



EUROPEAN UNION
DELEGATION TO THE UNITED STATES OF AMERICA

**COMMENTS BY THE EUROPEAN UNION
TO THE BUREAU OF INDUSTRY AND SECURITY, OFFICE OF TECHNOLOGY
EVALUATION, U.S. DEPARTMENT OF COMMERCE**

**REQUEST FOR COMMENTS:
SECTION 232 NATIONAL SECURITY INVESTIGATION OF IMPORTS OF NEODYMIUM-
IRON-BORON (NDFEB) PERMANENT MAGNETS (86 FR 53277)**

**Submitted by:
The Delegation of the European Union
to the United States of America
November 12, 2021**

2175 K Street NW, Washington, DC 20037-1831 Telephone: +1 (202) 862-9500 Fax: +1 (202) 429-1766
E-Mail Address: delegation-washington@eeas.europa.eu

<http://www.EUintheUS.org>

The European Union (“EU”) takes note of the initiation, on 21 September 2021, of an investigation under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), to determine the effect on US national security from imports of neodymium-iron-boron (NdFeB) permanent magnets (“neodymium magnets”). In response to the public request for comments (as indicated at Federal Register Notice 86 FR 53277 of 27 September, Federal Docket Number Doc. 210902–0176), the EU takes this opportunity to convey the following.

The current US administration continues to launch US Section 232 national security investigations, for what appears to be industrial policy reasons. The proliferation of such investigations and possible actions under the guise of national security to protect certain industrial sectors against foreign competition is of great concern to the EU. The EU and its Member States have been a close national security partner of the United States (“US”) for decades and reject the notion that their exports as well as their industries, could threaten US national security.

As indicated in the US Federal Register Notice itself, neodymium magnets are used in defence applications such as fighter aircrafts and missile systems. However, neodymium magnets have an ever-increasing broad range of industrial applications. They are used as essential components of electric vehicles, wind turbines, computer hard drives, audio equipment, and magnetic resonance imaging (MRI) devices. Moreover, the industrial applications for neodymium magnets are expected to increase significantly in the coming decade¹. A report on “Rare Earth Elements in National Defence for Congress” estimated that the Department of Defence uses less than 5% of domestic consumption of rare earths². Such factors undermine the justification of launching an investigation based on the grounds of national security.

The EU wants to recall that, with regard to the critical material sector (which includes permanent magnets), the EU and the US have agreed during the first inaugural meeting of the EU-US Trade and Technology Council on 29 September 2021 to work together on advancing respective supply chain resilience and security of supply in this key sector. Furthermore, as part of the secure supply chains working group, the EU and the US have agreed to cooperate to: “increase transparency of supply and demand; map respective existing sectoral capabilities; exchange information on policy measures and research and development priorities; and cooperate on strategies to promote supply chain resilience and diversification³”. Any unilateral measures, including import restrictions, by the US that could directly or indirectly affect the interests of the EU with regard to the supply chains of neodymium magnets would therefore contradict this forward-looking cooperative transatlantic agenda.

The EU is an important trading partner for the US: in 2020, US imports of neodymium magnets from the EU constituted the third most important source of US imports representing around 15% of the total⁴. As a result, the EU constitutes a reliable source of input, with a significant potential to further increase in the coming years, which would contribute towards a more stable and diversified sourcing of such important inputs for US and EU industries.

¹According to recent forecasts, the global Electric Vehicles fleet could reach 230 million vehicles in 2030, compared to the current 10 million vehicles. Neodymium magnets are an essential component for the production of electric vehicles. (source: <https://www.iea.org/reports/global-ev-outlook-2021?mode=overview>)

² Rare Earth Elements in National Defense: Background, Oversight Issues, and Options for Congress Valerie Bailey Grasso Specialist in Defense Acquisition December 23, 2013 <https://sgp.fas.org/crs/natsec/R41744.pdf>:

³EU-US TTC Inaugural Statement available at: https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_21_4951

⁴ US statistics: HTS code 8505110070.

The EU fully understands the need for the US to further enhance its domestic production capabilities in this strategic sector. The EU itself is aiming to develop and enhance its own magnet value chain⁵ and reduce its import dependency. Keeping market conditions predictable and undistorted is a key to attain these objectives. The European Raw Materials Alliance report on the “Rare Earth Magnets and Motors”⁶ shows the intention of the EU industry to increase the magnets production from the current 500 tonnes to 7000 tonnes per year by 2030, and to close the gaps in the domestic supply chain from rare earths to magnets. It is also important to note that one of EU key players in the magnet value chain has important ties with the US. Therefore, the EU industry would be negatively affected by any import restrictions which might be taken by the US either directly or indirectly via potential trade diversion effects.

At the same time, to our knowledge, the US industry is not yet in a position to manufacture neodymium magnets at a commercial scale⁷. As the US supply chain review notes, developing a complete supply chain for neodymium magnets is an extensive process, which is likely to take several years. As a result, the EU respectfully asks the US to consider the full extents of a potential US decision to apply unilateral measures, including import restrictions, at this stage of the respective development of the EU and US industries.

The EU would also like to recall that no exception in the WTO's General Agreement on Tariffs and Trade (“GATT”) can justify unilateral measures, such as import restrictions, taken by a developed country for the purpose of protecting a domestic industry against foreign competition. In situations of unfair competition, the trade defence instruments may offer a remedy, provided the relevant criteria are met. While the GATT provides for security exceptions, the scope of these exceptions has been circumscribed carefully for specific situations and conditions, which do not appear to be present in this case.

The EU continues to believe that trade distortive actions based on national security cannot provide a lasting solution for any industry-based sector, including US neodymium magnets producers. Moreover, the experience with import adjustments under Section 232 with respect to steel and aluminium has shown that US trading partners, including the EU, have not left these trade restrictive measures unanswered. Consequently, the EU will consider and maintain open its options vis-a-vis the US, also in function of the actions the US may possibly adopt as a result of the investigation.

Without prejudice to its WTO rights, the EU also wishes to underline that the Department of Commerce's analysis of national security must be narrowly tailored to focus on real and direct threats to national security. The EU urges the US to take all relevant factors into account, before any unilateral action is taken which could lead to negative effects on EU exports and production, as well as potential disruptions of supply chains on either sides of the Atlantic. The US should also consider to differentiate based on the threat, if any, posed to US national security by any specific foreign suppliers. The EU wishes that the US should take into account all factors and possible consequences from taking unilateral actions, and carefully review the conditions in the domestic market.

⁵ The Commission's 2020 Communication on Critical Raw Materials (COM(2020) 474 final) sets out that “*European Raw Materials Alliance will focus on the most pressing needs, which is to increase EU resilience in the rare earths and magnets value chain, as this is vital to most EU industrial ecosystems*”.

⁶ <https://erma.eu/app/uploads/2021/09/01227816.pdf>

⁷ This has also been confirmed by one US domestic producer: <https://www.usare.com/post/bipartisan-house-bill-to-boost-rare-earth-permanent-magnet-manufacturing-in-the-u-s>

The EU wishes to emphasise the need for both the EU and US to advance their ongoing existing strands of cooperation for this strategic product. The US supply chain review recalls that the EU and the US have already an extensive cooperation for several initiatives⁸ and, as mentioned above, can further develop this within the EU and US Trade and Technology Council. Against this background, the EU wishes that the US would focus on enhancing transatlantic cooperation on neodymium magnets, rather than on imposition of unilateral measures which would directly or indirectly contradict the spirit of such cooperation.

For these reasons and to conclude, the EU asks the US Department of Commerce, to refrain from the introduction of new US Section 232 measures on neodymium magnets.

⁸ 100-Day Reviews under Executive Order 14017 – June 2021 – page 164 (available at: https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf?utm_source=sfmc%E2%80%8B&utm_medium=email%E2%80%8B&utm_campaign=20210610_Global_Manufacturing_Economic_Update_June_Members)