Magnesium from China, Russia, and Ukraine

Investigations Nos. 731-TA-696-698 (Final)

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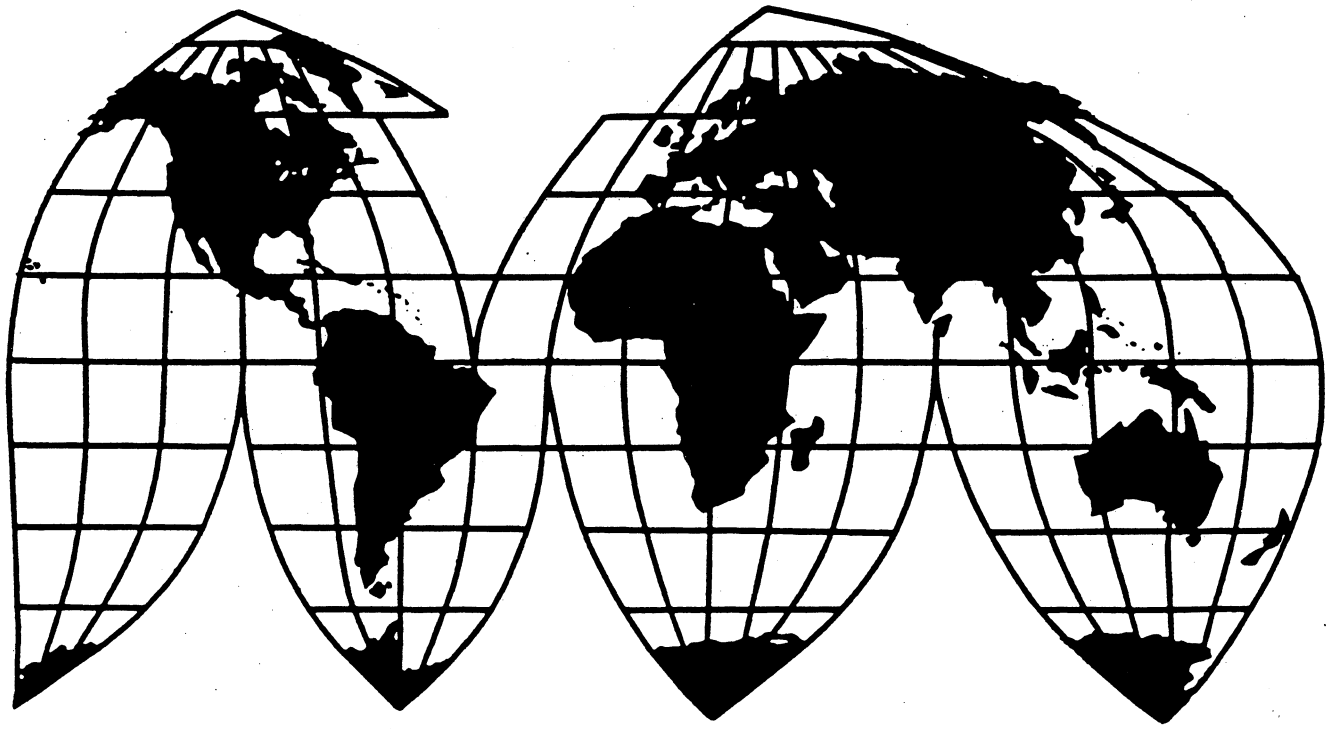
U.S. International Trade Commission



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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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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.

DETERMINATIONS AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-696-698 (Final)

MAGNESIUM FROM CHINA, RUSSIA, AND UKRAINE

Determinations

On the basis of the record[1] developed in the subject investigations, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured[2] by reason of imports from China, Russia, and Ukraine of pure magnesium,[3] provided for in subheading 8104.11.00 of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from China and Russia of alloy magnesium,[4] provided for in subheading 8104.19.00 of the HTS, that have been found by the Department of Commerce to be sold in the United States at LTFV.

Background

The Commission instituted these investigations effective November 7, 1994, following preliminary determinations by the Department of Commerce that imports of magnesium from China, Russia, and Ukraine were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution 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

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

[2] Chairman Watson, Vice Chairman Nuzum, and Commissioner Crawford dissenting.

[3] Pure magnesium encompasses: (1) products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products containing less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as "pure" magnesium); and (3) products (generally referred to as "off-specification pure" magnesium) that contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium. "Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8 percent by weight. It generally does not contain, individually or in combination, 1.5 percent or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium, and rare earths.

[4] Alloy magnesium contains 50 percent or greater, but less than 99.8 percent, primary magnesium, by weight, and one or more of the following: aluminum, manganese, zinc, silicon, thorium, zirconium, and rare earths, in amounts which, individually or in combination, constitute not less than 1.5 percent of the material, by weight. Products that meet the aforementioned description but do not conform to ASTM specifications for alloy magnesium are not included in the definition of alloy magnesium. In addition to primary magnesium, alloy magnesium may contain magnesium scrap, secondary magnesium, or oxidized magnesium in amounts less than the primary magnesium itself.

December 7, 1994 (59 F.R. 63105). The hearing was held in Washington, DC, on March 28, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

Based on the record in these final investigations, we determine that the industry in the United States producing pure magnesium is materially injured by reason of imports of pure magnesium from China, Russia, and Ukraine that are sold in the United States at less than fair value ("LTFV").[5] We also determine that the industry in the United States producing alloy magnesium is neither materially injured nor threatened with material injury by reason of imports of alloy magnesium from China and Russia that are sold at LTFV.[6] [7]

I. LIKE PRODUCT AND DOMESTIC INDUSTRY

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission first defines the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930, as amended (the "Act"), defines the relevant domestic industry as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[8] In turn, the statute defines "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."[9] The Commission's decision regarding the appropriate like product or products is essentially 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.[10] No single factor is dispositive, and the Commission may consider factors it deems relevant based upon the facts of a particular investigation. The Commission looks for "clear dividing lines among possible like products" and disregards minor variations.[11]

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[5] Chairman Watson, Vice Chairman Nuzum, and Commissioner Crawford determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of the LTFV imports of pure magnesium. See their dissenting views.

[6] Commissioner Crawford finds that the domestic industry producing primary magnesium is neither materially injured nor threatened with material injury by reason of the LTFV imports of alloy magnesium. See her separate and dissenting views.

[7] The petition seeking initiation of these investigations was filed prior to the effective date of the Uruguay Round Agreements Act. These investigations thus remain subject to the substantive and procedural rules of the pre-existing law. See Pub. L. 103-465, 108 Stat. 4809 (1994) at § 291.

Whether the establishment of an industry in the United States is materially retarded is not an issue in these investigations.

[8] 19 U.S.C. § 1677(4)(A).

[9] 19 U.S.C. § 1677(10). In analyzing like product issues, the Commission generally considers a number of factors including: (1) physical characteristics and uses, (2) interchangeability of the products, (3) channels of distribution, (4) customer and producer perceptions of the products, (5) the use of common manufacturing facilities and production employees, and (6) where appropriate, price. Calabrian Corp. v. United States, 794 F. Supp. 377, 382, n.4 (Ct. Int'l Trade 1992).

[10] See 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).

[11] Torrington Co. v. United States, 747 F. Supp. at 748-49.

B. Articles Subject to Investigation

The imported articles subject to these investigations are defined as encompassing two separate classes or kinds of merchandise -- pure primary magnesium and alloy primary magnesium. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and is produced by decomposing raw materials into magnesium metal.[12] Commerce originally defined the two classes or kinds strictly by metal content, i.e., pure primary magnesium was defined as encompassing all products that contain not less than 99.8 percent primary magnesium, by weight, and the second class or kind was defined as alloy primary magnesium products which contain 50 percent or greater, but less than 99.8 percent, primary magnesium, by weight.

In its final determinations, Commerce modified the scope of each class or kind "in order to clarify the distinctions between pure magnesium and alloy magnesium."[13] The modified scope language broadens the definition of pure magnesium to include "off-specification pure" ("off-spec") magnesium and narrows the definition of alloy magnesium to exclude such imports. Thus, pure primary magnesium encompasses:

(1) products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium;

(2) products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium; and

(3) products (generally referred to as "off-specification pure" magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM [American Society for Testing and Materials] specifications for alloy magnesium.[14]

Pure primary magnesium is used chiefly as a chemical in the desulfurization and chemical reduction industries, and as an input in producing alloy.[15]

Alloy magnesium is used principally for casting or in wrought form. It is harder and stronger than pure magnesium and may possess a higher corrosion resistance. It is "cast and sold in various physical forms and sizes, including ingots, slabs, billets and other shapes."[16] As defined by Commerce in its modified scope language, the investigation of alloy--

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[12] Notices of Final Determination of Sales at Less than Fair Value, 60 Fed. Reg. 16432 (Ukraine), 60 Fed. Reg. 16437 (China), and 60 Fed. Reg. 16440 (Russia) (March 30, 1995).

[13] Notices of Final Determination of Sales at Less than Fair Value. With respect to pure magnesium from Russia, Commerce also found and stated in its notice that sales through certain supply channels had an LTFV margin of zero, and indicated that it would direct the Customs Service to exclude those imports from any order resulting from the investigation. 60 Fed. Reg. at 16450.

[14] Notices of Final Determination of Sales at Less than Fair Value. Commerce has defined "off-specification pure" magnesium as--

> pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually, or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths. Id.

[15] Id.

[16] Notice of Final Determination (Russia at 5; China at 4).

> covers alloy primary magnesium which contains 50% or greater, but less than 99.8%, primary magnesium, by weight, and one or more of the following: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths in amounts which, individually or in combination, constitute not less than 1.5% of the material, by weight. Products that meet the aforementioned description but do not conform to ASTM specifications for alloy magnesium are not included in the scope of this investigation.[17]

Primary magnesium anodes, granular primary magnesium (including turnings and powder) and secondary magnesium are excluded from the scope of the investigations for both classes or kinds.

C. Like Product Issues

In its preliminary determination, the Commission found that a single like product, consisting of all primary magnesium, corresponded to each class or kind of merchandise subject to investigation as then defined by Commerce.[18] Consequently, the Commission defined the domestic industry to consist of all primary magnesium producers, but stated that it intended to reexamine the like product and domestic industry questions in any final investigations, particularly with respect to the issues of interchangeability and overlap in end uses.[19]

1. Whether Pure Magnesium and Alloy Magnesium Constitute Separate Like Products

In these final investigations, we find two like products, pure magnesium and alloy magnesium, corresponding to each class or kind defined by Commerce.[20] Under Commerce's original scope definitions, there were not clear lines dividing domestic pure and alloy magnesium products like the pure imports or the alloy imports under investigation. Because Commerce has redefined the scopes of the investigations of each class or kind, the domestic products that correspond to each class or kind are more like each respective class or kind than they appeared to be under Commerce's original scope definition. In light of this refinement and the evidence suggesting more limited interchangeability between domestic pure and alloy magnesium, we find that there are two separate like products -- pure

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[17] Id.

[18] Magnesium from the People's Republic of China, Russia, and Ukraine, Invs. Nos. 731-TA-696-698 (Preliminary), USITC Pub. 2775 (May 1994) at I-11. Commissioner Rohr found that the product like both the imported pure magnesium and the imported alloy magnesium was domestic commodity-grade pure magnesium. USITC Pub. 2775 at I-40 (Separate Views of Commissioner Rohr). He based this determination on the fact, subsequently confirmed by Commerce's redefinition of the scope of these investigations, that the overwhelming majority of so-called "alloy" magnesium imports under the prior Commerce definition, was being used in the manner of "pure" magnesium rather than as "alloy" magnesium as he had defined alloy magnesium in Magnesium from Canada, Inv. Nos. 701-TA-309 and 731-TA-528 (Final), USITC Pub. 2550 (Aug. 1992).

[19] Magnesium from the People's Republic of China, Russia, and Ukraine, USITC Pub. 2775 at I-11.

[20] Although we are not bound by our definitions of the like product from prior investigations and panel reviews, we note that we define the like products in these final investigations in the same manner that we defined the like products in the remand investigation of Magnesium from Canada, Inv. Nos. 701-TA-309 and 731-TA-528 (Final) (Remand), USITC Pub. 2696 (Nov. 1993).

magnesium and alloy magnesium -- each corresponding to the respective class or kind found by Commerce.[21]

The predominant physical characteristic of all primary magnesium is the magnesium content that imparts to both pure and alloy products their essential characteristics as a lightweight, low density metal with a high strength-to-weight ratio.[22] Pure magnesium contains at least 99.8 percent magnesium by weight, and alloy magnesium contains less than 99.8 percent, but generally at least 90 percent magnesium, by weight.[23] Alloy magnesium is produced by adding alloying elements, typically aluminum and zinc, at the end of the production process.[24]

Pure and alloy magnesium typically have different principal uses, however.[25] Pure magnesium is an alloying agent and a chemical reagent used in aluminum alloying, iron and steel desulfurization, nonferrous metals production, and as anodes. Magnesium alloys, on the other hand, generally are used by die, sand, and mold casters that take advantage of the structural properties of alloy magnesium to produce structural products such as automobile and power tool components.

For the most part, pure and alloy magnesium are targeted for distinct markets and are not interchangeable.[26] Although there are a small number of instances in which alloy magnesium could be used in applications that require pure magnesium, it rarely is so used because alloy magnesium contains other elements that may not be acceptable for the particular application.[27] Likewise, pure magnesium is unacceptable in many applications that require alloy magnesium, because pure magnesium does not have the mechanical properties or corrosion resistance of alloy magnesium.[28]

Both domestically-produced pure and alloy magnesium are mainly distributed directly to unrelated end users.[29] However, the significance of the similarity in channels of distribution is mitigated by the evidence that the different products generally are sold to different classes of end users.

Customers perceive differences among pure and alloy magnesium based on the distinct end uses for the respective products.[30] Customer perceptions reflect the fact that pure magnesium is sold predominantly to end users such as aluminum producers and desulfurizers, while alloy magnesium is sold predominantly to diecasters.

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[21] Commissioner Rohr notes that he explained a difference between pure and alloy magnesium in his separate views in Magnesium from Canada at 26-29. He readopts those views in these investigations. He notes that he did not consider alloy a separate like product in the preliminary investigations because there was no evidence that the so-called "alloy" magnesium being imported was really alloy as he defined it. In these final investigations, it was discovered that the vast majority of the originally defined alloy was in fact like pure magnesium. There was also an amount, albeit very small, of true alloy. Because of this small amount, he does consider the alloy like product and domestic industry to be relevant to these investigations.

[22] Confidential Staff Report (hereinafter referred to as "CR") at I-7; Public Staff Report (hereinafter referred to as "PR") at I-6.

[23] Id.

[24] CR at I-12; PR at I-9.

[25] See CR at I-7-9; PR at I-6-7.

[26] CR at I-8-9; PR at I-6-7.

[27] CR at I-50; PR at I-23.

[28] Id. at n.74.

[29] CR at I-10-11; PR at I-8.

[30] CR at I-11; PR at I-8.

As in the preliminary investigations, there is some evidence of users who predominantly purchase one type of magnesium also purchasing the other type on occasion.[31] However, the few sales of pure magnesium to diecasters (who usually purchase alloy magnesium for structural applications) do not necessarily reflect cross-use sales. Rather, there is evidence that diecasters, on infrequent occasions, purchase pure magnesium and alloy it themselves before casting.[32] Further, the record indicates that some sales to desulfurizers and aluminum producers originally categorized as sales of alloy magnesium may actually consist of sales of "off-spec" pure magnesium.[33] Commerce's clarification of the scope in these final investigations, that off-spec imports are defined as pure rather than alloy magnesium, has reduced the number of instances of cross-kind sales of both imported and domestic products.[34]

The existence of separate markets for pure and alloy magnesium has resulted in different price trends and different demand dynamics in each basic market. Prices for alloy magnesium generally are higher and more stable than prices for pure magnesium.[35]

As we found in the preliminary investigations, the companies that produce both pure and alloy magnesium use the same machinery, equipment and employees for both.[36] However, this factor is outweighed by the evidence in these final investigations concerning differences in certain physical characteristics, end uses and customer perceptions, the lack of interchangeability between pure and alloy magnesium, and the differences in price levels and trends. Accordingly, for the above reasons, we find pure and alloy magnesium to be separate like products.

2. Whether Pure Magnesium Includes "Off-Spec" Pure Magnesium

We further define the domestic product like the imported pure magnesium to include off-spec pure magnesium. All pure magnesium, whether or not it meets ASTM specifications, is produced by the same processes in the same facilities with the same equipment and employees.[37] The physical characteristics of pure and off-spec pure are essentially the same, with magnesium being the predominant component, although off-spec magnesium contains slightly less magnesium. Desulfurizers and alloyers can use and have purchased off-spec magnesium for the same applications for which they use pure magnesium.[38] The prices for off-spec pure are lower than those for pure, since most purchasers are willing to purchase off-spec only at a discount. However, we find that this one factor is outweighed by the commonality of production processes and facilities, close

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[31] See USITC Pub. 2775 at I-9-10 and Table E-1, CR at E-3; PR at E-3.

[32] CR at I-8, n.30; PR at I-7, n.30.

[33] See, e.g., CR at I-50, notes 75 and 76; PR at I-23, notes 75 and 76.

[34] See Table E-1, CR at E-3; PR at E-3. In one instance, reflected in the table, ***. Affidavit of Mag Corp. President Lee R. Brown (Exhibit 1 to Petitioners' Postconference Brief).

[35] Report at I-13.

[36] USITC Pub. 2775 at I-9, I-11.

[37] "Off-spec" pure magnesium ***. Petitioners Posthearing Brief at Appendix B, Question 1, p. 10.

[38] CR at I-50, n.76; PR at I-23, n.76; Purchaser questionnaire responses of ***. One aluminum producer indicated that ***. *** purchaser questionnaire response. In addition, although most aluminum producers indicated that they have not purchased off-spec pure, and several indicated that they would not use it, some aluminum producers stated that off-spec could be substituted for pure depending on the chemical content, e.g., if it had high aluminum content. Purchaser questionnaire responses of ***.

similarities in physical characteristics, interchangeability for a number of uses, and customer perceptions.

In sum, we find that the domestic product like the LTFV pure magnesium imports is pure magnesium, whether or not it meets ASTM specifications, and that the corresponding domestic industry is the industry producing pure magnesium. We find that the domestic product like the LTFV imports of alloy magnesium is domestic alloy magnesium, and that the corresponding domestic industry is the industry producing alloy magnesium.[39] [40]

II. CONDITION OF THE DOMESTIC INDUSTRIES[41]

In assessing whether the domestic industry is materially injured or threatened with material injury by reason of LTFV and subsidized imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[42] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. 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."[43]

A. Domestic Pure Magnesium Industry

There are several conditions of competition distinctive to the domestic industry producing pure magnesium. Pure magnesium is sold mainly to aluminum producers, steel desulfurizers, magnesium granule producers, and chemical and pharmaceutical manufacturers.[44] The demand for pure magnesium is dictated largely by the demand in these end-use markets. Thus, the domestic industry producing pure magnesium may be affected by the business cycles of the industries that consume pure magnesium. The demand in the consuming industries appears to have remained relatively steady, with a slight increase, during the period investigated.[45]

Second, electrolytic cells used in the production of both pure and alloy magnesium will deteriorate if they are not kept running constantly. If they deteriorate, they must be rebuilt. The costs of rebuilding these cells are so high that producers must try to keep the

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[39] We note that *** the pure magnesium produced by Northwest Alloys is used internally. See Transcript of Conference (April 21, 1994) ("Conference Tr.") at 117; CR at I-17. The statutory definition of domestic industry does not provide for excluding captive production. 19 U.S.C. § 1677(4)(A). See U.S. Steel Group v. United States, 873 F. Supp. 673, 681-82 (Ct. Int'l Trade 1994), appeal docketed, No. 95-1245 (Fed. Cir. March 22, 1995). No party has argued for exclusion of captive production in these investigations, and we see no basis for exclusion of Northwest's internal shipments.

[40] There is evidence that one U.S. producer imported a small amount of primary magnesium from Russia. CR at I-14; PR at I-10. This firm is therefore a "related party," and we may exclude it from the industry if "appropriate circumstances" exist. See 19 U.S.C. § 1677(4)(B). We conclude that such appropriate circumstances do not exist. That firm's importation of subject merchandise was so small relative to its production of the like product that it is clear its interests are those of a producer, not an importer of the product. Moreover, ***.

[41] Vice Chairman Nuzum does not join the discussion of the condition of the domestic industries.

[42] 19 U.S.C. § 1677(7)(C)(iii).

[43] Id.

[44] CR at I-50, n.73; PR at I-23, n.73.

[45] Table 1, CR at I-15; PR at I-11.

cells in constant operation. Thus, to be cost-effective, producers must maintain continuous and steady production of both pure and alloy magnesium.[46]

Third, the Commission found in August 1992 that the domestic pure magnesium industry was experiencing material injury by reason of unfairly traded imports from Canada.[47] Suspension of liquidation of the subject Canadian imports took effect in December 1991 and January 1992,[48] prior to the influx of imports subject to the current investigations in the latter half of 1992. After the countervailing duty and antidumping orders were issued in August 1992, imports of pure magnesium from Canada declined.[49] Shortly thereafter, subject imports from China, Russia and Ukraine began entering the United States.[50]

Apparent U.S. consumption of pure magnesium increased somewhat from 1992 to 1993, and then declined slightly in 1994, for a small total increase over the period.[51] U.S. producers' domestic shipments moved by larger magnitudes in the opposite direction, declining substantially from 1992 to 1993 and then increasing to a lesser degree in 1994.[52] Consequently, U.S. producers' share of the domestic pure magnesium market dropped substantially between 1992 and 1993, and despite some recovery in 1994, declined significantly over the period of investigation.[53]

Domestic production decreased each year from 1992 to 1994.[54] Capacity remained steady from 1992 to 1993, and then decreased in 1994 due to the closing of one of Dow's two plants.[55] Capacity utilization declined from 1992 to 1993, but then rose when capacity dropped in 1994, despite the concurrent decrease in production.[56] Inventories first rose substantially from 1992 to 1993 and then dropped in 1994 to slightly below 1992 levels.[57]

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[46] Transcript of Hearing (March 28, 1995) ("Hearing Tr.") at 73-74; Petitioners' Prehearing Brief at 18, 31 and Exhibit Q.

[47] Magnesium from Canada, USITC Pub. 2550. See also USITC Pub. 2696 (finding material injury to separate pure and alloy magnesium industries by reason of Canadian imports).

[48] 56 Fed. Reg. 63927 (Dec. 6, 1991); 57 Fed. Reg. 6094 (Feb. 20, 1992).

[49] Imports of pure magnesium from countries not subject to the current investigations, which consist mostly of imports from Canada, dropped from 21,758 metric tons in 1991 to 1,251 metric tons in 1992 and rose only slightly, to 2,226 metric tons, in 1993. USITC Pub. 2775 at C-7, Table C-9.

[50] We also note that imports of pure and alloy magnesium from Russia and Ukraine became eligible for MFN treatment in June 1992.

[51] Table 1 and Table A-1, CR at I-15 and A-3; PR at I-11 and A-3. Apparent consumption increased from *** metric tons in 1992 to *** metric tons in 1993, and then decreased to *** in 1994.

[52] Tables 3 and A-1, CR at I-20 and A-4; PR at I-15 and A-3. U.S. shipments, including company transfers, dropped from *** metric tons in 1992 to *** metric tons in 1993, and then rose to *** metric tons in 1994. Domestic shipments exclusive of company transfers followed the same pattern.

[53] Table 24, CR at I-48; PR at I-26. U.S. producers' market share decreased from *** percent in 1992 to *** percent in 1993, and then increased to *** percent.

[54] Table 2, CR at I-19; PR at I-14. Domestic production of pure magnesium dropped from *** metric tons in 1992 to *** metric tons in 1993, and then dropped further to *** metric tons in 1993.

[55] Table 2, CR at I-19; PR at I-14. See CR at I-18; PR at I-13. See Hearing Tr. at 37, 59. As noted infra, we find the capacity figures for all primary magnesium to be more probative than the separate capacity data for pure and alloy magnesium. The trends in capacity for both pure magnesium alone and all primary magnesium, however, were the same. Capacity to produce pure magnesium decreased from *** metric tons in 1992 and 1993 to *** metric tons in 1994; for the same period, capacity to produce primary magnesium decreased from *** metric tons to *** metric tons.

[56] Table 2, CR at I-19; PR at I-14.

[57] Table 4, CR at I-22; PR at I-16. End-of-period inventories of pure magnesium were *** metric tons in 1992, *** metric tons in 1993 and *** in 1994 (after Dow's plant closing).

The ratio of inventories relative to U.S. shipments rose from 1992 to 1993, but returned to the 1992 ratio in 1994.[58]

Employment of production and related workers producing pure magnesium fell throughout the period of investigation.[59] Hours worked also declined.[60] Aggregate wages and compensation paid to workers declined, although hourly wages and compensation increased.[61] Unit labor costs fluctuated but decreased overall from 1992 to 1994, while productivity also fluctuated but increased overall.[62]

The domestic industry reported poor financial performance. By both quantity and value, net sales decreased during the period of investigation.[63] The industry reported *** throughout the period of investigation.[64] The industry's capital expenditures declined substantially from 1992 to 1994.[65] Research and development expenses fell each year throughout the period of investigation.[66] [67]

B. Domestic Alloy Magnesium Industry

Several of the conditions of competition applicable to the domestic industry producing pure magnesium also are applicable to the domestic industry producing alloy magnesium.[68] Unlike pure magnesium, however, alloy magnesium is sold primarily to diecasters for structural applications.[69] The alloy magnesium market has experienced substantial growth as

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[58] Id. The ratio of inventories to production was *** percent in 1992, *** percent in 1993, and *** percent in 1994.

[59] Table 5, CR at I-23; PR at I-17. Employment fell from *** workers in 1992 to *** workers in 1994.

[60] Id. Hours worked by production and related workers declined from *** hours in 1992 to *** hours in 1994.

[61] Id. From 1992 to 1994, total wages decreased from *** to *** and total compensation decreased from *** to ***. Hourly wages increased from *** to *** and hourly total compensation increased from *** to ***.

[62] Id. In 1992, unit labor costs were *** per metric ton and productivity was *** metric tons per 1,000 hours. In 1994, unit labor costs were *** per metric ton and productivity was *** metric tons per 1,000 hours.

[63] Table 9, CR at I-29; PR at I-19. By quantity, net sales dropped from *** metric tons in 1992 to *** metric tons in 1993 and then rose to *** metric tons, remaining below 1992 levels. By value, net sales followed the same pattern, dropping from *** in 1992 to *** in 1993 and then increasing somewhat to *** in 1994.

[64] Id. The industry reported operating losses of *** in 1992, *** in 1993, and *** in 1994.

[65] Table 15, CR at I-34; PR at I-20. Capital expenditures remained *** and decreased to *** million in 1994.

[66] Table 16, CR at I-34; PR at I-20. Research and development expenses decreased from *** in 1992 to *** in 1994.

[67] Based on the foregoing performance indicators, Commissioner Rohr and Commissioner Newquist find that the domestic industry producing pure magnesium is experiencing material injury.

[68] As with pure magnesium, the production of alloy magnesium requires electrolytic cells that must run constantly to avoid deterioration or costly rebuilding. In addition, the alloy magnesium industry was also subject to unfairly traded imports from Canada prior to 1992. However, the imposition of antidumping and countervailing duties on alloy magnesium imports from Canada did not result in decreased importation of that product. Rather, imports of Canadian alloy increased from 4,093 metric tons in 1991 to 6,215 metric tons in 1993. USITC Pub. 2775 at C-8, Table C-10.

[69] CR at I-50, notes 73 and 74; PR at I-23, notes 73 and 74.

the demand for magnesium in structural diecast applications in sectors such as the automotive market has increased.[70]

Apparent U.S. consumption of alloy magnesium increased each year of the investigation, for an overall increase of *** percent from 1992 to 1994.[71] The domestic industry's U.S. shipments increased overall during the period of investigation, although by a smaller percentage than apparent consumption.[72]

Domestic production of alloy magnesium increased each year of the investigation, for an overall increase of *** percent.[73] Capacity to produce all primary magnesium decreased in 1994, due to Dow's plant shutdown. Capacity utilization for primary magnesium increased following the plant shutdown.[74]

Employment of production and related workers producing alloy magnesium was slightly higher in 1994 than it was in 1992.[75] Hours worked, wages, and compensation likewise were higher in 1994 than in 1992.[76] As compared to 1992, in 1994 productivity was higher while unit labor costs were lower.[77]

Although the financial performance of the alloy magnesium industry declined from 1992 to 1993, the industry showed improvement in 1994.[78] Net sales and gross profits were at period highs in 1994, and ***.[79]

U.S. producers' capital expenditures for alloy magnesium decreased over the period of investigation, while research and development expenses remained stable.[80] [81]

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[70] CR at I-14 and I-15 (Table 1); PR at I-10 and I-11 (Table 1); Hearing Tr. at 206.

[71] Table 1 and Table A-2, CR at I-15 and A-6; PR at I-14 and A-3. Apparent U.S. consumption of alloy magnesium rose steadily from *** metric tons in 1992 to *** metric tons in 1994.

[72] Table 1, CR at I-15; PR at I-11. Producers' U.S. shipments initially dropped from *** metric tons in 1992 to *** metric tons in 1993 before rising to *** metric tons in 1994.

[73] Table 2 and Table A-2, CR at I-19 and A-7; PR at I-14 and A-3.

[74] Table 2, CR at I-19; PR at I-14. The separate 1994 capacity and capacity utilization data for alloy magnesium show opposite trends from those for all primary magnesium, i.e. they show an increase in capacity and a consequent decrease in capacity utilization. However, ***. CR at I-18; PR at I-13. Thus, the reported increase in alloy magnesium capacity from 1993 to 1994 is actually a reflection of the large increase in alloy demand relative to the slight increase in pure demand. Since it is anomalous for alloy capacity to increase while total primary magnesium capacity decreased, we find that the capacity data for primary magnesium are more probative than the separate capacity data for alloy for purposes of evaluating the true capacity and capacity utilization for alloy magnesium.

[75] Table 5, CR at I-23, PR at I-17. In 1992, *** workers were employed in domestic production of alloy magnesium, compared to *** workers in 1994.

[76] Id. In 1992, alloy magnesium workers worked *** hours, received hourly wages of *** and hourly total compensation of ***. In 1994, alloy magnesium workers worked *** hours, received hourly wages of *** and hourly total compensation of ***.

[77] Id. In 1992, unit labor costs were *** per metric ton and productivity was *** metric tons per 1,000 hours. In 1994, unit labor costs were *** per metric ton and productivity was *** metric tons per 1,000 hours.

[78] Table 12, CR at I-32; PR at I-19.

[79] Id. By quantity, net sales increased by *** percent, from *** metric tons in 1992 to *** metric tons in 1994. By value, net sales increased by *** percent, from *** in 1992 to *** in 1994. Gross profits grew from *** in 1992 to *** in 1994. Gross profit margins were *** percent in 1992 as compared to *** percent in 1994. In 1992 and 1993, the industry ***. In 1994, the industry ***.

[80] Tables 15 and 16, CR at I-34, PR at I-20. Capital expenditures first increased from *** in 1992 to *** million in 1993 and then fell to *** in 1994. Research and development expenses were approximately *** in each year of the period of investigation.

III. CUMULATION

In determining whether there is material injury by reason of LTFV imports, the Commission is required to "cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of the domestic industry in the United States market."[82] Cumulation is not required, however, when imports from a subject country are negligible and have no discernible adverse impact on the domestic industry.[83]

In assessing whether imports compete with each other and the domestic like product, the Commission has generally considered four factors, including:

(1) the degree of fungibility between the 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 imports from different countries and the domestic like product;

(3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and

(4) whether the imports are simultaneously present in the market.[84]

While no single factor is determinative, and the list of factors is not exclusive, these factors provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.[85] Only a "reasonable overlap" of competition is required.[86]

The statute provides that the Commission is not required to cumulate in any case in which it determines that imports of the merchandise subject to investigation "are negligible and have no discernable adverse impact on the domestic industry."[87] In determining whether imports are negligible, the Commission is to consider all relevant economic factors, including whether:

(I) the volume and market share of the imports are negligible,

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[81] (...continued)

[81] Based on the foregoing indicators, Commissioner Rohr and Commissioner Newquist find that the domestic industry producing alloy magnesium is not presently experiencing material injury. Accordingly, they proceed directly to an analysis of whether the domestic industry is threatened with material injury by reason of the subject imports of alloy magnesium.

[82] 19 U.S.C. § 1677(7)(C)(iv)(I); Chaparral Steel Co. v. United States, 901 F.2d 1097, 1101 (Fed. Cir. 1990).

[83] 19 U.S.C. § 1677(7)(C)(v).

[84] See generally, e.g., Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

[85] See, e.g, Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[86] See e.g., U.S. Steel Group v. United States, 873 F. Supp. at 685-87.

[87] 19 U.S.C. § 1677(7)(C)(v).

(II) sales transactions involving the imports are isolated and sporadic, and

(III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.[88]

For each class or kind of subject imports, we first examine whether there is a reasonable overlap in competition between the domestic and imported products, and among the subject imported products. We then address the applicability of the negligible imports exception in these investigations.

A. Cumulation of LTFV Imports of Pure Magnesium

1. Competition Among the LTFV Imports and Between the LTFV Imports and the Domestic Like Product

The parties do not dispute that LTFV imports of pure magnesium from Ukraine and Russia compete with one another. This was confirmed by some purchasers who indicated that they purchased pure magnesium from the C.I.S. generally, without distinction between Russian and Ukrainian magnesium.[89]

Similarly, the purchaser questionnaire responses from those who purchased from both China and other subject countries indicate that Chinese pure magnesium is used in the same applications and competes for sales to the same end users with the imports from Russia and Ukraine.[90] The importer of the Chinese product also indicated that the Chinese magnesium currently sold to aluminum alloyers competes with the magnesium imported from Ukraine and Russia.[91]

The evidence further indicates that the imports of pure magnesium from all subject countries compete with U.S.-produced pure magnesium. Throughout the period of investigation, U.S. producers shipped large quantities of pure magnesium to aluminum producers, steel desulfurizers, and magnesium granule producers -- the same end users that purchased much of the magnesium from all subject countries, including the stockpiled magnesium from Russia and Ukraine.[92] The purchaser questionnaire responses confirm that imports of Chinese, Russian, and Ukrainian pure magnesium compete with domestic pure magnesium for sales to the same end users.[93]

Most of the initial imports of magnesium from both Ukraine and Russia came from U.S.S.R. stockpiles and competed with domestic pure magnesium for sales to the desulfurization market.[94] The purchaser questionnaire responses and staff conversations with purchasers concerning lost sales and revenues allegations also verify that newly-produced

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[88] 19 U.S.C. § 1677(7)(C)(v).

[89] See questionnaire responses of *** and ***.

[90] See, e.g., page 23 of the questionnaire responses of ***.

[91] Conference Tr. at 117. See USITC Pub. 2775 at I-16, citing Chinese Respondents' Postconference Brief at n. 85. See also Chinese Respondent's Postconference Brief at 5 (Section 3C).

[92] See Table E-1, CR at E-3, PR at E-3; Conference Tr. at 91-92, 100-101.

[93] See, e.g., page 17 of purchaser questionnaire responses.

[94] Hearing Tr. at 182-185, 191-192; Importer questionnaire responses.

Ukrainian and Russian magnesium compete with U.S. magnesium for sales to the same users -- mainly aluminum producers, steel desulfurizers and magnesium granule producers.[95]

Although the Chinese respondents assert that competition between the Chinese and domestic pure magnesium is attenuated,[96] the record does not bear out this assertion. The importer of the Chinese product admitted that the Chinese pure magnesium competes with the U.S.-produced pure magnesium for sales to aluminum producers.[97] Moreover, there was *** among purchasers of the Chinese imports that those imports can be used in the same range of uses as, and are generally of comparable quality to, the domestic product.[98] The sales of the Chinese imports and the U.S. product to the same end users for the same types of applications demonstrate that competition between the Chinese imports and the domestic product is not, as respondents assert, attenuated.[99]

Because only a reasonable overlap of competition is required to cumulate, we place little weight on the Chinese respondents' argument that the Chinese product did not compete with the domestic pure magnesium shipped as company transfers and exports. In essence, these respondents admit that the Chinese product did compete for sales in the U.S. market with *** of the total shipments of U.S.-produced pure magnesium. In addition, the Chinese respondents' references to the prices of U.S. producers' exports ignores the specific language in the cumulation provision of the statute directing the Commission to focus on overlaps in competition in the U.S. market,[100] not on whether the imports compete with U.S. products sold overseas. We therefore find that the subject imports of pure magnesium compete among themselves and with the domestic like product.

2. Negligibility

The Chinese respondents argue that their imports should not be cumulated with other subject imports under the negligible imports exception. We find that the imports from China were neither isolated nor sporadic, and entered the United States continuously from the latter half of 1992 through the first half of 1994.

The imports from China have increased both in terms of volume and market share since late 1992. The volume of imports of Chinese pure magnesium increased from no imports in 1991 to 410 metric tons in 1992, and then to 2,071 metric tons in 1993.[101] Imports from China continued to enter the United States at a similar pace until the middle of 1994, following the Commission's preliminary determinations in these investigations. We attribute the 1994 declines, at least in part, to the ongoing antidumping investigation, and therefore place little weight on the data for the second half of 1994 for purposes of our

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[95] CR at I-11, I-63, I-68-75, and Table E-1, CR at E-3; PR at I-8, I-33, I-35-38 and E-3.

[96] Chinese Respondents' Prehearing Brief at 5-7.

[97] Conference Tr. at 118.

[98] Of the *** responding purchasers of Chinese magnesium, only *** indicated that the imported product could not be used for the same end use as the domestic product. ***. In addition, numerous other purchasers who did not themselves purchase Chinese magnesium nonetheless opined that the Chinese magnesium is comparable in quality to and/or can be used for the same uses as the domestic product and as the Russian and Ukrainian imports. See, e.g., questionnaire responses of ***.

[99] See Certain Circular, Welded, Non-Alloy Steel Pipes and Tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela, Inv. Nos. 731-TA-532-537 (Final), USITC Pub. 2564 at 26 (Oct. 1992).

[100] 19 U.S.C. § 1677(7)(C)(iv).

[101] Table 23, CR at I-46; PR at I-24; USITC Pub. 2775 at II-50.

negligibility analysis.[102] [103] Imports of pure magnesium from China accounted for *** percent market share in 1992 and *** percent of the pure magnesium market in 1993.[104] Despite the absence of these imports in all but two of the months in the second half of 1994, the imports from China still accounted for *** percent market share in 1994.

We also note that the pure magnesium market is fairly price sensitive.[105] A number of purchasers indicated that price was a factor in adding or dropping suppliers.[106] Even for contractual sales, producers change their prices, both upward and downward, in reaction to prices offered by competitors.[107] Thus, even small quantities of the imports may cause adverse price effects.

Having found that the pure magnesium imports from all subject countries compete with one another and with U.S.-produced pure magnesium, and that it is not appropriate to apply the negligibility exception to any of the subject imports,[108] we have cumulated the volume and effects of all subject imports of pure magnesium.

B. Cumulation of Imports of Alloy Magnesium

There is limited evidence in the record concerning the nature of the alloy magnesium imports.[109] Nonetheless, in light of the extremely low volume and isolated nature of Chinese alloy imports, we determine to apply the negligibility exception to the alloy magnesium imports from China, and therefore have not cumulated the volume and effects of subject alloy magnesium imports from China and Russia.

The data show that only 56 metric tons of alloy from China were imported into the United States during the entire period of investigation.[110] Moreover, all of these imports entered the United States in 1992, and there were no imports of alloy magnesium from China in 1993 or 1994.[111] Given the low volume and market share of these imports in 1992, and their complete absence from the U.S. market in 1992 and 1993, we find no evidence of a

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[102] Memorandum INV-S-056 (April 26, 1995). See Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 284 (Ct. Int'l Trade 1990) ("The court has previously stated that 'the initiation of antidumping and countervailing duty proceedings can create an artificially low demand for affected imports, thus distorting the data on which [the Commission] relies in making its determination.'").

[103] Chairman Watson does not rely on this factor for the purposes of reaching his negligibility analysis.

[104] Table 24, CR at I-48; PR at I-26.

[105] Commissioner Bragg notes that the staff's estimates of low elasticity of demand and moderately high elasticity of substitution support the finding of price sensitivity. See Memorandum EC-S-048 (April 21, 1995) ("Economic Memorandum") at 34-35. The relative inelasticity of demand means that additional volumes of supply, in the form of LTFV imports, will tend to have a disproportionate effect on price. The relatively high substitution elasticity means that imports will readily substitute for the domestic product, further exacerbating price effects.

[106] See CR at I-64, I-68-75; PR at I-33, I-35-38.

[107] Economic Memorandum at 17.

[108] We note that other than the Chinese respondents, no party argued that its imports were negligible. We find no basis for applying the negligibility exception to imports from Ukraine and Russia.

[109] See, e.g., CR at I-53, PR at I-29 (noting that none of the diecasters that responded to the Commissioner's purchaser questionnaire reported buying alloy magnesium from either of the subject countries).

[110] Table 23, CR at I-46; PR at I-24.

[111] Id. In 1992, these alloy imports from China accounted for *** percent of the U.S. alloy magnesium market.

discernible adverse impact upon the domestic alloy magnesium industry by reason of the subject imports of alloy magnesium from China.

We therefore have considered separately the question of material injury or threat thereof by reason of alloy magnesium imports from China from the question of material injury or threat thereof by reason of alloy magnesium imports from Russia.[112]

IV. MATERIAL INJURY BY REASON OF THE LTFV IMPORTS

A. Legal Standard

In final antidumping investigations, the Commission determines whether an industry in the United States is materially injured by reason of imports subject to investigation that Commerce has determined to be sold at LTFV.[113] In making this determination, the Commission must consider the volume of imports, their effect on prices for the like product, and their impact on domestic producers of the like product, but only in the context of U.S. production operations.[114] Although the Commission may consider alternative causes of injury to the domestic industry other than the LTFV imports, it is not to weigh causes.[115] [116] [117]

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[112] Although Commissioner Rohr and Commissioner Newquist do not join the preceding discussion, they adopt the reasoning and conclusion for the purposes of addressing discretionary cumulation in the context of their threat determinations. See 19 U.S.C. § 1677(7)(F)(iv). Commissioner Newquist further relies on the lack of reasonable overlap of competition between the Chinese and Russian alloy magnesium imports, in that the alloy imports from the respective countries were not simultaneously present in the U.S. market.

[113] 19 U.S.C. § 1673d(b).

[114] 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 . . . and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

[115] See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988). Alternative causes may include the following:

> [T]he volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry.

S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. No. 317, 96th Cong., 1st Sess. 47 (1979).

[116] For Chairman Watson's interpretation of the statutory requirement regarding causation, see Certain Calcium Aluminate Cement and Cement Clinker from France, Inv. No. 731-TA-645 (Final), USITC Pub. 2772, at I-14 n.68 (May 1994).

[117] Commissioner Rohr and Commissioner Newquist further note that the Commission need not determine that imports are "the principal, a substantial, or a significant cause of material injury." S. Rep. No. 249, 96th Cong., 1st Sess. 57 and 74 (1979); see also, e.g., Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741 (Ct. Int'l Trade 1989); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. at 1101.

B. Material Injury by Reason of LTFV Imports of Pure Magnesium from China, Russia, and Ukraine[118]

1. Volume of LTFV Imports

The volume of cumulated LTFV imports is significant and increased substantially from 1992 through the first half of 1994.[119] From 1992 to 1993, the quantity of LTFV imports of pure magnesium increased manyfold.[120] During the first half of 1994, the quantity of subject LTFV imports was also significant.[121] The value of the LTFV imports likewise increased rapidly from 1992 to 1993 and remained significant in the first half of 1994.[122]

Market penetration of the LTFV imports of pure magnesium, by both quantity and value, also increased significantly during the period of investigation.[123] From 1992 to 1993, these LTFV imports increased their market share from *** percent to *** percent, more than quadrupling their share of the U.S. pure magnesium market. Due to their absence from the U.S. market in the second half of 1994, the LTFV pure magnesium imports lost some of their previously-gained market share, but still accounted for *** percent of annual apparent consumption for that year. By value, the share of the U.S. pure magnesium market held by the LTFV imports increased from *** percent in 1992 to *** percent in 1993, and, even with virtually no imports in the second half of 1994, retained *** percent of the market that year.[124]

Respondents argue that the large influx of Russian and Ukrainian pure magnesium into the U.S. market in 1992 and 1993 resulted from an abnormal "temporary phenomenon,"

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[118] Chairman Watson and Vice Chairman Nuzum do not join this discussion. They find that the domestic industry producing pure magnesium is neither materially injured nor threatened with material injury by reason of the LTFV imports of pure magnesium. See Dissenting Views of Chairman Watson and Dissenting Views of Vice Chairman Nuzum.

[119] Table 23, CR at I-46; PR at I-24; Memorandum INV-S-056 (April 26, 1995). We do not rely on the data for the second half of 1994, because the virtual cessation of LTFV imports during that period immediately followed our May 1994 preliminary affirmative determinations in these investigations. See Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 284 (Ct. Int'l Trade 1990). Respondents argued that the cessation of imports to the United States after mid-1994 was unrelated to this investigation and reflected instead the ability to obtain higher prices for magnesium in Europe and Japan. The evidence in the record does not support this argument. According to two trade publications (Metal Bulletin and Platt's Metals Week), a European producer's prices for pure magnesium sold in Europe ranged from between $1.29 and $1.34 per pound in April 1994 to $1.62 per pound in December 1994. Prices in the United States, as reported by U.S. producers and others, were similar, ranging from between $1.22 and $1.46 per pound in April 1994 to $1.63 per pound in December 1994. See Memorandum INV-S-055 (April 26, 1995).

[120] Table 23, CR at I-46; PR at I-24. LTFV imports of pure magnesium increased from *** metric tons in 1992 to *** metric tons in 1993.

[121] Approximately *** metric tons entered the United States in the first half of 1994. This figure was derived by subtracting the only subject imports that entered the United States after June 1994, i.e., 214 metric tons imported from China (see Memorandum INV-S-056), from the total of LTFV pure magnesium imports for 1994. See Table 23, CR at I-46; PR at I-24.

[122] Table 23, CR at I-46; PR at I-24. The value of LTFV imports of pure magnesium increased from *** in 1992 to *** in 1993. The value of the LTFV imports in the first half of 1994 was approximately ***.

[123] Table 24, CR at I-48; PR at I-26.

[124] Table 24, CR at I-49; PR at I-27.

i.e., the need to sell oxidized stockpiles of fifteen-year old U.S.S.R. magnesium.[125] This alleged temporary phenomenon, however, extended over most of the period of investigation and hardly constitutes a one-time or short-lived occurrence.[126] Respondents also argue that the U.S. market experienced supply shortages in 1993 which were filled by the subject imports, as well as shortages in 1994 which could not be filled once importation of the subject imports ceased.[127] Purchasers confirmed that the supply of pure magnesium currently is tight, but did not indicate that there were supply shortages in 1993 that approached the magnitude of LTFV pure magnesium imports that year.[128]

To the extent respondents rely on recent supply constraints, that reliance is misplaced, because any decrease in the supply of domestic pure magnesium resulted from the decrease in capacity caused by Dow's plant shutdown.[129] In turn, Dow attributes the shutdown in part to injury from the LTFV imports.[130] It would be anomalous to discount the significance of LTFV imports that were in part responsible for a decline in domestic capacity on the grounds that the domestic industry is now unable to fully supply demand.

We accordingly find the volume of the LTFV pure magnesium imports to be significant.

2. Effect of LTFV Imports on Domestic Prices

We determine that the effect of the large and increasing volume of subject imports during the period of investigation has been to depress prices or prevent price increases to a significant degree.[131]

In considering the effect of the LTFV imports on domestic prices, we note that the subject imports and the domestic product compete directly in the market.[132] A number of producers, importers, and purchasers indicated that domestically-produced pure magnesium and the subject imports of pure magnesium are generally comparable.[133] There is evidence of some quality differences between the imports and the domestic product due to the subject imports' undesirable size, packaging, and surface condition.[134] There was a consensus, however, that the imports and the domestic product are used in the same range of uses.[135]

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[125] See, e.g., Ukrainian Respondents' Prehearing Brief at 27.

[126] Further, as we noted in the preliminary investigations, our examination of present material injury to a domestic industry by reason of LTFV imports does not depend on whether present material injury was caused by a one-time occurrence or not. USITC Pub. 2775 at I-22, citing Fresh Kiwifruit from New Zealand, Inv. No. 731-TA-516 (Preliminary), USITC Pub. 2394 at 18, n.69. However, an increase in import volume caused by an aberrant incident that will not be repeated may be relevant to a threat determination. Id.

[127] Chinese Respondents' Prehearing Brief at 22-23; Russian Respondents' Prehearing Brief at 19; Ukrainian Respondents' Prehearing Brief at 13-23.

[128] See CR at I-68-75; PR at 35-38.

[129] See e.g., CR at I-63; PR at I-33; Hearing Tr at 74. Dow has announced that it intends to increase its capacity incrementally. Petitioners' Posthearing Brief at Appendix A, Exhibit 2; CR at I-18; PR at I-13.

[130] Hearing Tr. at 35-38, Petitioners' Posthearing Brief at Appendix N, Exhibit 2.

[131] See 19 U.S.C. § 1677(7)(C)(ii).

[132] See Economic Memorandum at 24-27.

[133] See CR at I-53-54, I-63-65; PR at I-29-30, I-33-34.

[134] CR at I-54; PR at I-30.

[135] Purchaser questionnaire responses at 17.

The purchaser questionnaires and the responses to staff inquiries concerning lost sales and lost revenue allegations further confirm that the subject imports and the domestic product compete for sales to the same end users, e.g., aluminum producers and steel desulfurizers.[136] Moreover, several purchasers of pure magnesium view price as the most important consideration in a purchasing decision, and most others view it as an important factor.[137]

The pricing data indicate that prices for both domestic pure magnesium and domestic alloy magnesium began to rise in 1992 after the suspension of liquidation in the investigation of Canadian magnesium, and continued to rise through the middle of 1993.[138] However, following the importation of lower-priced LTFV pure magnesium from the subject countries in the second and third quarters of 1993, prices for U.S.-produced pure magnesium, and in most instances, for the imported pure product, fell in the fourth quarter of 1993 and remained low in the first half of 1994.[139] In the second half of 1994, when the LTFV imports were withdrawn from the market, U.S. producers were again able to raise their prices for pure magnesium. In contrast to the 1993 and 1994 pricing patterns for pure magnesium, prices for U.S.-produced alloy magnesium, which were not forced to respond to large increases of LTFV alloy imports from the subject countries, remained stable throughout 1993 and 1994.

A comparison of U.S. producer prices and importer prices for sales of pure magnesium to aluminum producers shows underselling by the imported products in the vast majority of instances.[140] In 17 of the 21 possible quarterly comparisons between the domestic product and the LTFV imports from China, the imported product undersold the domestic product by margins ranging from 2.7 to 17.6 percent. The only price comparison between U.S. producer and importer sales of pure magnesium to granule producers showed an underselling margin of *** percent by the imported (Ukrainian) product.[141]

Similarly, price comparisons based on purchaser data show significant underselling by the subject LTFV imports of pure magnesium.[142] Prices for the LTFV imports were below those of the domestic product in 32 of the 43 instances where price comparisons were possible, with margins ranging from 0.8 to 21.2 percent.

The relationship between the domestic and import pricing trends and the presence of large volumes of LTFV imports in the market, together with significant underselling by the subject imports, indicates that the lower-priced imports depressed and suppressed U.S. prices to a significant degree. Moreover, staff was able to confirm several instances of domestic producers losing sales or revenues due to competition from the subject LTFV imports.[143] These examples of lost sales and revenues further demonstrate the significant price suppressing and depressing effects of the subject LTFV imports.

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[136] See CR at I-68-75; PR at I-35-38.

[137] CR at I-63-64, I-71, I-74; PR at I-33-34, I-36, I-38.

[138] See Figure 1, CR at I-58; PR at I-31, Tables 25 and 26, Tables H-1 and H-2, CR at I-57, I-60, H-3-4; PR at I-31, I-32, H-3.

[139] Id.

[140] Table 27, CR at I-62; PR at I-32.

[141] Table 27, CR at I-62; PR at I-32.

[142] Table H-3, CR at H-5; PR at H-3. See CR at I-66; PR at I-34.

[143] CR at I-68-75; PR at I-35-38.

3. Impact on the Domestic Industry

The significant and increasing LTFV imports and the declines in prices from 1992 to mid-1994 have had a significant adverse impact on the domestic pure magnesium industry. Despite a slight increase in apparent U.S. consumption of pure magnesium, the U.S. producers' market share declined from 1992 to 1993 while the volume and market share of the subject LTFV imports increased rapidly and significantly. The entry of large volumes of low-priced LTFV pure magnesium imports from the subject countries in 1992 and 1993 followed the imposition of duties on imports of LTFV pure magnesium from Canada found to be materially injuring the U.S. industry. Because there are few substitutes for pure magnesium, U.S. producers should have been able to raise their prices for pure magnesium without sacrificing a significant amount of sales volume.[144] They were unable to do so, however, because of the entry into the market of significant volumes of lower-priced subject LTFV imports.

Due to the prohibitive costs of recharging the electrolytic cells used to produce magnesium when production facilities are shut down, U.S. producers face pressures to reduce prices to maintain production volumes.[145] In addition, the U.S. plants producing primary magnesium are dedicated to primary magnesium production, with little flexibility to produce other products. The entry of significant and increasing volumes of the lower-priced subject imports in the latter half of 1992 and 1993 resulted in growth of U.S. inventories and placed significant pressure on the domestic producers to lower their prices to avoid reductions in production volumes.

One producer, Dow Chemical, reacted to the loss in market share to the LTFV imports, among other factors, by shutting down one of its plants in the first quarter of 1994, rather than replacing the facility as originally planned.[146] In turn, this shutdown resulted in reductions in industrywide capacity to produce pure magnesium. It also resulted *** and in declines in employment of workers producing pure magnesium.[147]

Given the substitutability between subject imports and the like product, the rapid and significant increase in the LTFV imports, the consistent underselling by these imports, the resulting decline in domestic market share and the poor financial condition of the U.S industry, we determine that the domestic industry producing pure magnesium is materially injured by reason of the subject LTFV imports of pure magnesium.

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[144] See Economic Memorandum at 14-15.

[145] Hearing Tr. at 73-74; Petitioners' Prehearing Brief at 31.

[146] Hearing Tr. at 32, 44-46; CR at G-3, PR at G-3.

[147] Commissioner Bragg notes that the moderately high degree of substitutability of subject imports with domestic pure magnesium, and the low elasticity of demand for pure magnesium, also suggest that the large volumes of lower-priced imports would tend to adversely affect domestic prices, shipment volumes, and overall revenues of the domestic industry producing pure magnesium. (The staff economic memorandum estimates the elasticity of substitution for pure magnesium to be in the range of 3 to 5 for China, Russia and Ukraine, and the elasticity of demand for pure magnesium to be in the range of 0.25 to 0.50. Economic Memorandum at 34-35.) Supporting this conclusion, the Commercial Policy Analysis System (COMPAS) output, using 1994 data, indicates that U.S. prices and volumes have been suppressed, resulting in total estimated revenue suppression of up to 5.2% in the pure magnesium market by reason of LTFV imports. If the data for 1993 are used, which as explained above the Commission finds to be more relevant for this investigation than the 1994 data, the degree of revenue suppression increases to *** percent. See Economic Memorandum at 37.

V. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS OF ALLOY MAGNESIUM FROM RUSSIA OR CHINA[148]

A. No Material Injury by Reason of LTFV Imports of Alloy Magnesium from China

As previously noted, the volume of imports of alloy magnesium from China totaled a mere 56 metric tons during the entire period of investigation.[149] All of these imports entered the United States in 1992, and accounted for *** percent of apparent U.S. consumption of alloy magnesium in that year.[150] We find that the low volume of Chinese imports, both in absolute terms and as a share of apparent consumption, is not significant. Responses to questionnaires did not supply pricing data on these imports, but given the negligible volume of these imports, we find that they could not have had significant adverse effects on domestic alloy magnesium prices, or an adverse impact on the domestic industry producing alloy magnesium. We therefore find no material injury by reason of the LTFV imports of alloy magnesium from China.

B. No Material Injury by Reason of LTFV Imports of Alloy Magnesium from Russia

We also find that the volume of LTFV imports of alloy magnesium from Russia is not significant. There were no imports of LTFV alloy magnesium from Russia in 1992. In 1993 and 1994 the volumes of LTFV imports from Russia were insignificant.[151] In 1993, Russian alloy magnesium accounted for *** percent by volume of domestic consumption. Russian market share by volume decreased, however, to *** percent in 1994.[152] By value, the Russian alloy import share of the U.S. alloy magnesium market was even lower, accounting for *** percent of the value of U.S. consumption in 1993 and *** percent in 1994. The data further indicate that movements in the U.S. alloy producers' market share have been relative to changes in market share held by Canadian imports.[153]

The only reported sale of Russian alloy magnesium involved a product for which pricing data were not requested. Thus, there are no price comparisons available for Russian alloy magnesium.[154] The diecaster purchaser questionnaires reflect that the only price or other sales competition for U.S.-produced alloy magnesium is from Canadian alloy magnesium. Accordingly, we find that the Russian imports did not have significant adverse effects on domestic alloy magnesium prices, or an adverse impact on the domestic industry

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[148] Commissioner Rohr and Commissioner Newquist do not join this discussion.

[149] Table 23, CR at I-46; PR at I-24.

[150] Table 24, CR at I-48; PR at I-26.

[151] Table 23, CR at I-46; PR at I-24. LTFV imports from Russia totalled *** metric tons in 1993, and *** metric tons in 1994.

[152] Table 24, CR at I-48; PR at I-26.

[153] See Tables 23 and 24, CR at I-46 and I-49; PR at I-24 and I-27.

[154] CR at I-53, I-59; PR at I-29, I-31.

producing alloy magnesium.[155] We therefore find no material injury by reason of the LTFV imports of alloy magnesium from Russia.[156]

VI. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS OF ALLOY MAGNESIUM FROM RUSSIA OR CHINA

A. Legal Standard

Section 771(7)(F) of the Act directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and actual injury is imminent." The Commission is not to make such a determination "on the basis of mere conjecture or supposition."[157]

We have considered all the statutory factors that are relevant to these investigations.[158] [159] The presence or absence of any single factor is not dispositive.[160] Having found the subject alloy magnesium imports from China to be negligible, we decline to cumulate imports of alloy magnesium from China and Russia for purposes of our threat analysis.[161] We do not find that there is a threat of material injury to the domestic alloy magnesium industry by reason of the subject imports of alloy magnesium from China or Russia.

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[155] In fact, petitioners conceded that the domestic industry is not materially injured by reason of the subject imports of alloy magnesium. Hearing Tr. at 57.

[156] Commissioner Bragg notes that despite the relatively low elasticity of demand for alloy magnesium (estimated by staff to be in the range of 0.75 to 1.0), the low elasticity of substitution of Chinese and Russian imports with U.S. alloy magnesium (estimated to be between 1 and 2) and the very low level of these imports suggest that domestic prices, shipment volumes and overall revenues of the domestic industry producing alloy magnesium are unlikely to be adversely affected by LTFV imports. Supporting this conclusion, the COMPAS output indicates that revenues in the alloy magnesium market have been suppressed by only up to 0.2 percent if 1994 data are used, and *** percent using 1993 data. Economic Memorandum at 37.

[157] 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984), aff'd, 760 F.2d 249 (Fed. Cir. 1985).

[158] 19 U.S.C. § 1677(7)(F)(i)(I)-(X). In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class or kind of merchandise suggest a threat of material injury to the domestic industry. 19 U.S.C. § 1677(7)(F)(iii)(I). Factor I is not relevant because no subsidy is involved. Because these investigations do not involve an agricultural product, Factor IX is not applicable.

[159] Commissioner Rohr notes that because Chinese imports are negligible, he does not find it appropriate to consider the joint impact of Russian and Chinese imports in these investigations.

[160] See, e.g., Rhone Poulenc, S.A. v. United States, 592 F. Supp. 1318, 1324 n.18 (Ct. Int'l Trade 1984).

[161] See 19 U.S.C. § 1677(7)(C)(v). Commissioner Newquist reiterates his reliance on the absence of a reasonable overlap of competition between the Chinese and Russian alloy magnesium imports.

B. No Threat of Material Injury by Reason of LTFV Imports of Alloy Magnesium from China

The only Chinese producer that responded to the Commission's questionnaire *** and therefore we ***.[162] In light of our consideration of the other threat factors, as discussed below, we find that even if significant excess capacity existed, it would not support a finding of threat of material injury.

Having found that there have been no significant volume or significant price suppressing or depressing effects of the alloy imports from China, we further find no evidence that such imports will increase to injurious levels or have such price effects in the imminent future. There are no *** or increases in inventories of Chinese alloy magnesium in the United States.[163]

There may be some possibility that producers in China would shift production from pure magnesium to alloy magnesium in light of our affirmative determination concerning LTFV pure magnesium imports. However, market conditions make it unlikely that there will be a significant shift from production of pure magnesium to production of alloy magnesium in China, or that any increases in Chinese alloy production will result in significant increases in exports of alloy magnesium to the United States. First, the U.S. demand for primary magnesium is overwhelmingly for pure magnesium. Second, there is already significant competition in the United States market among domestic alloy magnesium and nonsubject (Canadian) alloy magnesium. Finally, the purchasers of alloy magnesium, in contrast to the purchasers of pure magnesium, typically view factors other than price as being most important to their purchasing decisions, and tend to seek long-term contracts with traditional suppliers.[164] In combination, these factors mitigate the economic incentives for product-shifting from pure magnesium to alloy magnesium.

Accordingly, we determine that the U.S. alloy magnesium industry is not threatened with material injury by reason of imports of alloy magnesium from China.

C. No Threat of Material Injury by Reason of LTFV Imports of Alloy Magnesium from Russia

Capacity in Russia to produce alloy magnesium has declined substantially from 1992 to 1994, but is projected to *** in 1995.[165] Capacity utilization is high, at *** percent, but is projected to decrease somewhat with the projected increase in capacity.

Having found that there have been no significant volume or significant price suppressing or depressing effects of the alloy imports from Russia, we further find no evidence that such imports will increase to injurious levels or have such price effects in the imminent future. There are no *** or increases in inventories of Russian alloy magnesium in the United States.[166]

As with China, there may be some possibility that producers in Russia would shift production from pure magnesium to alloy magnesium in light of our affirmative determination concerning the LTFV pure magnesium imports. Petitioners have provided press reports suggesting that Russia may increase alloy production and that one U.S.

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[162] CR at I-39; PR at I-21.

[163] Table 18, CR at I-37; PR at I-21.

[164] CR at I-64; PR at I-33.

[165] Table 21, CR at I-42; PR at I-22.

[166] Table 18, CR at I-37; PR at I-21.

automobile manufacturer is considering Russia as a source for alloy magnesium. The Russian respondents have stated that the Russian producers do not plan to expand their capacity greatly "with a view to the U.S. market," and also have noted that there is an increased demand for alloy magnesium in Europe due to an upswing in the European automobile market.[167]

As we noted with respect to the possibility of product shifting by Chinese producers, conditions in the U.S. alloy magnesium market make it unlikely that there will be a significant shift from production of pure magnesium to production of alloy magnesium in Russia, or that any increases in Russian alloy production will result in significant imminent increases in exports of alloy magnesium to the United States. In addition, Commerce in its final determinations in these investigations found that Russian imports of pure magnesium sold through certain trading companies were not sold at less than fair value. Thus, the Russian producers may continue selling pure magnesium through these companies, further reducing any incentive for product shifting.

Finally, we have taken note that there are pending antidumping investigations in the European Union (EU) and in Brazil concerning primary magnesium from, among other countries, Russia.[168] However, those investigations have not yet been concluded, and there is no evidence at this time of any existing dumping findings or antidumping remedies against Russia or China in other foreign markets.

Accordingly, we determine that the U.S. alloy magnesium industry is not threatened with material injury by reason of imports of alloy magnesium from Russia.

Conclusion

In light of the significant and increasing volumes of subject imports of pure magnesium from China, Russia, and Ukraine from 1992 through mid-1994, as well as the adverse price effects and the adverse impact on the domestic industry's condition, we find that the domestic industry producing pure magnesium is materially injured by reason of cumulated LTFV imports of pure magnesium from China, Russia, and Ukraine.

In light of the insignificant volume of imports of alloy magnesium from China or Russia, and the lack of any evidence that such imports will have significant volume or price effects in the immediate future, we find that there is no material injury or threat of material injury by reason of the LTFV imports of alloy magnesium from China and Russia.

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[167] Hearing Tr. at 217, 236.

[168] CR at I-43; PR at I-22.

DISSENTING VIEWS OF CHAIRMAN WATSON

On the basis of the information obtained in these final investigations, I determine that the domestic industry producing pure magnesium is neither materially injured nor threatened with material injury by reason of imports of pure magnesium from the People's Republic of China, Russia, and Ukraine sold at less-than-fair-value (LTFV).

I have joined my colleagues in the majority discussions of determination of like product, the condition of the industry, and the decision to cumulate imports of pure magnesium from China, Russia, and Ukraine. I further concur that the domestic industry producing alloy magnesium is neither materially injured nor threatened with material injury by reason of LTFV imports of alloy magnesium from China and Russia.

These additional views present my analysis leading to my determination that the domestic industry producing pure magnesium is neither materially injured nor threatened by reason of LTFV imports of pure magnesium from China, Russia, and Ukraine.

1. No Material Injury by Reason of LTFV Imports of Pure Magnesium From China, Russia, and Ukraine.

In final antidumping investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports that Commerce has determined are sold at LTFV.[1] The Commission must consider the volume of imports, their effect on prices for the like product, and their impact on domestic producers of the like product, but only in the context of U.S. production operations.[2] Although the Commission may consider alternative causes of injury to the industry other than LTFV imports, it is not to weigh causes.[3] [4]

a. Volume Effects

The volume of LTFV imports of pure magnesium rose from *** metric tons in 1992 to *** metric tons in 1993, before falling to *** metric tons in 1994.[5] I do not find the increase in LTFV imports of pure magnesium over the period of investigation to be significant for several reasons.

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[1] 19 U.S.C. § 1673d(b).

[2] 19 U.S.C. § 1677(7)(B)(i). The Commission also may consider "such other economic factors as are relevant to the determination." Id.

[3] See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (CT. Int'l Trade 1988). Alternative causes may include the following:

> [T]he volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry.

S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-57 (1979).

[4] For my interpretation of the statutory requirement regarding causation, see Certain Calcium Aluminate Cement and Cement Clinker from France, Inv. No. 731-TA-645 (Final), USITC Pub. 2772, at I-14 n.68 (May 1994).

[5] Table 23, CR at I-46, PR at I-23.

First, the volume of cumulated LTFV imports declined in 1994 compared to 1993, both in absolute terms and in terms of market share.[6] I find that there is sufficient evidence on the record to suggest that the curtailment of LTFV imports in 1994 did not result solely from the filing of the petitions in these investigations but, rather, was due to unrelated governmental and commercial factors.[7] I thus do not agree with Petitioner that data showing declines in LTFV import volume in the second half of 1994 should be disregarded.

Second, over the period of investigation, the volume of cumulated LTFV imports, both in absolute terms and in terms of market share, was consistently small relative to domestic production.[8] Although the market share by quantity of cumulated LTFV imports reached a high of *** percent in 1993, evidence on the record indicates that increased volumes of pure magnesium imports during 1993 were prompted by domestic supply shortages and a depletion of Russia's military magnesium stockpile during 1992 and 1993.[9] I also note that, although the U.S. producers' market share declined somewhat in 1993, a significant portion of the decline appears to be due to increases in fair value imports.[10]

Third, evidence on the record indicates that the market share of fair value imports followed a similar pattern as that of LTFV imports during the period of investigation, rising from *** percent in 1992 to *** percent in 1993, and subsequently falling to *** percent in 1994.[11] Fair value and LTFV pure magnesium imports simultaneously peaked in 1993 and declined in 1994.[12] I find that this information supports my finding that a domestic supply shortage occurred during 1993 and lessens the likelihood that the decline in LTFV imports in 1994 was solely due to this investigation. I also note that evidence on the record indicates that there was a critical shortage of domestic pure magnesium in the United States in late 1994 and early 1995.[13] I find that the inability of the domestic industry to satisfy domestic demand requirements for pure magnesium over the period of investigation lessens any potential adverse volume effects of LTFV imports.

For all of the foregoing reasons, I do not find the volume of cumulated LTFV imports in these investigations to be significant.

B. Price Effects

The record in these investigations does not support Petitioners' allegations that LTFV imports have significantly depressed and suppressed prices for the domestic product during the period of investigation. Domestic average unit values rose from *** in 1992 to *** in

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[6] Table 24, CR at I-48-49, PR at I-26.

[7] These factors include the liquidation of magnesium stockpiles in Russia, more attractive selling terms in other parts of the world, Ukrainian power shortages, and a decision by the Ukrainian government to allocate more magnesium production for domestic consumption. Ukrainian Respondents' Prehearing Brief at 4-6; Russian Respondents' Prehearing Brief at 25, Chinese Respondents' Posthearing Brief at 2-3.

[8] Table 24, CR at I-48-49, PR at I-26.

[9] CR at I-39, PR at I-21; Chinese Respondents' Posthearing Brief at 2; Russian Respondents' Posthearing Brief at 2-3.

[10] Table 24, CR at I-48, PR at I-26. From 1992 to 1993, the market penetration of fair value imports increased from *** percent to *** percent, while the market penetration of LTFV imports rose from *** percent to *** percent.

[11] Table 24, CR at I-48-49, PR at I-24.

[12] Id.

[13] CR at I-18-19 and I-55, PR at I-13 and I-30.

1993 and remained at *** in 1994.[14] Thus, overall domestic prices rose to their highest levels over the period of investigation in 1993, the same time that LTFV imports also were at their highest levels, and remained high in 1994, when LTFV imports were at their lowest levels over the period examined.[15]

In assessing price effects, I also consider the substitutability between LTFV imports and the domestic like product, price sensitivity of demand for the domestic like product, and the presence of price-restraining competitive factors in the domestic market. Although users reported that the domestic product and LTFV imports are generally employed for the same range of uses, the products are differentiated in several key respects.[16] A significant portion of U.S. purchasers reported disadvantages associated with LTFV imports involving quality, reliability, service, contractual arrangements, size and shape of the product, delivery, availability, and other factors.[17] In addition, a substantial number of purchasers indicated that price is not the most important factor in their magnesium purchasing decisions.[18] I find that the domestic product and LTFV imports are, at best, moderate substitutes. Furthermore, I find that evidence of underselling by LTFV imports in these investigations[19] largely reflects product differentiation, quality differences, and other non-price factors.

Finally, despite evidence on the record that demand for pure magnesium is relatively inelastic,[20] the ability of the domestic pure magnesium industry to raise prices appears to be constrained by the presence of fair value imports in the domestic market.[21] Fair value imports and the domestic product also appear to be moderately substitutable.[22] Furthermore, throughout the period of investigation, fair value imports were significant in volume relative to LTFV imports and in 1994, the market presence of fair value imports of pure magnesium exceeded that of LTFV imports.[23]

Based on the foregoing, I find that cumulated LTFV imports had no significant adverse effects on the prices of domestically produced pure magnesium.

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[14] Table A-1, CR at A-3-4-5, PR at A-3. Although I am mindful of the risks in placing too much reliance on average unit values, I have given more consideration to unit values in this particular investigation since there is no evidence on the record to indicate that the average unit values were affected significantly by changes in product mix. First, pure magnesium sold by the domestic industry appears to be fairly commodity-like, with little physical product differentiation between U.S. suppliers. CR at I-7, PR at 6. Second, the record indicates that a large portion of the sales of the domestic industry are under long term contracts which contain volume requirements. CR at I-51, PR at I-28. Third, the record also indicates that the distribution of sales of pure magnesium by end users remained relatively stable over the period examined. Table E-1, CR at E-3, PR at E-3.

[15] Table A-1, CR at A-3-4-5, PR at A-3; Table 23, CR at I-46-47, PR at I-23.

[16] EC-S-048 at 36.

[17] EC-S-048 at 26-27.

[18] Id.

[19] CR at I-61 and I-66, PR at I-32 and I-34.

[20] Evidence on the record indicates that demand for pure magnesium is a derived demand, that pure magnesium accounts for a small share of the cost of the products in which it is used, and that there are few, if any, substitutes for pure magnesium in its end uses. EC-S-048 at 14-15.

[21] Slightly more than one-half of the responding firms (5 of 9) reported that prices for fair value imports were lower than those for the domestic product. EC-S-048 at 28.

[22] EC-S-048 at 28-29. All of the 15 responding purchasers reported that U.S.-produced magnesium is used in the same applications as magnesium imported from countries not subject to investigation or fair value imports. Virtually all (16 of 18) of the responding purchasers reported that the quality of the domestic product was comparable to that of fair value imports. Id.

[23] Table 24, CR at I-48-49, PR at I-26.

C. Impact

Several factors lead to my conclusion that the domestic pure magnesium industry suffered no adverse impact by reason of LTFV imports of pure magnesium from the cumulated countries that are subject to investigation. As discussed above, I do not find the volume of LTFV imports to be significant and I find no evidence of adverse price effects by reason of LTFV imports of pure magnesium. In addition, as discussed below, I do not accept Petitioners' arguments that the U.S. pure magnesium industry has suffered, and is suffering, material injury by reason of LTFV imports.

Any deterioration in financial performance by the domestic industry during the period of investigation is primarily attributable to ***.[24] *** the industry as a whole showed improvements in capacity utilization, quantity and value of U.S. shipments, and productivity from 1993 to 1994.[25]

I give little credence to Petitioners' claim that competition from LTFV imports led to Dow's decision to close one of its two plants producing pure magnesium, leading to declines in capacity, employment, and financial health.[26] Evidence on the record reveals that Dow's decision to close the plant was, at least in part, due to long term market considerations and was intended to improve efficiency and streamline its manufacturing process.[27]

I also note that several times over the period of investigation the domestic industry was unable to meet domestic demand. Evidence of such supply shortages in the domestic market even further reduces the likelihood that the domestic industry was, or could be, materially injured by reason of LTFV imports.

On the basis of all of the above, I determine that an industry in the United States is not materially injured by reason of LTFV imports of pure magnesium from China, Russia, and Ukraine.

2. No Threat of Material Injury by Reason of LTFV Imports of Pure Magnesium from China, Russia, and Ukraine.

I have considered all of the statutory factors that are relevant to this investigation.[28] The statute requires that the Commission determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent." The Commission is not to make a determination "on the basis of mere conjecture or supposition."[29]

I have based my analysis on the limited amount of information available concerning production and capacity of pure magnesium in the countries subject to investigation. Evidence on the record indicates that capacity in China and Ukraine was stable throughout the period of investigation and that, although Russian capacity increased from 1992 to 1994, it is projected to remain stable in 1995.[30] Production levels in China were stable throughout the period examined, while production in Russia increased from 1992 to 1994 and production in Ukraine declined over the period of investigation. Information received by the Commission

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[24] Table 11, CR at 1-31, PR at I-19. *** CR at I-18, PR at I-13.

[25] Tables 2, 4, and 5, CR at I-19-23, PR at I-14, and I-16-17.

[26] Hearing Transcript at 31-33, Petitioners' Posthearing Brief at 28-29.

[27] CR at I-18, PR at I-13.

[28] 19 U.S.C. § 1677(F)(i).

[29] 19 U.S.C. § 1677(F)(ii).

[30] Tables 19, 20, and 22, CR at I-39-44, PR at I-21-22.

from one of four Chinese and two Russian producers of magnesium reflects high levels of capacity utilization in those countries throughout the period examined.[31] I find that available capacity in Ukraine is not likely to result in a significant increase in imports of pure magnesium to the United States for several reasons. First, as is the case with all countries subject to investigation, Ukraine's home market and non-U.S. export markets exceed the United States market in importance.[32] Second, Ukrainian production of pure magnesium declined throughout the period of investigation and is expected to decline further in 1995 due to power supply shortages.[33] For these reasons, I find that the information concerning production and unused or underutilized capacity in the countries subject to investigation does not support a conclusion that any threat of material injury is real or that actual injury is imminent.

Although cumulated[34] market penetration of LTFV imports increased significantly from 1992 to 1993, it declined in 1994.[35] Moreover, the large percentage increase in the market share of LTFV imports from 1992 to 1993 reflects the very small initial cumulated market share. Because the cumulated market share of LTFV imports was low in 1994 and available capacity in the countries subject to investigation is not likely to result in a significant increase in market penetration, I do not find it likely that market penetration of LTFV imports will rise to an injurious level.

For the reasons discussed above, I found that the LTFV imports have had no adverse price effects during the period of investigation. I find nothing in the record to indicate that there will be injurious price effects in the imminent future.

The evidence on the record indicates that U.S. importers' end-of-period inventories from countries subject to investigation in absolute terms, as a ratio to imports, and as a ratio to total shipments, declined over the period of investigation and ***.[36] Given this evidence, I find that there has been no substantial increase in U.S. importers' inventories and that this information does not represent evidence that any threat of actual injury is real or that actual injury is imminent.

I find no evidence of any other demonstrable adverse trends that indicate that LTFV imports will be a cause of actual injury in the immediate future. I do not find that the potential for product shifting represents a threat of material injury that is real or imminent. Although producers of pure magnesium in countries subject to investigation are able to produce pure and alloy magnesium on the same equipment and can shift from production of one product to the other,[37] their ability to do so is constrained by capacity limitations and demand for pure and alloy magnesium products in home markets and U.S. and non-U.S. export markets.

I find that a pending European Union antidumping investigation of primary magnesium imports from Russia, Ukraine, and Kazakhastan and a Brazilian antidumping investigation of primary magnesium imports from Russia, Ukraine, and the United States[38] do

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[31] Id.

[32] Table 22, CR at I-44, PR at I-22.

[33] CR at I-43, PR at I-22.

[34] For the purposes of this threat determination, I exercise my discretion to cumulate all LTFV imports for the same reasons explained in the Commission opinion, supra. I further note that cumulation of all LTFV imports presents the best case for the Petitioners.

[35] Table 24, CR at I-48-49., PR at I-26.

[36] Table 18, CR at I-37-38, PR at I-21.

[37] CR at I-12-13, PR at I-9.

[38] CR at I-43, PR at I-22.

not constitute evidence that any threat of material injury is real or that actual injury is imminent because these investigations have not been concluded and have not resulted in the "findings or antidumping remedies" required by the statute for consideration in this case.[39]

For the reasons stated above, I find that the domestic industry producing pure magnesium is not threatened with material injury by reason of LTFV imports from China, Russia, and Ukraine.

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[39] 19 U.S.C. § 1677(F)(iii).

DISSENTING VIEWS OF VICE CHAIRMAN JANET A. NUZUM

Like my colleagues, I do not find that a domestic industry is materially injured or threatened with material injury by reason of less than fair value ("LTFV") imports of alloy magnesium from China and Russia. Except as noted therein, I join the views of the majority with respect to all issues concerning alloy magnesium.

Unlike some of my colleagues, however, I also make negative determinations with respect to imports of pure magnesium from China, Russia and Ukraine. In this regard, I join the views of the majority opinion only with respect to like product, domestic industry (including related parties), and cumulation. These dissenting views set forth my analysis with respect to present material injury and threat of material injury for pure magnesium.

I. CONDITIONS OF COMPETITION

Our statutory authority instructs us to evaluate the impact of unfair imports in the context of the conditions of competition that are distinctive to the affected domestic industry.[1] These competitive conditions provide a framework for interpreting many of the standard indicia we examine. I therefore find it useful to begin with a discussion of these factors.

One condition of competition affecting the domestic magnesium industry during the period examined is the impact of unfairly traded imports of pure magnesium from Canada and consequent imposition of trade remedies against these imports in 1992.[2] These developments are reflected in the market by the substantial decline in imports of pure magnesium from Canada from 21,758 metric tons in 1991 to 1,251 metric tons in 1992.[3] The rapid departure of Canadian magnesium from the domestic market provided domestic producers the opportunity to increase their production, shipments and market share. Indeed, the domestic industry's market share reached its highest level for the period in 1992. However, as discussed below, that same year the domestic industry also experienced its worst financial performance during the period examined.

A second condition of competition worth noting is the nature of the production process of magnesium, specifically, the use of electrolytic cells. Electrolytic cells must be kept running constantly, or else they will deteriorate. Magnesium producers must try to keep the cells running constantly because the costs of rebuilding them are so high.[4] Consequently, domestic producers must maintain high levels of capacity utilization for cost-effective production.

Apparent consumption of pure magnesium during the period examined here did not change very much. It increased by about *** percent from 1992 to 1993, and then decreased by less than *** percent from 1993 to 1994.[5] Although consumption of pure magnesium remained relatively stable, conditions of short supply were also evident during the period

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[1] 19 U.S.C. § 1677(7)(C).

[2] Suspension of liquidation of imports of Canadian magnesium occurred in December 1991 and January 1992. 56 Fed. Reg. 63927 (Dec. 6, 1991); 57 Fed. Reg. 6094 (Feb. 20, 1992). Following our determination that the domestic industry was experiencing material injury by reason of unfairly traded imports from Canada in August 1992, see Magnesium from Canada. Invs. Nos. 701-TA-309 and 731-TA-528 (Final) USITC Pub. 2550 (Aug. 1992), the Commerce Department issued antidumping and countervailing duty orders.

[3] See USITC Pub. 2775 at C-7, Table C-9.

[4] Petitioners' Prehearing Br. at 18.

[5] Table 24, CR at I-15, PR at I-26.

examined, when purchasers were not able to buy all of the pure magnesium they needed from domestic producers.[6] Domestic producers further reported instances where they were unable to supply magnesium in a timely manner.[7]

These conditions of competition during the period we examined in these investigations provide a backdrop for understanding and analyzing the statutory indicators addressed below.

II. NO PRESENT MATERIAL INJURY BY REASON OF LTFV IMPORTS

A. Volume of subject imports. Cumulated subject imports of pure magnesium increased from 1992 to 1993 at a rate that may fairly be termed significant. Cumulated imports increased almost *** from *** metric tons in 1992 to *** in 1993.[8] In terms of market share, cumulated imports increased from less than 5 percent in 1992 to over 10 percent in 1993. At the same time, domestic market share fell from more than 95 percent to less than 80 percent.[9] Respondents contended, and petitioners did not disagree, that this early influx in subject imports was largely due to sales of oxidized stockpiles of fifteen-year old U.S.S.R. magnesium.[10]

In 1994, however, subject imports of pure magnesium fell to *** metric tons and less than 7 percent market share, while domestic market share rebounded to more than 83 percent.[11] There is strong disagreement among the parties as to the reason for the decline in subject imports in 1994. I am persuaded that these antidumping investigations were at least partly responsible for the decline.

Nevertheless, I note that since the Department of Commerce made its preliminary determinations in November 1994, imports of fairly-traded pure magnesium from Russia have not increased significantly, which suggests they are continuing to sell in other countries.[12] Further, it appears that the stockpiles of oxidized magnesium which fueled the increase in subject imports during 1992-93 have been depleted.[13] In short, while the antidumping investigations likely caused some of the decline in subject imports in 1994, there appear to be other reasons for the decline as well. Accordingly, while cumulated subject imports did increase significantly from 1992 to 1993, I find that the volumes and market shares held by subject imports at the end of the period of investigation are not significant.

B. Price effects. I will begin my discussion of price effects with some comments on the issue of quality. Although there is significant interchangeability among subject imports and domestic pure magnesium, there also are some quality differences. Pure magnesium from Russia and Ukraine that first entered the U.S. market in 1992 and 1993 was oxidized, frequently covered with potassium bichromate solution (viewed by the Environmental

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[6] CR at I-55, PR at I-30.

[7] Id.; see also Petitioners' Posthearing Br., App. B at 16.

[8] Table 23, CR at I-46; PR at I-23.

[9] Table 24, CR at I-48; PR at I-26.

[10] USITC Pub. 2775 at I-22. Russian Respondents' Prehearing Br. at 3; Ukrainian Respondent's Prehearing Br. at 4-5.

[11] Tables 23 and 24, CR at I-46, I-48; PR at I-23, I-26.

[12] See INV-S-055, INV-S-056, showing no imports of pure magnesium from Russia in November or December 1994 and only $1.26 million worth in the first two months of 1995.

[13] CR at I-8; PR at I-6-7.

Protection Agency as a waste product), and wrapped in paraffin wax or wax paper.[14] It appears, however, that the quality of pure magnesium from Russia and Ukraine improved over the course of the period examined.[15]

Another difference is that imports from all three subject countries are only available in smaller sizes, while domestically-produced pure magnesium is available in a variety of sizes. The smaller size is viewed as a disadvantage by some purchasers.[16]

Overall, purchasers were divided on the subject of quality. Half of the responding purchasers indicated that Chinese and Ukrainian products are comparable to domestic products, while the other half viewed the imports are inferior. In the case of Russian magnesium, over two-thirds of responding purchasers indicated it was comparable to domestically-produced magnesium.[17] The record reflects widespread and fairly continuous underselling by the subject imports. Out of 22 possible comparisons of domestic producer and importer prices, subject imports undersold domestic pure magnesium in 18 instances by margins ranging from 2.7 to 17.6 percent.[18]

Domestic prices for pure magnesium increased substantially in 1992, which is when Canadian pure magnesium largely exited the market. Domestic prices declined during 1993, at the same time that subject imports increased, although domestic prices remained well above the low levels of 1992. Domestic prices recovered in 1994, at the same time that subject import volumes fell.[19] Thus, the record indicates at least a correlation between the trends in domestic price and subject import volumes. Further, several purchasers confirmed petitioners' lost sales allegations, indicating that they purchased magnesium from Russia, China and/or Ukraine because of the lower price.[20]

There are other facts, however, that mitigate the significance of the underselling and lost sales/lost revenue information. First, 25 out of the 34 total allegations of lost sales or lost revenue concern transactions that occurred in 1993, when subject imports from Russia and Ukraine consisted largely of the oxidized stockpiled pure magnesium.[21] As noted earlier, these stockpiles have largely been depleted.[22] Thus, to the extent that it was these stockpiles that caused domestic producers to lose sales and revenue, and caused domestic prices to fall, such effects, at best, could constitute evidence of past injury. Given that the stockpiles are depleted, oxidized magnesium from Russia or Ukraine cannot have present or future adverse price effects.

Second, a sizeable portion of the imports from Russia were fairly traded.[23] These imports undersold domestic product almost as frequently as did LTFV imports.[24] Price

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[14] CR at I-54; PR at I-29.

[15] CR at I-8, I-54; PR at I-7, I-30.

[16] CR at I-54; PR at I-30.

[17] Id.

[18] Table 27, CR at I-62; PR at I-32.

[19] Tables 25, 26, CR at I-57, I-60; PR at I-31-32.

[20] CR at I-70-72; PR at I-36.

[21] Table 28, CR at I-69; PR at I-35.

[22] CR at I-8; PR at I-7.

[23] Table 24, CR at I-45; PR at I-26. For example, fairly-traded imports from Russia accounted for nearly *** percent of total imports of pure magnesium from the three subject countries in 1993, and more than *** percent in 1994. Further, fairly-traded imports from Russia were *** than LTFV imports from Russia in both 1993 and 1994.

[24] Tables 25 and 26, CR at I-57, I-60; PR at I-31-32.

depression caused by these fairly-traded imports, of course, is not a basis for an affirmative determination.

On balance, I find the question of whether LTFV imports had adverse price effects to be a close one. On the one hand, there is some evidence that domestic prices may have been affected by the sharp increase in imports, both fairly and unfairly traded, from the subject countries and by the underselling, in 1993 and early 1994. On the other hand, as discussed below, the industry's financial performance improved considerably from 1992 to 1993, and ***. In 1994, although domestic prices recovered as subject imports left the market, the industry's financial performance slightly worsened.[25]

C. Impact on the domestic industry. Given the closeness of the question of price effects, I examined the record with particular care for other evidence of adverse impact by the subject imports. Several industry indicators showed declines from 1992 to 1993 in production, shipments, employment, and net sales, as subject imports increased.[26] There was substantial improvement in financial performance, however, as *** in 1992 shrunk to *** in 1993, and the operating margin improved from *** percent, even though prices started to fall.[27] Both *** went from *** in 1992 to *** in 1993, while ***.[28]

From 1993 to 1994, most industry indicators showed improvement, although this period also includes the decline in capacity, as Dow permanently shut down one of its plants.[29] Production declined *** percent, but this likely reflects ***.[30] U.S. shipments improved *** percent, and net sales climbed *** percent.[31] Operating income worsened slightly, falling to a *** and an operating margin of *** percent. ***.[32]

In short, the industry's financial performance improved in the face of increasing subject imports and falling prices, and then worsened slightly as subject imports declined and prices increased. Thus, the record does not show, in my view, a clear causal link between the domestic industry's performance and subject imports. Accordingly, I do not find substantial evidence that the domestic industry is materially injured by reason of subject imports.

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[25] These trends might be explained by lags between price changes and domestic industry performance. There is no evidence in this record, however, to suggest that there exist lags in this industry that are lengthy enough to account for the disparity in price and industry trends.

[26] See Tables 2, 3, 5, 9, CR at I-19, I-20, I-23, I-29; PR at I-14, I-15, I-17, I-19.

[27] See Tables 9, 25 26, CR at I-29, I-57, I-60; PR at I-19, I-31-32.

[28] Table 11, CR at I-31, PR at I-15.

[29] Table 2, CR at I-19, PR at I-14. During the final investigation, Dow contended the reason for shutting down its plant was because subject imports were taking away market share. Hearing Tr. at 31-32; Petitioners' Posthearing Br. at 28-29. I find Dow's press releases that announced the closing of the plant to be ambiguous about the role of subject imports in the U.S. market. One of the press releases, dated September 28, 1993, quotes Scott Thompson, the manager of Magnesium Operations, as follows: "Our market projections indicate that all of the present on-line capacity is not required to meet current customer demand. . . . We anticipate being able to produce sufficient magnesium to satisfy market demand from the remaining production." The press release also mentions the appearance of Russian magnesium in the "free world." I find the other press releases are equally ambiguous about the role of increased Russian magnesium in the U.S. market as a reason for Dow's closing its plant. See Petitioners' Posthearing Br., Exh. N2.

[30] Table 2, CR at I-19, I-21; PR at I-14-15.

[31] Tables 3, 9, CR at I-20, I-29; PR at I-15, I-19.

[32] Tables 9, 11, CR at I-29, I-31; PR at I-19..

III. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS

Having arrived at a negative determination with respect to present injury, I now turn to examine whether the domestic industry is threatened with material injury by reason of the LTFV imports. Section 771(7)(F) of the Act directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent." The statute specifically states, "Such a determination may not be made on the basis of mere conjecture or supposition."[33] The Commission considers as many of the ten statutory factors as are relevant to the facts of the particular investigation before it, as well as any other relevant economic factors.[34] Our reviewing court has stated that the ten statutory factors serve primarily as guidelines for the Commission's analysis of the likely impact of future imports.[35]

A. Cumulation for purposes of threat analysis. In assessing whether a domestic industry is threatened with material injury by reason of imports from two or more subject countries, the Commission has discretion to cumulate the volume and price effects of such imports to the extent practicable.[36] In these investigations, I observed that the trends for LTFV imports from all three subject countries were very similar.[37] Further, LTFV imports of pure magnesium from all three countries undersold domestic pure magnesium, and prices for these imports overlapped with one another.[38] Finally, magnesium is a commodity product and the subject imports appear to be fairly fungible. Accordingly, I conclude it is appropriate to cumulate the subject imports for purposes of my threat analysis.

B. No threat of material injury. Capacity to produce pure magnesium remained steady in China and Ukraine, while it increased in Russia, based on the information available.[39] Capacity utilization in China and Ukraine was much lower than in Russia.[40] Notwithstanding the excess capacity in China and Ukraine, however, the market shares held by LTFV imports of pure magnesium from these two countries were much lower than that held by LTFV imports from Russia throughout the period examined.[41] Finally, neither imports from China nor imports from Ukraine achieved significant market penetration during

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[33] 19 U.S.C. §1677(7)(F)(ii). See Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990).

[34] Factor I, regarding the nature of the subsidy, and Factor XI, regarding raw agricultural products, are not relevant to this investigation.

[35] Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int'l Trade 1992).

[36] 19 U.S.C. § 1677(7)(F)(iv).

[37] Table 23, CR at I-46; PR at I-23.

[38] Table 25, CR at I-57; PR at I-31.

[39] We obtained capacity and production information from one Chinese producer who accounts for a relatively small share of total production, from both Russian producers, and from one of two Ukrainian producers. We also obtained capacity and production estimates from the U.S. Bureau of Mines. CR at I-38-43; PR at I-21-22.

[40] Compare Tables 19, 20, and 22, CR at I-40, 41, and 44; PR at I-21-22. I note in particular that production of pure magnesium in Ukraine *** steadily during the period. Id. at Table 22, CR I-44; PR at I-22.

[41] Table 24, CR at I-48; PR at I-26.

the period, even though these foreign producers had the extra capacity to increase production that would have made significant market penetration possible.

As noted, Russian capacity to produce pure magnesium increased during the period.[42] Exports of Russian pure magnesium to other markets also increased, however, which suggests that these capacity increases are not directed at the U.S. market.

There was no substantial increase in inventories of the merchandise in the United States.[43] Indeed, importers' inventories never exceeded *** percent of domestic consumption of pure magnesium.[44]

As noted earlier, although subject imports did increase rapidly from 1992 to 1993, they decreased almost as rapidly the following year for a variety of reasons, including these antidumping investigations. The record on price effects during the period was mixed. The evidence concerning supply shortages in the domestic market in 1994 and 1995 and the inability of domestic producers to fill spot orders indicates that demand for pure magnesium is likely to remain strong for the imminent future.[45] Thus, even if subject imports were to increase, I am not persuaded that such increases are likely to reach injurious levels in the imminent future, or that the subject imports will enter at prices that have depressing or suppressing effects.

I also do not find evidence of other demonstrable adverse trends. To the contrary, the supply shortages evident in 1994 and 1995 suggest the domestic industry will enjoy strong demand for pure magnesium for the imminent future.[46]

Finally, I note that there are pending antidumping investigations in Brazil and in the European Union involving imports of pure magnesium from Russia and Ukraine, as well as other countries.[47] Our record, however, suggests that there are not yet findings or antidumping duties imposed in any of those investigations which would be relevant to these investigations.

CONCLUSION

For the reasons discussed above, I determine that the domestic industry producing pure magnesium is neither materially injured nor threatened with material injury by reason of LTFV imports of pure magnesium from China, Russia or Ukraine.

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[42] Table 20, CR at I-41; PR at I-22.

[43] Table 18, CR at I-37; PR at I-21.

[44] Derived from information in Table 18, CR at I-37, and Table 24, CR at I-48; PR at I-21, I-26.

[45] CR at I-18, I-19, I-55, I-72; PR at I-13-14, I-30, I-37..

[46] Since the Commission made a negative determination with respect to alloy magnesium, the potential for product-shifting is not relevant here.

[47] CR at I-43; PR at I-22.

VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in these final investigations, I determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of magnesium from the People's Republic of China ("China"), Russia and Ukraine found by the Department of Commerce to be sold at less-than-fair-value ("LTFV"). I concur in the conclusion of my colleagues that an industry in the United States is not materially injured or threatened with material injury by reason of LTFV imports of alloy magnesium from China and Russia. However, I dissent from the majority of the Commission's determination, and determine that an industry in the United States is not materially injured or threatened with material injury by reason of LTFV imports of pure magnesium from China, Russia and Ukraine. Because my like product finding in these investigations differs from my colleagues', my separate views follow.

I. LIKE PRODUCT

The Department of Commerce ("Commerce") has investigated two classes or kinds of merchandise: pure magnesium and alloy magnesium. In the preliminary determinations in these investigations, I joined the like product finding of the majority of the Commission. That like product finding analyzed separately what domestic product is "like" imported pure magnesium and what domestic product is "like" imported alloy magnesium. We found that primary magnesium is the like product that corresponds to each class or kind of subject imports. That is, domestic primary magnesium is "like" imported pure magnesium, and domestic primary magnesium is also "like" imported alloy magnesium.

In our preliminary determinations, we reached our like product determination by following the Commission's traditional six-factor test, citing the commonality of production facilities, machinery, processes and employees, the sharing of the same predominant component (magnesium) and its essential physical characteristics, and the existence of crossover sales between pure and alloy magnesium to the same end users. In a footnote, the majority expressed its intention to reexamine the like product question in these final investigations, particularly with respect to the issues of interchangeability and overlap in end uses.[1]

In these final investigations, the majority has changed its like product determination to find two separate like products. The majority has found that domestic pure magnesium, not all primary magnesium, is "like" imported pure magnesium, and that domestic alloy magnesium, not all primary magnesium, is "like" imported alloy magnesium. Unfortunately, the record in these final investigations is devoid of any evidence that supports such a switch in like product findings. The record contains no basis for making a different finding concerning the commonality of production facilities, machinery, processes and employees, or that domestic pure and alloy magnesium share the same predominant component (magnesium) and its essential physical characteristics. Moreover, the record in these final investigations contains evidence, as it did in the preliminary determinations, that there is sufficient interchangeability between domestic pure and domestic alloy magnesium to prevent a finding of a clear dividing line between the two. Record evidence in these final investigations fully supports our findings. In fact, the availability of full year 1994 data in the current record shows the overlap to be even more pronounced. In our preliminary determinations regarding

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[1] Magnesium from the People's Republic of China, Russia and Ukraine, Invs. Nos. 731-TA-696-698 (Preliminary) USITC Pub. 2775 (May 1994), hereinafter referred to as the "Preliminary Determinations".

the overlap between sales of pure and alloy magnesium, we cited sales of both products to desulfurizers and diecasters, and only small sales of domestic alloy to aluminum producers.[2] Evidence in the current record indicates that there is a significant, and growing, overlap in sales to both desulfurizers and diecasters. Sales to desulfurizers constitute the second largest market both for domestic pure magnesium and for domestic alloy magnesium.[3] Moreover, sales to desulfurizers have become an increasingly important market for domestic alloy magnesium, increasing from only *** metric tons in 1992 to *** metric tons in 1994, which is *** metric tons above the 1993 level that was the most current information at the time of our preliminary determinations.[4] Overlap in sales is also clear with respect to common sales to diecasters. Sales to diecasters constitute the largest market for domestic alloy magnesium. Diecasters remain a relatively small market for domestic pure magnesium. However, the record in these final investigations shows that the market for sales of pure magnesium to diecasters has grown substantially, from *** metric tons in 1992 to *** metric tons in 1994,[5] which is an extraordinarily larger amount than the highest level of *** metric tons in 1991 as shown in the record of the preliminary investigations.[6] [7] While the low level of alloy magnesium sales to aluminum producers was unchanged, the information in the current record establishes even more strongly that there is no clear dividing line between domestic pure magnesium and domestic alloy magnesium.

In sum, the current record contains no relevant evidence to support a change in the like product finding. Rather, the majority's changed like product finding is apparently a response to Commerce's decision to re-define pure and alloy magnesium.[8] This change results in a larger volume of subject imports of pure magnesium, and thus a larger market share of subject imports of pure magnesium, particularly when the narrower like product of pure magnesium is chosen. Conversely, the volume and market share of subject imports of alloy magnesium is reduced. The redefinition also makes domestic pure magnesium more "like" imported pure magnesium and domestic alloy magnesium more "like" imported alloy magnesium.

However, Commerce's redefinition provides no basis for altering the Commission's like product analysis.[9] The Commission's analysis of like product in the preliminary

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[2] Preliminary Determinations at I-10.

[3] In 1994, sales of alloy magnesium and pure magnesium to desulfurizers accounted for *** percent and *** percent of shipments, respectively. Calculated from Table E-1, CR at E-3; PR at E-3.

[4] See Preliminary Determinations Confidential Report (INV-R-070, May 6, 1994) at II-21.

[5] CR at E-3, Table E-1; PR at E-3. In 1994, sales to diecasters accounted for *** percent of domestic shipments of pure magnesium.

[6] See Preliminary Determinations Confidential Report (INV-R-070, May 6, 1994) at II-21.

[7] This extraordinary difference may result from Commerce's redefinition of its scope of investigation, discussed below. If so, the redefinition actually increases the overlap between sales of domestic pure and domestic alloy magnesium, compared with the overlap in the preliminary determinations.

[8] Commerce initially included certain "off spec" pure magnesium in its alloy magnesium class or kind of merchandise. In its final determination, Commerce changed its scope definition to include this "off spec" pure magnesium in its pure magnesium class or kind of merchandise, instead of its alloy class or kind of merchandise.

[9] In this regard, petitioners' position concerning the appropriate like product is instructive. In the preliminary investigations, petitioners argued for a single like product consisting of primary magnesium, asserting that there is no clear dividing line between pure and alloy magnesium. See Petitioners' Postconference Brief at 4-13. Importantly, both petitioning companies ***. See CR at I-18; PR at I-13. In these final investigations, petitioners argue for two separate like products, albeit with somewhat

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determinations remains sound and is appropriate in these final investigations. The majority's decision to revise its like product finding is not warranted either by Commerce's redefinition or the evidence in the current record.

I therefore find that the like product corresponding to subject imports of pure magnesium is primary magnesium. I also find that the like product corresponding to subject imports of alloy magnesium is primary magnesium. Consequently, in my determination with respect to subject imports of pure magnesium, I define the domestic industry as the producers of primary magnesium. Similarly, in my determination with respect to subject imports of alloy magnesium, I define the domestic industry as the producers of primary magnesium.[10]

II. ANALYTICAL FRAMEWORK

In determining whether a domestic industry is materially injured by reason of the LTFV imports, the statute directs the Commission to consider:

> (I) the volume of imports of the merchandise which is the subject of the investigation,
> (II) the effect of imports of that merchandise on prices in the United States for like products, and
> (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States....[11]

In making its determination, the Commission may consider "such other economic factors as are relevant to the determination."[12] In addition, the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry ... within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[13]

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[9] (...continued)
less clarity than their contrary position in the preliminary investigations. Petitioners assert that, due to Commerce's changed scope definition, domestic pure magnesium is the product most "like" imported pure. However, they acknowledge that several of the like product factors relied on in the preliminary determinations continue to support a finding that domestic primary magnesium is "like" imported pure magnesium. Although they assert that the domestic alloy magnesium is the product most "like" imported alloy magnesium, they also suggest that the Commission could find that domestic pure magnesium is "like" imported alloy magnesium. This suggestion leads to an intriguing result. Petitioners assert that domestic alloy is "like" imported alloy; if, as suggested, domestic pure is also "like" imported alloy, then domestic alloy must be "like" domestic pure. Consequently, if domestic alloy and domestic pure are "like" each other, then the domestic product "like" the subject imports is primary magnesium. In sum, petitioners' own assertions, even in these final investigations, warrant a finding that primary magnesium is the product "like" subject imports.

[10] One producer imported subject imports during the period of investigation, and thus meets the definition of "related party" in 19 U.S.C. § 1677(4)(B). However, I find that appropriate circumstances do not exist to exclude this firm from the domestic industry because the volume of the imports was so small that it is clear that this firm's primary and fundamental interests lie in producing the like product, not importing subject imports. See CR at I-14; PR at I-10.

[11] 19 U.S.C. § 1677(7)(B)(i).

[12] 19 U.S.C.§ 1677(7)(B)(ii).

[13] 19 U.S.C. § 1677(7)(C)(iii).

The statute directs that we determine whether there is "material injury by reason of the dumped imports." Thus we are called upon to evaluate the effect of dumped imports on the domestic industry and determine if they are causing material injury. There may be, and often are, other "factors" that are causing injury. These factors may even be causing greater injury than the dumping. However, the statute does not require us to weigh or prioritize the factors that are independently causing material injury. Rather, the Commission is to determine whether any injury "by reason of" the dumped imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effects of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry."[14] It is important, therefore, to assess the effects of the dumped imports in a way that distinguishes those effects from the effects of other factors unrelated to the dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without the dumping, that is, had subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury. The Court of International Trade has held that the "statutory language fits very well" with my mode of analysis.[15]

In my analysis of material injury, I evaluate the effects of the dumping on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the dumping on domestic prices, I compare domestic prices that existed when the imports were dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of dumping on the quantity of domestic sales,[16] I compare the level of domestic sales that existed when imports were dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales and overall revenues is critical to determining the state of the industry, because the impact on other industry indicators (e.g., employment, wages, etc.) is derived from the impact on the domestic industry's prices, sales, and revenues.

I then determine whether the price, sales and revenue effects of the dumping, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been priced fairly. If so, the domestic industry is materially injured by reason of the dumped imports.

For the reasons discussed below, I determine that the domestic industry producing primary magnesium is not materially injured by reason of LTFV imports of pure magnesium from China, Russia and Ukraine. I also determine that the domestic industry producing primary magnesium is not materially injured by reason of LTFV imports of alloy magnesium from China and Russia.

III. CONDITIONS OF COMPETITION

To understand how an industry is affected by unfair imports, we must examine the conditions of competition in the domestic market. The conditions of competition constitute the commercial environment in which the domestic industry competes with unfair imports,

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[14] S.Rep. No. 71, 100th Cong., 1st Sess. 116 (1987)(emphasis added).

[15] U.S. Steel Group v. United States, 873 F.Supp. 673, 695 (Ct. Int'l Trade 1994), appeal docketed, No. 95-1245 (Fed. Cir. March 22, 1995).

[16] In examining the quantity sold, I take into account sales from both existing inventory and new production.

and thus form the foundation for a realistic assessment of the effects of the dumping. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

A. Demand Conditions

An analysis of demand conditions tells us what options are available to purchasers, and how they are likely to respond to changes in market conditions, for example an increase in the general level of prices in the market. Purchasers generally seek to avoid price increases, but their ability to do so varies with conditions in the market. The willingness of purchasers to pay a higher price will depend on the importance of the product to them (e.g. how large a cost factor) and whether they have options that allow them to avoid the price increase, for example by switching to alternative products. An analysis of these demand-side factors tells us whether demand for the product is elastic or inelastic, that is, whether purchasers will reduce the quantity of their purchases if the price of the product increases. For the reasons discussed below, I find that the elasticity of demand for primary magnesium is relatively low.

Cost Factor. The first factor that measures the willingness of purchasers to pay higher prices is the importance of the product to purchasers. If the product is an input, its importance will depend on the significance of the product's cost relative to the total cost of the downstream products in which it is used. When the price of an input is a small portion of the total product cost, changes in the price of the input are less likely to alter demand for the downstream product and, by extension, the demand for the input.

The cost share of magnesium varies depending on the product in which it is used. The cost of pure magnesium accounts for a small portion of the cost of many of the end products in which it is used.[17] In addition, the cost of alloy magnesium does not account for a substantial portion of the cost of most of the end products in which it is used.[18] For these reasons, I find that primary magnesium accounts for a relatively small percentage of the cost of the final products in which it is used.

Alternative Products. A second important factor in determining whether purchasers would be willing to pay higher prices is the availability of viable alternative products. Often purchasers can avoid a price increase by switching to alternative products. If such an option exists, it can impose discipline on producer efforts to increase prices.

In this investigation the record demonstrates that there are only very limited alternatives to magnesium. There are no known alternatives for pure magnesium in virtually any of its end uses, and the use of an alternative product in the iron and steel desulfurization market is somewhat limited.[19]

There are alternatives for alloy magnesium in certain end use applications. However, in applications where specific characteristics of magnesium (e.g. minimizing weight) are important, the economic viability of alternative products is limited.[20] Thus, very few products represent viable alternatives to alloy magnesium. Consequently, overall there are very limited alternatives to primary magnesium. Therefore, purchasers seeking to avoid a

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[17] EC-S-048 at 15.

[18] EC-S-048 at 15.

[19] EC-S-048 at 15.

[20] EC-S-048 at 16.

price increase would have only a very limited ability to switch to alternative, non-magnesium products.

Taking into consideration both the small cost factor in downstream products and purchasers' limited options to use alternative products, I find that the elasticity of demand for primary magnesium is relatively low. That is, purchasers will not reduce significantly the amount of magnesium they buy in response to a general increase in the price of magnesium.

B. Substitutability

Simply put, substitutability measures the similarity or dissimilarity of products from the purchaser's perspective. Substitutability depends upon 1) the extent of product differentiation, measured by product attributes such as physical characteristics, suitability for intended use, purity, rate of defects, convenience or difficulty of usage in production process, quality, etc.; 2) differences in other non-price considerations such as reliability of delivery, technical support, and lead times; and 3) differences in terms and conditions of sale. Products are close substitutes and have high substitutability if product attributes, other non-price considerations and terms and conditions of sale are similar.

While price is nearly always important in purchasing decisions, non-price factors that differentiate products determine the value that purchasers receive for the price they pay. If products are close substitutes, their value to purchasers is similar, and thus purchasers will respond more readily to relative price changes. On the other hand, if products are not close substitutes, relative price changes are less important and are therefore less likely to induce purchasers to switch from one source to another.

Because demand for primary magnesium is inelastic, overall purchases will not decline significantly if magnesium prices increase. However, purchasers will seek other sources of magnesium to avoid a price increase. In other words, while overall demand for magnesium will remain relatively constant, the demand for magnesium from different sources will decrease or increase depending on their relative prices and the substitutability of magnesium from different sources. If magnesium from different sources is substitutable, purchasers are more likely to shift sources when the price from one source (i.e. subject imports) increases. The magnitude of this shift in demand is determined by the degree of substitutability among the sources.

Purchasers have four potential sources of magnesium: domestically produced magnesium, subject imports, fairly traded Russian imports, and nonsubject imports. Purchasers are more or less likely to switch from one source to another depending on the similarity, or substitutability, between and among them.

I have made separate determinations for subject imports of pure magnesium and subject imports of alloy magnesium. Therefore, I have evaluated the substitutability among magnesium sources for each determination, as follows.

Subject Imports of Pure Magnesium. In my evaluation of substitutability, I have given the domestic industry the benefit of the doubt, as follows. First, I have assumed that subject imports from China, Russia and Ukraine are close substitutes for each other. Second, I have assumed that nonsubject imports are not good substitutes for either subject imports or domestic magnesium. Thus, I have assumed that any shift in demand away from subject imports would increase demand only for domestic magnesium or fairly traded Russian imports, and not demand for nonsubject imports. Consequently, only an evaluation of the substitutability among subject imports, domestic magnesium and fairly traded Russian imports is essential to my determination.

Although subject imports and domestic magnesium generally conform to the same specifications, are used in similar applications and are sold through similar channels of distribution, differences in product attributes and non-price considerations reduce substitutability between them. The record shows that purchasers choose domestic magnesium instead of subject imports for reasons that include quality, reliability, service, contractual agreements, size or shape of the product, delivery, availability, and a desire for multiple sources of supply or to maintain a given source of supply.[21] In addition, ***.[22] Consequently, nearly *** percent of domestic shipments of the like product is consumed internally and thus does not compete directly with subject imports, which reduces the substitutability between the two. Based on this information, I find that on balance subject imports of pure magnesium and domestic primary magnesium are moderately substitutable.

Dumped Russian imports and fairly traded Russian imports are very close, if not perfect, substitutes. There are only two magnesium producers in Russia, and magnesium produced by both is imported into the U.S. market, some dumped and some fairly traded. Dumped Russian magnesium and fairly traded Russian magnesium are identical products, except for the dumping. There is no evidence on the record to indicate any product differentiation, non-price differences or differences in terms and conditions of sale between dumped Russian imports and fairly traded Russian imports. Consequently, I conclude that dumped Russian imports and fairly traded Russian imports are very close, if not perfect, substitutes for each other.

As discussed above, subject imports, including LTFV Russian imports, are moderately substitutable with domestic magnesium. Since LTFV Russian imports and fairly traded Russian imports are close, if not perfect, substitutes for each other, it follows that fairly traded Russian imports and domestic magnesium are moderately substitutable for each other.

Subject Imports of Alloy Magnesium. In this case, very small amounts of subject imports of alloy magnesium have been imported from China and Russia, and there is very little record information on which to analyze substitutability. Therefore, I have given the domestic industry the benefit of the doubt and assumed that imports of alloy magnesium from China and Russia are close substitutes for domestic primary magnesium, but not close substitutes for magnesium from other sources. Thus, I have assumed that purchasers would shift their purchases to domestic magnesium if the price of subject Chinese and Russian alloy magnesium increases.

C. Supply Conditions

Supply conditions in the market are a third condition of competition. Supply conditions determine how producers would respond to an increase in demand for their product, and also affect whether producers are able to institute prices increases and make them stick. Supply conditions include producers' capacity utilization, their ability to increase their capacity readily, the availability of inventories and products for export markets, production alternatives and the level of competition in the market. The level of competition in the domestic market has a critical effect on producer responses to demand increases. A competitive market is one with a number of suppliers, able to produce sufficient amounts of a product to meet purchaser demand.

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[21] EC-S-048 at 24 - 27.

[22] CR at I-17; PR at I-10.

Capacity utilization rates are also key. Unused capacity can exercise discipline on prices, if there is a competitive market, as no individual producer could make a price increase stick.

Capacity Utilization and Inventories. In 1994, only 14 percent of the domestic industry's capacity to produce primary magnesium was not used and therefore was available to increase production. However, this available capacity exceeded the total quantity of subject imports in 1994. The domestic industry also had substantial inventories available at the end of 1994.[23] Thus the domestic industry had both available capacity and inventories that would allow it to fill the demand supplied by subject imports.[24]

Level of Competition. The domestic magnesium market is highly competitive. There are three domestic producers of magnesium, with industry-wide unused capacity. In addition, nonsubject imports and fairly traded Russian imports have a significant presence in the U.S. market, accounting for *** percent of consumption in 1994.[25] The record thus indicates that there is significant competition in the domestic market among domestic producers, producers of nonsubject imports, and producers of fairly traded Russian imports.

IV. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS OF PURE MAGNESIUM FROM CHINA, RUSSIA AND UKRAINE

The statute requires us to consider the volume of LTFV imports, their effect on domestic prices, and their impact on the domestic industry. I consider each requirement in turn.

A. Cumulation

By quantity, the market shares of subject imports from China and subject imports from Ukraine were *** percent and *** percent, respectively, in 1994.[26] These market shares are in the range that the Commission has in the past found to be negligible and thus not cumulated with other, non-negligible subject imports. Although the record warrants a finding that subject imports from these two countries are negligible, I have given the domestic industry the benefit of the doubt and cumulated subject imports from all three countries in my determination.

B. Volume of Subject Imports

Cumulated subject imports of pure magnesium increased from *** metric tons in 1992, to *** metric tons in 1993, and then decreased to *** metric tons in 1994. The value of subject imports of pure magnesium was *** in 1992, *** in 1993, and *** in 1994.[27] By quantity, subject imports of pure magnesium held a market share of *** percent in 1992, ***

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[23] CR at A-9 to A-11, Table A-3; PR at A-4.

[24] While there are substantial export markets for domestic magnesium, there are assertions that sales cannot be diverted easily. See EC-S-048 at 10 - 11. Even without these export markets, the domestic industry had sufficient available capacity and inventories to fill the demand supplied by subject imports.

[25] CR at A-18, calculated from Table A-6; PR at A-7.

[26] CR at A-18, Table A-6; PR at A-7.

[27] CR at A-4, Table A-1; PR at A-3.

percent in 1993, and *** percent in 1994. Their market share by value was *** percent in 1992, *** percent in 1993 and *** percent in 1994.[28] While it is clear that the larger the volume of subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of its price and volume effects. Based on the small market share of subject imports in 1994 and the conditions of competition in the domestic magnesium market, I find that the volume of subject imports is not significant in light of its price and volume effects.

C. Effect of Subject Imports on Domestic Prices

To determine the effect of subject imports on domestic prices I examine whether the domestic industry could have increased its prices if the subject imports had not been dumped. As discussed, both demand and supply conditions in the magnesium market are relevant. Examining demand conditions helps us understand whether purchasers would have been willing to pay higher prices for the domestic product, or buy more or less of it, if subject imports had been sold at fairly traded prices. Examining supply conditions helps us understand whether available capacity and competition in the market would have imposed discipline and prevented price increases for the domestic product, even if subject imports had not been unfairly priced.

In most cases, if the subject imports had not been dumped, their prices in the U.S. market would have increased. Thus, if subject imports had been fairly priced, they would have become more expensive relative to domestic magnesium, fairly traded Russian imports and nonsubject imports. In such a case, if the magnesium is substitutable, purchasers would have shifted towards the relatively less expensive products.

In these investigations, the dumping margins for subject imports from China and Ukraine are very large, so that subject imports likely would have been priced significantly higher had they been fairly traded. I have assumed that, at the higher, fairly traded prices, all of the subject imports from China and Ukraine would have been priced out of the market. Although purchasers are able to use the domestic product instead of subject imports, subject imports and domestic magnesium are only moderately substitutable, as the domestic magnesium is of higher quality than the subject imports. Nonetheless, I have given the domestic industry the benefit of the doubt and assumed that the entire demand for subject imports would have shifted to domestic magnesium. However, imports from these two countries held a very small market share of *** percent by quantity in 1994. Therefore, any shift in demand to domestic magnesium would have been very small.

Unlike subject imports from China and Ukraine, there would have been no shift in demand from dumped Russian pure magnesium to domestic magnesium if Russian imports had not been dumped. The Department of Commerce assigned zero margins to imports of pure magnesium from Russia imported through a substantial number of specifically named trading companies. Consequently, imports through these trading companies are fairly traded, and the prices for them would not have changed if the dumping of Russian imports had been eliminated.

On the other hand, for imports not imported through these trading companies, the Department of Commerce assigned a margin of 100.25 percent. In other words, whether Russian imports are dumped or fairly traded depends on how, and from whom, the imports are purchased. If the imports assigned the 100.25 percent margin had not been dumped, they would not have been imported in the same manner. However, these same imports could

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[28] CR at A-18, Table A-6; PR at PR at A-7.

have been imported, as fairly traded imports, through any one of the named trading companies. As discussed above, dumped Russian imports and fairly traded Russian imports are produced by the same producers and are very close, if not perfect, substitutes for each other. Consequently, purchasers would have converted the dumped Russian imports into fairly traded Russian imports by purchasing them through one or more of the trading companies. Therefore, demand for subject imports from Russia would not have declined; nor would it have shifted to domestic magnesium. It would simply have shifted to fairly traded Russian imports. Therefore demand for subject imports only from China and Ukraine would have shifted to domestic magnesium, and the overall increase in demand for domestic magnesium would have been very small.

Notwithstanding the low elasticity of demand for magnesium, any attempt by the domestic industry to increase its prices would have been unsuccessful. There is significant competition among magnesium suppliers in the U.S. market. The three domestic producers compete among themselves as well as with fairly traded Russian imports and nonsubject imports. And there is excess production capacity. In these circumstances, any effort by a producer to raise its prices would have been beaten back by competitors. Price increases would not have stuck even without unfairly priced subject imports. Therefore, significant effects on domestic prices cannot be attributed to the unfair pricing of subject imports. Consequently, I find that subject imports are not having significant effects on prices for domestic magnesium.

D. Impact of Subject Imports on the Domestic Industry

To assess the impact of subject imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors.[29] These factors together either encompass or reflect the volume and price effects of the dumped imports, and so I gauge the impact of the dumping through those effects.

As discussed above, the domestic industry would not have been able to increase its prices if subject imports had been sold at fairly traded prices. Therefore, any impact of dumped imports on the domestic industry would have been on the domestic industry's output and sales.

In 1994, the market share of subject imports of pure magnesium was *** percent by quantity, a rather small volume. At the same time, the combined market share of fairly traded Russian imports and nonsubject imports was *** percent, and the domestic industry's market share was 80.2 percent.

As discussed above, had subject imports not been dumped, only the demand for subject imports from China and Ukraine would have declined. Demand for subject imports from Russia would not have decreased, but would have simply shifted from dumped Russian magnesium to fairly traded Russian magnesium. Consequently, the overall decrease in demand for subject imports would have been very small. Domestic producers could easily have increased their production and sales to satisfy the increased demand. However, even if the domestic industry would have captured all of the sales lost by subject imports, the domestic industry's output and sales, and therefore its revenues, would not have increased significantly. I therefore, find that, had subject imports not been dumped, the impact on the domestic industry's output and sales would not have been significant.

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[29] 19 U.S.C. § 1677((7)C)(iii).

Had subject imports not been dumped, the domestic industry would not have been able to increase its prices, output or sales, and therefore its revenues, significantly. Consequently the domestic industry would not have been materially better off if the subject imports had been fairly traded. Therefore, I find that the domestic industry producing primary magnesium is not materially injured by reason of LTFV imports of pure magnesium from China, Russia and Ukraine.

V. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS OF PURE MAGNESIUM FROM CHINA, RUSSIA AND UKRAINE

I have considered the enumerated statutory factors that the Commission is required to consider in its determination.[30] A determination that an industry "is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."[31]

I am mindful of the statute's requirement that my determination must be based on evidence, not conjecture or supposition. Accordingly, I have distinguished between mere assertions, which constitute conjecture or supposition, and the positive evidence[32] that I am required by law to evaluate in making my determination.

The information regarding production capacity in China is limited. Even if capacity is available, I find that it does not represent evidence that any threat of material injury is real, for two reasons. First, both the information obtained from the Bureau of Mines and from the responding Chinese producer indicates that exports to the United States were a fairly small percentage of total Chinese production in 1993 and 1994.[33] Consequently, Chinese producers are not primarily reliant on the U.S. market. Second, Chinese imports have been quite small throughout the period of investigation, attaining their highest market share of 1.7 percent in 1993, and there is no positive evidence to indicate that imports will exceed these historical levels in the immediate future.

The information concerning production capacity in Ukraine is also limited, but does indicate that unused and underutilized capacity exists. However, one of the two Ukrainian producers has ceased producing magnesium altogether and the other producer has ***.[34] In addition, imports from Ukraine have been fairly small throughout the period of investigation, and there is no positive evidence that imports will exceed these historical levels in the immediate future.

Finally, there has been an increase in Russian production capacity. However, capacity utilization is quite high, at *** percent in 1994 and projected at *** percent in 1995, which limits the ability of the Russian producers to increase their production and thus their exports to the United States.[35] In addition, none of the unused or underutilized Russian

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[30] 19 U.S.C. § 1677(7)(F)(i).

[31] 19 U.S.C.§ 1677(7)(F)(ii).

[32] See American Spring Wire Corporation v. United States, 590 F.Supp. 1273 (1984).

[33] U.S. Bureau of Mines information indicates that only 17.3 percent of Chinese production was exported to the United States in 1993. See CR at I-39; PR at I-21. In addition, information provided by the responding Chinese producer indicates that its exports to the United States accounted for only *** percent and *** percent of production, respectively, in 1993 and 1994. See CR at I-40, Table 19; PR at I-21.

[34] CR at I-43 to I-44; PR at I-22.

[35] CR at I-41, Table 20; PR at I-22.

capacity will result in increased imports of LTFV imports in the immediate future. As discussed in my material injury determination, if Russian imports had not been dumped, Russian magnesium would have been imported through one or more of the trading companies that received zero margins. That is, dumped Russian magnesium would have been considered fairly traded imports had they been imported through one or more of the trading companies. Purchasers of Russian magnesium will do the same in the immediate future. Consequently, any increase in Russian imports in the immediate future will be fairly traded imports, not dumped imports. For these reasons, I find that the information relevant to production capacity and unused or underutilized capacity in the exporting countries does not represent evidence that any threat of material injury is real or that actual injury is imminent.

While the cumulated market share of subject imports of pure magnesium increased from *** percent in 1992 to *** percent in 1993, it declined to *** percent in 1994. I find that any "rapid increase" in market penetration from 1992 to 1993 does not constitute persuasive evidence that any threat of material injury is real or that actual injury is imminent. First, the increase occurred two years ago, in the middle of the period of investigation, and was followed by a substantial decrease in market penetration, which does not indicate that market penetration will increase in the immediate future. Second, even though capacity is available in the exporting countries, imports will not increase significantly in the immediate future. Therefore, I find that any rapid increase in market penetration that occurred during the period of investigation does not indicate a likelihood that market penetration will increase to an injurious level.

At the end of 1994, there were *** U.S. inventories of Russian or Ukrainian pure magnesium, and only *** amount of Chinese inventories.[36] These inventories are so small that they do not constitute a threat of material injury.

In my determination of no material injury by reason of LTFV imports of pure magnesium, I demonstrated that subject imports have had no significant effect on domestic prices. In light of the competition among magnesium suppliers in the U.S. market, I find no evidence that this will change in the immediate future. Therefore, I conclude that subject imports will not enter the United States at prices that will have a depressing or suppressing effect on domestic prices.

I find no evidence of any other demonstrable adverse trends that indicate the probability that subject imports will be the cause of actual injury. Finally, I note that there are pending antidumping investigations in the European Union and Brazil concerning primary magnesium from, among other countries, Russia.[37] However, neither of those investigations has been completed, and thus they do not constitute the antidumping findings or remedies contemplated in the statute.[38]

For the reasons stated above, I find that the domestic industry producing primary magnesium is not threatened with material by reason of LTFV imports of pure magnesium from China, Russia and Ukraine.

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[36] CR at A-3, Table A-1; PR at A-4.

[37] CR at I-43; PR at I-22.

[38] See 19 U.S.C. § 1677(7)(F)(iii)(I).

VI. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS OF ALLOY MAGNESIUM FROM CHINA AND RUSSIA

The statute requires us to consider the volume of LTFV imports, their effect on domestic prices, and their impact on the domestic industry. I consider each requirement in turn.

In 1994, there were no subject imports of alloy magnesium from China.[39] Consequently, subject imports from China could not have had any effect on domestic prices or any impact on the domestic industry. Therefore, the domestic industry is not materially injured by reason of subject imports of alloy magnesium from China.

In 1994, only *** metric tons of LTFV alloy magnesium from Russia were imported,[40] which accounted for a minuscule percentage of domestic consumption of primary magnesium.[41] I have given the domestic industry the benefit of the doubt and assumed that none of these imports would have been sold in the U.S. market at fairly traded prices, and that the entire demand would have shifted to the domestic industry. As discussed above, competition in the market would have prevented the domestic industry from increasing its prices in response to this shift in demand. Thus, dumped alloy magnesium from Russia cannot be found to have had any effect on domestic magnesium prices. In addition, even if the domestic industry had captured the entire market share held by these imports, the volume is so small that the domestic industry would not have increased its output or sales significantly. Since the domestic industry would not have been able to increase its prices or its output and sales, and therefore its revenues significantly, the domestic industry would not have been materially better off if alloy magnesium imports from Russia had been fairly traded. Therefore, I determine that the domestic industry is not materially injured by reason of LTFV imports of alloy magnesium from Russia.

VII. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS OF ALLOY MAGNESIUM FROM CHINA AND RUSSIA

I have considered the enumerated statutory factors that the Commission is required to consider in its determination.[42] A determination that an industry "is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."[43]

I am mindful of the statute's requirement that my determination must be based on evidence, not conjecture or supposition. Accordingly, I have distinguished between mere assertions, which constitute conjecture or supposition, and the positive evidence[44] that I am required by law to evaluate in making my determination.

As discussed above, there were no imports of Chinese alloy magnesium in 1994. Therefore, there is no basis to cumulate Russian imports of alloy magnesium. Consequently, I have evaluated subject Chinese imports and subject Russian imports separately.

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[39] Because there were no subject imports of alloy magnesium from China, there is no basis to cumulate subject imports from Russia.

[40] CR at A-7, Table A-2; PR at A-3.

[41] CR at A-18, Table A-6; PR at A-7.

[42] 19 U.S.C. § 1677(7)(F)(i).

[43] 19 U.S.C.§ 1677(7)(F)(ii).

[44] See American Spring Wire Corporation v. United States, 590 F.Supp. 1273 (1984).

There were no imports of Chinese alloy magnesium in 1993 or 1994, and there is no evidence that imports of Chinese alloy magnesium will enter the U.S. market in the near future. If there are no subject imports, there can be no material injury by reason of subject imports. Absent evidence that there will be subject imports in the immediate future, there can be no threat of material injury by reason of subject imports. Therefore, I determine that the domestic industry is not threatened with material injury by reason of LTFV imports of alloy magnesium from China.

While there have been LTFV imports of alloy magnesium from Russia during the period of investigation, the quantities have been extremely small, reaching their largest market share of *** percent in 1993.[45] There is no positive evidence that Russian imports of alloy magnesium will increase to a significant level in the immediate future. Absent such evidence, there is no evidence that any threat of material injury is real or that actual injury is imminent, and any conclusion to the contrary would be based on mere supposition or conjecture. Therefore, I determine that the domestic industry is not threatened with material injury by reason of LTFV imports of alloy magnesium from Russia.

VIII. CONCLUSION

On the basis of the foregoing analysis, I determine that the domestic industry producing primary magnesium is not materially injured or threatened with material injury by reason of LTFV imports of pure magnesium from China, Russia and Ukraine. I also determine that the domestic industry producing primary magnesium is not materially injured or threatened with material injury by reason of LTFV imports of alloy magnesium from China and Russia.

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[45] CR at A-18, Table A-6; CR at A-7.

INFORMATION OBTAINED IN THE INVESTIGATIONS

INTRODUCTION

These investigations result from a petition filed by Magnesium Corporation of America (Magcorp), Salt Lake City, UT;[1] the International Union of Operating Engineers, Local 564, Freeport, TX; and the United Steelworkers of America, Local 8319, Salt Lake City, UT, on March 31, 1994, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less than fair value (LTFV) imports of primary magnesium[2] from China, Russia, and Ukraine.[3] Information relating to the background of the investigations is provided below.[4]

Date	*Action*
March 31, 1994 . . .	Petition filed with Commerce and the Commission; institution of Commission preliminary investigations
April 20, 1994	Commerce's notice of initiation
May 16, 1994	Commission's preliminary determinations
November 7, 1994 . .	Commerce's preliminary determinations; institution of the Commission's final investigations (59 F.R. 63105, December 7, 1994)

[1] Dow Chemical Co. (Dow) joined the petitioners in June 1994.

[2] For purposes of these investigations, primary magnesium includes pure and alloy magnesium. Commerce modified its scope of investigations in its final determinations in order to clarify the distinctions between pure and alloy magnesium. The modified definitions follow. Pure magnesium encompasses: (1) products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products containing less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as "pure" magnesium); and (3) products (generally referred to as "off-specification or off-spec pure" magnesium) that contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium. "Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8 percent by weight. It generally does not contain, individually or in combination, 1.5 percent or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium, and rare earths. Pure magnesium is sold in various slab and ingot forms and sizes. Alloy magnesium contains 50 percent or greater, but less than 99.8 percent, primary magnesium, by weight, and one or more of the following: aluminum, manganese, zinc, silicon, thorium, zirconium, and rare earths, in amounts which, individually or in combination, constitute not less than 1.5 percent of the material, by weight. Products that meet the aforementioned description but do not conform to ASTM specifications for alloy magnesium are not included in the definition of alloy magnesium. In addition to primary magnesium, alloy magnesium may contain magnesium scrap, secondary magnesium, or oxidized magnesium in amounts less than the primary magnesium itself. Pure and alloy magnesium are provided for in subheadings 8104.11.00 and 8104.19.00, respectively, of the Harmonized Tariff Schedule of the United States (HTS). Excluded from the scope of investigations are primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium. *See also*, Commerce's scope of investigations in its notice of final determinations, 60 F.R. 16432. Commerce's preliminary scope of investigations defined pure magnesium as containing at least 99.8 percent magnesium by weight, and alloy magnesium as containing less than 99.8 percent magnesium by weight but 50 percent or more magnesium by weight, although products conforming to the aforementioned primary magnesium content but which do not conform to ASTM specifications were included in the definition of alloy magnesium.

[3] A summary of the data collected in the investigations is presented in app. A. These summary data include tables for alloy and pure magnesium according to the current and previous scopes of investigations. All other data presentations in this report utilize the current scope of investigations. Certain graphical presentations of data collected in the investigations are presented in app. B.

[4] *Federal Register* notices cited in the tabulation are presented in app. C.

March 22, 1995 . . .	Commerce's final determinations (60 F.R. 16432), March 30, 1995[5]
March 28, 1995 . . .	Commission's hearing[6]
April 26, 1995	Commission's vote
May 5, 1995	Commission determinations due to Commerce

PREVIOUS COMMISSION AND OTHER INVESTIGATIONS CONCERNING MAGNESIUM

On August 19, 1992, the Commission determined, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (the Act),[7] that an industry in the United States was materially injured by reason of imports from Canada of magnesium that were found by the Department of Commerce to be subsidized by the Governments of Canada and Quebec and to be sold in the United States at LTFV.[8] [9] [10]

On January 6, 1992, the U.S. Department of Labor (Labor) received a petition for trade adjustment assistance pursuant to section 221(a) of the Trade Act of 1974, 19 U.S.C. § 2271, filed on behalf of workers producing magnesium at Northwest Alloys, Inc. (Northwest Alloys), Addy, WA. In the petition, Northwest Alloys stated that "primarily USSR exports of magnesium have flooded the world markets at discounted prices." The firm also attached a press release announcing the firm's cutbacks of capacity and personnel. Northwest Alloys explained that its inability to participate in foreign markets was a result of a "large amount of Russian magnesium being dumped in both Europe and Asia at extremely low prices" and that "the oversupply of magnesium in the United States and the continuation of the recession has severely affected the domestic market." Labor certified Northwest Alloys' workers as eligible to apply for trade adjustment assistance. Labor found that Northwest Alloys' major customers located in Washington, Missouri, and Oregon increased their purchases of imported magnesium while decreasing magnesium purchases from

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[5] Commerce calculated final LTFV margins as follows: for China, margins (in percent *ad valorem*) were 108.26 for pure magnesium and 79.38 for alloy; for Russia, margins ranged from 0.0 to 100.25 for pure (with AIOC, Gerald Metals, Greenwich Metals, Hunter Douglas, Interlink, Razno, SMW, and MG at 0.0 or *de minimus* margins), and from 0.0 to 153.65 for alloy (with Gerald Metals and SMW at 0.0 margins); and for Ukraine, margins ranged from 36.05 to 104.27 for pure (alloy magnesium is not included in the scope of investigation for Ukraine because the Commission reached a negative determination in its preliminary investigation). Commerce reached an affirmative critical circumstances determination with respect to imports of Russian alloy, except for imports from Gerald Metals and SMW. There were only three months during 1992-94 when Russian alloy was imported, all in 1993: 194 metric tons in January, 98 tons in July, and 139 tons in October. ***. Petitioner has conceded that there is no evidence for the Commission to make an affirmative critical circumstances finding on imports of alloy from Russia. See petitioners' posthearing brief, Exhibit B, p. 55.

[6] A list of witnesses who attended the hearing is attached at app. D.

[7] 19 U.S.C. § 1671d(b) and 1673d(b).

[8] Invs. Nos. 701-TA-309 and 731-TA-528 (Final), USITC Pub. 2550, Aug. 1992, USITC Pub. 2696, Nov. 1993 (Final Remand).

[9] In August 1992, Commerce issued duty orders on imports from Norsk Hydro Canada, Inc., specifically a 31.33-percent antidumping duty and a 21.61-percent countervailing duty on pure magnesium, and a 21.61-percent countervailing duty on alloy magnesium.

[10] The Commission instituted preliminary countervailing duty investigation No. 701-TA-310 (Preliminary) regarding imports of pure and alloy magnesium from Norway; however, Commerce dismissed the countervailing duty petition involving Norway, and the Commission accordingly terminated its investigation. *See*, 56 F.R. 54887. The Commission also instituted a preliminary and final antidumping duty investigation (No. 731-TA-529) regarding imports of pure and alloy magnesium from Norway; however, Commerce dismissed the petition involving imports of alloy from Norway because petitioner did not provide sufficient evidence to support the allegations, and Commerce found no LTFV imports of pure magnesium from Norway. The Commission accordingly terminated its investigation.

Northwest Alloys during the relevant period. The customers did not identify the country of origin of the imported magnesium.[11]

On February 3, 1994, Magcorp filed a section 221 petition for trade adjustment assistance that identified imports from China, Russia, and Ukraine as the reason for employment losses at Magcorp. Labor made an affirmative determination on May 24, 1994, certifying Magcorp's employees as eligible to apply for worker adjustment assistance. Labor found that an increase in imports of magnesium "contributed importantly" to the decline in sales or production at Magcorp from 1992 to April 1994.[12]

THE PRODUCT

The imported product subject to these investigations is primary magnesium.[13] Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Two types of primary magnesium are sold: pure magnesium and alloy magnesium, corresponding to the two classes or kinds of merchandise found by Commerce. In the preliminary investigations, petitioner argued that the appropriate like product consists of all primary magnesium.[14] In these final investigations, petitioner has argued for two like products, consisting of pure and alloy magnesium.[15] Counsel for the Russian respondents has argued for two like products in both the preliminary and final investigations, consisting of pure and alloy magnesium.[16] Counsel for Chinese and Ukrainian respondents took no position on the issue of like product in the preliminary investigations.[17] In these final investigations, counsel for the Chinese respondents have argued for one like product, consisting of all primary magnesium.[18] Counsel for the Ukrainian respondents have argued for two like products, consisting of pure and alloy magnesium.[19] No party has argued against Commerce's scope modifications. In its preliminary determinations in these investigations, the Commission found one like product consisting of primary magnesium.[20]

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[11] Telephone conversation on July 22, 1992, with Marvin M. Fooks, Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor.

[12] Department of Labor, certification regarding eligibility to apply for worker adjustment assistance, May 24, 1994, p. 2.

[13] This section of the report outlines product issues including the imported and domestically produced products. The Commission's decision regarding the appropriate domestic products that are "like" the subject imported products is based on a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions; (5) common manufacturing facilities and production employees; and, where appropriate, (6) price.

[14] Petitioners' postconference brief, pp. 4-13.

[15] Petitioners' prehearing brief, pp. 1 and 7, note 14; hearing transcript, pp. 63, 67-68, and 85; and petitioners' posthearing brief, pp. 6, 10-11. Petitioners state, however, that the Commission could determine that the product most like imported alloy magnesium is domestic pure magnesium. Petitioners have conceded that there is no injury to the domestic industry from imports of alloy magnesium (hearing transcript, p. 57).

[16] Postconference brief of Russian respondents, pp. 7-14, and Russian respondents' prehearing brief, pp. 6-10.

[17] Chinese respondents' postconference brief, p. 5, Sec. 4a, and Ukrainian respondents' postconference brief, p. 4, n. 9.

[18] Hearing transcript, pp. 148-149.

[19] Hearing transcript, p. 205.

[20] Likewise, in the final investigation of magnesium from Canada, the Commission originally found one like product. However, upon remand from the U.S.-Canada Binational Panel directing the Commission to provide separate injury analyses for at least two separate industries, the Commission found two like products--pure and alloy magnesium.

Physical Characteristics and Uses

Magnesium is the eighth most abundant element in the earth's crust and the third most plentiful element dissolved in seawater. Magnesium metal,[21] the lightest of all structural metals, is a silver-white metallic element with a density approximately 63 percent that of aluminum, the principal metal with which it competes in the U.S. market.[22] Magnesium's light weight and high vibrational-dampening properties have encouraged research to develop alloys with improved physical and mechanical properties to enable magnesium's use as a structural metal wherever minimizing weight is an important consideration.

Pure magnesium includes the following: (1) products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products containing less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as "pure" magnesium); and (3) products (generally referred to as "off-specification pure" magnesium) that contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

Until Commerce's final scope modifications, "off-spec" pure magnesium was treated as alloy magnesium. During 1992-93, a majority of subject imports of alloy magnesium were "off-spec" shipments of pure magnesium, containing between 98.6 and 98.8 percent magnesium by weight.[23] These products were physically different from the domestic alloy, which averages 90 to 91 percent magnesium content.[24] By 1994, a majority of subject imports of alloy magnesium contained 90-91 percent magnesium content.[25]

Alloy magnesium contains 50 percent or greater, but less than 99.8 percent, primary magnesium, by weight, and one or more of the following: aluminum, manganese, zinc, silicon, thorium, zirconium, and rare earths, in amounts which, individually or in combination, constitute not less than 1.5 percent of the material, by weight. Products that meet the aforementioned description but do not conform to ASTM specifications for alloy magnesium are not included in the alloy category. The most popular grade of alloy is AZ91D, containing approximately 90 percent magnesium and 9 percent aluminum. Alloy magnesium is produced in order that the product can have certain properties such as additional strength, ductility, workability, corrosion resistance, low density, or castability. Both pure magnesium and alloy magnesium are packaged, handled, and shipped following the same regulations and requirements, and both are sold in various slab and ingot forms and sizes.

There were a few physical differences reported between imported and domestic pure magnesium. One difference involves ingot size: imported ingots from subject sources are smaller in size than domestically produced ingots.[26] Another physical difference reported was that material from the CIS stockpile was heavily oxidized, and treated with potassium bichromate to counteract the oxidation, making this material possibly inferior in quality to domestically produced pure

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[21] Magnesium compounds such as caustic-calcined magnesias, magnesium hydroxide, magnesium sulfate, magnesium carbonate, and refractory magnesia are not included in the investigations.

[22] In 1994, the bulk of U.S. producers' shipments were to the aluminum industry for use in making aluminum alloys (in which aluminum is the principal metal by weight) to increase the hardness and corrosion resistance of pure aluminum. Such aluminum alloys are used principally in beverage cans; as structural components in automobiles, aircraft, and military vehicles; and as bumpers, wheels, and decorative trim in automobiles. Other important uses for magnesium include magnesium castings and wrought magnesium applications, e.g., in such automotive components as clutch housings, headlamp assemblies, valve and grill covers, and in power tool components such as chain saw and lawn mower housings; the desulfurization of iron and steel; and as reducing agents in nonferrous metals production.

[23] Petitioners' prehearing brief, exhibit A.

[24] Industry sources and Chinese respondents' prehearing brief, p. 6.

[25] Staff conversations with industry sources, February 1995, and petitioners' prehearing brief, exhibit A.

[26] Chinese respondents' prehearing brief, p. 6; hearing transcript, p. 142; and Ukrainian respondent's prehearing brief, p. 12.

magnesium.[27] The stockpile material was available from 1992 to 1994. It has now been depleted, and 1995 sales of Russian pure magnesium are first quality.[28]

Pure magnesium and alloy magnesium generally serve separate end-use markets.[29] Pure magnesium is typically used in the production of aluminum alloys, in iron and steel desulfurization, as a reducing agent for various nonferrous metals (titanium, zirconium, hafnium, uranium, beryllium), and as anodes.[30] Alloy magnesium is principally used in structural applications, primarily in castings (die, permanent mold, and sand) and extrusions for the automotive industry.[31] All pure magnesium products, including "off-spec" pure magnesium, are interchangeable.[32]

Secondary magnesium is magnesium recovered from secondary sources such as old and new scrap and recycling.[33] The bulk of secondary magnesium is consumed by the aluminum can recycling industry,[34] and some secondary magnesium is sold on the open market. In its preliminary investigations on Canada and Norway, the Commission also collected data on secondary magnesium. None of the secondary magnesium producers indicated that they produced primary magnesium.[35] Likewise, none of the producers of pure and alloy magnesium (primary magnesium) indicated that they produced secondary magnesium. In its previous investigations, the Commission determined that secondary magnesium was not "like" imported primary magnesium.[36] Secondary magnesium is not subject to these investigations. No party in these investigations has argued that the domestic like product includes secondary magnesium, and the Commission declined to include it in the like product found in the preliminary investigations.

Interchangeability

Imported and domestically produced pure and alloy magnesium are interchangeable in applications.[37] Domestically produced pure and alloy magnesium are interchangeable to some small degree in applications, as discussed in the section above.

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[27] Hearing transcript, pp. 182-185.

[28] Hearing transcript, pp. 191-192; Russian respondents' posthearing brief, pp. 2-3; and Ukrainian respondents' posthearing brief, p. 3.

[29] A table containing U.S. producers' shipments and importers' shipments by products and end users is presented in app. E.

[30] However, small quantities of pure magnesium were purchased by diecasters, who add their own alloying agents before casting.

[31] ***. Affidavit of Lee R. Brown, petitioners' postconference brief, exhibit 1. ***.

[32] Petitioners' prehearing brief, p. 12; hearing transcript, p. 70; and petitioners' posthearing brief, Exhibit B, p. 8.

[33] Old scrap is magnesium that has been used in end products and is collected for metal recovery after the products are worn out or discarded. New scrap, generated in fabricating operations such as alloying, forging, casting, and machining, consists of clippings, turnings, borings, skimmings, slags, and drosses. U.S. Bureau of Mines, *Mineral Facts and Problems, 1985 Edition*, Bulletin 675, Magnesium chapter, pp. 6-7.

[34] Aluminum recyclers account for the vast majority of magnesium recovery. Approximately 85 percent of the magnesium recovered from scrap is from aluminum-based alloyed products such as recycled two-piece beverage cans. These recyclers, however, do not separate the magnesium from the aluminum and sell the magnesium on the open market; rather they reuse the magnesium with the aluminum to produce new two-piece beverage cans or other aluminum alloy products.

[35] Secondary magnesium producers purchase magnesium scrap and produce cast shapes such as ingots, slabs, and anodes essentially by remelting the scrap. These secondary products are then sold to many of the same firms that purchase primary magnesium, in particular the aluminum industries and diecasters. The chemistry of secondary and primary magnesium is similar; however, there is the potential for higher impurity levels in the secondary material. Purchasers who are sensitive to impurity levels tend to purchase only primary magnesium.

[36] Determinations of the Commission in invs. Nos. 701-TA-309 and 731-TA-528 and 529 (Preliminary): Magnesium from Canada and Norway, USITC Pub. 2443, Oct. 1991, p. I-7, n. 7. See also USITC Pub. 2550, p. 6, n. 6.

[37] Hearing transcript, pp. 23 and 41, and purchaser questionnaire responses.

Greater competition exists regarding substitute products in the alloy magnesium markets than in the pure magnesium markets, and there are important factors other than price and availability that determine the substitutability of products for magnesium. In the aluminum industry, there is no substitute for magnesium. However, in steel and iron desulfurization, secondary magnesium may be used. In addition, calcium chloride may be substituted; however, sunk capital costs, environmental concerns, service structures, and corporate policies may affect the decision to substitute calcium chloride for magnesium.

Aluminum, zinc, and even plastics can be substituted in many diecasting applications where alloy magnesium may be used. Diecasters that produce automobile parts such as engine valve covers, transmission casings, instrument panel support brackets, and mirror housings must consider not only meeting necessary technical specifications, but also the total delivered cost of their product (including machining and finishing costs) to automobile manufacturers.

In producing titanium metal by reducing titanium tetrachloride, sodium may be used rather than magnesium. Rare-earth elements, such as cerium, can be used in the production of nodular iron, and calcium carbide and calcium carbonate are used for iron desulfurization. In cathodic protection in pipelines, alloys of aluminum and zinc may be substituted for alloy magnesium. Alumina, chromite, and kyanite may be used in place of magnesia[38] in some refractory applications.[39]

Channels of Distribution

The overwhelming majority of shipments of subject imports and domestic magnesium are made to unrelated end users.[40] The unrelated customers who purchase pure magnesium, however, are almost always different from those who purchase alloy magnesium, given their distinct end uses. There is a small overlap in a minority of customers purchasing both pure and alloy magnesium for aluminum alloys, diecasting, and iron and steel desulfurization. ***.[41]

Customer and Producer Perceptions

Customers and producers perceive pure and alloy magnesium to be two products targeted for distinct markets. Customer and producer perceptions of subject imports of pure magnesium indicate that it competes with domestically produced pure magnesium.[42] Some purchasers cited quality differences between imported and domestically produced pure magnesium; however, others found that they were comparable in quality.

Common Manufacturing Facilities and Production Employees

The production of both pure and alloy magnesium involves three major processing steps: production of the "feed" material; magnesium-chlorine separation; and foundry casting. These processing steps vary from manufacturer to manufacturer, but the end products within pure magnesium and within alloy magnesium are virtually identical.

No matter which raw materials are used, all produce a "feed stock" of either anhydrous (dry) or hydrous (wet) magnesium chloride, which needs to be further processed by separating the chemically-bound chlorine and magnesium. This separation can be accomplished in either of two methods: by an electrolytic process or a silicothermic process. Magcorp and Dow use the electrolytic process. Northwest Alloys uses the silicothermic process.

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[38] Magnesia are magnesium compounds, not magnesium metal.

[39] U.S. Bureau of Mines, *Mineral Facts and Problems*, Bulletin 675.

[40] One producer, ***.

[41] Responses to Commission questionnaires. Petitioners' posthearing brief points out that all forms of pure magnesium, including "off-spec" pure magnesium, are sold directly to end users (Exhibit B, p. 9).

[42] Purchasers' questionnaire responses, and hearing transcript, p. 80.

Until the electrolytic or silicothermic reduction of magnesium is completed, the manufacturing processes used for the production of both pure and alloy magnesium are identical.[43] [44] In those facilities which produce both pure magnesium and alloy magnesium, the same production workers tend to work on both lines.[45]

Magcorp uses ***. Its production process inherently produces pure magnesium. In order to produce magnesium alloys, the pure magnesium must complete a further step. This additional step involves the placing of liquid magnesium into special furnaces and either adding alloying elements to produce magnesium alloys or further processing in order to extract certain impurities to produce higher purity magnesium. Dow uses a very similar process. Dow, however, has ***. ***. The cost of producing alloy magnesium is slightly higher than the cost of producing pure magnesium due to the cost of purchasing aluminum ingot for alloying and any extra processing costs.

Dow and Magcorp indicated that they produce pure and alloy magnesium on the same equipment and machinery. Alterations to switch between commodity-grade pure and ultra-pure magnesium grades involve metal scheduling, use of specific fluxing agents, and minor procedural changes. Switching between pure magnesium and alloy magnesium in almost all cases simply involves moving from one casting line to another and metal scheduling changes. Dow and Magcorp indicated that production capabilities for commodity-grade pure magnesium, ultra-pure magnesium, and alloy magnesium are allocated based on actual or estimated demand for each type of product. ***.[46]

***. There is no evidence on the record indicating that the production process for pure or alloy magnesium is different in China, Russia, or Ukraine than in the United States.

Price

Pricing data obtained in these investigations indicate that the prices for U.S.-produced alloy magnesium are somewhat higher and are more stable than prices for U.S.-produced pure magnesium. ***.

U.S. Tariff Treatment

Imports of pure and alloy magnesium are classified in HTS subheadings 8104.11.00 and 8104.19.00, respectively. However, as a result of Commerce's scope modifications, these HTS breakouts no longer conform to the investigations' two classes or kinds of merchandise. "Off-spec" pure magnesium falls under the HTS subheading for alloy magnesium, even though it was treated as pure magnesium by Commerce. Imports from China were dutiable at MFN rates (8.0 percent *ad valorem* for pure and 6.5 percent *ad valorem* for alloy) during the period 1992-94, as has been the case since 1980. Imports from Russia and Ukraine became dutiable at MFN rates as of June 1992. Prior to that time, imports from those two countries were subject to the column 2 rates of duty (100 percent for pure and 60.5 percent for alloy). Imports of pure magnesium from Ukraine are eligible for duty-free entry under the Generalized System of Preferences (GSP); Russian-origin imports are excluded from the GSP, and China is not an eligible country under the program.

THE DOMESTIC MARKET

The period for which data were collected in these investigations is from January 1992 through December 1994.[47] U.S. trade data were compiled from questionnaires of the Commission. Import data were compiled using official statistics of Commerce, except as noted. The Commission

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[43] Alloy magnesium and pure magnesium typically have common manufacturing facilities and production employees. However, in order to produce alloy magnesium, additional processing equipment and labor are necessary.

[44] ***. Magcorp's questionnaire response.

[45] ***.

[46] Petitioners' posthearing brief, Exhibit B, p. 10.

[47] The data obtained in response to the Commission's questionnaires are for magnesium on a "gross weight" basis, not a "contained weight" basis.

received responses from all three U.S. producers. The Commission received 14 responses to the importers' questionnaire accounting for approximately *** of U.S. imports from subject sources during the period 1992-94.[48]

Apparent U.S. Consumption

The United States is by far the world's largest market for primary magnesium. Data for apparent U.S. consumption of primary magnesium are presented in table 1 and show an increase of about 8 percent by quantity from 1992 to 1994. The increase in demand is due in part to strong demand in downstream industries, such as aluminum and steel, and in part to a structural increase in the use of magnesium in auto production in 1994.[49] The value of consumption rose by even more (21 percent) from 1992 to 1994.

U.S. Producers

Magcorp, the petitioner, has corporate offices in Salt Lake City, UT, and a production facility in Rowley, UT. Magcorp is a wholly owned subsidiary of the Renco Group of New York, NY. The Renco Group purchased the Rowley plant in August 1989 from AMAX Magnesium.

Magcorp accounted for *** percent of U.S. production in 1994. It had *** during the period for which data were collected. Magcorp produces both pure and alloy magnesium. ***.[50]

Dow Chemical Company, co-petitioner, Midland, MI, is the largest producer of magnesium in the United States, accounting for *** percent of U.S. production in 1994. It produces both pure and alloy magnesium. Its magnesium operations are located in Freeport, TX.[51] ***.

Dow began production of magnesium in 1941 and was the first commercial magnesium producer in the United States. Dow has been the largest U.S. magnesium producer in the United States for the last 50 years.[52]

Northwest Alloys is a wholly owned subsidiary of Aluminum Company of America (Alcoa) and accounted for *** percent of U.S. production in 1994.[53] Northwest Alloys produces only pure magnesium products, ***.

U.S. Importers

Questionnaires were mailed to 20 companies believed to be importing magnesium from the subject countries. The Commission received responses from 14 importers. Of the responding importers, ***.

***.[54]

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[48] ***.

[49] Hearing transcript, pp. 47, 56, and 206.

[50] ***.

[51] Dow's facilities in Freeport, TX, produce some 400 chemicals. Its facilities are referred to as the world's largest chemical complex.

[52] Hearing transcript, pp. 29-31. ***.

[53] Northwest Alloys ***.

[54] ***.

Table 1
Primary magnesium: U.S. shipments of domestic product, U.S. imports, by sources, and apparent U.S. consumption, by products, 1992-94

Item	1992	1993	1994
	Quantity (*metric tons*)		
Pure magnesium:			
Producers' U.S. shipments	***	***	***
U.S. imports from--			
China	410	2,071	800
Russia (LTFV)	***	***	***
Ukraine	692	4,223	1,283
Subtotal	***	***	***
Russia (fair value)	***	***	***
Other sources	1,251	2,226	2,000
Total	4,284	25,590	15,738
Apparent consumption	***	***	***
Alloy magnesium:			
Producers' U.S. shipments	***	***	***
U.S. imports from--			
China	56	0	0
Russia (LTFV)	***	***	***
Subtotal	***	***	***
Russia (fair value)	***	***	***
Other sources	3,151	6,232	9,623
Total	3,206	6,606	9,733
Apparent consumption	***	***	***
Primary magnesium:			
Producers' U.S. shipments	111,465	91,646	103,339
U.S. imports from--			
China	466	2,071	800
Russia (LTFV)	***	***	***
Ukraine (subject)	692	4,223	1,283
Subtotal	***	***	***
Russia (fair value)	***	***	***
Other sources	4,402	8,459	11,623
Total	7,490	32,196	25,471
Apparent consumption	118,955	123,842	128,810

Continued.

Table 1--Continued
Primary magnesium: U.S. shipments of domestic product, U.S. imports, by sources, and apparent U.S. consumption, by products, 1992-94

Item	1992	1993	1994
	Value (*1,000 dollars*)		
Pure magnesium:			
Producers' U.S. shipments	***	***	***
U.S. imports from--			
China	1,169	5,815	1,717
Russia (LTFV)	***	***	***
Ukraine	2,093	9,698	3,254
Subtotal	***	***	***
Russia (fair value)	***	***	***
Other sources	3,443	6,301	5,543
Total	12,408	62,332	38,243
Apparent consumption	***	***	***
Alloy magnesium:			
Producers' U.S. shipments	***	***	***
U.S. imports from--			
China	159	0	0
Russia (LTFV)	***	***	***
Subtotal	***	***	***
Russia (fair value)	***	***	***
Other sources	10,766	21,383	31,393
Total	10,924	22,224	31,646
Apparent consumption	***	***	***
Primary magnesium:			
Producers' U.S. shipments	285,940	278,135	303,194
U.S. imports from--			
China	1,327	5,815	1,717
Russia (LTFV)	***	***	***
Ukraine (subject)	2,093	9,698	3,254
Subtotal	***	***	***
Russia (fair value)	***	***	***
Other sources	14,209	27,684	36,937
Total	23,332	84,555	69,889
Apparent consumption	309,272	362,690	373,083

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to Commission questionnaires and from official statistics of the U.S. Department of Commerce. Russian import data from those firms receiving either 0 or *de minimis* margins in Commerce's final determination are from questionnaires and are listed under "Russia (fair value)." All other import data are derived from official statistics.

CONSIDERATION OF ALLEGED MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

U.S. Capacity, Production, and Capacity Utilization

Aggregated data on capacity, production, and capacity utilization are presented in table 2. Both pure and alloy magnesium are typically produced in the same plant and utilize the same equipment and workers. ***. Thus, separate capacity data presented for pure and alloy magnesium are of limited utility.

Dow cut its capacity by *** during late 1993 and early 1994 by shutting down one of its two plants (Plant B). It stated that the plant closing was necessary because subject imports were taking market share away from Dow.[55] However, its press release on November 28, 1994, indicated that "the decision to close Plant B is based on the company's long-term projections of the magnesium industry; not on the short-term conditions of today's magnesium marketplace...Dow will focus its resources on keeping a single facility in world-class condition ready and able to compete head-to-head with competitors whose market decisions in some cases might be driven by such factors as the need for western currency, or the desire to create jobs in their home country." The press release also indicated that Dow would be incrementally expanding the capacity of its Plant A facility. ***.

Importers and purchasers have indicated that there are supply problems with U.S. producers in 1995, due to high capacity utilization rates and an overall capacity decrease in the U.S. industry as a result of Dow's plant shutdown.[56] The producers themselves have admitted that there is a tight market for magnesium in 1995, and Dow has publicly stated that there is demand out there that it cannot meet. Dow has honored its longterm contracts but has not been able to fill spot orders.[57] A recent article in the trade press cites numerous instances of shortages, and quotes Dow officials as stating that "those customers who chose to stick with Dow through the flood of Russian and Ukrainian imports are harvesting the benefits."[58] ***.[59]

U.S. Producers' Shipments

Data for U.S. producers' shipments of primary magnesium are presented in table 3. U.S. producers' shipments, by companies, are presented in appendix F. During the period for which data were collected, ***. Average unit values for U.S. shipments spiked in 1993, then experienced a substantial decrease in 1994; however, average unit values were still 15 percent higher in 1994 than they were in 1992.

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[55] Hearing transcript, pp. 31-32, and petitioners' posthearing brief, pp. 28-29.

[56] Responses to purchaser questionnaires, and Ukrainian respondents' posthearing brief, pp. 11-12.

[57] Hearing transcript, pp. 74-76, 179-181, and Ukrainian respondents' prehearing brief, Exhibit 13, p. 4.

[58] *Platts Metals Week*, Jan. 30, 1995, p. 8.

[59] Petitioners' posthearing brief, Exhibit B, p. 16.

Table 2
Primary magnesium: U.S. capacity, production, and capacity utilization, by products, 1992-94

Item	1992	1993	1994
	Average-of-period capacity (*metric tons*)		
Pure magnesium	***	***	***
Alloy magnesium	***	***	***
Total	164,667	164,667	140,000
	Production (*metric tons*)		
Pure magnesium	***	***	***
Alloy magnesium	***	***	***
Total	136,290	127,788	120,382
	Capacity utilization (*percent*)		
Pure magnesium	***	***	***
Alloy magnesium	***	***	***
Average	82.8	77.6	86.0

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

Table 3
Primary magnesium: Shipments by U.S. producers, by products and by types, 1992-94

Item	1992	1993	1994
	Quantity (*metric tons*)		
Pure magnesium:			
Company transfers	***	***	***
Domestic shipments	***	***	***
Subtotal	***	***	***
Exports	***	***	***
Total	***	***	***
Alloy magnesium:			
Company transfers	***	***	***
Domestic shipments	***	***	***
Subtotal	***	***	***
Exports	***	***	***
Total	***	***	***
Primary magnesium:			
Company transfers	***	***	***
Domestic shipments	***	***	***
Subtotal	111,465	91,646	103,339
Exports	***	***	***
Total	***	***	***
	Value (*1,000 dollars*)		
Pure magnesium:			
Company transfers	***	***	***
Domestic shipments	***	***	***
Subtotal	***	***	***
Exports	***	***	***
Total	***	***	***
Alloy magnesium:			
Company transfers	***	***	***
Domestic shipments	***	***	***
Subtotal	***	***	***
Exports	***	***	***
Total	***	***	***
Primary magnesium:			
Company transfers	***	***	***
Domestic shipments	***	***	***
Subtotal	285,940	278,135	303,194
Exports	***	***	***
Total	***	***	***

Continued.

Table 3--Continued
Primary magnesium: Shipments by U.S. producers, by products and by types, 1992-94

Item	1992	1993	1994
	Unit value (*per pound*)		
Pure magnesium:			
Company transfers	$***	$***	$***
Domestic shipments	***	***	***
Average	***	***	***
Exports	***	***	***
Average	***	***	***
Alloy magnesium:			
Company transfers	***	***	***
Domestic shipments	***	***	***
Average	***	***	***
Exports	***	***	***
Average	***	***	***
Primary magnesium:			
Company transfers	***	***	***
Domestic shipments	***	***	***
Average	1.16	1.38	1.33
Exports	***	***	***
Average	***	***	***

[1] Not applicable.

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

U.S. Producers' Inventories

Data for U.S. producers' inventories of primary magnesium are presented in table 4. The ***.

Table 4
Primary magnesium: End-of-period inventories of U.S. producers, by products, 1992-94

* * * * * * *

U.S. Employment, Wages, Compensation, and Productivity

U.S. employment, wages, compensation, and productivity are presented in table 5. Magcorp's production employees are members of the United Steelworkers of America, Local 8319. Magcorp employed an average of *** production and related workers producing primary magnesium in 1994. ***.

Dow's production employees are members of the International Union of Operating Engineers, Local 564. Dow employed an average of *** production and related workers producing primary magnesium in 1994. ***.

Northwest Alloys indicated that its production and related workers are not union-affiliated. Northwest Alloys employed an average of *** production and related workers producing primary magnesium in 1994. ***.

Table 5
Average number of U.S. production and related workers producing primary magnesium, hours worked,[1] wages and total compensation paid to such employees, and hourly wages, productivity, and unit labor costs,[2] by products, 1992-94

Item	1992	1993	1994
	Number of production and related workers (PRWs)		
Pure magnesium	***	***	***
Alloy magnesium	***	***	***
Total	1,591	1,559	1,319
	Hours worked by PRWs (*1,000 hours*)		
Pure magnesium	***	***	***
Alloy magnesium	***	***	***
Total	3,273	3,234	2,745
	Wages paid to PRWs (*1,000 dollars*)		
Pure magnesium	***	***	***
Alloy magnesium	***	***	***
Total	48,303	48,126	42,280
	Total compensation paid to PRWs (*1,000 dollars*)		
Pure magnesium	***	***	***
Alloy magnesium	***	***	***
Total	68,353	69,413	59,301
	Hourly wages paid to PRWs		
Pure magnesium	$***	$***	$***
Alloy magnesium	***	***	***
Average	14.76	14.88	15.40
	Hourly total compensation paid to PRWs		
Pure magnesium	$***	$***	$***
Alloy magnesium	***	***	***
Average	20.88	21.46	21.60
	Productivity (*metric tons per 1,000 hours*)		
Pure magnesium	***	***	***
Alloy magnesium	***	***	***
Average	41.6	39.5	43.9

Continued.

Table 5--Continued
Average number of U.S. production and related workers producing primary magnesium, hours worked,[1] wages and total compensation paid to such employees, and hourly wages, productivity, and unit labor costs,[2] by products, 1992-94

Item	1992	1993	1994
	Unit labor costs (*per metric ton*)		
Pure magnesium	$***	$***	$***
Alloy magnesium	***	***	***
Average	501.53	543.19	492.61

[1] Includes hours worked plus hours of paid leave time.
[2] On the basis of total compensation paid.

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

Financial Experience of U.S. Producers

Financial information was provided on magnesium operations in addition to overall establishment operations by the three U.S. producers.[60] These data, representing 100 percent of 1994 production of magnesium, are presented in this section. Dow's data have been verified and the subsequent revisions are included, as are the revisions for the like product reclassification for Magcorp. Virtually all overall establishment revenues are sales of pure and alloy magnesium; therefore, questionnaire data submitted on all primary magnesium operations are used in lieu of overall establishment operations.

Primary Magnesium Operations

Income-and-loss data on the U.S. producers' primary magnesium operations, which include pure and alloy magnesium operations, are presented in table 6. Per-pound income-and-loss data are presented in table 7 and selected financial data, by firms, are presented in table 8. The aggregate data are ***.[61]

Magcorp, the petitioner, experienced a ***.

Northwest Alloys appears to have had the ***, which may be related to its silicothermic process. Dow and Magcorp use the electrolytic process. The greatest aggregate ***.

Table 6
Income-and-loss experience of U.S. producers on their operations producing primary magnesium, calendar years 1992-94

* * * * * * *

Table 7
Income-and-loss experience (*on a per-pound basis*) of U.S. producers on their operations producing primary magnesium, calendar years 1992-94

* * * * * * *

[60] Dow, Magcorp, and Northwest Alloys. All reported on a calendar year basis ***.
[61] Preliminary Staff Report, p. II-49.

Table 8
Income-and-loss experience of U.S. producers on their operations producing primary magnesium, by firms, calendar years 1992-94

* * * * * * *

Operations on Pure Magnesium

Income-and-loss data for the U.S. producers' pure magnesium operations are presented in table 9. Per-pound income-and-loss data are presented in table 10 and selected financial data, by firms, are presented in table 11. Pure magnesium makes up the vast majority of the primary magnesium operations. Again, the aggregate data are ***.

Magcorp's pure magnesium income-and-loss experience is *** its primary magnesium operations. Although Magcorp went from an ***. *** pure magnesium operations are *** Magcorp's; i.e., ***.

Table 9
Income-and-loss experience of U.S. producers on their operations producing pure magnesium, calendar years 1992-94

* * * * * * *

Table 10
Income-and-loss experience (*on a per-pound basis*) of U.S. producers on their operations producing pure magnesium, calendar years 1992-94

* * * * * * *

Table 11
Income-and-loss experience of U.S. producers on their operations producing pure magnesium, by firms, calendar years 1992-94

* * * * * * *

Operations on Alloy Magnesium

Income-and-loss data for the U.S. producers' alloy magnesium operations are presented in table 12. Per-pound income-and-loss data are presented in table 13 and selected financial data, by firms, are presented in table 14. ***. The per-pound costs for alloy magnesium are slightly higher than those of pure magnesium since additional costs are incurred for aluminum and extra processing for alloy products.

Table 12
Income-and-loss experience of U.S. producers on their operations producing alloy magnesium, calendar years 1992-94

* * * * * * *

Table 13
Income-and-loss experience (*on a per-pound basis*) of U.S. producers on their operations producing alloy magnesium, calendar years 1992-94

* * * * * * *

Table 14
Income-and-loss experience of U.S. producers on their operations producing alloy magnesium, by firms, calendar years 1992-94

* * * * * * *

Capital Expenditures

The capital expenditures reported by the U.S. producers are presented in table 15.

Table 15
Capital expenditures by U.S. producers of primary magnesium, by products, calendar years 1992-94

* * * * * * *

Research and Development Expenses

The U.S. producers' research and development expenses are presented in table 16.

Table 16
Research and development expenses of U.S. producers of primary magnesium, by products, calendar years 1992-94

* * * * * * *

Investment in Productive Facilities

The value of property, plant, and equipment (fixed assets) and total assets for the U.S. producers, and the return on total assets for these producers are presented in table 17. ***.

Table 17
Value of assets and return on assets of U.S. producers' establishments wherein primary magnesium is produced, by products, calendar years 1992-94

* * * * * * *

Capital and Investment

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of magnesium from China, Russia, and Ukraine on their firms' growth, investment, 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 in appendix G.

CONSIDERATION OF THE QUESTION OF THREAT OF MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

The Commission analyzes certain specific factors in making threat determinations (19 U.S.C. § 1677(7)(F)(i)). Information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise is presented in the section of this report entitled "Consideration of the Causal Relationship Between Imports of the Subject Merchandise and the Alleged Material Injury," and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in appendix G. Available information on U.S. inventories of the subject products; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows. Other threat indicators have not been alleged or are otherwise not applicable.

U.S. Importers' Inventories

End-of-period inventories of U.S. importers are presented in table 18. ***.

Table 18
Primary magnesium: End-of-period inventories of U.S. importers, by products and by sources, 1992-94

* * * * * * *

Ability of Foreign Producers to Generate Exports and Availability of Export Markets Other Than the United States

The Commission sent foreign producer questionnaires to counsel representing Chinese, Russian, and Ukrainian producers. Responses were received from some producers in all three countries.[62]

China

There are presently four producers of magnesium in China: MinHe, NingXia, Fushon, and Yin Chuan. Only Yin Chuan does not export magnesium. The Commission received partial data from MinHe only, which are presented in table 19.[63]

According to estimates of the U.S. Bureau of Mines, China had an annual production capacity of 26,000 metric tons of primary magnesium in 1993, with production of 12,000 metric tons, representing a capacity utilization ratio of 46.2 percent. In 1993, 2,071 metric tons of magnesium from China were imported into the United States, accounting for 17.3 percent of total estimated production.[64]

Table 19
Pure magnesium: MinHe's capacity, production, inventories, capacity utilization, and shipments, 1992-94 and projected 1995

* * * * * * *

Russia

There are two producers of magnesium in Russia: AVISMA Titanium-Magnesium Works, Berezniki, Russia; and Solikamsk Magnesium Works, Solikamsk, Russia.[65] Data on Russia's production capacity, production, capacity utilization, home-market shipments, and exports during 1992-94, and projections for 1995, are presented in tables 20 (pure magnesium) and 21 (alloy magnesium). ***.[66] ***. ***.

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[62] The Commission also sent a telegram during the preliminary investigations soliciting data from the U.S. embassies in Beijing, Moscow, and Kiev for the purpose of gathering information on the ability of foreign producers to generate exports, the availability of export markets other than the United States, and whether the subject merchandise is subject to antidumping findings or remedies in any GATT-member countries. To date, no information has been received in response to those telegrams.

[63] ***.

[64] Because these data are from various sources, caution should be used in evaluating them.

[65] Until the dissolution of the former U.S.S.R., magnesium producers were controlled by the military, and magnesium was classified as a strategic material. Following the dissolution of the U.S.S.R., the Russian producers gained independence from the military. Large stocks of magnesium were maintained in military strategic stockpiles that were sold to international metals brokers in 1992 and 1993.

[66] The U.S. Bureau of Mines estimates Russian capacity to be 95,000 metric tons in 1993, with production at about 30,000 tons, resulting in a capacity utilization rate of 31.6 percent.

Table 20
Pure magnesium: Russian capacity, production, inventories, capacity utilization, and shipments, 1992-94 and projected 1995

* * * * * * *

Table 21
Alloy magnesium: Russian capacity, production, inventories, capacity utilization, and shipments, 1992-94 and projected 1995

* * * * * * *

Ukraine

There are two producers of magnesium in Ukraine: Concern Oriana, Kalush, Ukraine;[67] and Zaparozhye Titanium and Magnesium Works, Zaparozhye, Ukraine.[68] The Commission received a questionnaire response in these investigations from Concern Oriana, which is summarized in table 22. ***.[69]

According to estimates of the U.S. Bureau of Mines, Ukraine had an annual production capacity of 54,000 metric tons in 1993, with production of 9,000 metric tons, representing a capacity utilization ratio of 16.7 percent. In 1993, 4,223 metric tons of magnesium were imported into the United States, accounting for 46.9 percent of total estimated production.[70]

Table 22
Pure magnesium: Ukraine capacity, production, inventories, capacity utilization, and shipments, 1992-94 and projected 1995

* * * * * * *

Brazilian and European Union Investigations

On December 5, 1994, Brazil opened an antidumping investigation on imports from Russia, Ukraine, and the United States. The complaint was filed by Brazil's sole magnesium producer, Rima Industrial, and alleged margins of 36 percent for Russia and Ukraine, and 25 percent for the United States. The investigation covers the period January 1993 through June 1994. It is currently in progress.

On January 17, 1994, the European Union (EU) initiated an antidumping investigation on imports of magnesium from Kazakhstan, Russia, and Ukraine, following a complaint lodged by Euro Alliages on behalf of the sole current EU producer. That investigation is currently in progress.

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN IMPORTS OF THE SUBJECT MERCHANDISE AND THE ALLEGED MATERIAL INJURY

U.S. Imports

Table 23 presents U.S. imports for consumption of primary magnesium, by types and sources, for the period 1992-94. Data on U.S. imports were compiled from official statistics of

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[67] The U.S. Bureau of Mines estimates that the 1993 annual production capability of Concern Oriana was 24,000 metric tons.

[68] According to Gerald Metals, a large importer of primary magnesium with contacts in Ukraine, Zaparozhye primarily produces titanium. Zaparozhye has been unable to pay for the necessary raw materials to produce magnesium and, accordingly, stopped production of magnesium in the summer of 1993, and subsequently announced that it would not produce magnesium in 1995. Hearing transcript, pp. 175-176.

[69] Ukrainian respondents' prehearing brief, pp. 25-26.

[70] Because these data are from various sources, caution should be used in evaluating them.

Table 23
Primary magnesium: U.S. imports, by products and by sources, 1992-94

Item	1992	1993	1994
	Quantity (*metric tons*)		
Pure magnesium:			
China	410	2,071	800
Russia (LTFV)	***	***	***
Ukraine	692	4,223	1,283
Subtotal	***	***	***
Russia (fair value)	***	***	***
Other sources	1,251	2,226	2,000
Total	4,284	25,590	15,738
Alloy magnesium:			
China	56	0	0
Russia (LTFV)	***	***	***
Subtotal	***	***	***
Russia (fair value)	***	***	***
Other sources	3,151	6,232	9,623
Total	3,206	6,606	9,733
Primary magnesium:			
China	466	2,071	800
Russia (LTFV)	***	***	***
Ukraine (subject)	692	4,223	1,283
Subtotal	***	***	***
Russia (fair value)	***	***	***
Other sources	4,402	8,459	11,623
Total	7,490	32,196	25,471
	Value (*1,000 dollars*)		
Pure magnesium:			
China	1,169	5,815	1,717
Russia (LTFV)	***	***	***
Ukraine	2,093	9,698	3,254
Subtotal	***	***	***
Russia (fair value)	***	***	***
Other sources	3,443	6,301	5,543
Total	12,408	62,332	38,243
Alloy magnesium:			
China	159	0	0
Russia (LTFV)	***	***	***
Subtotal	***	***	***
Russia (fair value)	***	***	***
Other sources	10,766	21,383	31,393
Total	10,924	22,224	31,646

Continued.

Table 23--Continued
Primary magnesium: U.S. imports, by products and by sources, 1992-94

Item	1992	1993	1994
	Value (*1,000 dollars*)		
Primary magnesium:			
China	1,327	5,815	1,717
Russia (LTFV)	***	***	***
Ukraine (subject)	2,093	9,698	3,254
Subtotal	***	***	***
Russia (fair value)	***	***	***
Other sources	14,209	27,684	36,937
Total	23,332	84,555	69,889
	Unit value (*per pound*)		
Pure magnesium:			
China	$1.29	$1.27	$0.97
Russia (LTFV)	***	***	***
Ukraine	1.37	1.04	1.15
Average	***	***	***
Russia (fair value)	***	***	***
Other sources	1.25	1.28	1.26
Average	1.31	1.10	1.10
Alloy magnesium:			
China	1.29	(1)	(1)
Russia (LTFV)	***	***	***
Average	***	***	***
Russia (fair value)	***	***	***
Other sources	1.55	1.56	1.48
Average	1.55	1.53	1.47
Primary magnesium:			
China	1.29	1.27	.97
Russia (LTFV)	***	***	***
Ukraine (subject)	1.37	1.04	1.15
Average	***	***	***
Russia (fair value)	***	***	***
Other sources	1.46	1.48	1.44
Average	1.41	1.19	1.24

[1] Not applicable.

Note.--Because of rounding, figures may not add to the totals shown; unit values are calculated from unrounded figures.

Source: Compiled from data submitted in response to Commission questionnaires and from official statistics of the U.S. Department of Commerce. Russian import data from those firms receiving either 0 or *de minimis* margins in Commerce's final determination are from questionnaires and are listed under "Russia (fair value)." All other import data are derived from official statistics.

Commerce, except as noted. To arrive at LTFV imports from Russia, reported imports from trading companies identified by Commerce to have zero margins were subtracted from official statistics.[71] Cumulated LTFV imports of primary magnesium from China, Russia, and Ukraine increased by almost *** in quantity from 1992 to 1993, and by more than *** in value. Such imports subsequently declined by *** percent in quantity and *** percent in value from 1993 to 1994. Imports from Russia ceased in June 1994.[72]

U.S. Market Penetration By Imports

Market penetration ratios of imports of primary magnesium as a share of the quantity and value of U.S. consumption are presented in table 24. Cumulated LTFV imports of primary magnesium from China, Russia, and Ukraine increased their share of apparent U.S. consumption, by quantity, from *** percent in 1992 to *** percent in 1993 before falling to *** percent in 1994.

Prices

Marketing Characteristics

Primary magnesium is available in two principal forms, pure and alloy, with pure magnesium accounting for the majority of sales in the U.S. market. The end markets for pure and alloy magnesium are somewhat separate in that end users who purchase pure magnesium typically do not purchase alloy magnesium and vice versa.[73] Although there are a small number of instances where alloy magnesium could be used in applications that require pure magnesium, it is generally not done because alloy magnesium contains other elements that may not be acceptable for the application.[74] Information from producers, importers, and purchasers indicates that aluminum producers tend to have more stringent quality requirements; these firms do not want to risk the finished product quality by introducing magnesium containing other elements. Magnesium granule producers, on the other hand, are more likely to be able to use magnesium that has slightly lower levels of magnesium.[75] [76]

Because the different segments of the magnesium market require somewhat different levels of magnesium and impurities, pricing tends to vary slightly in the different customer groups. All three U.S. producers reported that prices are determined differently for different types of customers or

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[71] ***.

[72] Hearing transcript, p. 50. Russian respondents have argued that the cessation of imports was due to strong demand and increased prices in Europe, diverting Russian material to that market (Russian respondents' prehearing brief, pp. 13, 17, and 26). Petitioner has argued that the cessation of imports was due to the possibility that subject imports would be liable for duties after June 9, 1994, because there was a possibility that petitioners could file a critical circumstances allegation. Hearing transcript, pp. 89-93, and petitioners' posthearing brief, pp. 11-13. Also, petitioners have argued that prices were lower in Europe during the period for which data were collected. See petitioners' posthearing brief, Exhibit B, p. 34.

[73] Pure magnesium is sold to aluminum producers, magnesium granule producers for steel desulfurization, and chemical and pharmaceutical manufacturers, while alloy magnesium is mainly sold to diecasters.

[74] Alloy magnesium is generally used as a structural metal. Because pure magnesium does not have the mechanical properties or the corrosion resistance of alloy magnesium, it is unacceptable in many of the applications that use alloy magnesium.

[75] Magnesium granule producers have reportedly been able to use magnesium that contains approximately 95-97 percent magnesium. While this is technically considered to be alloy magnesium, it is not likely to be used in alloy applications such as diecasting.

[76] *** reported that the desulfurization industry specifies "on-spec" magnesium when the supply is available and prices are low. When the supply of magnesium is tight and prices are higher, the desulfurization industry can use off-spec product in many applications.

*** reported that desulfurization powder manufacturers can often adjust their product blend to accommodate off-spec pure magnesium.

Furthermore, a couple of magnesium granule producers and aluminum manufacturers reported that they may be able to accept lower magnesium content; however, fairly significant discounts would be required.

Table 24
Primary magnesium: Apparent U.S. consumption and market penetration, by products, 1992-94

Item	1992	1993	1994
	Quantity (*metric tons*)		
Pure magnesium	***	***	***
Alloy magnesium	***	***	***
Total	118,955	123,842	128,810
	Value (*1,000 dollars*)		
Pure magnesium	***	***	***
Alloy magnesium	***	***	***
Total	309,272	362,690	373,083
	Share of the quantity of U.S. consumption (*percent*)		
Pure magnesium:			
Producers' U.S. shipments	***	***	***
U.S. imports from--			
China	***	***	***
Russia (LTFV)	***	***	***
Ukraine	***	***	***
Subtotal	***	***	***
Russia (fair value)	***	***	***
Other sources	***	***	***
Total	***	***	***
Alloy magnesium:			
Producers' U.S. shipments	***	***	***
U.S. imports from--			
China	***	***	***
Russia (LTFV)	***	***	***
Subtotal	***	***	***
Russia (fair value)	***	***	***
Other sources	***	***	***
Total	***	***	***
Primary magnesium:			
Producers' U.S. shipments	93.7	74.0	80.2
U.S. imports from--			
China	.4	1.7	.6
Russia (LTFV)	***	***	***
Ukraine (subject)	.6	3.4	1.0
Subtotal	***	***	***
Russia (fair value)	***	***	***
Other sources	3.7	6.8	9.0
Total	6.3	26.0	19.8

Continued.

Table 24--Continued
Primary magnesium: Apparent U.S. consumption and market penetration, by products, 1992-94

Item	1992	1993	1994
	Share of the value of U.S. consumption (*percent*)		
Pure magnesium:			
Producers' U.S. shipments	***	***	***
U.S. imports from--			
China	***	***	***
Russia (LTFV)	***	***	***
Ukraine	***	***	***
Subtotal	***	***	***
Russia (fair value)	***	***	***
Other sources	***	***	***
Total	***	***	***
Alloy magnesium:			
Producers' U.S. shipments	***	***	***
U.S. imports from--			
China	***	***	***
Russia (LTFV)	***	***	***
Subtotal	***	***	***
Russia (fair value)	***	***	***
Other sources	***	***	***
Total	***	***	***
Primary magnesium:			
Producers' U.S. shipments	92.5	76.7	81.3
U.S. imports from--			
China	.4	1.6	.5
Russia (LTFV)	***	***	***
Ukraine (subject)	.7	2.7	.9
Subtotal	***	***	***
Russia (fair value)	***	***	***
Other sources	4.6	7.6	9.9
Total	7.5	23.3	18.7

[1] Less than 0.05 percent.

Note.--Because of rounding, figures may not add to the totals shown; shares are computed from the unrounded figures.

Source: Compiled from data submitted in response to Commission questionnaires and from official statistics of the U.S. Department of Commerce. Russian import data from those firms receiving either 0 or *de minimis* margins in Commerce's final determination are from questionnaires and are listed under "Russia (fair value)." All other import data are derived from official statistics.

markets.[77] *** reported that pricing between segments may vary because of the differing value that is recognized within each segment due to customer needs concerning factors such as reliability of supply, quality, and price stability. *** also reported that pricing can vary within a given segment due to the degree of competition.[78]

Another factor that may affect prices of magnesium in the different markets is the availability of substitute products. There are no substitutes for magnesium in aluminum alloy production,[79] metal reduction, or nodular iron production; however, there are some substitutes for magnesium in the other uses of the product. Calcium carbide can be used in place of magnesium in the desulfurization industry; magnesium, however, is preferred as it is faster, more efficient, and more consistent, thus leading to lower steel costs. In the castings industry, magnesium competes with aluminum, zinc, iron, steel, and a range of plastics.

Magnesium is sold on both a spot and contract basis. Magcorp reported that *** were made on a contract basis. Northwest Alloys reported using contracts ***, with approximately *** percent of its sales made on a contract basis. Conversely, the majority of responding importers reported that most of their sales are made on a spot basis.

Contracts in this industry vary in length from less than a year to five years, with the typical contract being one to two years long.[80] These agreements contain volume requirements but do not generally fix price for the duration of the contract.[81] Prices are usually negotiated at the onset of the agreement and take into account the overall competitive pricing levels of magnesium in the U.S. market. Most agreements allow for price changes during the length of the contract as market prices change and all three U.S. producers reported that the agreements contain meet-or-release clauses. Dow reported that prices can be changed in either direction, up or down. According to Dow, it can raise the price, given proper notice, and the customer then has the option of accepting or refusing to purchase additional product. Similarly, if the customer receives a competitive offer for goods of like quality at a price less than that specified in the contract, the customer can ask for Dow to meet the lower price.[82] [83]

Both *** also reported that they have standard quantity requirements; while *** reported that these requirements vary, *** reported that it usually requires full truckloads. These two suppliers also reported that they have price premiums for sub-minimum shipments. While *** makes the buyer absorb the freight cost on such a shipment, *** charges a 3-5 percent premium.

Some U.S. suppliers of magnesium have list prices for pure and alloy magnesium; however, these prices are rarely, if ever, adhered to.[84] According to ***, list prices are generally used as starting points for spot sales and contract price negotiations. Actual pricing generally varies from the list price schedule due to competitive forces and supply and demand conditions in the marketplace; *** reported that during January 1992-December 1994, some customers purchased magnesium above list prices and some at prices below list. Published price series for magnesium are found in *American Metals Market*; these prices are based upon list prices and, thus, do not necessarily reflect current market transaction prices.

Prices for both pure and alloy magnesium are quoted on a per-pound basis. Suppliers reported that prices for magnesium are generally quoted on a delivered basis with the supplier

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[77] ***.

[78] For example, there were few imports of diecast alloy magnesium from any of the subject countries during the period for which data were requested; alloy magnesium is imported from Canada; however, antidumping duties have been in place since 1992. Pricing data for alloy magnesium reported by U.S. producers were *** than those for pure magnesium.

[79] *** reported that some secondary magnesium can be used to reduce the cost.

[80] *** reported that its contracts last one to two years but contain evergreen provisions; thus, if neither party cancels the agreement in writing, it is automatically renewed under the current provisions.

[81] ***, however, reported that its contracts for alloy magnesium fix both price and quantity for the duration of the agreement, while those for sales of pure magnesium only set volume requirements.

[82] Transcript of the hearing, p. 34.

[83] Counsel for the Russian and Ukrainian respondents provided copies of the terms and agreement of contracts with Dow. These terms, which were submitted by purchasers of magnesium, stated that ***.

[84] *** reported that it does not use list prices for its sales of magnesium. Similarly, none of the responding importers reported having published list prices.

arranging and paying for the freight costs. Transportation costs account for approximately 1 to 4 percent of the delivered price and are not considered to be an important factor in a customer's sourcing decision for magnesium. As a result, suppliers can and do ship magnesium throughout the continental United States.[85] Lead times for delivery for sales of U.S.-produced magnesium are relatively short. *** reported that its lead times for deliveries range from 1 to 90 days with the average being 7-14 days.[86] *** reported lead times ranging from 5 to 30 days.[87]

Product Comparisons

Producers, importers, and purchasers were requested to discuss any differences between domestic and imported magnesium that would explain price differences and purchasing patterns. Both product and marketing considerations were considered in responding. Comments by these firms are discussed below.

One important distinction between the domestic magnesium and the subject imports is the availability of certain types of magnesium. While two of the three U.S. producers manufacture and sell diecast alloy magnesium, only one of the responding importers reported selling this product in the United States.[88] None of the diecasters that responded to the Commission's purchaser questionnaire reported buying alloy magnesium from any of the subject countries; therefore, there is little, if any, substitution between subject imports and the domestic product for these firms in their diecasting applications.[89]

Differences of opinion exist with regard to the quality of the subject imports vis-a-vis the domestic magnesium. While *** reported that differences in quality between domestic and imported magnesium are not a significant factor in their sales of magnesium, *** disagreed. *** reported that it provides documentation with each shipment as to the product quality through certificates of analysis. According to ***, some of its customers were unable to obtain such documentation from the subject country producers. Nine of the 14 reporting importers also reported that quality differences were not a significant factor in their sales of imported magnesium. One importer, ***, cited several quality differences between the domestic and imported products. *** reported that imported ingots are smaller and often arrive in the United States in an oxidized state.[90] This importer also reported that imported ingots are frequently covered with potassium bichromate solution (which is viewed as a waste by the EPA) or paraffin wax or wax paper (which causes additional melt and handling problems). Another importer agreed that there were size differences and also stated that there were differences in the documentation and analysis of the Russian magnesium. Purchasers were somewhat divided on the topic of product quality comparability. When asked to directly compare the quality of the domestic product with the subject imports, about half of the responding firms reported that the quality of the Chinese and Ukrainian products was comparable to that of the domestic product; the remaining firms reported that the quality of these subject imports was inferior. In the case of Russia, over two-thirds of responding firms found the quality of the product generally comparable to that of the domestic product. Information from purchasers indicates that the quality differences are not usually in the basic chemistry of the magnesium but rather other areas such as surface conditions, packaging, and sizing.[91] Several purchasers reported that the quality of the subject imports, particularly the Russian and Ukrainian products, has improved recently with regard to levels of oxidation.

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[85] Several importers reported that their sales are concentrated in the east coast, southeast, and midwest.

[86] ***.

[87] ***.

[88] ***.

[89] Moreover, in the diecasting market, U.S. magnesium producers also offer scrap repurchase programs. Under these programs, magnesium suppliers purchase diecaster-generated scrap and give either cash or credit on future sales of alloy magnesium. These programs are popular with diecasters because they give them a better return on their scrap.

[90] Another importer, ***, reported that there are problems with material from Russia and Ukraine and, thus, magnesium from these sources is not interchangeable with that from domestic sources.

[91] One purchaser did report that it purchased some Russian product that had a high sodium content.

As stated above, another factor that differentiates the subject imports from the domestic product is the size of the product. While the U.S. product is available in a variety of sizes, such as 16-, 25-, and 50-pound ingots, imports from the subject countries are only available in smaller-size ingots (i.e., 8-kg (17.6 pound) ingots). Many purchasers reported that the size of the product was a disadvantage of the imported products because they incur some melt loss on the smaller-sized imported material.[92] ***.

Differences also exist in the perception of the suppliers of the subject imports as being reliable suppliers.[93] Many purchasers reported that U.S. suppliers were generally more reliable in terms of supply and delivery. Purchasers cited a lack of flexibility on the part of importers to meet quick delivery times as a disadvantage of these imports. In fact, several purchasers reported paying more for the domestic product in order to ensure that they would be able to get magnesium. Several purchasers reported that recently (i.e., late 1994 and early 1995) they have had difficulty obtaining product. Two purchasers, ***, reported that the short supply of magnesium is a critical situation and they may be forced to shut down some of their furnaces due to a lack of magnesium. One large purchaser, ***, stated that the supply of magnesium was lowered due to a decrease in the amount of Russian material exported to the United States; demand, on the other hand, was increasing due to strong aluminum demand, a strong European market, and an increase in the use of magnesium in auto parts. In questionnaire responses, both *** reported that there were instances when they were unable to supply magnesium in a timely manner during the period 1992-94.[94]

Price Trends

The Commission requested price and quantity data from U.S. producers and importers for their sales of magnesium during the period January 1992-December 1994. Producers and importers were requested to submit separate pricing data for their sales to aluminum producers, magnesium granule producers, and diecasters.[95] Product specifications for which pricing data were requested are as follows:

Product 1: Pure magnesium ingots containing at least 99.8 percent magnesium but less than 99.95 percent magnesium

Product 2: Magnesium ingots containing at least 99.0 percent magnesium but less than 99.8 percent magnesium

Product 3: Magnesium diecasting alloy ingots containing not more than 9 percent aluminum and 1 percent zinc[96]

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[92] One purchaser, ***, reported that it preferred the larger size of the domestic product and would pay up to 4-5 cents more per pound for the domestic magnesium.

[93] ***. *** also stated that its customers perceive the supply of magnesium from the subject countries to be less reliable due to their inconsistent delivery performance and their inability to commit to long-term contracts.

[94] ***.

*** reported that at the end of 1994, imports from Russia and China dropped off and demand for magnesium exceeded supply. During this time, *** reported that it was not able to supply many customers because its capacity was sold out.

[95] Aluminum producers and magnesium granule producers both purchase commodity-grade pure magnesium (product 1). Magnesium granule producers purchase the magnesium and process it into granules and then sell it to steel manufacturers for desulfurization purposes.

[96] This alloy is commonly referred to as AZ91D and is used in diecasting applications. This alloy accounts for a large portion of the total diecasting market.

These products account for the bulk of primary magnesium sold in the U.S. market.[97] While product 2 is not generally sold by U.S. producers, ***.[98] The main purpose of requesting data for sales of magnesium containing less than 99.8 (but at least 99.0) percent magnesium was to capture sales of the imported product that were believed to contain slightly less than 99.8 percent magnesium. In these final investigations, only one firm, ***, reported any sales of "off-spec" pure magnesium.[99]

Sales to aluminum manufacturers[100]

Weighted-average prices for sales of U.S.-produced magnesium sold to aluminum manufacturers *** percent from the first quarter of 1992 to the second quarter of 1993 (table 25 and figure 1). These prices *** percent by the second quarter of 1994 before *** in the second half of the year to a level *** percent *** than that of the beginning of the period. Prices for Chinese magnesium sold to aluminum manufacturers *** irregularly from the second quarter of 1992 to the fourth quarter of 1994, *** percent in that time. Prices for Russian LTFV magnesium sold to this customer group followed a trend somewhat similar to that of domestic prices, *** in 1993, and *** in 1994.[101] Prices for LTFV Russian magnesium were *** in the second quarter of 1994 than they were in the same quarter of 1993. Prices for Ukrainian magnesium *** irregularly from the third quarter of 1992 to the first quarter of 1994, *** percent in that time.

Table 25
Magnesium: Weighted-average delivered prices and total quantities of U.S.-produced magnesium and magnesium imported from China, Russia, and Ukraine sold to aluminum manufacturers, by quarters, Jan. 1992-Dec. 1994

* * * * * * *

Figure 1
Weighted-average delivered selling prices of U.S.-produced magnesium and magnesium imported from China, Russia, and Ukraine, by quarters, Jan. 1992-Dec. 1994

* * * * * * *

Sales to magnesium granule producers

Weighted-average prices for sales of U.S.-produced commodity-grade pure magnesium (product 1) to magnesium granule producers followed a trend similar to that of sales to aluminum manufacturers (table 26 and figure 1). Overall, these prices were *** percent *** at the end of 1994 than they were at the beginning of 1992. No prices were reported for sales of either Chinese or Russian LTFV material sold to magnesium granule producers. One firm reported selling pure magnesium imported from Ukraine to this customer group, but did so only for one quarter.[102] In addition, one firm reported selling Russian magnesium to these end users; however, this importer, ***, was found to be selling fairly-traded product to the United States; these prices *** from the second quarter of 1993 to the fourth quarter of 1994, *** percent in that time.

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[97] Data were reported by all 3 U.S. producers and 12 importers. The products for which pricing data were reported accounted for approximately *** percent of U.S. open market shipments in 1994. Pricing data represent approximately *** and *** percent of Chinese and Russian LTFV imports and *** of the imports from Ukraine in 1994. In 1993, however, pricing data represent about *** percent of imports from China.

[98] ***.

[99] *** reported selling small amounts of "off-spec" pure magnesium (i.e., product 2) to aluminum manufacturers in 1993.

[100] All prices discussed in this section refer to product 1 (commodity-grade pure magnesium).

[101] Prices for non-LTFV Russian magnesium *** from the fourth quarter of 1992 to the same quarter of 1994, *** percent in that time.

[102] ***.

*** also reported sales of product 2 (magnesium ingots containing between 99.0 and 99.8 percent magnesium) to magnesium granule producers. These prices *** from the first quarter of 1993 to the same quarter of 1994 but then *** in 1994 for *** of *** percent.

Table 26
Magnesium: Weighted-average delivered prices and total quantities of U.S.-produced magnesium and magnesium imported from Russia sold to magnesium granule producers and diecasters, by quarters, Jan. 1992-Dec. 1994

* * * * * * *

Sales to diecasters

Weighted-average prices for U.S.-produced alloy magnesium (product 3) sold to diecasters *** percent from the first quarter of 1992 to the same quarter of 1993 and then *** for the remainder of the period for which data were collected (table 26). None of the importers that reported pricing data reported selling alloy magnesium to diecasters during the period January 1992-December 1994.[103]

Price Comparisons

Table 27 shows margins of underselling and overselling for pure magnesium sold to aluminum manufacturers. In this end-use market, the Chinese product was priced between 2.7 and 17.6 percent below the domestic product in 7 of the 10 quarters where comparisons were possible; in the other 3 instances, the Chinese product was priced between 1.9 and 3.7 percent above the domestic product. In that same end-user market, Russian LTFV magnesium was priced between 6.6 and 16.9 percent below the domestic product in all of the five instances where price comparisons were possible. In five of the six possible comparisons between Ukrainian and U.S. prices, Ukrainian prices were below U.S. prices; margins were between 7.1 and 16.6 percent. In the remaining instance, the Ukrainian magnesium was priced 16.8 percent above the domestic product.

Table 27
Magnesium: Margins of under/(over)selling for sales of pure magnesium to aluminum producers, by quarters, Jan. 1992-Dec. 1994

* * * * * * *

There was only one price comparison between LTFV imports and domestic product in the magnesium granules market; the Ukrainian product was priced *** percent below the domestic product in the second quarter of 1993.[104]

There were no comparisons between the domestic product and imports from any of the subject countries for sales of product 3 to magnesium alloy to diecasters.

Purchaser Responses

The Commission sent questionnaires to approximately 59 firms believed to be purchasers of pure and alloy magnesium. Thirty-six responses were received, with 32 providing useable information.[105] These firms' purchases of magnesium accounted for 67.0 percent of U.S. producers' shipments, 38.3 percent of shipments of imports from China, and virtually all of the imports from Russia (both LTFV and non-LTFV) and Ukraine in 1994. The following is a compilation of the responses received from these firms.

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[103] As stated earlier, ***.

[104] For Russia, the only firm to report prices for the imported product was ***, a firm found to be selling fairly-traded magnesium in the U.S. market.

[105] The remaining 4 firms reported that they had not purchased any magnesium during 1992-94.

Purchasers reported buying both pure and alloy magnesium for a variety of uses including production of aluminum can stock, aluminum extrusions, ferroalloys, magnesium anodes, magnesium powder for use in steel desulfurization, chemicals, and diecastings for the automobile and computer industries. Firms that purchased pure magnesium reported buying the product from U.S. producers and suppliers of imports from the subject countries and other countries, such as Canada, France, and Switzerland. Because there were very few imports of alloy magnesium (for diecasting purposes) from the subject countries, diecasters reported buying alloy magnesium from U.S. and Canadian suppliers. While about two-thirds of responding purchasers reported that they do not compete for sales to their customers with the suppliers from whom they purchase magnesium, several cited Northwest Alloys as a supplier and a competitor.[106] The majority of responding purchasers (24 of 30) reported that they usually or always know the country of origin of the magnesium that they purchase. However, only slightly more than one-half of purchasers reported always or usually knowing the specific manufacturer of the magnesium that they buy.

The frequency of purchases by the responding firms varied, ranging from daily to annual purchases, with many firms stating that purchases were made irregularly. Although a few firms reported reviewing suppliers and their prices as frequently as each purchase, about two-thirds of the purchasers reported that they do not frequently change suppliers. Reasons given for changing suppliers include lower prices for imported material, higher prices for Dow, geographic location, imposition of antidumping and countervailing duties on Canadian material, and a decrease in the quantity of product available when ***.

Purchasers were asked to compare Chinese, Russian, and Ukrainian suppliers' marketing efforts with those of the domestic magnesium suppliers. Areas of comparison include terms of sale, service, warranties, and sales techniques. Most of the responding purchasers reported that there were no differences between the suppliers of the magnesium from the subject countries and the domestic product. A few purchasers reported differences, including reduced credit terms and faster payment terms for foreign suppliers, less reliability with foreign suppliers, better service with domestic suppliers, and little if any recourse for defective material (i.e., no warranties).

Purchasers were asked to list the three major factors considered by their firm in deciding from whom to purchase pure or alloy magnesium. There appear to be some differences in the importance of factors depending on the type of firm. In the case of aluminum manufacturers, quality was rated as the most important factor considered by the largest number of firms (i.e., nine); contractual agreements and price were mentioned as the number one factor by five firms and three firms, respectively. Price was rated second by seven firms and third by seven firms. Availability is also an important consideration for aluminum producers, with six firms reporting it as the second most important factor and five firms rating it third. Other factors listed as being important by aluminum producers include service, delivery, and credit terms. Purchasers of alloy magnesium tend to view factors other than price as being important; none of the responding diecasters reported that price was one of the top two factors considered when deciding from whom to purchase magnesium; three diecasters ranked price as the third most important consideration. The factor cited most frequently as the number one consideration was contractual agreements/traditional supplier. Other factors cited by diecasters who purchase alloy magnesium include quality, availability, sales terms, service, delivery, and scrap repurchase programs. Finally, other firms such as brokers and magnesium granule producers view price as the most important factor. One purchaser, ***, reported that firms that use magnesium for steel desulfurization are very open on the quality with regard to the specifications of the product. According to ***, cost is the primary factor and the lowest price will always win a contract or sale.[107]

Because quality is often an important consideration for many firms that purchase magnesium, purchasers have qualification procedures that suppliers must follow before magnesium will be purchased. Qualification can be as simple as requiring documentation that the magnesium meets the required specifications. In some cases, however, firms will have suppliers submit samples for laboratory testing and will require testing of a truckload of material at the plant. The time necessary to qualify a supplier can range from a few days up to about six months. While most purchasers (i.e., 22 of 26) reported that no suppliers, domestic or foreign, have failed in their attempt to qualify

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[106] Alcoa, a large purchaser of pure magnesium, is the parent company of Northwest Alloys.

[107] *** also stated that the lowest price will always win the sale because there is extreme pressure exerted by primary steelmakers to lower costs.

their magnesium, a few did report problems. Three firms reported some quality problems with the Russian material and one firm has had occasional problems with material from Dow and Northwest Alloys.

Purchasers were also asked to compare the domestic and imported magnesium with respect to nine factors: availability, delivery time, delivery terms, packaging, price, product consistency, product quality, reliability of supply, and technical support. More than one-half of the responding purchasers reported that the domestic product was superior with regard to availability, delivery time, product quality, reliability of supply, and technical support. Purchasers were equally divided on the comparability between the imports and the domestic products with regard to delivery terms, packaging, and product consistency; about one-half of the responding purchasers found the two equal while the others thought that the domestic product was superior.

Purchasers reported that prices for magnesium change irregularly, depending on supply and demand conditions; prices can change as often as several times per year or as little as once per year. These firms were also asked to identify any firm or firms that they believed to be price leaders in the magnesium market. Eleven firms stated that they found Dow to be the leader of prices, while four other firms stated that both Dow and Magcorp were price leaders in the magnesium market. Only one firm reported that imports were a price leader, stating that when prices decline imports lead the way and when prices are rising, Dow leads.

Many purchasers also reported that prices for Chinese, Russian, and Ukrainian magnesium were lower than those for domestic magnesium in 1994. Nevertheless, over half of the 30 firms reported that they had purchased the domestic product in spite of its higher price.[108] Reasons for doing so include quality, reliability, service, contractual agreements, size and/or shape of product, delivery, availability, and a desire for multiple sources or to maintain a given source of supply.[109]

Purchaser Prices

Pricing data were requested for firms' purchases of pure and alloy magnesium during the period January 1992-December 1994. Eighteen firms provided actual price and quantity data; the pricing data accounted for 40.2 percent of U.S. producers' shipments in 1994 and 32.9, 82.0, and 93.8 percent, respectively, of shipments of LTFV imports from China, Russia, and Ukraine in 1994. In general, trends in prices reported by aluminum manufacturers, magnesium granule producers, and diecasters were similar to those reported by magnesium producers (appendix H, tables H-1 and H-2).

With regard to imports from China, there were 13 instances where price comparisons were possible (table H-3, appendix H). In 9 of these instances, prices for Chinese magnesium were below those for domestic magnesium; margins ranged from 0.8 to 11.6 percent. In the remaining 4 instances, prices for Chinese magnesium were above those for the domestic product, with margins ranging from 0.1 and 3.5 percent. In the case of LTFV imports from Russia, imports were priced below the domestic product in 11 of the 16 instances where comparisons were possible; margins ranged from 1.2 to 13.3 percent. In the remaining instances, the Russian product was priced between 0.8 and 18.6 percent above the domestic product. Finally, in the case of imports from Ukraine, prices for the Ukrainian product were between 5.3 and 21.2 percent below the domestic product in 12 of the 14 instances. In the remaining instances, the Ukrainian product was priced 4.5 and 9.0 percent below the domestic product.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Chinese yuan depreciated 35.8 percent relative to the U.S. dollar from January-March 1992 to October-December 1994 (figure 2).[110] The real value of the Chinese currency is not shown because

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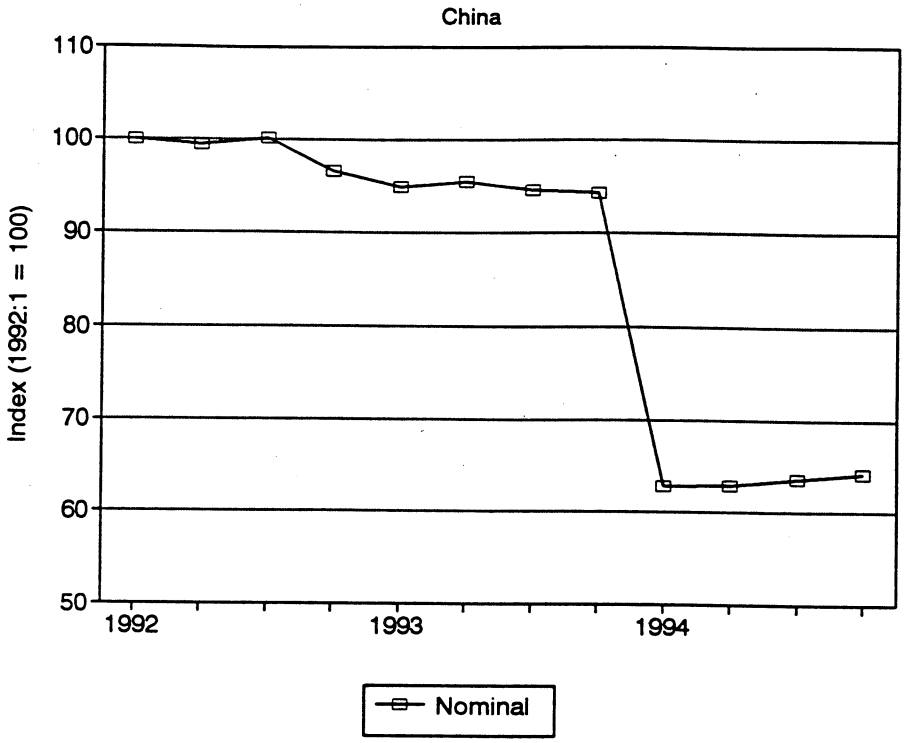
[108] Furthermore, 26 of 30 responding purchasers reported that the lowest price offered for primary magnesium does not always win a contract or sale.

[109] Two purchasers reported that they would prefer to buy domestic magnesium and would do so if prices were within $0.05 per pound.

[110] Beginning Jan. 1, 1994, the People's Bank of China changed the manner in which the official exchange rate was determined.

producer price information for China is not available. Exchange rates for Russia and the Ukraine are not available.

Figure 2
Nominal exchange rates of the Chinese yuan, by quarters, Jan. 1992-Dec. 1994



Source: International Monetary Fund, International Financial Statistics, February 1995.

Lost Sales and Lost Revenues

The Commission received lost sales and lost revenue allegations from ***.[111] *** alleged that it lost *** million on sales of *** tons of magnesium due to competition from imports from China, Russia, and Ukraine. *** submitted 23 lost sale allegations which total *** million and involved *** tons.[112] Tables 28 and 29 summarize the lost sale and lost revenue allegations submitted by U.S. producers. Staff contacted 12 of the 18 purchasers and a summary of the information follows.

Table 28
Lost sales allegations concerning imports of magnesium from China, Russia, and Ukraine, as reported by U.S. producers

* * * * * * *

[111] *** did not report any specific lost revenue allegations. ***.

[112] *** reported that its *** lost sales were due to competition from imports from all three of the subject countries. *** reported that its lost sales were due to competition from Russian and Ukrainian imports.

Table 29
Lost revenue allegations concerning imports of magnesium from China, Russia, and Ukraine, as reported by U.S. producers

* * * * * * *

*** was cited in one lost sale allegation. *** reported that although *** did purchase some Chinese and Russian magnesium, the amount was *** tons compared with the *** tons cited in the allegation.[113] *** reported that the Chinese and Russian material was purchased in addition to (not instead of) the amount that *** was buying from domestic suppliers. According to *** got price quotes from offshore suppliers to get a better assessment of the overall magnesium market. Prices for the Russian magnesium were lower than those for the domestic product; however, *** reported that only its small subsidiaries *** can tolerate the lower quality of the imported product. The Russian and/or Chinese material was not purchased for use in its *** business.[114] Furthermore, *** stated that he was concerned with the consistency of supply. *** reported that *** is *** of magnesium that it is too risky for it to depend on Russian material. With regard to the Chinese product, *** reported that there is a lot of inconsistency with the quality; while sometimes the quality is acceptable, other times it is not. *** also reported that the magnesium market has been experiencing supply problems recently due to increased demand in both the aluminum and diecasting industries and a reduction in supply as Russian imports have decreased.

*** was named in a lost sale and a lost revenue allegation. *** confirmed the lost revenue by stating that he probably used import prices to get a lower price from domestic sources because he normally uses bids of competing firms when negotiating prices. *** reported that the price of the Russian material has been lower than that of the domestic magnesium suppliers. With regard to the lost sale allegation, *** stated that he did not believe that it was true. According to ***, *** contacted him at the end of 1992 and *** reported that it was having trouble filling its orders. *** asked if *** could supply material to one of *** customers; *** did so with imported material. *** also reported that supply is currently very tight in the magnesium market due to a decrease in the supply of Russian material being exported to the United States.[115]

*** was cited in two lost sales allegations and one lost revenue allegation. ***, spokesman for ***, confirmed both the lost sales and the lost revenue allegations. *** reported that he did in fact purchase magnesium imported from Russia instead of from domestic producers because imports were priced below the domestic product. However, *** reported that prices are more similar now. *** also confirmed that he requested that the domestic firms lower their prices because of the availability of imported magnesium at lower prices. According to ***, the domestic product was priced around *** per pound, while the imports were priced around *** per pound. *** stated that he asked the domestic producers to agree on a price between the two original prices. *** stated that while quality and reliability are important factors, most of the product available today (from foreign and domestic sources) is similar; as a result, price becomes the key issue.

*** was named in two lost sales allegations and one lost revenue allegation. *** confirmed both the lost sales and the lost revenue allegations. With regard to the lost sales allegations, *** reported that prior to 1993, *** was purchasing *** of its magnesium from domestic suppliers. Starting in 1993, however, *** began purchasing imports from China and Russia; *** purchased approximately *** percent from domestic sources and *** percent from foreign sources. *** commented that *** is not currently purchasing magnesium from either China or Russia because product is not available. *** added that the quality of the imports varied. While one supplier of the Russian material provided good quality material, others provided inferior product. In the case of China, *** reported that he did not like the way the magnesium was packaged (i.e., stacked loosely).

*** was named in one lost sale allegation. *** confirmed that his firm had purchased the imported product instead of the domestic product because it was priced below the domestic product. *** stated that although the imported product was of a lesser quality, the price difference was

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[113] ***.

[114] In its questionnaire response, *** did report that the Russian and Chinese products were purchased for price reasons; however, these purchases accounted for less than *** percent of its total consumption.

[115] *** reported that Russian magnesium producers have been ordered to sell their material to the Russian aluminum market.

enough to offset these differences.[116] According to *** incurred some additional melt loss on the smaller-sized Russian material; as a result, when the domestic product was available for a price within 4 to 5 cents (per pound) of the imported product, *** would purchase the domestic product.[117] *** also reported that the supply of magnesium is currently very tight and prices have risen to levels as high as $1.90-$2.00 per pound for spot purchases. As a result of the short supply, *** may have to shut down some of its furnaces.

*** was named in a lost sale allegation. ***, spokesman for ***, reported that *** did shift purchases from one of its domestic suppliers ***;[118] however, when *** stopped buying from *** it began buying from both *** and from suppliers of the subject imports.[119] *** reported that *** made a decision to raise its price in ***. *** did not agree with that assessment of the magnesium market and, thus, decided to shift purchases from *** to other suppliers. Purchase price data reported by *** indicate a mixture of underselling and overselling by imports from China and Russia.[120] Prices for the Russian imports, however, are for sales by ***.

*** was named in three lost sales and one lost revenue allegation. ***. *** did, however, respond to the Commission's purchaser questionnaire. In its response, *** reported purchasing magnesium from U.S. producers and suppliers from the three subject countries. Prices paid by *** for the imported pure magnesium were below those paid for the domestic product in all but one instance.[121] *** also reported that its purchases of magnesium imported from the subject countries increased relative to its domestic purchases. According to ***, magnesium from the subject countries is not as readily available nor as economically attractive as it was during the first part of the period.

*** was named in a lost sale allegation. Staff contacted ***; however, it was unable to obtain information concerning the specific allegation, *** did respond to the Commission's purchaser questionnaire. In its response, *** indicated that it purchased pure magnesium from U.S. producers and from Chinese and Russian suppliers. In 1992, *** bought *** its magnesium requirements from domestic suppliers; in 1993, *** purchased less magnesium from U.S. sources and started buying from both Chinese and Russian suppliers.[122] Purchases of both domestic and Russian magnesium increased in 1994,[123] whereas those from Chinese suppliers declined in that year. According to data submitted by ***, prices paid for pure magnesium imported from China and Russia were lower than those paid for the domestic product.

*** was contacted by staff but did not respond to inquiries on the *** lost sale allegation and *** lost revenue allegations in which it was named. ***, however, did respond to the Commission's purchaser questionnaire. In its response, *** reported that it began buying pure magnesium from Russia in 1993; in that year, *** purchases of domestic magnesium were *** percent lower than

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[116] *** reported that the Russian product had some surface problems (i.e., oxidization) and was only available in smaller sizes.

[117] Price data reported by *** for its purchases of pure magnesium indicate that the Russian product was priced between *** percent lower than the domestic product during the period ***. In the other periods for which *** reported buying both domestic and Russian material, the imports were purchased from firms found to be supplying fairly-traded Russian imports.

[118] ***.

[119] ***.

[120] In one of the two instances where direct quarterly comparisons were possible, the Chinese products were priced below the domestic product. In the eight instances where comparisons were possible, prices for the Russian product were below the domestic product in three instances, above the domestic in three instances, and the same in the remaining two instances.

[121] In all but one of the quarters for which quarterly prices were reported, *** bought the Russian magnesium from ***.

In the fourth quarter of 1992, *** largest purchase of Chinese magnesium was more expensive than the domestic product.

[122] Quarterly price data submitted by ***.

[123] ***.

they had been in 1992.[124] *** reported that price is the most important factor in its purchasing decisions and the lowest price will always win a contract or sale. *** also reported that, since 1992, prices for U.S.-produced magnesium have decreased relative to the prices of the subject imports. *** reported that at some times during 1994, imports from Russia and the Ukraine were priced below the U.S. product and at other times, the U.S. product was less expensive. *** reported paying more for the domestic product at times to maintain supplier relationships to insure an adequate supply. Conversely, *** also reported paying more for the Russian and/or Ukrainian product due to the lack of availability of magnesium from domestic suppliers.

*** was contacted by staff but did not respond. *** did, however, respond to the Commission's purchaser questionnaire. In its response, *** reported that price is the most important factor in its purchasing decisions and it has dropped and added suppliers on the basis of price.[125] With regard to price leadership, *** reported that on the way down, imports lead the way and on the way up, Dow generally leads the way.

While *** did not respond to inquiries on the lost sale allegation, it did submit a response to the Commission's purchaser questionnaire. In its response, *** reported that it added two suppliers of Russian material, ***, because of price. While *** reported that it began purchasing from Russian suppliers in 1993, the ***; purchases from U.S. producers accounted for *** percent of its total purchases in 1992, compared to *** percent in 1993 and *** percent in 1994. *** also reported that while the price of the Russian material was lower, the quality of the product is questionable, lead times are longer, and the size of the ingots is smaller.

*** was named in one lost sale allegation. While *** did report purchases of Russian magnesium, this material was purchased from ***.

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[124] *** purchased approximately *** metric tons of pure magnesium from domestic producers in 1992, *** metric tons in 1993, and then *** metric tons in 1994. *** purchases of Russian magnesium decreased from *** metric tons in 1993 to *** metric tons in 1994. A *** (*** metric tons) of pure magnesium was purchased from Canada in 1992.

[125] *** reported that it dropped *** and added a number of firms that supply magnesium imported from Russia and the Ukraine due to price.

APPENDIX A

SUMMARY DATA CONCERNING THE U.S. MARKET

Table A-1
Pure magnesium: Summary data concerning the U.S. market, 1992-94

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Table A-2
Alloy magnesium: Summary data concerning the U.S. market, 1992-94

* * * * * * *

Table A-3
Primary magnesium: Summary data concerning the U.S. market, 1992-94

(Quantity=*metric tons*; value=*1,000 dollars*; unit values are *per pound*; period changes=*percent, except where noted*)

Item	Reported data			Period changes		
	1992	1993	1994	1992-94	1992-93	1993-94
U.S. consumption quantity:						
Amount	118,955	123,842	128,810	+8.3	+4.1	+4.0
Producers' share[1]	93.7	74.0	80.2	-13.5	-19.7	+6.2
Importers' share:[1]						
China	0.4	1.7	0.6	+0.2	+1.3	-1.1
Russia (LTFV)	***	***	***	***	***	***
Ukraine (subject)	.6	3.4	1.0	+0.4	+2.8	-2.4
Subtotal	***	***	***	***	***	***
Russia (fair value)	***	***	***	***	***	***
Other sources	3.7	6.8	9.0	+5.3	+3.1	+2.2
Total	6.3	26.0	19.8	+13.5	+19.7	-6.2
U.S. consumption value:						
Amount	309,272	362,690	373,083	+20.6	+17.3	+2.9
Producers' share[1]	92.5	76.7	81.3	-11.2	-15.8	+4.6
Importers' share:[1]						
China	0.4	1.6	0.5	(2)	+1.2	-1.1
Russia (LTFV)	***	***	***	***	***	***
Ukraine (subject)	.7	2.7	.9	+0.2	+2.0	-1.8
Subtotal	***	***	***	***	***	***
Russia (fair value)	***	***	***	***	***	***
Other sources	4.6	7.6	9.9	+5.3	+3.0	+2.3
Total	7.5	23.3	18.7	+11.2	+15.8	-4.6
U.S. importers' imports from--						
China:						
Imports quantity	466	2,071	800	+71.7	+344.4	-61.4
Imports value	1,327	5,815	1,717	+29.4	+338.2	-70.5
Unit value	$1.29	$1.27	$0.97	-24.7	-1.4	-23.6
Ending inventory quantity	***	***	***	***	***	***
Russia (LTFV):						
Imports quantity	***	***	***	***	***	***
Imports value	***	***	***	***	***	***
Unit value	$***	$***	$***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
Ukraine (subject):						
Imports quantity	692	4,223	1,283	+85.4	+510.3	-69.6
Imports value	2,093	9,698	3,254	+55.5	+363.4	-66.4
Unit value	$1.37	$1.04	$1.15	-16.1	-24.0	+10.5
Ending inventory quantity	***	***	***	***	***	***

Continued.

Table A-3--Continued
Primary magnesium: Summary data concerning the U.S. market, 1992-94

(Quantity=*metric tons*; value=*1,000 dollars*; unit values are *per pound*; period changes=*percent, except where noted*)

Item	Reported data			Period changes		
	1992	1993	1994	1992-94	1992-93	1993-94
U.S. importers' imports from--						
Subject sources:						
Imports quantity	***	***	***	***	***	***
Imports value	***	***	***	***	***	***
Unit value	$***	$***	$***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
Russia (fair value):						
Imports quantity	***	***	***	***	***	***
Imports value	***	***	***	***	***	***
Unit value	$***	$***	$***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
Other sources:						
Imports quantity	4,402	8,459	11,623	+164.0	+92.2	+37.4
Imports value	14,209	27,684	36,937	+160.0	+94.8	+33.4
Unit value	$1.46	$1.48	$1.44	-1.6	+1.4	-2.9
Ending inventory quantity	***	***	***	***	***	***
All sources:						
Imports quantity	7,490	32,196	25,471	+240.1	+329.9	-20.9
Imports value	23,332	84,555	69,889	+199.5	+262.4	-17.3
Unit value	$1.41	$1.19	$1.24	-11.9	-15.7	+4.5
U.S. producers'--						
Average capacity quantity	164,667	164,667	140,000	-15.0	0	-15.0
Production quantity	136,290	127,788	120,382	-11.7	-6.2	-5.8
Capacity utilization[1]	82.8	77.6	86.0	+3.2	-5.2	+8.4
U.S. shipments:						
Quantity	111,465	91,646	103,339	-7.3	-17.8	+12.8
Value	285,940	278,135	303,194	+6.0	-2.7	+9.0
Unit value	$1.16	$1.38	$1.33	+14.4	+18.3	-3.3
Export shipments:						
Quantity	***	***	***	***	***	***
Exports/shipments[1]	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	$***	$***	$***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
Inventory/shipments[1]	***	***	***	***	***	***
Production workers	1,591	1,559	1,319	-17.1	-2.0	-15.4
Hours worked (*1,000s*)	3,273	3,234	2,745	-16.1	-1.2	-15.1
Total compensation (*$1,000*)	68,353	69,413	59,301	-13.2	+1.6	-14.6
Hourly total compensation	$20.88	$21.46	$21.60	+3.4	+2.8	+0.7

Continued.

Table A-3--Continued
Primary magnesium: Summary data concerning the U.S. market, 1992-94

(Quantity=*metric tons*; value=*1,000 dollars*; unit values are *per pound*; period changes=*percent, except where noted*)

Item	Reported data			Period changes		
	1992	1993	1994	1992-94	1992-93	1993-94
U.S. producers'--						
Productivity (*metric tons per 1,000 hours*)	41.6	39.5	43.9	+5.3	-5.1	+11.0
Unit labor costs (*per metric ton*)	$501.53	$543.19	$492.61	-1.8	+8.3	-9.3
Net sales--						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit sales value	$***	$***	$***	***	***	***
Cost of goods sold (COGS)	***	***	***	***	***	***
Gross profit (loss)	***	***	***	***	***	***
SG&A expenses	***	***	***	***	***	***
Operating income (loss)	***	***	***	***	***	***
Capital expenditures	***	***	***	***	***	***
Unit COGS	$***	$***	$***	***	***	***
Unit SG&A expenses	$***	$***	$***	***	***	***
Unit operating income (loss)	$***	$***	$***	***	***	***
COGS/sales[1]	***	***	***	***	***	***
Op. income (loss)/sales[1]	***	***	***	***	***	***

[1] "Reported data" are in percent and "period changes" are in percentage points.
[2] An increase of less than 0.05 percentage points.
[3] Not applicable.
[4] An increase of 1,000 percent or more.
[5] Negative figure, but less than significant digits displayed.

Note.--Period changes are derived from the unrounded data. Period changes involving negative period data are positive if the amount of the negativity decreases and negative if the amount of the negativity increases. Because of rounding, figures may not add to the totals shown. Unit values and other ratios are calculated from the unrounded figures, using data of firms supplying both numerator and denominator information.

Source: Compiled from data submitted in response to Commission questionnaires and from official statistics of the U.S. Department of Commerce. Russian import data from those firms receiving either 0 or *de minimis* margins in Commerce's final determination are listed under "Russia (fair value)." All other import data are derived from official statistics.

Table A-4
Pure magnesium (excluding "off-spec" pure magnesium): Summary data concerning the U.S. market, 1992-94

* * * * * * *

Table A-5
Alloy magnesium (including "off-spec" pure magnesium): Summary data concerning the U.S. market, 1992-94

* * * * * * *

Table A-6
Primary magnesium: Summary data concerning the U.S. market, 1992-94, including imports of pure and alloy magnesium as a share of consumption of primary magnesium

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APPENDIX B

CERTAIN GRAPHIC PRESENTATIONS

Figure B-1
Primary magnesium: Apparent U.S. consumption, by sources, 1992-94

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Figure B-2
Primary magnesium: Shipments by U.S. producers, by types, 1992-94

* * * * * * *

Figure B-3
Primary magnesium: U.S. imports, by sources, 1992-94

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Figure B-4
Primary magnesium: Share of the quantity of U.S. consumption, by sources, 1992-94

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APPENDIX C

FEDERAL REGISTER NOTICES

Investigations Nos. 731–TA–696–698 (Final)

Magnesium From The People's Republic of China, Russia, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–696–698 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China (China), Russia, and Ukraine of unwrought pure magnesium [1] and by reason of imports from China

[1] For purposes of these investigations, unwrought pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Products that have the aforementioned primary magnesium content but do not conform to ASTM specifications or other industry or customer-specific specifications are included in the scope of these investigations. Pure unwrought magnesium is provided for in subheadings 8104.11.00 and 8104.20.00 of the Harmonized Tariff Schedule of the United States (HTS). Excluded from the scope of investigation are magnesium anodes, granular magnesium (including turnings and powder), and secondary magnesium. See also, Commerce's scope of investigation in its notices of preliminary determinations, 59 F.R. 55420, 55424, and 55427

and Russia of unwrought alloy magnesium.[2]

For further information concerning the conduct of these 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).

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Janine Wedel (202–205–3178), Office of s, 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. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of unwrought pure magnesium from China, Russia, and Ukraine and imports of unwrought alloy magnesium from China and Russia 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 March 31, 1994, by Magnesium Corporation of America (Magcorp), Salt Lake City, UT; the International Union of Operating Engineers, Local 564, Freeport, TX; and the United Steelworkers of America, Local 8319, Salt Lake City, UT.

Participation in the Investigations and Public Service List.—Persons wishing to participate in the 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, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register. 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 these investigations will be placed in the nonpublic record on March 15, 1995, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on March 28, 1995, 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 March 20, 1995. 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 March 23, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigations as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is March 22, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is April 5, 1995; witness testimony must be filed no later than three (3) 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 on or before April 5, 1995. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the 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 the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: November 30, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–30093 Filed 12–6–94; 8:45 am]

BILLING CODE 7020–02–P

[2] For purposes of these investigations, unwrought alloy magnesium contains less than 99.8 percent magnesium by weight but 50 percent or more magnesium by weight, with magnesium being the largest metallic element in the alloy by weight, and is sold in various ingot and billet forms and sizes. Products that have the aforementioned primary magnesium content but do not conform to ASTM specifications or other industry or customer-specific specifications are included in the scope of these investigations. Unwrought alloy magnesium is provided for in subheadings 8104.19.00 and 8104.20.00 of the HTS. Excluded from the scope of investigation are magnesium anodes, granular magnesium (including turnings and powder), and secondary magnesium. See also, Commerce's scope of investigation in its notices of preliminary determinations, 59 FR 55424 and 55427.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-823-806]

Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Ukraine

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

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch, Dorothy Tomaszewski or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3773, (202) 482-0631 or (202) 482-0922, respectively.

Final Determination

We determine that imports of pure magnesium from Ukraine are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination on October 27, 1994 (59 FR 55420, November 7, 1994), the following events have occurred:

In December 1994, we issued sections A and C of our antidumping questionnaire [1] to exporters Greenwich Metals and Hochschild Partners. These companies provided responses to these questionnaires in December 1994 and January 1995.

Verifications were conducted at the Chicago, Illinois, facilities of MG Metals from December 6 to December 7, 1994; at Gerald Metals' Lausanne, Switzerland, offices from December 13 to December 14, 1994, and at its Stamford, Conn., offices on January 24 and January 25, 1995; at Concern Oriana's (formerly Concern Chlorvinyl) facilities in Kalush, Ukraine; and at the Greenwich, Conn., facilities of Greenwich Metals from January 30 to January 31, 1995.

On January 31, 1995, we amended our preliminary determination to correct for certain ministerial errors (60 FR 7519, February 8, 1995).

Respondents Concern Oriana, Gerald Metals, Greenwich Metals, Hochschild Partners, as well as petitioners,[2] filed case and rebuttal briefs. A public hearing was held on February 24, 1995.

Scope of Investigation[3]

The product covered by this investigation is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses:

(1) products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium);

(2) products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and

(3) products (generally referred to as "off-specification pure" magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to all below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this investigation are alloy primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.11.00, 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Investigation

The period of investigation ("POI") is October 1, 1993, through March 31, 1994.

Fair Value Comparisons

A. Participating Respondents

To determine whether sales of pure magnesium from Ukraine to the United States by Gerald Metals, Hochschild Partners, and MG Metals were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Verification revealed that, for its POI sales to U.S. companies, there were no instances where Greenwich Metals' role in the sales process was that of being the

[1] Section A requested general information on each company; and section C requested information on, and a listing of, U.S. sales made during the period of investigation ("POI").

[2] Magnesium Corporation of America; Dow Chemical; International Union of Operating Engineers, Local 564; and United Steel Workers of America, Local 8319.

[3] The scope of this investigation has been modified since the preliminary determination in order to clarify the distinctions between pure magnesium and alloy magnesium. See Comment 5 in the "Interested Party Comments" section of this notice, below, for a discussion of the scope modification. For a detailed definition of alloy magnesium, see the "Scope of Investigation" section of the concurrent investigations of alloy magnesium from the People's Republic of China and the Russian Federation.

first company to sell Ukraine-produced pure magnesium to a U.S. customer. That is, all subject merchandise purchased by Greenwich was done so on terms that made Greenwich the U.S. customer of its supplier. Accordingly, Greenwich will be subject to the "Ukraine-wide" deposit rate.

B. All Other Companies

All companies to which a questionnaire was issued are considered mandatory respondents in this proceeding. Several companies in Ukraine either failed to respond to either our initial requests for information about U.S. sales, or failed to respond to our request for permission to verify. These companies include: Zaporozhye Titanium-Magnesium Plant, a Ukrainian producer; and Alex, Mages, and Intreid, Ukrainian exporters. Accordingly, we have based the "Ukraine-wide" duty deposit rate—applicable to all companies except those that (1) made POI U.S. sales of subject merchandise, and (2), participated in this investigation—on the best information available ("BIA").

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to respondents that cooperated in an investigation and margins based on more adverse assumptions for those respondents, like the non-participating respondents in this investigation, which did not cooperate in an investigation. As outlined in *Coumarin,*[4] where, as here, a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (1) the highest calculated rate of any respondent in the investigation, (2) the highest margin alleged in the petition, or (3) the margin from the preliminary determination for that firm. Accordingly, we have set the Ukraine-wide deposit rate at 104.27 percent, *ad valorem.* This margin represents the highest margin in the petition, as recalculated by the Department for purposes of initiating this proceeding and as further adjusted to account for factors of production listed in the petition that were not valued at the time of initiation, but for which information is on the record upon which to base a surrogate value.

[4] Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China (59 FR 66895, December 28, 1994).

United States Price

We based USP for third-country exporters Gerald Metals and Hochschild on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the exporters to unrelated parties in the United States prior to importation into the United States and because exporter's sales price ("ESP") methodology was not indicated by other circumstances.

For Gerald Metals and Hochschild, we calculated purchase price based on packed, CIF, delivered, or FOT warehouse prices to unrelated purchasers in the United States. For Gerald Metals, we made the following deductions (where appropriate): ocean freight; foreign brokerage; U.S. Brokerage and handling charges; U.S. duty; and U.S. inland freight. For Hochschild Partners, we made the following deductions (where appropriate) for foreign brokerage; ocean freight; marine insurance; and U.S. inland freight.

We based USP for MG Metals, a third-country exporter, on ESP, in accordance with section 772(c) of the Act, because the subject merchandise was sold to the first unrelated purchaser after importation into the United States.

We calculated ESP based on packed delivered prices. For MG Metals, we made the following deductions (where appropriate) for ocean freight; marine insurance; foreign brokerage; U.S. inland freight; U.S. inland insurance, U.S. duties; U.S. brokerage and handling; and additional packing costs.

From each exporter's U.S. price, we continued to deduct foreign inland freight between the factory and the reported intermediate destination (*e.g.,* Rotterdam) using the per-ton foreign inland freight figure reported in the petition in order to account for this movement charge from producer to the intermediate destination.

Minor adjustments were made to the reported U.S. sales of these exporters pursuant to our findings at verification (*see* Final Calculation Memorandum, on file in room B–099 of the Main Commerce Department Building, for details of adjustments).

Foreign Market Value

A. Surrogate Country Selection

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market-economy country and that are significant producers of comparable merchandise.

In our preliminary determination, we selected Indonesia as our primary surrogate country and resorted to Egypt for certain surrogate values where values in Indonesia were either unavailable or out of date. These countries are appropriate surrogate countries for the reasons set forth in our preliminary determination. Since we find no compelling reason to change this selection, we have continued to base FMV on the values of the appropriate factors of production as valued in Indonesia or Egypt.

B. Factors of Production

In accordance with section 773(c) of the Act, we calculated FMV, with regard to the exporters' U.S. sales of magnesium produced by Concern Oriana, based on factors of production cited in the preliminary determination, making adjustments based on verification findings (see Final Calculation Memorandum). With regard to the exporters' U.S. sales of magnesium produced by the other Ukraine manufacturer. Zaporozhye Titanium-Magnesium Plant (from which we did not receive factors of production data), we did not calculate FMV; instead, we assigned an uncooperative BIA margin which equalled the highest adjusted alleged margin cited in our initiation notice (as indicated in our amended preliminary determination).

The factors used to produce pure magnesium include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of surrogate values, see our Final Calculation Memorandum.) An imputed factory overhead figure was also included in the FMV calculation based on a percentage of materials, labor and energy. We granted a by-product offset against the cost of manufacturing (*i.e.,* the sum of materials, labor, energy and factory overhead). We then added the statutory minimum imputed amounts for general expenses and profit. We followed the same methodology for packing costs used at the preliminary determination; however, adjusted the packing material cost so as not to double count certain materials. Additionally, we used the Indonesian unskilled labor rate for packing labor.

We have used the same surrogate values used in the preliminary determination with the exception of certain corrections made based on verification or interested party comments. Based on verification, we adjusted the values of magnesium

chloride and chlorine to reflect the actual purity used in the production (or yielded as a by-product) of subject merchandise. We recalculated certain reported inland freight distances between factory and input supplier based on verified distances. We used labor rates from Indonesia specific to skilled and unskilled labor. One material input, considered a direct material for the preliminary determination, has not been accounted for in our final determination because it was discovered at verification to be an indirect material.

Verification

As provided in Section 776(b) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

Comment 1: BIA for Refusal to Permit Verification

Petitioners argue that the Department should assign a margin based on total BIA to all companies that reported having made no POI sales of subject merchandise, but that did not indicate in their response to the Department's inquiry that they would permit verification of this information.

DOC Position

We agree with petitioners and have assigned a margin based on total BIA to those companies that either refused verification or did not respond to our request to verify a report of no sales.

Comment 2: Surrogate Value for Magnesium Chloride

Concern Oriana asserts that the surrogate value used for magnesium chloride in the preliminary determination was aberrational and unrealistic because: (1) The surrogate value is almost five times greater on a per-unit basis than the Brazil value of hydrated carnallite provided in the petition, of which magnesium chloride is but one cost component; (2) the UN Trade Commodity Statistics show an export value for Indonesia which is one third that of the import value; and (3) values for imports of magnesium chloride into other potential surrogate countries vary more than 500 percent, demonstrating that the value used for the preliminary determination is inherently unreliable.

Concern Oriana requests that the Department use the value of hydrated carnallite from the petition as a more realistic and accurate surrogate for the value of magnesium chloride used in the production of magnesium.

Petitioners counter that the Department should not use a surrogate value for hydrated carnallite, a completely different material, when a nonaberrational price is available for a commodity category containing the actual materials used in the production process. Specifically, petitioners contend that the Indonesian price for magnesium chloride and the petition's price for hydrated carnallite cannot be compared. Petitioners also contend that the range of import prices for magnesium chloride from other potential surrogate countries ($159 to $1,000/per metric ton) demonstrates that the price used in the preliminary determination ($152.89 per metric ton) is conservative rather than aberrational. Petitioners note as well that the Indonesian import price fits into the high preference category of the Department's hierarchy for surrogate values: it is publicly available information, it is non-export value, and it is contemporaneous to the POI, unlike the petition value for a totally different product suggested by respondents.

DOC Position

We agree with petitioners that the record does not support a finding that the surrogate value for magnesium chloride is aberrational or otherwise inappropriate. First, it is not accurate to characterize magnesium chloride as "but one cost component" of hydrated carnallite. The fact that hydrated carnallite is processed to obtain magnesium chloride (rather than vice versa) makes a higher price for magnesium chloride logical. Second, although import prices in other surrogate countries vary, Concern Oriana has not demonstrated that this variance should be construed as evidence that the value used here is unreliable. Third, we have specifically expressed a preference for import values over export values when both are available (*see PRC Pencils*[5]).

Comment 3: Basis for Greenwich Metals' Deposit Rate

Petitioners assert that verification revealed that Greenwich's reported U.S. sales of subject merchandise were entirely of merchandise that it had purchased from a European trader that was aware that the merchandise was destined for the United States. Consequently, petitioners request that the Department assign Greenwich the "Ukraine-wide" rate and assign the European trader the BIA rate for not participating in this investigation.

Greenwich counters that it properly reported the sales in question as its own U.S. sales. Greenwich argues that the European trader did not know the ultimate destination of the merchandise because Greenwich did not inform the European trader where to ship the merchandise until after the terms of sale were fixed. Greenwich also argues that the European trader did not know the ultimate destination of subject merchandise at the time the terms of the sale were fixed because Greenwich bought the merchandise on a "duty-unpaid" basis—leaving Greenwich the option of selling the merchandise in either the U.S. market or in a third country.

DOC Position

We agree with petitioners. First, the record does not support Greenwich's claim that it did not inform the European trader where to ship the merchandise until after the terms of sale were fixed. Rather, as verification revealed, the contract setting the terms of sale included as identification of the shipment destination. Second, the fact that sales terms are "duty unpaid" is far outweighed by the fact that the merchandise was shipped to the United States and the absence of any indication that the seller could legitimately expect such sales not to enter the U.S. market. Accordingly, we have not calculated a company-specific margin for Greenwich because we find that it did not make any U.S. sales of the subject merchandise during the POI. Instead, Greenwich and its European supplier will both be subject to the "Ukraine-wide" rate.

Comment 4: Completeness of Ukraine Magnesium Industry's Response

Petitioners argue that, as state owned entities, Zaporozhye and Concern Oriana comprise the consolidated magnesium industry in Ukraine. According to petitioners, total BIA should be assigned to this consolidated Ukrainian industry because the industry as a whole failed to report complete sales information (*i.e.*, Zaporozhye did not provide a complete response to the questionnaire). They also claim that total BIA should also be assigned to third-country exporters because of the Ukrainian industry's non-cooperation.

If the Department elects not to apply total BIA to all third-country exporters in this proceeding, then petitioners contend that the Department should base FMV for the exporters' U.S. sales (1) wholly on BIA, disregarding Concern

[5] Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China (60 FR 55625, November 8, 1994)

Oriana's factors of production, or (2) on a simple average of Concern Oriana's calculated FMV and a BIA-based FMV for Zaporozhye, or that the Department should link individual exporters' applicable deposit rate to the specific producer which supplies subject merchandise.

Gerald Metals counters that Concern Oriana's magnesium production process is similar to that of Zaporozhye and, therefore, the Department should use only verified information from Concern Oriana to calculate FMV in its LTFV analyses.

DOC Position

If an antidumping duty order is issued in this proceeding, any direct sales from Ukraine will be subject to a deposit rate based on total BIA. (*See* discussion of "All Other Companies" in the "Fair Value Comparisons" section of this notice, above).

As to the third-country exporters, we have continued to follow the approach set out in the preliminary determination. We have based FMV for those companies' reported U.S. sales of Concern-Oriana-produced merchandise on Concern Oriana's factors of production; we have not calculated FMV for reported sales of Zaporozhye-produced merchandise, but instead have assigned an uncooperative BIA margin. This approach is consistent with the approach that we have taken in other NME cases, such as *Coumarin, Pencils,* and *PRC Sulfur Dyes*[6], where the Department based FMV for an exporter not controlled by the central government only on the factors of production of the producer or producers which supplied subject merchandise to that exporter. Under this approach, individual transaction margins are then weight averaged to arrive at a single, exporter-specific deposit rate. Further, in a situation like that created here by Zaporozhye's failure to respond, where FMV information needed to calculate a margin is not available, the Department has, as here, resorted to partial BIA and plugged into the weighted-average calculations BIA margins for individual transactions. (See, *e.t., Pencils.*)

Comment 5: Scope

Petitioners contend that the Department should clarify the scope in this proceeding. Petitioners argue that "off-specification" pure magnesium (*i.e.*, magnesium that is *less* than 99.8% pure magnesium but that otherwise can be and is considered pure magnesium by consumers) should be considered as within the scope. Petitioners propose a revised scope to achieve this end.

Greenwich argues that the proposed revised scope is flawed because it appears to include secondary magnesium (*i.e.*, magnesium that has been remelted and recast) as subject merchandise.

DOC Position

We agree with petitioners that some magnesium is produced which, despite not meeting the normal definition (based on magnesium content) of pure magnesium, nevertheless may be used in applications that normally require pure magnesium. In fact, the records in the concurrent antidumping investigations of pure and alloy magnesium from the People's Republic of China show sales of such magnesium were supplied to fulfill an order for pure magnesium.

We therefore have revised the scope to include this off-specification pure magnesium within the definition of pure magnesium. Off-specification pure magnesium is described as any product (1) that is 50 percent or more primary magnesium, and (2) that does not meet any ASTM definition of alloy magnesium (based on specific percentages of one or more alloying agents).

We note that our consultations with the Bureau of Mines established that the industry standards for alloy magnesium are ASTM standards. (See Final Calculation Memorandum). Consequently, we have not adopted scope language proposed by petitioners that refers to alloy magnesium defined by "other industry standards" in illustrating products that are not off-specification pure magnesium. Although ASTM standards define pure magnesium as not less than 99.8 percent magnesium, we believe that metal with a primary magnesium content below that level should be captured in the scope if it cannot legitimately be defined as a specific ASTM alloy magnesium.

The fact that the scope encompasses only merchandise with primary magnesium content of 50 percent or greater means that merchandise composed of 50 percent or more secondary magnesium is excluded.

Comment 6: By-Product Offset Methodology

Petitioners contend that the Department's decision to permit an offset to material surrogate values to account for the chlorine by-product of the magnesium production process was erroneous for the following reasons: (1) the producers were unable to demonstrate for the record that any economic benefit accrued to the firm and that such benefit was linked to the production of the subject merchandise; (2) the surrogate value used was incorrect in that it did not correspond to the actual purity level of the by-product produced and was not calculated net of transportation and processing costs; and (3) any adjustment determined to be appropriate should have been made to the cost of manufacture rather than cost of materials so as not to understate factory overhead, general expenses, and profit.

Concern Oriana argues that the cost of manufacturing magnesium should be reduced by the value of chlorine by-product.

DOC Position

We agree with petitioners in part. First, because the by-product results from the production process and is either used by the magnesium producer or sold for use by some other company in the NME country, it is a factor whose value must be taken into account in our calculation of the fair value against which to test U.S. prices. Second, we have adjusted the by-product's surrogate CIF import value to reflect concentration differences. However, no adjustment to value for transportation costs is appropriate; for by-products, as for material factors of production consumed in the production process, we consider the import values used to be surrogates for ex-factory, freight-exclusive prices from suppliers to consumers. Third, we agree with petitioners that the proper adjustment is a reduction in the cost of manufacture. This adjustment increases overhead amount commensurately with the value of the by-product, thereby eliminating the need for valuing any additional processing-related elements. Additionally, an adjustment to cost of manufacture is consistent with Department practice in other NME investigations (see, *e.g., Coumarin*).

Comment 7: Surrogate General Expenses and Profit

Petitioners argue that an amount should be included in FMV calculations in order to reflect general expenses incurred and profit realized by each reseller involved in the sales process. Petitioners argue that, because the responding resellers failed to provide their selling expenses (despite a Departmental request to do so in the questionnaire), the Department should add an amount based on financial statements submitted by resellers.

[6] Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the People's Republic of China (58 FR 7543, February 8, 1993)

Greenwich, Hochschild, and Gerald Metals, assert that petitioners have provided no convincing rebuttal to the Department's recent rejection of such a request in *Coumarin*, and note that the questionnaires they received did not contain section D, the section dealing with general expenses.

DOC Response

We agree with respondents that an addition to FMV of actual reseller general expenses and profit would be inappropriate. Given that Ukraine is an NME and the Ukrainian magnesium industry has not been found to be market oriented, section 773(c) of the Act requires that the Department measure U.S. prices against the factors of production (materials, labor, energy, and overhead) used in producing the merchandise, valued in an appropriate surrogate country, plus general expenses, profit and containers. The Act's only specific guidance as to the valuation of general expenses, profit and containers is to establish minima for the first two. Our regulations, meanwhile, instruct us to "include in this calculation of constructed value an amount for general expenses and profit, as required by section 773(e)(1)(B) of the Act. (19 CFR 353.52(c)) The Department has not interpreted the Act and the regulations as requiring use of actual expenses and profit for these FMV components when FMV is based on factors of production; the Department has also explicitly rejected such adjustments in prior NME proceedings (see, *e.g., Coumarin* and *Sparklers*[7]). Moreover, to do so simply does not make sense because it amounts to a comparison of apples and oranges. In NME proceedings, the FMV is normally based completely on factors valued in a surrogate country (without regard to, for example, actual selling expenses) on the premise that the actual experience cannot be meaningfully considered. Were the question simply one of "traditional" dumping by trading companies, the market-economy price-to-price or price-to-CV methodology would appropriately be employed; actual selling expenses would have been accounted for on both U.S. prices and foreign market prices (or, if appropriate, constructed value, in which case other general expenses and profit would also have been taken into account). Accordingly, we have continued to value general expenses and profit by simply applying to the surrogate-based cost of manufacture the greater of either appropriate surrogate percentages or the statutory minima.

Command 8: Surrogate Value of Labor

Petitioners challenge the Department's use of an unskilled labor value in the preliminary determination to account for both skilled and unskilled labor. Petitioners assert that, if the Department cannot locate specific skilled and unskilled labor values from the chosen surrogate countries, the Department should employ labor rates from the petition as BIA.

DOC Position

We have obtained and used Indonesian wage data for 1992 for skilled and unskilled labor (see *PRC Lighters*[8]). Because Indonesia is our primary surrogate country, we do not need to address the question of an appropriate alternative source of values for these factors.

Comment 9: Unreported Material.

Petitions assert that the Department should include in Concern Oriana's FMV the value for a material which was not included in the preliminary determination. In its questionnaire response, Concern Oriana did not provide usage information for this material, claiming that its value was not significant. Petitioners contend that the value in Ukraine is not relevant since the input would be valued in a surrogate country. Therefore, as BIA, petitioners advocate use of an average of all other direct input values as the value for this input.

DOC Position

We disagree. Verification confirmed that this factor was properly omitted since it was a waste product of the magnesium production process for which only a very small fraction was recycled into the production process. Therefore, it is appropriate not to value this input in the FMV calculation.

Comment 10: Concentration/Purity Levels of Material Inputs

Petitioners contend that appropriate adjustments should be made for differences in concentration or purity between surrogate values on the one hand and materials used in production on the other hand. However, petitioners also argue that the Department should not assume that surrogate values represent 100 percent concentration and therefore should make no adjustment where the concentration applicable to a surrogate value cannot be determined.

DOC Position

Where we have been able to determine the purity or concentration applicable to a surrogate value, we have adjusted for differences, if any, between the surrogate and the actual material. Otherwise, we have attempted no adjustment for purity or concentration.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pure magnesium from Ukraine that are entered, or withdrawn from warehouse, for consumption on or after November 7, 1994, which is the date of publication our notice of preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

Consistent with our practice in investigations involving imports from NME countries, we have calculated a single, "Ukraine-wide" deposit rate applicable to all exporters in Ukraine, as well as any exporters in third countries that have not been assigned a company-specific margin. As is discussed under "All Other Companies" in the "Fair Value Comparisons" section of this notice, the record in this investigation indicates that Ukraine exporters of magnesium may not have responded to our questionnaire; therefore, the "Ukraine-wide" deposit rate has been calculated based on total BIA.

The weighted-average dumping margins are as follows:

Manufacturer/producer exporter	Weighted-average margin percentage
Gerald Metals	103.27
MG Metals	79.87
Hochschild Partners	92.21
Ukraine-Wide Rate	104.27

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will within 45 days determine whether imports the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist,

[7] *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991)

[8] Preliminary Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China (59 FR 64191, December 13, 1994)

the investigation 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 Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on all after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: March 22, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95-7775 Filed 3-29-95; 8:45 am]

BILLING CODE 3510-DS-P

[A-570-832 and A-570-833]

Notice of Final Determinations of sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the People's Republic of China

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

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482-4136 or (202) 482-1769, respectively.

Final Determinations

The Department of Commerce (the Department) determines that pure magnesium and alloy magnesium 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 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the Department announced its preliminary determinations on October 27, 1994, (59 FR 55424, November 7, 1994) the following events have occurred:

On October 19, 1994, Min He Magnesium (Min He), a producer and exporter of the subject merchandise, and Xiamen Xing Xia Co. Ltd (Xing Xia), an exporter of the subject merchandise, requested that we postpone our final determinations by 60 days pursuant to 19 CFR 353.20(b)(1). On November 7, 1994, we published a notice postponing the final determinations (59 FR 55424).

In January, 1995, we conducted verification of the questionnaire responses at Min He and Xing Xia. On February 10, 1995, petitioner filed a case brief. On February 17, 1995, respondents filed a rebuttal brief and petitioner withdrew its request for a public hearing.

Scopes of Investigations

The scopes of these investigations have been modified since the preliminary determination in order to clarify the distinctions between pure magnesium and alloy magnesium. See Comment 1 in the "Interested Party Comments" section of this notice, below.

A. Pure Magnesium

The product covered by this investigation is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium);

(2) Products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and

(3) Products (generally referred to as "off-specification pure" magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this investigation are alloy primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1 mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.11.00, 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

B. Alloy Magnesium

The product covered by this investigation is alloy primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.

Alloy magnesium products are produced by adding alloying elements to pure magnesium in order to alter the mechanical and physical properties of the magnesium to make it suitable for use as a structural material. Alloy magnesium is used primarily for casting or in wrought form. It is harder and

stronger than pure magnesium and may possess a higher corrosion resistance.

This investigation covers alloy primary magnesium which contains 50% or greater, but less than 99.8%, primary magnesium, by weight, and one or more of the following: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths in amounts which, individually or in combination, constitute not less than 1.5% of the material, by weight. Products that meet the aforementioned description but do not conform to ASTM specifications for alloy magnesium are not included in the scope of this investigation. In addition to primary magnesium, alloy magnesium may contain magnesium scrap, secondary magnesium, or oxidized magnesium in amounts less than the primary magnesium itself.

Alloy primary magnesium is cast and sold in various physical forms and sizes, including ingots, slabs, rounds, billets and other shapes.

Excluded from the scope of this investigation are pure primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope include products having a maximum physical dimension (*i.e.*, length or diameter) or 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Periods of Investigation

The period of investigation (POI) for pure magnesium is April 1, 1993 through March 31, 1994. The POI for alloy magnesium is September 1, 1992 through March 31, 1994.

Best Information Available (BIA)

The Department's antidumping questionnaire was sent to seven companies located in the PRC, in addition to the copy sent to the Ministry of Foreign Trade and Economic Cooperation. Of these seven companies, responses were received from only one, Min He. Two companies, Luoyang Copper Working Plant and Northeast Light Alloy Fabrication Plant, replied that they did not export the subject merchandise. Two companies, Harbin Non-Ferrous Metal Smelter and Fushun Aluminum Smelter, did not respond to the questionnaires at all and the questionnaires sent to the other two companies, Yingkou Magnesium Works and Tongling Copper Smelter, were returned as undeliverable. Another company, Xing Xia, was accepted by the Department as a voluntary respondent.

In investigations involving imports from non-market economy countries, unless respondents request and qualify for separate rates, we apply the same rate to all exports from that country and treat responses from individual companies as single consolidated response. Since none of the respondents requested a separate rate in either the pure magnesium or alloy magnesium investigation, all respondents are treated as one entity for the purposes of assigning an antidumping margin in each investigation.

At the time of the preliminary determination, it was unclear whether there were nonresponding potential exporters during the POI. Since the preliminary determination, we have identified nonresponding potential exporters. The required consolidated response in this case is incomplete because these companies failed to respond to the Department's questionnaire. Moreover, the portion of the response that was submitted, (*i.e.* Min He and Xing Xia) failed to verify. (*see* verification reports dated February 3, 1995)

Although the participating respondents, Min He and Xing Xia, did attempt to cooperate with the Department's requests for documentation during their respective verifications, they were not able to do so and the Department was unable to verify the accuracy and completeness of the information reported in their questionnaire responses. Therefore, the Department must assign an antidumping margin on the basis of BIA pursuant to section 776 (b) and (c) of the Act.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns less adverse margins to those respondents that cooperated in an investigation and more adverse margins to those respondents that did not cooperate in an investigation. The Department's two-tiered methodology for assigning BIA has been upheld by the U.S. Court of Appeals for the Federal Circuit. (*See* Allied Signal v. United States, 996 F.2d 1185 (Fed. Cir. 1993) (June 22, 1993)). In this case, the Department has determined that the respondent, a single entity as explained above, is uncooperative because known exporters did not respond to the Department's questionnaire. This fact impeded significantly the Department's investigation.

When a respondent is uncooperative, the Department normally uses as BIA the higher of 1) the highest margin in the petition; 2) the highest margin calculated for any other respondent within the same country for the same class or kind of merchandise; or 3) the estimated margin found for the affected firm in the preliminary determination. (*See* Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 1892, 19033 (1989)). In this investigation, the preliminary determination margins are higher than the petition margins, as revised in the initiation notice. (*See* Initiation of Antidumping Duty Investigations: Pure and Alloy Magnesium From the People's Republic of China, the Russian Federation, and Ukraine (59 FR 21748, April 26, 1994). Therefore, as BIA, we are assigning to all exporters of PRC pure magnesium and ally magnesium the rates calculated in the preliminary determinations. (see Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plated From Belgium (58 FR 37083, July 9, 1993). (For further discussion of BIA, see Comment 2)

Verification

As provided in section 776(b) of the Act, we attempted to verify all information submitted by respondents for use in our final determinations. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents. However, as noted above, we were not able to verify the accuracy and completeness of the respondents' submissions.

Interested Party Comments

Comment 1

Petitioners contend that the Department should clarify the scopes in these proceedings. Petitioners argue that "off-specification" pure magnesium (*i.e.*, magnesium that is less than 99.8% pure magnesium but that otherwise can be and is considered pure magnesium by consumers) should be considered within the scope of the pure magnesium proceeding instead of within the scope of the alloy magnesium proceeding. Petitioners propose revised scopes to achieve this end.

Respondents argued that petitioners' request for "clarification" of scope was untimely. They further argued that petitioners concerns about circumvention are merely speculative because no order yet exists as a result of this investigation. Furthermore, respondents stated that petitioners should have their concerns addressed in a request for scope review or an anticircumvention investigation.

DOC Position

We agree with petitioners that some magnesium, despite not meeting the normal definition (based on magnesium content) of pure magnesium, nevertheless may be used in applications that normally require pure magnesium. In fact, the record in this case show sales of such magnesium were supplied to fulfill orders for pure magnesium.

We therefore have revised the scopes of these investigations to include this off-specification pure magnesium within the definition of pure magnesium, described as any product (1) that is 50 percent or more primary magnesium, and (2) that does not meet any ASTM definition of alloy magnesium (based on specific percentages of one or more alloying agents).

We not that our consultations with the Bureau of Mines established that the industry standards for alloy magnesium are ASTM standards. (*See* Final Calculation Memorandum of the concurrent investigations of pure magnesium and alloy magnesium from the Russian Federation and ally magnesium from the Ukraine). Consequently, we have not adopted petitioner's proposed scope language that would describe off-specification pure magnesium as any product, *inter alia*, that does not meet ASTM standards or other industry standards.

Although ASTM standards define pure magnesium as not less than 99.8 percent magnesium, metal with a primary magnesium content below that level should be captured in the scope of the pure magnesium investigations if it cannot legitimately be defined as a specific ASTM alloy magnesium.

The fact that both scopes capture only merchandise with primary magnesium content of 50 percent or greater means that merchandise composed of 50 percent or more secondary magnesium would not fall within either scope.

Comment 2

Petitioners state that the Department should base the dumping margins for all producers and exporters of magnesium from the PRC on BIA, and argue that the BIA rate should be calculated using the factors data found at verification and the lowest United States price in the petition. At verification we found discrepancies in the factor usage data, the additional unreported factors, as well as, mis-reported data on labor and electricity. However, if the suggested methodology is not used, petitioners argue that the Department should not use as BIA a rate lower than the highest rate alleged in the petition.

Min He and Xing Xia argue that, although that they were unable to provide all of the information requested by the Department, they were cooperative and provided timely responses. In view of this cooperation, they argue the Department should not resort to the punitive first tier BIA. Instead, the Department should base its BIA rate on the margins alleged in the petition. They also argue that since the Department was unable to verify the information reported, it must revert to BIA from the petition and publicly available sources, and thus not use facts found at verification to calculate the foreign market value.

DOC Position

The Department does not agree that respondents should be granted cooperative BIA rates. As stated above, because no exporter is being granted a separate dumping margin, we are assigning one country-wide margin in each of the investigations. Given that certain exporters failed to respond to our questionnaire, we are assigning an uncooperative BIA rate, pursuant to our long-standing practice.

Petitioners have asked the Department to depart from its standard practice and adjust this BIA rate based on information discovered at verification. Petitioners are essentially asking the Department to adjust the BIA rate to make it more accurate. However, it is a generally accepted principle that BIA "is not necessarily accurate information, * * * [but rather is] * * * information which becomes usable because respondent has failed to provide accurate information." (See *Association Columbiana de Exportadoras de Flores* v. *United States*, 704 F. Supp. 1114, 1126 (Ct. Int'l Trade 1989), *rev'd in part on remand*, 717 F. Supp. 834 (Ct. Int'l Trade 1989), *aff'd on other grounds*, 901 F.2d 1089 (Fed Cir. 1990) *cert. denied*, 111 S. Ct. 136 (1990)). The Department's practice is to apply, as BIA, the highest margin already calculated and not to engage in the exercise of attempting to calculate the highest possible margin. The purpose of resorting to BIA is not to be punitive but to encourage respondents to properly respond to the Department's requests for information. The Department believes that the 108.26% rate for pure magnesium and 79.38% rate for alloy magnesium accomplish this purpose.

Continuation of Suspension of Liquidation

In accordance with sections 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pure magnesium and alloy magnesium from the PRC that are entered, or withdrawn from warehouse, from consumption on or after November 7, 1994, which is the date of publication of our notice of preliminary determination in the **Federal Register**. The Customs Service shall in each proceeding, require a cash deposit or posting of a bond equal to 108.26 percent *ad valorem* on all entries of certain pure magnesium from the PRC and 79.38 percent *ad valorem* on all entries of certain alloy magnesium from the PRC. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations. As our final determinations are affirmative, the ITC will within 45 days determine whether imports of either product are materially injuring, or threaten material injury to, the U.S. industry. In each proceeding, if the ITC determines that material injury, or threat of material injury does not

exist, that proceeding will be terminated and all securities posted will be refunded or cancelled. If, in either proceeding, the ITC determines that such injury does exist, the Department will issue an antidumping duty order for the appropriate proceeding directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

These determinations are published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: March 22, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95-7776 Filed 3-29-95; 8:45 am]

BILLING CODE 3510-DS-P

(A-821-805, A-821-806)

Notice of Final Determinations of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the Russian Federation

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

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch, Dorothy Tomaszewski or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3773, (202) 482-0631 or (202) 482-0922, respectively.

Final Determination

We determine that imports of pure magnesium and alloy magnesium from the Russian Federation are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination on October 27, 1994 (59 FR 55420, November 7, 1994), the following events have occurred:

In December 1994, we issued sections A and C of our antidumping questionnaire [1] to respondent exporters Amalgamet Canada, Greenwich Metals, and Hochschild Partners. These companies provided responses to these questionnaires in December 1994 and January 1995.

All participating respondents' (in each proceeding) supplemental questionnaire responses were received and verifications were conducted as detailed in Appendix I.

On January 31, 1995, we amended our preliminary determinations to correct for certain ministerial errors (60 FR 7519, February 8, 1995).

Certain respondents (Amalgamet Canada, AVISMA, SMW, Gerald Metals, Greenwich Metals and Hochschild Partners) and petitioners filed case briefs. Rebuttal briefs were submitted by petitioners and the following respondents: Amalgamet Canada, AVISMA, SMW, Razno, Interlink, & AIOC, Gerald Metals, Greenwich Metals, and Hochschild Partners. A public hearing was held on February 28, 1995.

Scopes of Investigations

The scopes of these investigations have been modified since the preliminary determination in order to clarify the distinctions between pure magnesium and alloy magnesium. See Comment 9 in the "Interested Party Comments" section of this notice, below.

A. Pure Magnesium

The product covered by this investigation is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses:

(1) products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium);

(2) products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and

(3) products (generally referred to as "off-specification pure" magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this investigation are alloy primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.11.00, 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

B. Alloy Magnesium

The product covered by this investigation is alloy primary magnesium regardless of chemistry, form or size, unless expressly excluded

[1] Section A requested general information on each company; and section C requested information on, and a listing of, U.S. sales made during the period of investigation ("POI").

from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.

Alloy magnesium products are produced by adding alloying elements to pure magnesium in order to alter the mechanical and physical properties of the magnesium to make it suitable for use as a structural material. Alloy magnesium is used primarily for casting or in wrought form. It is harder and stronger than pure magnesium and may possess a higher corrosion resistance.

This investigation covers alloy primary magnesium which contains 50% or greater, but less than 99.8%, primary magnesium, by weight, and one or more of the following: Aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths in amounts which, individually or in combination, constitute not less than 1.5% of the material, by weight. Products that meet the aforementioned description but do not conform to ASTM specifications for alloy magnesium are not included in the scope of this investigation. In addition to primary magnesium, alloy magnesium may contain magnesium scrap, secondary magnesium, or oxidized magnesium in amounts less than the primary magnesium itself.

Alloy primary magnesium is cast and sold in various physical forms and sizes, including ingots, slabs, rounds, billets and other shapes.

Excluded from the scope of this investigation are pure primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope include products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Periods of Investigation

The POI in both proceedings is October 1, 1993, through March 31, 1994.

Fair Value Comparisons

A. Participating Respondents

To determine whether sales of pure magnesium to the United States by AIOC, Gerald Metals, Greenwich Metals, Hochschild Partners, HDM, Interlink, MG Metals, and Razno, and sales to the United States of alloy magnesium by Amalgamet, Gerald Metals, and SMW, were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Verification revealed that, for its POI sales to U.S. companies, there were no instances where Greenwich Metals' role in the sales process was that of being the first company to sell Russia-produced alloy magnesium to a U.S. customer. That is, all subject merchandise purchased by Greenwich was done so on terms that made Greenwich the U.S. customer of its supplier. Accordingly, Greenwich will be subject to the "Russia-wide" deposit rate for alloy magnesium.

Amalgamet Canada is closely related to W&O Bergmann in that a large percentage of each company's shares are owned by a common owner (Preussag). Bergmann was sent an antidumping questionnaire in August, but, despite its close relationship to Amalgamet, never apprised us of Amalgamet's POI U.S. sales of subject merchandise.[2]

The questionnaire sent to Bergmann clearly instructed Bergmann to report "the names and addresses of all related companies in all countries dealing" with the subject merchandise. Had Bergmann properly participated in these investigations, Amalgamet would have been identified in a timely fashion, and would have been instructed to respond to the questionnaire. Amalgamet and Bergmann should have known that Amalgamet's participation in these proceedings was mandatory based on Bergmann's receipt of the questionnaire. Accordingly, Amalgamet and Bergmann will be assigned a deposit rate based on the best information available ("BIA") based on their failure to participate despite early notice of the investigations.

B. All Other Companies

In both proceedings, there is nothing on the record to indicate that any exporters within Russia failed to report U.S. sales of subject merchandise during the POI. The only Russian exporter to have sold either product to the United States during the POI is SMW. Because SMW's calculated margin in both proceedings is zero, we have based the "Russia-wide" deposit rate on a simple average of the rates applicable to all companies considered mandatory respondents, excluding calculated rates that are zero or *de minimis*. In these proceedings, because all such companies' margins are based on BIA, the "Russia-wide" rate is also based entirely on BIA.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to respondents that cooperated in an investigation and margins based on more adverse assumptions for those respondents, like the non-participating respondents in this investigation, which did not cooperate in an investigation. As outlined in Coumarin,[3] where, as here, a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (1) the highest calculated rate of any respondent in the investigation, (2) the

[2] Until just prior to our preliminary determinations, the record showed that Bergmann by itself was a mandatory respondent; this changed (albeit temporarily given Amalgamet's post-preliminary-determination revelation that it had made U.S. sales) when Bergmann stated in an October 1994 fax that earlier-disclosed sales of subject merchandise, although to a U.S. company, were sold "fob Rotterdam, Antwerp or Zeebrugge" without knowledge of destination on Bergmann's part.

[3] Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China (59 FR 66895, December 28, 1994).

highest margin alleged in the petition, or (3) the margin from the preliminary determination for that firm. Accordingly, we have set the Russia-wide deposit rate at 100.25 percent and 153.65 percent, *ad valorem*, in the pure magnesium and alloy magnesium, respectively. These margins represent the highest margin in the petition, as recalculated by the Department for purposes of initiating this proceeding and as further adjusted to account for factors of production listed in the petition that were not valued at the time of initiation, but for which information is on the record upon which to base a surrogate value.

United States Price

As detailed below, we based USP on purchase price, in accordance with section 772(b) of the Act, when the subject merchandise was sold directly by the exporters to unrelated parties in the United States prior to importation into the United States and because exporter's sales price ("ESP") methodology was not indicated by other circumstances.

We based USP on ESP, in accordance with section 772(c) of the Act, when the subject merchandise was sold to the first unrelated purchaser after importation into the United States.

Both purchase price and ESP were based on packed prices to unrelated purchasers in the United States, according to the applicable delivery terms, with appropriate price adjustments. The following is a summary of U.S. price calculations for each exporter, with an asterisk ("*") designating price adjustments applicable to some but not all sales (see Final Calculation Memorandum, on file in room B–099 of the Main Commerce Department Building, for details of these adjustments).

Exporter	Terms of sale	Price adjustments
Pure Magnesium		
AIOC (PP, ESP)	CIF, FOB, Delivered	Foreign inland freight, storage charges, inspection charges*, sample costs charges*, document charges*, other foreign inland freight, dunnage, ocean freight, seaway tolls, U.S. duty, stevedoring, wharfage*, unloading charges*, warehousing*, U.S. inland freight.
Interlink (PP)	Delivered, In-Warehouse	Foreign insurance, ocean freight, marine insurance, procedure fees, harbor maintenance fees, U.S. inland freight, U.S. inland insurance*, U.S. brokerage.
Gerald (PP)	In-Warehouse, Delivered, FOT Warehouse.	Foreign brokerage, foreign inland freight*, ocean freight, U.S. inland freight*, U.S. brokerage, oxidation credits.*
Greenwich (PP, ESP)	Delivered, FOT, In-warehouse.	Discounts*, foreign brokerage, ocean freight, marine insurance, U.S. duty, U.S. inland freight*, U.S. inland insurance, U.S. brokerage, third party payments.*
Hochschild (PP)	Delivered	Foreign brokerage, ocean freight, marine insurance, U.S. duty*, U.S. inland freight*, U.S. brokerage*, third party payments.*
HDM (ESP)	Delivered	Ocean freight, U.S. duty*, U.S. inland freight, U.S. brokerage*, repacking*, U.S. containerization*, other containerization.
MG (PP, ESP)	Delivered	Foreign brokerage*, foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. inland insurance, U.S. brokerage, repacking.*
Razno (PP)	CIF, FOB	Foreign brokerage, foreign inland freight, oxidation credits.*
SMW (PP)	FOB	Foreign brokerage, foreign inland freight.
Alloy Magnesium		
SMW (PP)	FOB	Foreign brokerage, foreign inland freight.
Gerald (PP)	In-Warehouse, Delivered FOT Warehouse.	Foreign brokerage*, foreign inland freight*, ocean freight, U.S. duty*, U.S. inland freight, U.S. brokerage, third party payments.

From each exporter's U.S. price, we also deducted foreign inland freight between the factory and the reported intermediate destination (*e.g.*, Rotterdam) as follows: For SMW and Razno, we used reported distances and transport modes to calculate an appropriate surrogate factory-to-border freight amount on the basis of surrogate freight rates in Brazil; for all other exporters, we deducted the per-ton foreign inland freight amount reported in the petition as best information available because those exporters did not in their questionnaire responses information with respect to such charges. We made no deduction from USP to account for exporter-incurred selling expenses, nor did we deduct export taxes paid by Russian companies to the Russian government because the actual amounts paid are an internal expense within an NME country. We adjusted reported marine insurance and ocean freight charges for Razno as follows: a reported figure that was an extended value (*i.e.*, an amount applicable to the entire transaction) was adjusted to reflect a per-unit amount.

The following adjustments were made to the reported U.S. sales of these exporters pursuant to our findings at verification (*see* Final Calculation Memorandum, for details of these adjustments):

AIOC (Pure Magnesium): AIOC's final U.S. sales listing was adjusted to exclude certain sales that verification revealed had been improperly included. Based on verification findings, minor corrections to reported figures for inspection fees, sample costs, dunnage, ocean freight, seaway tolls, U.S. duties, unloading. Additionally, we deducted an amount for marine insurance based on verification.

Gerald Metals (Pure Magnesium and Alloy Magnesium): Minor corrections to reported figures for foreign brokerage, foreign inland freight, ocean freight, U.S. brokerage, third party payments, and oxidation credits were made based on verification findings.

Hochschild Partners (Pure Magnesium): Hochschild's final U.S. sales listing was adjusted to exclude certain sales that verification revealed had been improperly included. An additional unreported U.S. sale was discovered at verification and included in its final sales listing. For purposes of calculating a unit margin for this sale, we applied the highest reported charges for ocean freight, foreign brokerage and marine insurance, as well as the highest reported U.S. movement charges applicable to the delivery terms of this sale. Minor adjustments to reported figures for foreign brokerage, ocean freight, and marine insurance were also made based on verification findings. Finally, third party payment figures relating to certain sales were disclosed at verification.

Hunter Douglas (Pure Magnesium): Minor corrections to reported figures for ocean freight, U.S. duty, U.S. brokerage, and U.S. containerization charges were made based on verification findings.

Interlink (Pure Magnesium): Interlink's final U.S. sales listing was adjusted (a) to exclude certain sales that had been improperly included and (b) to include certain sales that had been improperly excluded. Additionally, minor corrections to reported figures for ocean freight and U.S. brokerage were made based on verification findings.

Razno Alloys (Pure Magnesium): Razno's final U.S. sales listing was adjusted (a) to exclude certain sales that had been improperly included and (b) to include certain sales that verification revealed had been improperly excluded. Additionally, although we considered Razno a Russian company for our preliminary determination because its sales office is in Moscow, we have determined that Razno would more properly be characterized as a Swiss company. It is registered in Switzerland, its accounts are kept in Switzerland, and its ownership is majority non-Russian. Finally, minor corrections were made to reported figures for foreign brokerage based on verification.

Foreign Market Value

For sales of magnesium produced by Avisma and SMW, we calculated FMV based on factors of production cited in the preliminary determination, making adjustments based on verification findings (see Final Calculation Memorandum). To calculate FMV, the verified factor amounts were multiplied by the appropriate surrogate values for the different inputs. We have used the same surrogate values used in the preliminary determination with the exception of certain corrections made based on verification or interested party comments.

Based on verification, we adjusted certain factors' value to reflect the actual purity used in the production of subject merchandise.

We recalculated certain inland freight distances between factory and input supplier based on verified distances.

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for the above-mentioned exporters. The factors used to produce pure and alloy magnesium include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of surrogate values, see our Final Calculation Memorandum.) A factory overhead figure was also included in the FMV calculation based on a percentage of materials, labor and energy. We also granted certain by-product offsets against the cost of manufacturing (*i.e.*, the sum of materials, labor, energy and factory overhead). We then added the statutory minimum amounts for general expenses and profit, the cost of containers and coverings, and other expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

We used the same methodology as in the preliminary determination to value factors of production, with the following exceptions: (1) We used a publicly available, published Brazilian rate for unskilled labor; (2) we used a publicly available, published Brazilian unit price for natural gas; and (3) we applied a publicly available, published Brazilian industrial rate for electricity used by electricity-intensive industries with comparable levels of electricity consumption and capacity as magnesium producers.

A. Market Reforms in the Russian Federation

In accordance with section 773(c) of the Act, the Department normally uses a factor valuation methodology to calculate foreign market value when the country involved is an NME country and the Department determines that it cannot determine foreign market value based on the respondent's prices or costs. Alternatively, an NME-country respondent may argue that market-driven prices characterize its particular industry and, therefore, despite NME status, that foreign market value should be calculated by using actual home market prices or costs (a market-oriented industry or "MOI" claim).

In these investigations, the Russian manufacturers, Avisma and SMW, claim that economic conditions now prevalent throughout Russia warrant revocation of Russia's NME-country status, effective January 1, 1994. Alternatively, the two companies claim MOI for the magnesium industry in Russia.

Regarding the revocation of NME status, the Department's analysis centers around a government's role in economic activity. See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Poland (58 FR 37205, July 9, 1993). Consistent with the factors described in section 771(18), the Department considers the extent to which resources are allocated by the market or government, taking into account government involvement in currency and labor markets, pricing, and production and investment decisions. Where resources are not allocated by the market, it would be difficult to conclude that home market prices or costs should be used to calculate fair value.

Evidence provided in these proceedings indicates that Russia is in the process of implementing extensive reforms to achieve its goal of becoming a market economy. The freeing of most prices in December 1991 and the privatization of most enterprises formerly within the state-planning system are important steps in moving Russia towards a market economy.

We cannot conclude, however, based on the information in this record that Russia should be treated as a market economy for purposes of the antidumping duty law. The Russian economy, having emerged from a centrally-planned system, is in a state of transition. Many of the state controls have been abandoned, but that does not mean that functioning markets have replaced controls. Because the evidence does not demonstrate that prices and costs in Russia adequately reflect market considerations, we cannot at this time alter Russia's designation as a nonmarket economy.

Regarding the MOI claim, information on the record suggests that the government continues to be involved in the Russian magnesium sector. For example, the Russian Federal Committee on Metallurgy, a successor to the Ministry of Industry (Metallurgy Department), indicated in an official statement that it controls activity in the magnesium industry in Russia, noting particularly that it coordinates production, exports, and prices. Also, although the two producers under investigation have been privatized, this same statement indicates that the Committee may be using the remaining government interest in these companies to carry out its intentions with respect to pricing and production. For these reasons, as stated in the preliminary determination, we determine that the prices or costs of producing magnesium in Russia should not be used to calculate fair value. No new information has been presented since then to alter this conclusion.

B. Separate Rates

In each of these proceedings, SMW requested that the Department calculate a dumping margin and assign a deposit rate separate from other potential Russian exporters. For our preliminary determination, we decided that we did not need to address the issue because (1) SMW was the only Russian exporter of alloy magnesium; and (2) we decided that SMW's pure magnesium exports were too small to consider in margin

calculations. However, we have now reconsidered our position that SMW's status as the only Russian company to sell to the United States obviates the need for a separate rates analysis when a separate rates claim has been put forward. SMW has claimed that government ownership and control are absent and, therefore, as a POI exporter, it is entitled to consideration of its claim.[4]

Further, we no longer consider SMW's pure magnesium sales insignificant because we have determined, as discussed above, that Razno Alloys, preliminarily found to be a Russian company, is actually a Swiss company. Razno's redefined status as a Swiss company renders SMW's pure magnesium exports significant in that SMW was the only company in Russia to have exported any pure magnesium directly to the United States. Thus, SMW is the only Russian company that exported either pure or alloy magnesium to the United States.

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department employs the criteria developed in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991) (Sparklers) and amplified in Silicon Carbide. Under this analysis, the Department assigns a separate rate only when an exporter can demonstrate the absence of both *de jure*[5] and *de facto*[6] governmental control over export activities.

Ownership

SMW is a joint-stock company ("JSC") that was state-owned until 1992, when a transition to private and employee ownership was begun. At the end of the POI, the Perm Regional Fund of State Property ("Perm Fund") owned 20 percent of SMW's shares, with the rest of shares owned by a workers collective—51 percent—or private companies (*e.g.*, investment funds). Verification supported SMW's account of its ownership status.

Control

Government control over SMW's export operations (both *de jure* and *de facto*) is absent. Specifically:

The July 1, 1992, Decree of the President of the Russian Federation: Measures for the Organization and Reconstruction of State Enterprises, and the Transferring of State Enterprises into Joint Stock Companies ("Decree 721"), establishes that JSCs are "out of the control of Ministries, State and Local administrative organs and authorities."

The July 3, 1991, law, "On Privatization of State-Owned and Municipal Enterprises," is divided into three sections dealing with general principles, procedures and means, and concluding principles. It is also divided into 31 articles. Significant articles include:

Article 6, which establishes Russian Federal Property Fund to act as temporary "possessor of RSFSR [Russian Federation] deeds to enterprises" and to sell shares and deeds to enterprises. Limits Fund's voting rights to a maximum of 20 percent of shares. States that Fund may not "interfere in the operations of enterprises except in cases stipulated by enterprises' founding documents and the legislation of the RSFSR * * *"; and

Article 9, which forbids buying of enterprises undergoing privatization by state entities or certain state-held companies/funds.

With respect to *de facto* aspects of government control over export activities, SMW sets its own prices[7] and "has free access to" the proceeds and profits of its export sales, would finance its own losses if they occurred, and could purchase foreign currency with rubles or otherwise dispose of assets (but has never actually had done so). Verification of sales transactions revealed no evidence of government involvement in the disposition of SMW's proceeds from export sales aside from the already-reported requirement that SMW convert half of foreign exchange earnings to rubles.

As a shareholder, the Perm Fund was able to appoint one of SMW's 15 Board members and votes in the appointment of the general director. The other 14 Board members are employees. In fact, minutes of SMW's 1993 Board meeting, examined at verification, did not appear to indicate participation by a representative associated with the Perm Fund or with any other government entity.

Although the Board of shareholders did not appoint SMW's general director, it did, based on the minutes of its 1993 meeting, reaffirm the basic terms of SMW's contract with the general director, who had been appointed before SMW became a JSC. This reaffirmation indicates that the Board controlled decisions regarding the appointment of management even though it did not choose to make a management change upon becoming a JSC.

In summary, the evidence favors a finding that government control is absent and, accordingly, we find that SMW should be considered a separate company for purposes of assigning a deposit rate.

C. Surrogate Country Selection

We selected Brazil as the appropriate surrogate country for the reasons set forth in our preliminary determinations. Since we find no compelling reason to change this selection, we have continued to base FMV on the values of the appropriate factors of production as valued in Brazil.

D. Factors of Production

For sales of magnesium produced by Avisma and SMW, we calculated FMV based on factors of production cited in the preliminary determination, making adjustments based on verification findings (see Final Calculation Memorandum). To calculate FMV, the verified factor amounts were multiplied by the appropriate surrogate values for the different inputs. We have used the same surrogate values used in the preliminary determination with the exception of certain corrections made based on verification or interested party comments.

Based on verification, we adjusted certain factors' value to reflect the actual purity used in the production of subject merchandise.

We have adjusted the surrogate inland freight charge for transporting factor inputs from supplier to factory to reflect the surrogate value for the actual quantity being transported. We

[4] Although Avisma also made a separate rates claim, it did not make any POI direct U.S. sales. It is, for good reason, unprecedented for the Department to entertain separate rates claims from companies that have not made direct sales to the United States: Analyzing and verifying separate rates claims from such companies would be a great burden, and government involvement in export sales operations could be hard to fully evaluate absent sales to the United States.

[5] Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies.

[6] The factors considered include: (1) whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (see *Silicon Carbide*).

[7] Although an export license was required in order to make export sales, and the nominal purpose was to allow the licensing authority to approve the export price, SMW characterized this procedure as pro forma. Verification revealed no indication that such control had ever been exercised: export licenses that had been issued, examined in the context of reviewing SMW's sales, appeared to reflect without exception prices negotiated between SMW and its customers. The price negotiation process did not appear to involve any government authorities.

recalculated inland freight distances between factory and input supplier based on verified distances.

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for the above-mentioned exporters. The factors used to produce pure and alloy magnesium include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of surrogate values, see our final calculation memorandum.) We then added amounts for general expenses and profit, the cost of containers and coverings, and other expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

We used the same methodology as in the preliminary determination to value the raw materials, except where corrections were possible or necessary.

Verification

As provided in section 776(b) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Critical Circumstances

In accordance with section 735(a)(3) of the Act, we determine that critical circumstances exist with respect to imports of alloy magnesium from the Russian Federation. No new information has been placed on the record since our preliminary determination. Therefore, we continue to find that critical circumstances exist with respect to all imports of alloy magnesium except those of Gerald Metals and SMW.

Interested Party Comments

Comment 1: Russian Manufacturers' Knowledge of Destination

Petitioners contend that Avisma and SMW should be assigned BIA margins because they knew at the time of sale to third-country resellers that the merchandise was destined for the United States. Petitioners note that the producers completed GSP forms, sold to customers that had U.S. addresses, and were explicitly told by some customers of merchandise's destination. Because of this knowledge on Avisma's and SMW's part, petitioners argue, resellers claiming to be the first to sell to a U.S. customer in the sales process should be assigned the "Russia-wide" rate.

Avisma and SMW argue that they did not know at the time of sale that merchandise was destined for the United States. The companies assert that the GSP forms were filled out by the producers after the sales were made, indicating that at the time of sale the producers did not know the destination. Avisma and SMW argue that the customer's address is irrelevant because magnesium is a commodity product that can be sold anywhere in the world. Finally, the companies point out that verification confirmed that there was no indication that either Avisma or SMW failed to report any U.S. sales.

DOC Position

We agree with Avisma and SMW. Based on our examination of sales and export documents at verification, we found nothing to indicate any unreported instances of merchandise being sold with the knowledge at the time of sale that the ultimate destination was the United States. We verified that simply because a purchaser's address is in the United States does not mean that the merchandise is destined for the United States. In fact, magnesium sold to purchasers with U.S. addresses was frequently shipped to non-U.S. destinations. Although SMW did, as some exporters stated, eventually learn of some of its merchandise's sale to U.S. customers, this knowledge always came after SMW had sold the merchandise.

Comment 2: Completeness and Accuracy of Various Resellers' Reporting of U.S. Sales

Petitioners contend that total or partial BIA is warranted for AIOC, Razno, Interlink, Hochschild and Greenwich Metals because these companies made various errors in reporting U.S. sales that were not revealed until just prior to, or during, verification. Petitioners also advocate total BIA for each exporter for which any verification revealed that the exporter failed to report sales of the subject merchandise, as well as for all companies that refused verification.

The companies argue that BIA is not warranted because the errors made were not serious and were corrected.

DOC Position

We agree with petitioners in part.

We determined that the errors cited by petitioners for AIOC, Razno, and Interlink were inadvertent and were, in the end, verified. There is nothing to indicate that the omission of these sales would have had any impact on these companies' margins. Further, we are satisfied that the record is now complete and accurate as to these companies' POI sales of subject merchandise. Accordingly, the reported information, as corrected based on verification, is the appropriate basis for our respective LTFV determinations for AIOC, Razno, and Interlink.

We disagree that BIA is warranted for Hochschild's failure to report a pre-POI contract discovered at verification; instead, we have included in Hochschild's sales listing information gathered at verification regarding this sale.

We agree with petitioners that Hochschild and Greenwich Metals incorrectly reported certain sales as U.S. sales. Verification demonstrated that the contracts setting terms of sale by these companies' suppliers included an identification of the shipment destination. This fact outweighs the contention that the companies had the option of transshipping the merchandise to another country. Accordingly, we determine that Greenwich did not make any U.S. sales of alloy magnesium during the POI and we have not calculated a company-specific alloy magnesium margin for Greenwich. Instead, Greenwich will be subject to the "Russia-wide" rate. We have also eliminated these improperly included sales from Hochschild's sales listing and have assigned the appropriate margin to Hochschild's European supplier.

Finally, with the exception of those participating exporters that have remedied reporting deficiencies, any exporter that improperly did not report POI sales is subject to suspension of liquidation at the "Russia-wide" rate (which is based entirely on BIA), as are all companies that reported having made no sales.

Comment 3: Scope

Petitioners contend that the Department should clarify the scopes in these proceedings. Petitioners argue that "off-specification" pure magnesium (*i.e.*, magnesium that is *less* than 99.8% pure magnesium but that otherwise can be and is considered pure magnesium by consumers) should be considered within the scope of the pure magnesium proceeding instead of within the scope of the alloy magnesium proceeding. Petitioners propose revised scopes to achieve this end.

Greenwich argues that the proposed revised scopes are flawed because they appear to include secondary magnesium (*i.e.*, magnesium that has been remelted and recast) as subject merchandise.

DOC Position

We agree with petitioners some magnesium, despite not meeting the normal definition (based on magnesium content) of pure magnesium, nevertheless may be used in

applications that normally require pure magnesium. In fact, the records in the concurrent antidumping investigations of pure and alloy magnesium from the People's Republic of China show sales of such magnesium were supplied to fulfill orders for pure magnesium.

We therefore have revised the scopes of these investigations to include this off-specification pure magnesium within the definition of pure magnesium, described as any product (1) that is 50 percent or more primary magnesium, and (2) that does not meet any ASTM definition of alloy magnesium (based on specific percentages of one or more alloying agents).

We note that our consultations with the Bureau of Mines established that the industry standards for alloy magnesium are ASTM standards. (See Final Calculation Memorandum.) Consequently, we have not adopted petitioner's proposed scope language that would describe off-specification pure magnesium as any product, *inter alia*, that does not meet ASTM standards or other industry standards.

Although ASTM standards define pure magnesium as not less than 99.8 percent magnesium, metal with a primary magnesium content below that level should be captured in the scope of the pure magnesium investigations if it cannot legitimately be defined as a specific ASTM alloy magnesium.

The fact that both scopes capture only merchandise with primary magnesium content of 50 percent or greater means that merchandise composed of 50 percent or more secondary magnesium would not fall within either scope.

Comment 4: Surrogate Value for Electricity

Avisma and SMW contend that published, public information indicates that large industrial users of electricity in Brazil receive a lower electricity rate (compared to other types of users). Respondents assert that information on the record indicates that Avisma and SMW are "large industrial users" of electricity and, as such, would receive a lower electricity rate if they bought electricity in Brazil. Therefore, respondents argue the appropriate value for electricity is $0.0235/Kwh.

Petitioners contend that the Department should continue to use the $0.055/Kwh rate for electricity value because the record does not show that the rate advocated by Avisma and SMW is the rate actually paid by the magnesium industry in Brazil. Petitioners charge that the record shows that the Brazil "large industrial user" rates are (1) below cost because they are subsidized, and (2) generally not applicable because they are established pursuant to individual negotiations. Even if the Department were to accept Brazil electricity rate schedules submitted by Avisma and SMW, petitioners contend, there would be no way to determine which rate would be appropriate for Avisma and SMW.

DOC Position

We agree with Avisma and SMW that the Brazil "large industry user" rate is the rate they would have received had they been electricity consumers in Brazil during the POI. For each company, the record contains verified figures on both POI magnesium production and the number of kilowatt hours needed to produce one metric ton. Dividing the total number of kilowatt hours used in POI magnesium production by the number of hours in the POI clearly shows that, at least during the POI, the kilowatt capacity of each user was significantly higher than the minimum necessary to receive the "large industrial user" rate in effect in Brazil during the POI. Although subsidization would not necessarily render a surrogate value inappropriate, petitioners have not in this instance presented evidence of subsidization (providing only a vague reference to possible subsidies in the Amazon region).

Comment 5: By-Product Offset Methodology

Petitioners contend that the Department's decision to permit an offset to material surrogate values to account for by-products of the magnesium production process was erroneous for the following reasons: (1) The producers were unable to demonstrate for the record that any economic benefit accrued to the firm and that the benefit was linked to the production of the subject merchandise; (2) the surrogate value used was incorrect in that it did not correspond to the actual purity level of the by-product produced and was not calculated net of transportation and processing costs; and (3) any adjustment determined to be appropriate should have been made to the cost of manufacture rather than cost of materials so as not to understate factory overhead, general expenses, and profit.

Avisma and SMW argue that there is nothing on the record indicating that they should not qualify for by-product offsets. With respect to valuation, the companies do not dispute that an appropriate purity level adjustment should be made, but contend that there are no processing costs associated with the by-products which are not captured in costs associated with primary product production. Finally, Avisma and SMW argue that an adjustment to cost of materials is the appropriate adjustment because the Department is using the factors-of-production methodology to calculate FMV.

DOC Position

We agree with petitioners in part and with Avisma and SMW in part. First, because the by-products result from the production process and are either used by the magnesium producer or sold for use by some other company in the NME country, we agree with Avisma and SMW that they are a factor whose value must be taken into account in our calculation of the fair value against which to test U.S. prices. Second, we have adjusted surrogate CIF import value of the by-products to reflect concentration differences. However, no adjustment to value for transportation costs is appropriate. For by-products, as for material factors of production consumed in the production process, we consider the import values used to be surrogates for ex-factory, freight-exclusive prices from suppliers to consumers. Third, we agree with petitioners that the proper adjustment is a reduction in the cost of manufacture. This adjustment increases the surrogate overhead amount commensurately with the value of the by-product, thereby eliminating the need for valuing any additional processing-related elements. Additionally, an adjustment to cost of manufacture is consistent with Department practice in other NME investigations (*see, e.g., Coumarin*[8]).

Comment 6: Surrogate Factory Overhead

Petitioners contend that the Department must account for costs associated with the rebuilding of electrolytic cells by adjusting upward the surrogate overhead percentage used in the preliminary determinations. Petitioners suggest using their own experience as to the cost of cell rebuilds expressed as a percentage of the sum of material, labor, and energy costs. Petitioners also suggest that the Department should, in calculating FMV, use an overhead ratio that includes energy in the numerator since verified energy amounts for the producers represent only energy directly related to production.

Avisma, SMW, Interlink, Razno, and AIOC argue that an adjustment to

[8] Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China (59 FR 66895, December 28, 1994)

overhead based upon petitioners' cell rebuild experience would be inconsistent with both the Act and Department practice and is, therefore, unwarranted. With respect to energy, these respondents argue that (1) inclusion in the denominator of the overhead ratio should be limited to indirect energy costs, and (2) only direct energy should be included in the base to which the overhead percentage is applied in calculating surrogate overhead.

DOC Position

We agree with respondents that the adjustment proposed by petitioners is not appropriate in this instance. Although we may take into account petitioners' experience in extraordinary circumstances, we generally do not consider petitioners' costs as an appropriate benchmark by which to test the accuracy of surrogate country values. Further, the fact that one element (*i.e*, cell rebuild) of factory overhead has significant cost associated with it does not invalidate the overhead percentage used. Factory overhead is a combination of elements, some of which may be more or less expensive depending on the product or even the company. The Department has rejected item-by-item evaluation of overhead components in the past (see the final determination of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Socialist Republic of Romania, (52 FR 17433, 17436, May 8, 1987)), and we see no reason to alter this practice in this case.

Further, there is no contrary evidence which indicates that the overhead percentage used for the preliminary determinations is an inappropriate surrogate figure. In the absence of an actual overhead for Brazil's magnesium industry, the Department will continue to rely on the surrogate overhead percentage used in the preliminary determination.

Comment 7: Surrogate General Expenses and Profit

Petitioners argue that the percentage used to account for producers' general expenses in calculating FMV should be changed from the statutory minimum to 26.92 percent, which is the ratio of SG&A expenses to cost of goods sold based on figures reported in the 1992 financial statement of an aluminum manufacturer in Brazil. Petitioners also argue that an additional amount should be included in FMV calculations in order to reflect general expenses incurred and profit realized by each reseller involved in the sales process. Petitioners argue that, because the responding resellers failed to provide their selling expenses (despite a Departmental request to do so in the questionnaire), the Department should add an amount based on financial statements submitted by resellers.

With respect to surrogate SG&A for manufacturers, Avisma, SMW, Interlink, Razno and AIOC argue that the figures put forward by petitioner are bogus because they involve application to an inflation-adjusted base of a percentage that is based on figures that have not been adjusted for inflation. These respondents argue that their own submitted surrogate information is superior to petitioners' information because it is inflation-adjusted. With respect to the question of whether to include in FMV an amount for reseller general expenses, the five aforementioned respondents, along with Greenwich, Hochschild, and Gerald Metals, assert that petitioners have provided no convincing rebuttal to the Department's recent rejection of such a request in Coumarin.

DOC Response

With respect to the question of the appropriate surrogate for manufacturer general expenses, we agree with Avisma, SMW, Interlink, Razno and AIOC that use of inflation-adjusted figures is the most appropriate basis for calculating the SG&A ratio. Accordingly, we have used either an appropriate figure from the record or the statutory minimum (10%), whichever is greater.

We also agree with respondents that addition to FMV of actual reseller general expenses would be inappropriate. Given that Russia is an NME and the Russian magnesium industry has not been found to be market oriented, section 773(c) of the Act requires that the Department measure U.S prices against the factors of production (materials, labor, energy, and overhead) used in producing the merchandise, valued in an appropriate surrogate country, plus general expenses, profit and containers. The Act's only specific guidance as to the valuation of general expenses, profit and containers is to establish minima for the first two. Our regulations, meanwhile, instruct us to "include in this calculation of constructed value an amount for general expenses and profit, as required by section 773(e)(1)(B) of the Act. (19 CFR 353.52(c)) The Department has not interpreted the Act and the regulations as requiring use of actual expenses and profit for these FMV components when FMV is based on factors of production; the Department has also explicitly rejected such adjustments in prior NME proceedings (see, *e.g.*, Coumarin and Sparklers[9]). Moreover, to do so simply does not make sense because it amounts to a comparison of apples and oranges. In NME proceedings, the FMV is normally based completely on factors valued in a surrogate country (without regard to, for example, actual selling expenses) on the premise that the actual experience cannot be meaningfully considered. Were the question simply one of "traditional" dumping by trading companies, the market-economy price-to-price or price-to-CV methodology would appropriately be employed; actual selling expenses would have been accounted for on both U.S. prices and foreign market prices (or, if appropriate, constructed value, in which case other general expenses and profit would also have been taken into account). Accordingly, we have continued to value general expenses and profit by simply applying to the surrogate-based cost of manufacture the greater of either appropriate surrogate percentages or the statutory minima.

Comment 8: Market Orientation (Russia and Magnesium Industry)

Avisma and SMW contend that, although they "do not expect the magnesium investigation[s] to result in the revocation of Russia's NME status," consideration of whether to revoke Russia's NME status should hinge upon whether there are concrete indicators of market-driven activity rather than on the degree to which the market has moved toward "an orderly Western-style brand of capitalism." The companies also state for the record that they demonstrated that the Russian magnesium industry is market oriented, but opted not to pursue this tack because they anticipated favorable outcomes using factors of production valued in a surrogate country.

Petitioners state that the records in these investigations offer no basis for determining that Russia is no longer an NME for purposes of these investigations, nor do the records support a finding that the magnesium industry is market oriented.

DOC Position

As discussed in the "Foreign Market Value" section, above, we have determined that it would be inappropriate to alter Russia's designation as an NME, and that the Russian magnesium sector is not a market-oriented industry. Should these

[9] Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991)

issues arise in future antidumping proceedings involving merchandise from the Russian Federation, the status of market reforms and market orientation of specific industries will be carefully evaluated if raised by parties in those proceedings.

Comment 9: Separate Rates

Petitioners argue that Avisma and SMW are subject to *de jure* and *de facto* government control and thus do not warrant separate rates.

SMW and Avisma counter that they are fully entitled to separate rates.

DOC Position

We agree with respondents in part. As is detailed above, we find that SMW has demonstrated the absence of *de jure* and *de facto* government control and thus is entitled to a separate rate in both proceedings. However, because Avisma did not make any POI U.S. sales of subject merchandise in either proceeding, it is not necessary to address the question of whether Avisma should be assigned a separate rate since such an action would result in no difference in the deposit rate that would apply to any future direct U.S. sales by Avisma.

Comment 10: Export Taxes

Petitioners argue that a tax imposed by the Russian government on magnesium exports must be accounted for in making LTFV comparisons because (1) section 772(d)(2)(B) requires deduction from U.S. price of export taxes, and (2) the tax imposition had the effect of reducing net receipts to the Russian producers selling their magnesium.

DOC Position

We disagree, and have not accounted for the export tax in our LTFV calculations. With respect to the reduction of net receipts to Russian producers, the premise in determining values in NME proceedings is that pecuniary aspects of internal transactions are considered meaningless and thus ignored. The export tax paid to an NME government is an intra-NME transfer of funds between a Russian producer and the Russian government. As such, it is inappropriate to account for such transfers in our LTFV analysis just as it is NME prices and costs.

The Department has interpreted section 772(e)(2), another paragraph dealing with the general question of reductions to U.S. price, as not requiring the deduction of selling expenses from ESP when FMV is based on factors of production. The issue of the export tax is analogous. Similarly, we interpret 772(d)(2)(B) as not requiring the deduction of an intra-NME transfer of funds, even if it is in the form of an export tax. Finally, we note that, in these proceedings, even if a reduction to USP to account for the export tax had been deemed appropriate, it would not have resulted in positive margins for any company receiving a calculated rate.

Comment 11: Surrogate Country Selection

Avisma and SMW contend that Poland, not Brazil, is the more appropriate surrogate country because Poland is the market economy country that most resembles the Russian Federation in economic terms and because Poland produces comparable merchandise. The companies assert that, in selecting a surrogate country, economic similarity should outweigh production of the investigated product.

Petitioners argue that Brazil is the appropriate surrogate country citing, among other factors weighing against selection of Poland, the fact that Poland produces an insignificant quantity of aluminum and no magnesium.

DOC Response

We agree with petitioners. Selection of a proper surrogate country must be made on case-by-case basis, in consideration of the Department's judgment of how to weigh facts on the record within the parameters prescribed by statute and regulations, as well as case precedent. Based on our experience in this case and previous proceedings involving magnesium, we judged electricity use to be a very important factor and thus gave it great weight under the rubric of product comparability. Given the economic comparability of Brazil to the Russian Federation, and since Brazil is a significant producer of electricity-intensive products such as magnesium and aluminum, we continue to find that Brazil is the most appropriate surrogate country in this case.

Comment 12: Quantity and Surrogate Value of Natural Gas, Liquid Petroleum Gas, and Heavy Oil

Petitioners contend that the Department should correct for a mathematical error made in converting a surrogate value for natural gas from a price per cubic meter to a price per metric ton. Petitioners also suggest a value of $290/MT to be the appropriate surrogate value for liquid petroleum gas. Petitioners claim that, for both Avisma and SMW, reported usage of heavy oil and natural gas appears to represent theoretical amounts that do not account for thermal losses (which petitioners suggest should be at least 30 percent).

Avisma, SMW, AIOC, Interlink and Razno argue that a value of $142.86/MT is correct because of an error in the source of petitioners' figure.

DOC Position

We agree with Avisma et al. as to the proper conversion of natural gas quantities. We do not need to address the question about the appropriate value for LPG because we are basing the value for this factor on natural gas. With respect to actual use of heavy oil and natural gas, we did not discover the error claimed by petitioners at verification and thus have not changed the reported quantities.

Comment 13: Quantity and Surrogate Value for Timber

Petitioners contend that the Department, in calculating FMV, should use the information on the record to value the timber used by Avisma and SMW and convert from cubic meters to kilograms.

Avisma, SMW, AIOC, Interlink and Razno advocate conversion of reported figures to board feet rather than kilograms, and use of the POI value of lumber per board foot in the United States.

DOC Position

We agree with petitioners and have valued timber based on their suggested methodology. With respect to the contention of Avisma et al., use of U.S. values for production factors is not appropriate in NME proceedings, particularly when surrogate-country values are available.

Comment 14: Surrogate Values of Carnallite Concentrate and Dehydrated Carnallite

Petitioners argue that the price of dolomite is not an appropriate surrogate for carnallite concentrate and dehydrated carnallite (which, unlike dolomite, are processed materials). Petitioners advocate increasing the dolomite value used in the preliminary determinations to account for processing associated with the manufacture from raw carnallite of either concentrated carnallite or dehydrated carnallite.

Avisma and SMW argue that the price of dolomite is a reasonable surrogate for the price of carnallite concentrate because the two materials have similar magnesium contents and the processing necessary to transform raw carnallite into carnallite concentrate is minimal. The companies contend that the value for calcinated dolomite is not a suitable

surrogate for carnallite concentrate because the two materials have completely different chemistries (chiefly, the absence of magnesium chloride in calcinated dolomite) and are used in substantially different magnesium production processes. The two companies advocate calculation of a value for dehydrated carnallite used by SMW based on Avisma's factors of production for that commodity.

DOC Position

We agree with Avisma and SMW. We used the price of dolomite in Brazil, as provided in the petition, as the surrogate for carnallite concentrate. Dolomite, with a comparable magnesium chloride content, is the most appropriate substitute available in the absence of an actual price in Brazil for carnallite concentrate. We have also calculated a value for dehydrated carnallite based on Avisma's factors of production.

Comment 15: Quantity and Surrogate Value of Labor

Petitioners advocate corrections to reported labor figures based on verification findings. Petitioners also argue that the Department should use as a surrogate 1993 wage rates in Brazil to value unskilled labor.

DOC Position

We agree with petitioners and have both corrected the reported labor figures and adopted the alternative value for unskilled labor.

Comment 16: Inflation Adjustments for Brazil Values

Petitioners contend that 1992 Brazil values used as surrogate values should be adjusted for inflation.

Avisma, SMW, AIOC, Interlink and Razno argue that no adjustment is appropriate since dollar-denominated prices of commodity chemicals cannot be assumed to have risen between 1992 and the POI.

DOC Position

We disagree with petitioners. Since we do not know the dates or exchange rates used to convert these values into dollars, an appropriate adjustment (if any) for dollar inflation cannot be determined. Further, the magnitude of any adjustment would likely be small since the data are nearly contemporaneous with the POI.

Comment 17: Concentration/Purity Levels of Material Inputs

Petitioners contend that appropriate adjustments should be made for differences in concentration or purity between surrogate values on the one hand and materials used in production on the other hand. However, petitioners also argue that the Department should not assume that surrogate values represent 100 percent concentration and therefore should make no adjustment where the concentration applicable to a surrogate value cannot be determined.

DOC Position

Where we have been able to determine the purity or concentration applicable to a surrogate value, we have adjusted for differences, if any, between the surrogate and the actual material. Otherwise, we have attempted no adjustment for purity or concentration.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pure magnesium from the Russian Federation that are entered, or withdrawn from warehouse, for consumption on or after November 7, 1994, which is the date of publication of our notice of preliminary determination in the **Federal Register**. The following companies will be excepted from these instructions because their sales of pure magnesium were found not to have been sold below fair value: AIOC, Amalgamet, Gerald Metals, Greenwich Metals, Hochschild Partners, Hunter Douglas, Interlink, MG Metals, Razno Alloys, or SMW. These companies will be excluded from an antidumping duty order should one be issued.

We are also directing the Customs Service to suspend liquidation of all entries of alloy magnesium from the Russian Federation entered, or withdrawn from warehouse, for consumption on or after August 9, 1994 (*i.e.*, the date that is 90 days prior to the date of publication of this notice in the **Federal Register**). Gerald Metals and SMW will be excepted from these instructions because their sales of alloy magnesium were found not to have been sold below fair value. The Customs Service shall, in each proceeding, require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

A. PURE MAGNESIUM

Exporter/manufacturer/producer	Weighted-average margin percentages
AIOC*	0.00
AIOC/Other	100.25
Gerald Metals*	0.00
Gerald Metals/Other	100.25
Greenwich Metals*	0.00
Greenwich Metals/Other	100.25
Hochschild Partners*	0.00
Hochschild Partners/Other	100.25
Hunter Douglas*	0.00
Hunter Douglas/Other	100.25
Interlink*	0.00
Interlink/Other	100.25
MG Metals/Avisma	0.00
MG Metals/SMW	0.00
MG Metals/Other	100.25
Razno Alloys/SMW	0.00
Razno Alloys/Other	100.25
SMW/SMW	0.00

A. PURE MAGNESIUM—Continued

Exporter/manufacturer/producer	Weighted-average margin percentages
SMW/Other	100.25
Russia-wide	100.25

*This company has not disclosed for the public record the identity of its supplier or suppliers in Russia. Upon public disclosure of this information to the Department, we will notify the Customs Service that sales through certain supply channels have an LTFV margin of zero and thus an exclusion from any order resulting from this investigation. Until and unless such disclosure is made, all entries will be subject to the "Russia-wide" deposit rate.

B. ALLOY MAGNESIUM

Manufacturer/producer/exporter	Weighted average margin percentages	Critical circumst.
Gerald Metals*	0.00	No.
Gerald Metals/Other	153.65	Yes.
SMW/SMW	0.00	No.
SMW/Other	153.65	Yes.
Russia-wide	153.65	Yes.

*This company has not disclosed for the public record the identity of its supplier or suppliers in Russia. Upon public disclosure of this information to the Department, we will notify the Customs Service that sales through certain supply channels have an LTFV margin of zero and thus an exclusion from any order resulting from this investigation. Until and unless such disclosure is made, all entries will be subject to the "Russia-wide" deposit rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations. As our final determinations are affirmative, the ITC will within 45 days determine whether imports of either product are materially injuring, or threaten material injury to, the U.S. industry. In each proceeding, if the ITC determines that material injury, or threat of material injury does not exist, that proceeding will be terminated and all securities posted will be refunded or cancelled. If, in either proceeding, the ITC determines that such injury does exist, the Department will issue an antidumping duty order for the appropriate proceeding directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

These determinations are published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Susan G. Esserman,

Assistant Secretary for Import Administration.

APPENDIX I

Company	Rus. pure	CASE rus. alloy	Supp. QR filing date	Verif. start date	Verif. end date	Location
Hunter Douglas	X			12/8	12/8	Chicago.
MG Metals	X			12/6	12/7	Chicago.
Gerald Metals	X	X	11/1, 30	12/13	1/25	Lausanne and Stamford CT.
Interlink	X		11/8	12/15	1/10	Fribourg and NYC.
SMW	X	X		1/18	1/19	Solikamsk, Russia.
AVISMA	X			1/16	1/17	Berezniki, Russia.
Razno	X			1/23	1/24	Zurich.
Hochschild Partners	X			1/26	1/27	NYC.
Greenwich Metals	X	X		1/30	1/31	Greenwich, CT.
Amalgamet	X	X	1/4	2/1	2/2	Toronto.
AIOC	X		11/21	12/15	2/9	NYC.

[FR Doc. 95–7777 Filed 3–29–95; 8:45 am]

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APPENDIX D

LIST OF WITNESSES

LIST OF WITNESSES

Investigations Nos. 731-TA-696-698 (Final)

Those listed below appeared as witnesses at the United States International Trade Commission's hearing held in connection with the subject investigations on March 28, 1995 in the Main Hearing Room, 500 E Street, S.W., Washington, D.C.

OPENING REMARKS

Petitioner

Respondent

In Support of Imposition of Antidumping Duties:

Baker & Botts
Washington, D.C.
on behalf of

Dow Chemical Company (Dow)
Magnesium Corporation (Magcorp)
International Union of Operating Engineers, Local 564
United Steelworkers of America, Local 8319

Frank Petitti, Global Business Director of Magnesium & Fabricated Metals, Dow

Richard Egan, Attorney, Dow Chemical Company

Michael Legge, President, Magcorp

Lee R. Brown, Vice President, Magcorp

Kenneth R. Button, Vice President, Economic Consulting Services, Inc.

Charles M. Darling, IV)
Michael X. Marinelli)--OF COUNSEL
William D. Kramer)

In Opposition to the Imposition of Antidumping Duties:

Perkins Coie
Washington, D.C.
on behalf of

MinHe Magnesium Factory
Midland Export Ltd.

Mary Lee, Export Sales Manager, MinHe Magnesium Factory

Seth Kaplan, Economist, Trade Resource Company

Andrew Lubin, President, Midland Export Ltd.

Wang Shi Bin, Commercial Councilor, Embassy of the People's Republic of China

Paul A. Zucker, Economist, Trade Resource Company

Leonard Santos)--OF COUNSEL
Lynn F. Kaufmann)

Popham, Haik, Schnobrich & Kaufman
Washington, D.C.
on behalf of

Gerald Metals, Inc.
Concern Oriana

Lawrence Lerner, Vice President, Gerald Metals, Inc.

Ann E. Feely, International Trade Specialist, Popham, Haik, Schnobrich & Kaufman

Frederick P. Waite)--OF COUNSEL
Jerzy L. Piatkowski)

Wilmer, Cutler & Pickering
Washington, D.C.
on behalf of

Avisma Titanium-Magnesium Works
Solikamsk Magnesium Works

John D. Greenwald--OF COUNSEL

APPENDIX E

U.S. SHIPMENTS BY PRODUCTS AND END USERS

Table E-1
Primary magnesium: U.S. producers' shipments and U.S. importers' shipments, by products and end users, 1992-94

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APPENDIX F

U.S. PRODUCERS' SHIPMENTS, BY FIRMS

Table F-1
Primary magnesium: U.S. producers' shipments, by products, by types, and by firms, 1992-94

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APPENDIX G

EFFECTS OF IMPORTS ON PRODUCERS' EXISTING DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL

Response of U.S. producers to the following questions:

1. Since January 1, 1992, has your firm experienced any actual negative effects on its growth, investment, ability to raise capital, or existing development and production efforts, including efforts to develop a derivative or more advanced version of the product, as a result of imports of primary magnesium from China, Russia, or Ukraine?

* * * * * * *

2. Does your firm anticipate any negative impact of imports of primary magnesium from China, Russia, or Ukraine?

* * * * * * *

3. Are there any differences in the impact of pure magnesium and alloy magnesium from China, Russia, or Ukraine?

* * * * * * *

4. Has the scale of capital investments undertaken been influenced by the presence of imports of primary magnesium from China, Russia, or Ukraine?

* * * * * * *

APPENDIX H

PURCHASER PRICE DATA

Table H-1
Magnesium: Weighted-average delivered purchase prices and total quantities of U.S.-produced magnesium and magnesium imported from China, Russia, and Ukraine purchased by aluminum manufacturers, by quarters, Jan. 1992-Dec. 1994

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Table H-2
Magnesium: Weighted-average delivered purchase prices and total quantities of U.S.-produced magnesium and magnesium imported from China, Russia, and Ukraine purchased by magnesium granule producers, by quarters, Jan. 1992-Dec. 1994

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Table H-3
Magnesium: Margins of under/(over)selling for purchases of pure magnesium by aluminum producers and magnesium granule producers, by quarters, Jan. 1992-Dec. 1994

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