magnetic photo pockets are properly within the scope of the investigations.\4\ The Department is evaluating the comments submitted by both parties and will issue its decision regarding the scope of the investigations in the preliminary determination of the companion AD investigations due on April 18, 2008.

\3\ This public document is available on the public record of each investigation (A-570-922, A-583-842, and C-570-923) in the Department's CRU.

\4\ The public version of petitioner's submission is available on the public record of each investigation (A-570-922, A-583-842, and C-570-923) in the Department's CRU.

Injury Test

Because the PRC is a ``Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (the ITC) is required to 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 finding that there is a reasonable indication that an industry in the United States is materially injured 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).

Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

On October 11, 2007, the Department initiated AD and CVD investigations of RFM from the PRC and Taiwan. See Notice of Initiation of Antidumping Duty Investigations: Raw Flexible Magnets from the People's Republic of China and Taiwan, 72 FR 59071 (October 18, 2007), and also Initiation Notice (for the PRC CVD investigation). The CVD investigation and the AD investigations have the same scope with regard to the merchandise covered.

On February 12, 2008, the petitioner submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final CVD determination with the final determination in the companion AD investigation of RFM from the PRC. Therefore, in accordance with section 705(a)(1) of the Act, and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final determination in the companion AD investigation of RFM from the PRC. The final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued on or about July 2, 2008.

Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is January 1, 2006, through December 31, 2006. See 19 CFR

351.204(b)(2).

Application of the Countervailing Duty Law to Imports From the PRC

On October 25, 2007, the Department published the final determination of coated free sheet paper from the PRC. See Coated Free Sheet Paper from the Republic of China: Final Determination of Countervailing Duty Investigation, 72 FR 60645 (October 25, 2007) (CFS China Final), and accompanying Issues and Decision Memorandum (CFS Decision Memorandum). In that determination, the Department found, ``given the substantial differences between the Soviet-style economies and the PRC's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.'' See CFS Decision Memorandum at Comment 6, ``Comparison of the Department's Findings in the Georgetown Memo and the August 30 Market Economy Status Memo,'' see also Memorandum to David M. Spooner, ``Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China--Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-day Economy,'' (March 29, 2007) at 2.\5\

\5\ This public document is available on the public record of the investigation of coated free sheet paper from the PRC (C-570-907) in the Department's CRU.

Recently, the Department has preliminarily determined that it is appropriate and administratively desirable to identify a uniform date from which the Department will identify and measure subsidies in the PRC for purposes of the CVD law. See Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 72 FR 63875 (November 13, 2007) (CWP from the PRC); see also Light-walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 72 FR 67703 (November 30, 2007); Laminated Woven Sacks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 72 FR 67893 (December 3, 2007); and Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, 72 FR 71360 (December 17, 2007).

In CWP from the PRC, we preliminarily determined that date to be December 11, 2001, the date on which the PRC became a member of the WTO. Therefore, for the reasons outlined in CWP from the PRC, we have limited our analysis to subsidies bestowed after December 11, 2001, for this preliminary determination.

Use of Facts Otherwise Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ``facts otherwise available'' if, inter alia, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ``shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet

[[Page 10001]]

all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

In this case, Cixi did not provide the requested information that is necessary to determine a CVD rate for this preliminary determination. Specifically, Cixi did not respond to either the Department's October 25, 2007, shipment data questionnaire or October 25, 2007, initial CVD questionnaire. Thus, in reaching our preliminary determination, pursuant to section 776(a)(2)(A) and (C) of the Act, we have based Cixi's CVD rate on facts otherwise available.

On February 12, 2008, Polyflex, which was the only active mandatory respondent, withdrew from this investigation. Thus, in reaching our preliminary determination, pursuant to section 776(a)(2)(C) and (D) of the Act, we have based Polyflex's CVD rate on facts otherwise available.

Use of Adverse Inferences

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies

on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as ``information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session (1994) at 870. The Department considers information to be corroborated if it has probative value. See SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. See SAA at 869.

In selecting from among the facts available, the Department has determined that, in the instant investigation, an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit a response to the Department's CVD questionnaire, Cixi did not cooperate to the best of its ability in this investigation. We also find that Polyflex, by withdrawing from the investigation, has failed to cooperate to the best of its ability in this investigation. Accordingly, we find that an adverse inference is warranted to ensure that Cixi and Polyflex will not obtain a more favorable result than had each company fully complied with our request for information. Thus, in those instances in which it determines to apply AFA, the Department, in order to satisfy itself that such information has probative value, will examine, to the extent practicable, the reliability and relevance of the information used. With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In selecting the AFA rate, it is the Department's practice to select, where possible, the highest calculated final net subsidy rate for the same type of program at issue. Where such information is not available, it is the Department's practice to apply the highest subsidy rate for any program otherwise listed. See CFS Decision Memorandum at ``Use of Adverse Facts Available'' section and Comment 24.

The Department's practice when selecting an adverse margin from among the possible sources of information is to ensure that the margin is sufficiently adverse ``as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' See Notice of Final Determination of Sales at Less than Fair Value: Static Random

Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ``that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' See SAA at 870. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior experience, selecting the highest prior margin ``reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' See Rhone Poulenc, Inc. v. United States, 899 F. 2d 1185, 1190 (Fed. Cir. 1990).

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render benefit data not relevant. Where circumstances indicate that the information is not appropriate as adverse facts available, the Department will not use it. See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996). In the instant case, no evidence has been presented or obtained which contradicts the relevance of the benefit data relied upon in a prior China CVD investigation. Thus, in the instant case, the Department finds that the information used has been corroborated to the extent practicable.

Because Cixi and Polyflex failed to act to the best of their ability in this investigation, as discussed above, for each program examined, we made the adverse inference that each company benefitted from each program. To calculate the program rate for the nine alleged income tax programs pertaining to either the reduction of the income tax or the payment of no tax, we have applied an adverse inference that Cixi and Polyflex paid no income tax during the POI. The standard income tax rate for corporations in China is 30 percent, plus a 3 percent provincial income tax rate. Therefore, the highest possible benefit for these nine income tax programs is 33 percent. We are applying the 33 percent AFA rate on a combined basis (i.e., the nine programs combined provided a 33 percent benefit). This 33

[[Page 10002]]

percent AFA rate does not apply to tax credit and refund programs. For the remaining programs in this investigation (including the tax credit and refund programs), we used the approach from the CFS China Final, as discussed above. Specifically, we are applying, where available, the highest subsidy rate calculated for a similar program in the CFS China Final. Absent a subsidy rate calculated for a similar program, we are applying the highest subsidy rate for any program otherwise listed in the CFS China Final. See CFS Decision Memorandum at ``Analysis of Programs.'' On this basis, the AFA countervailable subsidy rate determined for Cixi and Polyflex is 70.41 percent ad valorem. See Memorandum to the File regarding Adverse Facts Available Rate for China Ningbo Cixi Import Export Corporation and Polyflex Magnets Ltd. (February 19, 2008).\6\

\6\ A copy of this public memorandum in on the public file in the CRU.

Due to the circumstances of this case, we are taking public information concerning subsidy programs from the record of the CFS China CVD investigation and placing it on the record of this case for use as AFA because we have no other information on the record of this case from which to select appropriate AFA rates for non-income tax programs, and because this is an investigation, we have no previous segments of the proceeding from which to draw potential AFA rates. See Memorandum to the File regarding Placing on the RFM Record the Final Affirmative Countervailing Duty Determination of Coated Free Sheet Paper from the People's Republic of China (February 19, 2008). For the final determination, we invite parties to comment on the AFA rates applied to the programs alleged in this investigation.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated a countervailable subsidy rate for each producer/exporter of the subject merchandise individually investigated. 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...	70.41 percent ad valorem.
Polyflex Magnets Ltd.....	70.41 percent ad valorem.
All-Others.....	70.41 percent ad valorem.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of the subject merchandise from the PRC that are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the Federal Register, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above.

This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) 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 relating 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 administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Unless otherwise notified by the Department, interested parties may submit case briefs within 50 days of the date of publication of the preliminary determination in accordance with 19 CFR 351.309(c)(i). As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case briefs are filed. See 19 CFR 351.309(d).

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).

[[Page 10003]]

February 19, 2008.
David M. Spooner,
Assistant Secretary for Import Administration.

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