

UNITED STATES INTERNATIONAL TRADE COMMISSION

PURE MAGNESIUM FROM CHINA, ISRAEL, AND RUSSIA
Invs. Nos. 701-TA-403 and 731-TA-895-897 (Preliminary)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3376, DECEMBER 2000)

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-403 and 731-TA-895-897 (Preliminary)

PURE MAGNESIUM FROM CHINA, ISRAEL, AND RUSSIA

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines,² pursuant to section 733(a) of the Tariff Act of 1930,³ that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of pure magnesium from Israel and Russia, and pure granular magnesium from China,⁴ that are alleged to be sold in the United States at less than fair value (LTFV).

The Commission also determines,⁵ pursuant to section 703(a) of the Tariff Act of 1930,⁶ that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of pure magnesium from Israel that are alleged to be subsidized by the Government of Israel.

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the Federal Register as provided in section 207.21 of the

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 Commissioners Miller, Hillman, and Askey dissenting with respect to imports of pure magnesium ingot from Israel and pure granular magnesium from China. Commissioners Miller and Hillman dissenting with respect to imports of pure magnesium ingot from Russia. Commissioners Miller, Hillman, and Askey found imports of pure granular magnesium from Israel and Russia to be negligible.

³ 19 U.S.C. § 1673b(a).

⁴ The imported goods covered in the investigations concerning Israel and Russia include pure magnesium, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes. The imported goods covered in the investigation concerning China include all of the foregoing pure magnesium products, except pure magnesium ingots (which are covered by an existing order and are classifiable under subheadings 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States (HTS)).

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

The merchandise subject to the investigation concerning Israel and Russia is classifiable under subheadings 8104.11.00, 8104.19.00, and 8104.30.00 of the HTS. The merchandise subject to the investigation concerning China is classifiable under subheading 8104.30.00 of the HTS.

⁵ Commissioners Miller, Hillman, and Askey dissenting with respect to imports of pure magnesium ingot from Israel. Commissioners Miller, Hillman, and Askey found imports of pure granular magnesium from Israel to be negligible.

⁶ 19 U.S.C. § 1671b(a).

Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

BACKGROUND

On October 17, 2000, a petition was filed with the Commission and the Department of Commerce by Magnesium Corporation of America (MagCorp), Salt Lake City, UT, the United Steel Workers of America, Local 8319, Salt Lake City, UT, and the United Steelworkers of America, AFL-CIO-CLC (USWA International),⁷ alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports of pure magnesium from Israel and Russia, and pure granular magnesium from China, that are alleged to be sold in the United States at LTFV, and by reason of imports of pure magnesium from Israel that are alleged to be subsidized by the Government of Israel. Accordingly, effective October 17, 2000, the Commission instituted countervailing duty investigation No. 701-TA-403 (Preliminary) and antidumping investigations Nos. 731-TA-895-897 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference 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 October 25, 2000.⁸ The conference was held in Washington, DC, on November 7, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

⁷ See, letter from petitioners dated October 26, 2000 amending the petitions to include the USWA International as co-petitioners.

⁸ 65 FR 63888, Oct. 25, 2000.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of pure magnesium from Israel that are allegedly subsidized and by reason of imports of pure magnesium from China, Israel, and Russia that are allegedly sold in the United States at less than fair value (“LTFV”).¹

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.² In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”³

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

In determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁴ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁵ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”⁶

¹ Commissioners Miller, Hillman, and Askey dissenting with respect to China and Israel. *See*, Dissenting Views of Commissioners Marcia E. Miller, Jennifer A. Hillman, and Thelma J. Askey. Commissioners Miller and Hillman dissenting with respect to Russia. *See*, Dissenting Views of Commissioners Marcia E. Miller and Jennifer A. Hillman with respect to Russia. Commissioner Askey concurring with respect to Russia. *See*, Concurring Views of Commissioner Thelma J. Askey Concerning Imports from Russia.

² 19 U.S.C. § 1673b(a); *see also*, *American Lamb Co. v. United States*, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); *Aristech Chemical Corp. v. United States*, 20 CIT 353, 354 (1996).

³ *American Lamb*, 785 F.2d at 1001 (Fed. Cir. 1986); *see also*, *Texas Crushed Stone Co. v. United States*, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(10).

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁷ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁸ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁹ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁰

B. Domestic Like Product

In its notices of initiation, Commerce defined the imported merchandise from Israel and Russia within the scope of the investigations as including:

imports of pure magnesium products, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes. Pure magnesium includes: (1) products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as “ultra-pure” magnesium); (2) products that contain 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 that contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, and that do not conform to an ASTM Specification for Magnesium Alloy (generally referred to as “off-specification pure” magnesium).¹¹

⁷ See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See, Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁸ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

⁹ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also, S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹⁰ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹¹ 65 F.R. 68121, 68123 (Nov. 14, 2000).

Commerce defined the scope of the imported merchandise from China within the scope of the investigations as including all of the foregoing, except pure magnesium that is already covered by an existing antidumping duty order, and classifiable under 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedules of the United States.¹²

There are two like product issues in these investigations: (1) whether pure magnesium ingot and pure granular magnesium are separate like products; and (2) whether alloy magnesium should be included in the like product along with pure magnesium. Petitioners, Magnesium Corporation of America (“Magcorp”) and the United Steelworkers of America, AFL-CIO-CLC, contend that there should be one like product consisting of pure magnesium in all forms, and that pure magnesium ingot and pure granular magnesium are both part of this like product.¹³ The Israeli respondents, Dead Sea Magnesium (“DSM”) and the Government of Israel, agree that pure magnesium ingot and pure granular magnesium are part of the same like product.¹⁴ The Russian producer Avisma Titanium-Magnesium Works (“Avisma”) states that it does not “take issue with Magcorp’s contention that magnesium in granular and ingot form belong to a single ‘like product’ grouping.”¹⁵ Two U.S. grinders and producers of granular magnesium, Rossborough Manufacturing Co. L.P. (“Rossborough”) and Reactive Metals and Alloys, Inc. (“Remacor”), contend that pure magnesium ingot and pure granular magnesium are separate like products.¹⁶ In addition, the Israeli respondents suggest that alloy magnesium should be included in the same like product with pure magnesium, while the petitioners disagree.¹⁷

1. Whether Pure Magnesium Ingot and Pure Granular Magnesium Are Separate Like Products

Our previous investigations concerning magnesium have addressed like product issues with respect to pure magnesium ingot and alloy magnesium.¹⁸ These are our first investigations involving pure granular magnesium.

Pure granular magnesium and pure magnesium ingot have the same chemical composition, although they differ in size and shape.¹⁹ While Rossborough contends that one inch particle size is a clear dividing

¹² 65 F.R. 68121, 68123 (Nov. 14, 2000). The existing order regarding magnesium from China covers imports of pure magnesium ingot from China, but specifically excludes imports of pure granular magnesium. Thus, the scope of the Chinese investigation in these proceedings does not include magnesium ingot.

¹³ Petitions, Volume I, at 37-45; Petitioners’ Postconference brief at 1-9.

¹⁴ Israeli Respondents’ postconference brief at 13-15.

¹⁵ Avisma’s postconference brief at 6. The other Russian producer, Solikamsk Magnesium Works (“Solikamsk”), has not taken a clear position on like product issues. *See*, Solikamsk’s postconference brief at 18. The Chinese respondents did not present evidence at the Conference or submit a postconference brief.

¹⁶ Rossborough’s postconference brief at 14-22; Remacor’s postconference brief at 2-7.

¹⁷ Israeli Respondents’ postconference brief at 13-15; Petitioners’ postconference brief, attachment A, at 7.

¹⁸ Pure Magnesium from China, Inv. No. 731-TA-696 (Review), USITC Pub. 3346 (August 2000) at 4-5; Magnesium from Canada, Inv. Nos. 701-TA-309-A-B- and 731-TA-528 (Review), USITC Pub. 3324 (July 2000) at 5-6; Magnesium from China, Russia, and Ukraine, Inv. Nos. 731-TA-696-698 (Final), USITC Pub. 2885 (May 1995) at 7-9.

¹⁹ Confidential Report, as revised by Memoranda INV-X-247, Nov. 30, 2000, and INV-X-248, Nov. 30, 2000 (“CR”), at I-14; Public Report (“PR”) at I-10.

line between magnesium ingot and the smaller granular magnesium,²⁰ there is limited information in the record indicating whether one inch particle size is in fact a clear dividing line. The primary end uses for magnesium ingot are in aluminum alloying, steel desulfurization,²¹ metal reduction, and nodular iron industries. The primary end use for granular magnesium is in steel desulfurization, although there are additional end uses for the chemical industry and military ordnance.²²

While there is evidence of only limited interchangeability in the ferroalloy sector, in which one purchaser has substituted granular magnesium for a traditional magnesium ingot application,²³ the limited record in these preliminary investigations indicates that there is greater interchangeability in the steel desulfurization sector. In this sector, domestic producers of granular magnesium use the granular magnesium as a primary ingredient in desulfurization reagents that they produce and sell to steel companies.²⁴ In order to have a supply of the granular magnesium necessary to produce the desulfurization reagents, grinders can either purchase magnesium ingot, or they can purchase granular magnesium.²⁵ There is evidence that early in the period of investigation (“POI”) the grinders purchased domestic and imported sources of ingot for grinding, as well as relatively small amounts of imported granular magnesium. However, later in the period, their purchases of granular magnesium (in particular, of subject imports of Chinese granular magnesium) for desulfurization end uses displaced purchases of ingot for these end uses.²⁶ Thus, we find there is at least some interchangeability between magnesium ingot and granular magnesium for these grinders.

The evidence on perceptions of producers is mixed in these preliminary investigations, in that *** state that ingot and granular magnesium are interchangeable, while *** generally state that they are not interchangeable.²⁷ We intend to obtain more information on customers’ perceptions in any final phase investigations.

There are costs associated with grinding magnesium ingot into granular form, and historically granular magnesium has sold for a higher price than magnesium ingot. However, imported granular magnesium has recently been selling at prices below those for both domestic and imported magnesium ingot.²⁸

²⁰ Transcript of Conference held on November 7, 2000 (“Conference transcript”) at 81 (Leibowitz).

²¹ Use of magnesium ingot for steel desulfurization end uses requires that the ingot first be converted to granular form.

²² CR at I-14, PR at I-10.

²³ CR at I-14; PR at I-11.

²⁴ CR at II-1; PR at II-1.

²⁵ Desulfurization service providers generally grind pure magnesium ingot or granular pure magnesium into a powder form. They blend this magnesium powder with other materials to produce desulfurization reagents sold to steel producers. CR at II-1; PR at II-1.

²⁶ CR at III-15, Table III-5; III-18 to III-19, Table III-7; and IV-8, Table IV-6; PR at III-9, Table III-5; III-10, Table III-7; and IV-6, Table IV-6.

²⁷ CR at I-14; PR at I-11.

²⁸ Conference transcript at 38 (Button); CR at V-8 to V-11, Tables V-1 to V-4; PR at V-6, Tables V-1 to V-4.

In the United States, magnesium ingot and granular magnesium are not produced using the same manufacturing facilities or employees.²⁹ The record also indicates that there are some differences in channels of distribution between ingot and granular magnesium given their different end uses.³⁰ We note that a *** portion of domestic ingot production is transferred to related firms, while a *** of domestic granular production is internally consumed by the grinders.³¹ Because of its greater volatility, granular magnesium in powder form requires special precautions in shipping that magnesium ingot does not require.³²

Although we recognize that the record presents a mixed picture on whether magnesium ingot and granular magnesium are separate like products, we find that, on balance, the record indicates that there is one like product consisting of all pure magnesium.^{33 34} In any final phase of these investigations, we will closely re-examine our like product determination.

2. Whether Magnesium Alloy Should Be Included in the Like Product

In two recent investigations, the Commission found that alloy magnesium and pure magnesium were separate like products.³⁵ The principal arguments here by the Israeli respondents for finding them to be one like product -- that pure magnesium and magnesium alloy have similar physical characteristics, chemistries, production processes, and channels of distribution, and that companies that produce both products often use the same machinery, equipment, and employees³⁶ -- were considered by the Commission in its prior findings that pure magnesium and magnesium alloy constitute separate like products.³⁷ Given that alloy magnesium is not included in the scope of these investigations, and the absence of new information in the record on this issue, we determine not to broaden the like product beyond the scope to include alloy magnesium in the same like product as pure magnesium.

²⁹ CR at I-14; PR at I-11. Magcorp produces a small amount of granular magnesium, which it does not sell commercially, at the same plant at which it manufactures magnesium ingot. Conference transcript at 56 (Dorn).

³⁰ CR at I-15; PR at I-11

³¹ CR at II-1 to II-3; PR at II-1 to II-2.

³² Conference transcript at 78-79, 83 (Tomer, Leibowitz).

³³ None of the parties addressed the significance of the limiting of the scope of the investigation for China to only granular magnesium. For purposes of these preliminary determinations, we find that the lack of a clear dividing line between granular magnesium and magnesium ingot warrants broadening the like product beyond the scope of the investigation for China to include magnesium ingot, but intend to reexamine this issue in any final phase investigations.

³⁴ In making our like product finding for these preliminary determinations, we have relied primarily on the Commission's traditional like product analysis. In any final phase of these investigations we may seek additional information with respect to the factors relevant to the Commission's semi-finished product analysis.

³⁵ Pure Magnesium from China, Inv. No. 731-TA-696 (Review), USITC Pub. 3346 (August 2000) at 4-5; Magnesium from Canada, Inv. Nos. 701-TA-309-A-B- and 731-TA-528 (Review), USITC Pub. 3324 (July 2000) at 5-6; *see also*, Magnesium from China, Russia, and Ukraine, Inv. Nos. 731-TA-696-698 (Final), USITC Pub. 2885 (May 1995) at 7-9.

³⁶ Israeli Respondents' postconference brief at 13-14.

³⁷ Magnesium from China, Russia, and Ukraine, Inv. Nos. 731-TA-696-698 (Final), USITC Pub. 2885 (May 1995) at 8-9.

C. Domestic Industry

The domestic industry is defined as “the producers as a [w]hole of a domestic like product”³⁸ In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.³⁹

There are two domestic industry issues in these investigations. The first concerns whether the grinders that produce granular magnesium should be included in the domestic industry. The second concerns whether certain producers of pure magnesium that also import or purchase subject merchandise should be excluded from the domestic industry pursuant to the related parties provision.

1. Inclusion of Grinders in the Domestic Industry

In deciding whether a firm qualifies as a domestic producer, the Commission generally has analyzed the overall nature of a firm’s production-related activities in the United States, although production-related activity at minimum levels could be insufficient to constitute domestic production.⁴⁰ Petitioners argue that the grinders do not engage in sufficient production-related activities to be considered domestic producers. Conversely, respondent Rossborough argues that the grinders do engage in sufficient production-related activities.⁴¹

Although the issue is a close one, we find for purposes of these preliminary determinations that the grinders’ production-related activities in the United States are sufficient to constitute domestic production. While grinding is not a particularly complex process, the limited information in the record indicates a value added of approximately *** percent for traditional grinding, and a value added of approximately *** percent for one producer using a *** method to produce granular magnesium.⁴² While employment and capital expenditures are much lower for the granular producers than for the ingot producers, the available data

³⁸ 19 U.S.C. § 1677(4)(A).

³⁹ See, United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir.1996).

⁴⁰ The Commission generally considers six factors:

- (1) *source and extent of the firm’s capital investment;*
- (2) *technical expertise involved in U.S. production activities;*
- (3) *value added to the product in the United States;*
- (4) *employment levels;*
- (5) *quantity and type of parts sourced in the United States; and*
- (6) *any other costs and activities in the United States directly leading to production of the like product.*

No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation. See, Citric Acid and Sodium Citrate from China, Inv. No. 731-TA-863 (Preliminary), USITC Pub. 3277 at 8 (Feb. 2000); Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea, Inv. Nos. 701-TA-387-391, 731-TA-816-821 (Final), USITC Pub. 3273 at 9 (Jan. 2000). See also, Large Newspaper Printing Presses from Germany and Japan, Inv. Nos. 731-TA-736-737 (Final) USITC Pub. 2988 at 8-9 (Aug. 1996).

⁴¹ Petitioners’ postconference brief at 12-17; Rossborough’s postconference brief at 29-30.

⁴² CR at VI-17 to VI-19, Table VI-10; PR at VI-7, Table VI-10.

suggest that they are not insubstantial.⁴³ Accordingly, although we intend to seek more information in any final phase of these investigations, for purposes of these preliminary determinations, we include all six grinders as part of the domestic industry producing pure magnesium.

2. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.⁴⁴ Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.⁴⁵

We first consider whether any of the domestic producers meet the definition of a related party. Three grinders/producers of granular magnesium directly imported subject merchandise during the period of investigation. *** imported pure magnesium ingot from Russia and pure granular magnesium from China during the period of investigation, while *** both imported pure granular magnesium from China.⁴⁶ Consequently, these three firms are related parties.

We also consider whether four firms are subject to exclusion as related parties by virtue of their purchases of subject imports from China, Israel, and/or Russia. In previous investigations, the Commission has concluded that a domestic producer that does not itself import subject merchandise, or does not share a corporate affiliation with an importer, may nonetheless be deemed a related party if it controls large volumes of imports. The Commission has found such control to exist where a domestic producer was responsible for a predominant proportion of an importer's purchases and the importer's purchases were substantial.⁴⁷

⁴³ CR at III-21, Table III-9; PR at III-11, Table III-9 (employment); CR at VI-22, Table VI-11; PR at VI-8, Table VI-11 (capital expenditures). We note that some of the data submitted by the U.S. grinders appear to relate to their production of downstream desulfurization reagents rather than of granular magnesium. CR at VI-19 to VI-20 and VI-21 n.21, PR at VI-7 to VI-8 n.21. We intend to carefully examine this data issue during any final phase investigations.

⁴⁴ 19 U.S.C. § 1677(4)(B).

⁴⁵ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

⁴⁶ CR at III-4 to III-8; PR at III-3 to III-5.

⁴⁷ See, e.g., Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Inv. Nos. 701-TA-387-392 and 731-TA-815-822 (Preliminary), USITC Pub. 3181 at 12

(continued...)

The record does not indicate that any of the four firms that purchased subject merchandise controls large volumes of subject imports.⁴⁸

We next consider whether appropriate circumstances exist to exclude any of the related party producers from the domestic industry.

*** – *** produced *** metric tons of granular magnesium in 1999. Its total imports or purchases of subject imports in 1999 were *** metric tons.⁴⁹ Its ratio of imports/purchases of subject merchandise to production was *** percent in 1999, and was *** percent in interim 2000. *** stated that its reason for importing was “to remain competitive and to have an adequate supply of magnesium.”⁵⁰ ***⁵¹ ***.⁵²

Given that its ratio of imports/purchases of subject merchandise to domestic production is *** and increasing, and given its ***, there is some evidence that *** interests increasingly lie in importing subject merchandise rather than in domestic production. However, the information in the record is limited on this question, and given that *** is the *** domestic producer of granular magnesium,⁵³ for purposes of these preliminary determinations we do not exclude *** as a related party. We may seek to obtain more information on this issue in any final phase of these investigations.

*** – *** imported *** metric tons of granular magnesium from China in interim 2000, but ***. In interim 2000, it produced *** metric tons of granular magnesium. The ratio of its subject imports to its production was *** percent for interim 2000, while that ratio for all previous years in the POI was *** percent.

⁴⁷ (...continued)

(Apr. 1999); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 10 n.50 (Apr. 1997).

⁴⁸ *** purchased subject merchandise from Israel in 1997 and 1998 from importer ***. CR at III-18, Table III-7; PR at III-10, Table III-7; ***. *** purchases accounted for *** percent of *** imports of Israeli merchandise in 1997 and approximately *** percent of *** imports in 1998. CR at III-18, Table III-7; PR at III-10, Table III-7 ***. These data indicate that *** does not control ***.

*** purchased granular magnesium from China each year during 1997 through 2000 from three different importers ***, but did not ***. CR at III-19, Table III-7; PR at III-10, Table III-7 ***. The record does not contain information as to the importers from which *** and *** purchased.

Given the volumes of their purchases, (see, CR at III-18 to III-19, Table III-7, PR at III-10, Table III-7), the available data are not sufficient to support a conclusion that ***, ***, or *** controlled large volumes of subject imports, and we accordingly do not deem any of these producers to be related parties. We may revisit this issue in any final phase of these investigations.

⁴⁹ CR at III-4 to III-8; III-18, Table III-7; PR at III-3 to III-5; III-10, Table III-7.

⁵⁰ ***.

⁵¹ CR at III-4 to III-8; PR at III-3 to III-5.

⁵² CR at VI-20; PR at VI-7. Given *** statement regarding its ***, in any final phase of these investigations we will closely examine the data regarding *** imports of subject merchandise to ensure that those data do not also include imports of non-subject merchandise.

⁵³ CR at III-4 to III-8; PR at III-3 to III-5.

We find that *** volumes of imports *** in interim 2000, and the absence of any indication that its primary interest lies in importation rather than domestic production, provide no basis to exclude it as a related party.

*** – *** produced *** metric tons of granular magnesium in 1999. Its total imports or purchases of subject imports were *** metric tons in 1999.⁵⁴ Its ratio of imports/purchases of subject merchandise to production was *** percent in 1999, and *** percent in interim 2000. *** stated that ***.⁵⁵ Financial data for *** show a ***.⁵⁶

As with *** and increasing ratio of imports/purchases of subject merchandise to domestic production suggests that its interest may lie more as an importer of subject merchandise than as a domestic producer. While *** stated reason for importing suggests that it received a benefit from importing by obtaining a lower cost of raw material for its production of certain downstream products, the fact that its profitability and operating income *** just as its imports/purchases of subject merchandise *** suggests that any benefits it received from importing were limited. In addition, *** is the *** domestic producer of granular magnesium.⁵⁷ Accordingly, for purposes of these preliminary determinations we do not exclude *** as a related party, but we may seek to obtain more information on this issue in any final phase of these investigations.

Based on our like product determination, we find for these preliminary determinations a single domestic industry consisting of the U.S. producers of pure magnesium. We find that all U.S. grinders producing granular magnesium as well as all U.S. producers of magnesium ingot should be treated as U.S. producers.

III. CUMULATION⁵⁸

A. In General

For purposes of evaluating the volume and price effects for a determination of reasonable indication of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.⁵⁹ In

⁵⁴ CR at III-19, Table III-7; PR at III-10, Table III-7.

⁵⁵ ***.

⁵⁶ CR at VI-15, Table VI-9; PR at VI-6, Table VI-9.

⁵⁷ CR at III-4 to III-8; PR at III-3 to III-5.

⁵⁸ The record indicates that import quantities for each subject country exceeded the 3 percent statutory negligibility threshold during the pertinent period. CR at D-8, Table D-4; PR at D-7, Table D-4. Accordingly, we find that the subject imports are not negligible as defined by 19 U.S.C. § 1677(24).

⁵⁹ 19 U.S.C. § 1677(7)(G)(i).

assessing whether subject imports compete with each other and with the domestic like product,⁶⁰ the Commission has generally considered four factors, including:

- (1) *the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;*
- (2) *the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;*
- (3) *the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and*
- (4) *whether the subject imports are simultaneously present in the market.*⁶¹

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.⁶² Only a “reasonable overlap” of competition is required.⁶³

B. The Israel Free Trade Agreement Exception

Section 771(G)(ii)(IV) of the Act provides an exception to cumulation with respect to subject imports from Israel.⁶⁴ That provision states that the Commission shall not cumulatively assess the volume and effects of imports:

⁶⁰ The Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA, H.R. Rep. 316, 103d Cong., 2d Sess. at 848 (1994), citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁶¹ See, Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁶² See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁶³ See, Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

⁶⁴ None of the other three statutory exceptions to the general rule on cumulation apply in these investigations. These other exceptions concern countries as to which investigations have been terminated, countries as to which Commerce has made preliminary negative determinations for which there is no subsequent final determination, and countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act. 19 U.S.C. § 1677(7)(G)(ii).

*from any country that is a party to an agreement with the United States establishing a free trade area, which entered into force and effect before January 1, 1987, unless the Commission determines that a domestic industry is materially injured or threatened with material injury by reason of imports from that country.*⁶⁵

Thus, where, as here, antidumping or countervailing duty investigations involve both Israel and other countries, the Commission must first determine whether there is a reasonable indication of material injury to a domestic industry, or the threat thereof, by reason of imports from Israel. If this inquiry is answered in the affirmative, the Israeli imports are then eligible for cumulation with other subject countries. If this inquiry is answered in the negative, the Commission cannot cumulate the imports from Israel.

As set forth below, we determine that there is a reasonable indication that a domestic industry is materially injured by reason of subject imports from Israel, and that accordingly this exception to cumulation does not apply for purposes of these preliminary determinations.

1. Conditions of Competition

We find several conditions of competition pertinent to the U.S. market for pure magnesium.⁶⁶

U.S. consumption of pure magnesium was relatively flat over the period of investigation, and trended downward in interim 2000. U.S. apparent consumption was *** metric tons in 1997, *** metric tons in 1998, and *** metric tons in 1999, and was *** metric tons in interim 2000, as compared to *** metric tons in interim 1999.⁶⁷ Demand for pure magnesium is largely derived from the demand for the end uses of pure magnesium. Thus, demand for pure magnesium depends largely on demand for aluminum alloying, aluminum sheet, and desulfurization applications for the steel industry.⁶⁸

⁶⁵ 19 U.S.C. § 1677(7)(G)(ii)(IV).

⁶⁶ We note at least two issues with respect to captive production in these investigations. A significant volume (***) percent of U.S. producers' total shipments of pure magnesium ingot in 1999) of domestic production of magnesium ingot is internally transferred to related firms for further processing. CR at II-1 to II-2; PR at II-1. In addition, (***) percent of U.S. producers' total shipments of pure granular magnesium in 1999 was transferred internally for further processing into a downstream article. CR at II-3; PR at II-1 to II-2. No party argued that the captive production provision of the statute (19 U.S.C. § 1677(7)(C)(iv)), applied, and we have insufficient information to determine whether the provision is applicable. We intend to seek further information on these issues in any final phase of these investigations. For purposes of these preliminary determinations, we have relied on data with respect to U.S. producers' total shipments, and have not limited our analysis to data regarding U.S. producers' open-market shipments, but we note that the trends appear to be similar for both sets of data. See, CR at IV-13, Table IV-10; PR at IV-10, Table IV-10.

⁶⁷ CR at D-9, Table D-5, PR at D-8, Table D-5.

⁶⁸ CR at II-10, PR at II-6; Conference transcript at 20 (Kaplan).

Pure magnesium is price competitive in the United States.⁶⁹ The degree of price competition in the U.S. market between producers of magnesium ingot and of granular magnesium is unclear, and we will seek more information on this issue in any final phase of these investigations.⁷⁰

The vast majority of pure magnesium ingot sold by *** is sold on a contract basis, with U.S. producers selling *** percent on a contract basis and *** percent on a spot basis.⁷¹ ***,⁷² and meet-or-release provisions.⁷³ The record is less clear with respect to granular magnesium contracts, with U.S. grinders reporting that some contracts have meet-or-release provisions, while subject importers did not report that their contracts had such provisions.⁷⁴

There are also nonsubject imports present in the U.S. market, primarily imports of granular magnesium from Canada, as well as imports in the early part of the period of investigation of pure magnesium ingot from China, which are covered by a prior antidumping order, and are excluded from the scope of these investigations. As a share of U.S. apparent consumption, nonsubject imports by volume were *** percent in 1997, *** percent in 1998, *** percent in 1999, and *** percent in interim 2000, as compared to *** percent in interim 1999.⁷⁵

Several respondents have argued that domestic producers are unable to satisfy domestic demand, that there are limits in their capacity to expand production to meet demand, and that imports are therefore necessary to meet that demand.⁷⁶ We may examine this issue further in any final phase of these investigations.

2. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁷⁷

Subject imports from Israel increased by *** percent in volume from 1997 to 1999. The volume of subject imports was *** metric tons in 1997, *** metric tons in 1998, and *** metric tons in 1999.⁷⁸

⁶⁹ Conference transcript at 21 (Kaplan).

⁷⁰ Commissioner Bragg does not join in this statement. As discussed in footnote 106 below, she finds that magnesium ingot and granular magnesium competed on the basis of price during the POI.

⁷¹ CR at V-5; PR at V-4.

⁷² CR at V-5, PR at V-4.

⁷³ Conference transcript at 22 (Kaplan); CR at V-5; PR at V-4. Petitioners argue that “price competition in the magnesium market is magnified by the use of meet or release clauses and price indexing clauses in sales contracts.” Conference transcript at 22 (Kaplan)

⁷⁴ CR at V-5; PR at V-4.

⁷⁵ CR at D-15, Table D-8; PR at D-10, Table D-8.

⁷⁶ Rossborough’s postconference brief at 8-11; Solikamsk’s postconference brief at 15.

⁷⁷ 19 U.S.C. § 1677(7)(C)(i).

⁷⁸ CR at D-13, Table D-7; PR at D-10, Table D-7. The Israeli respondents contend that the official import statistics overstate subject imports from Israel, asserting that they misclassify non-subject ASTM-specification alloy magnesium ingot from Israel as subject magnesium ingot. See, CR at IV-2, PR at IV-1 to IV-2. We find that

(continued...)

While the volume of subject imports from Israel was lower in interim 2000 than in interim 1999, the volume for the nine month interim period in 2000 (***) metric tons) was *** for the full year of 1997.⁷⁹ As a share of U.S. apparent consumption, subject imports from Israel increased from *** percent in 1997 to *** percent in 1998 and 1999.⁸⁰ The market share of subject imports from Israel was lower in interim 2000 (***) percent) than in interim 1999 (***) percent).⁸¹

We find, for purposes of these preliminary determinations, the volume of subject imports from Israel, both in absolute terms and relative to consumption in the United States, to be significant.

3. Price Effects of the Subject Imports

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

- (I) *there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and*
- (II) *the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.*⁸²

The record indicates that subject imports of magnesium ingot from Israel were generally substitutable for the domestic like product. Information from U.S. producers, U.S. grinders, and importers indicates that domestic pure magnesium and pure magnesium imported from Israel are frequently, if not always, interchangeable.⁸³

Prices of subject imports from Israel declined throughout the period of investigation, declining by *** percent for ingot sold to aluminum producers, *** percent for ingot sold to grinders, and *** percent for ingot sold for use in metal reduction.⁸⁴

Prices for domestic ingot sold to aluminum producers also declined steadily during the period of investigation, falling by *** percent between the first quarter of 1997 and the third quarter of 2000. Prices for domestic ingot sold to grinders fell by *** percent over this period, while prices for domestic ingot sold for use in ferroalloy production declined by *** percent.⁸⁵

⁷⁸ (...continued)

the Commission's importer questionnaire data are more reliable as to subject imports from Israel, and accordingly rely on those data rather than official import statistics with respect to Israel.

⁷⁹ CR at D-13, Table D-7; PR at D-10, Table D-7. The volume of subject imports from Israel in interim 1999 was *** metric tons. Id.

⁸⁰ CR at D-15, Table D-8, PR at D-10, Table D-8.

⁸¹ CR at D-15, Table D-8, PR at D-10, Table D-8.

⁸² 19 U.S.C. § 1677(7)(C)(ii).

⁸³ CR at II-15, Tables II-2 and II-3; PR at II-8 to II-9, Tables II-2 and II-3.

⁸⁴ CR at V-7, V-14; PR at V-5, V-8.

⁸⁵ CR at V-7, V-14; PR at V-5, V-8.

The record also evidences significant instances of underselling by subject imports from Israel throughout the period of investigation, both with respect to pure magnesium ingot sold to aluminum producers and with respect to pure magnesium ingot sold to grinders.⁸⁶ With respect to sales to aluminum producers, subject imports from Israel undersold domestic products in *** for which there were price comparisons, with margins of underselling ranging from *** percent to *** percent.⁸⁷ With respect to sales to grinders, subject imports from Israel undersold domestic products in *** quarters, and oversold domestic products in only *** quarters, with margins of underselling ranging from *** percent to *** percent.⁸⁸

We therefore find for purposes of these preliminary determinations that subject imports from Israel have depressed domestic prices to a significant degree or prevented price increases, which otherwise would have occurred, to a significant degree.⁸⁹

4. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.⁹⁰ 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.”^{91 92 93}

⁸⁶ We note that as sales of magnesium ingot from Israel to U.S. grinders declined, subject imports from Israel continued to undersell the domestic product in the aluminum end-use segment of the market through the end of the POI. CR at V-8 to V-9, Tables V-1 to V-2; PR at V-6, Tables V-1 to V-2.

⁸⁷ CR at V-14; PR at V-9.

⁸⁸ CR at V-15; PR at V-9.

⁸⁹ We note that the Israeli respondents argue that subject imports from China and Russia, as well as nonsubject imports from China, have undersold the domestic product by larger margins than have subject imports from Israel. Israeli Respondents’ postconference brief at 21-22. We intend to seek additional information regarding price effects in any final phase of these investigations.

⁹⁰ 19 U.S.C. § 1677(7)(C)(iii). See also, SAA at 851, 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” Id. at 885.).

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

⁹² The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce estimated dumping margins of between 85.86 percent and 96.35 percent for Israel. 65 FR 68121, 68124 (Nov. 14, 2000).

⁹³ Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers. See, Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11 n.63.

The domestic industry experienced declines in almost all major indicators of industry performance during the period of investigation, with a particular decline in industry performance in interim 2000. The U.S. producers of magnesium ingot⁹⁴ reported continuing declines throughout the period of investigation in shipments,⁹⁵ sales, operating income, gross profit,⁹⁶ number of production and related workers, hours worked, and wages paid.⁹⁷ Similarly, U.S. magnesium ingot producers' end-of-period inventories rose steadily during the period of investigation and were at their highest level in September 2000.⁹⁸ While some indicators for U.S. ingot producers such as production and capacity utilization increased *** from 1998 to 1999, after declining from 1997 to 1998, those indicators were at lower levels in interim 2000 as compared to interim 1999.⁹⁹ Despite a decline in the ingot producers' cost of goods sold during the period of investigation, their financial performance deteriorated significantly as a result of lower sales volume and lower average sales values.¹⁰⁰

The U.S. producers of granular magnesium also experienced declines in major indicators during the period of investigation.¹⁰¹ The U.S. granular producers' production, capacity utilization,¹⁰² and shipments all declined throughout the period of investigation.¹⁰³ The number of production and related workers, hours worked, and wages paid declined from 1998 to 1999, and were lower in interim 2000 than they were in interim 1999.¹⁰⁴

We note that while ***.¹⁰⁵

Based on the record in this preliminary phase, we find that the significant and increasing volume of low priced subject imports from Israel had a significant adverse impact on the U.S. industry.

⁹⁴ Because of the risk of double counting, industry data with respect to magnesium ingot producers cannot be added to the data with respect to granular magnesium producers, and accordingly there are no data with respect to the U.S. pure magnesium industry as a whole. CR at III-9, Table III-2, n.1; PR at III-6, Table III-2, n. 1. We nonetheless analyze the effects of subject imports from Israel on the domestic industry as a whole.

⁹⁵ CR at III-12, Table III-3; PR at III-8, Table III-3.

⁹⁶ CR at VI-9, Table VI-5; PR at VI-5, Table VI-5.

⁹⁷ CR at III-21, Table III-9; PR at III-11, Table III-9.

⁹⁸ CR at III-20, Table III-8; PR at III-11, Table III-8.

⁹⁹ CR at III-9, Table III-2; PR at III-5, Table III-2.

¹⁰⁰ CR at VI-9, Table VI-5, and VI-13; PR at VI-4 to VI-5, Table VI-5.

¹⁰¹ Because most of the U.S. production of granular magnesium is transferred internally for further processing, many of the U.S. granular producers were unable to provide meaningful financial data with respect to their granular magnesium operations, and there are accordingly no combined financial data with respect to the operations of the U.S. granular producers as a whole. CR at VI-14; PR at VI-6. We note that the data granular producers were able to provide nonetheless support a finding of significant negative impact by reason of subject imports from Israel.

¹⁰² CR at III-9, Table III-2; PR at III-5, Table III-2.

¹⁰³ CR at III-12, Table III-3; PR at III-8, Table III-3.

¹⁰⁴ CR at III-21, Table III-9; PR at III-11, Table III-9.

¹⁰⁵ CR at V-16, Table V-5, and V-19; PR at V-9 to V-10, Table V-5.

5. Conclusion

For the foregoing reasons, we determine there is a reasonable indication that an industry in the United States is materially injured by reason of imports of pure magnesium from Israel that are allegedly subsidized, and are allegedly sold in the United States at less than fair value, and accordingly, the Israel Free Trade Agreement exception to cumulation does not apply.

C. Reasonable Overlap of Competition¹⁰⁶

We cumulate the volume and effect of subject imports from Israel and Russia for purposes of our analysis of reasonable indication of present material injury. Petitions with respect to both countries were filed on the same day. Based on the record in these preliminary investigations, we find that there is a reasonable overlap of competition among imports from each of these two subject countries, and between subject imports from these two countries and the domestic like product. Subject imports from both Israel and Russia during the period of investigation consisted entirely of pure magnesium ingot.¹⁰⁷ The record indicates that Russian ingot, Israeli ingot, and domestic ingot are perceived as interchangeable and compete in the same market segments (*e.g.*, sales to aluminum producers and grinders) through similar channels of distribution and are reasonably fungible despite possible minor quality differences.¹⁰⁸ Moreover, subject imports from Israel and Russia have been simultaneously present with the domestic like product in the U.S. market throughout the period of investigation, and the limited evidence in the record suggests that subject imports from Israel and Russia and the domestic like product overlap geographically in the entire United States.

Based on the information gathered in the preliminary phase of these investigations, we find that, on balance, there is a reasonable overlap of competition between the subject imports from Israel and Russia, and between the subject imports and the domestic like product. Consequently, we cumulate the volume and effect of subject imports from Israel and Russia for purposes of the determination concerning Russia.

However, we do not cumulate the volume and effect of subject imports from China with those of subject imports from Israel and Russia for purposes of our analysis of reasonable indication of present material injury. All subject imports from China were of granular magnesium, while all subject imports from Russia and Israel were of magnesium ingot.¹⁰⁹ Customers in the U.S. market perceived subject granular

¹⁰⁶ Commissioner Bragg does not join section III.C of this opinion. She points out that the record indicates that during the POI Chinese subject imports (composed of granular magnesium) displaced, on the basis of price, Israeli and Russian subject merchandise (composed of magnesium ingot), as well as domestic magnesium ingot, with respect to sales to U.S. grinders. CR and PR at Tables III-5 and IV-6; Petitioners' postconference brief at 20-21; Israeli Respondents' postconference brief at 13; Solikamsk's postconference brief at 18; Avisma's postconference brief at 6. She also observes that granular magnesium represented a significant portion of apparent U.S. consumption throughout the POI. CR and PR at Tables IV-12 and D-6A. Commissioner Bragg therefore finds that subject imports from China, Israel, and Russia and the domestic like product are: (1) fungible; (2) sold in the same geographical markets through similar channels of distribution; and (3) simultaneously present in the U.S. market. Accordingly, Commissioner Bragg cumulates subject imports from China, Israel, and Russia.

¹⁰⁷ CR at IV-3 to IV-4, Tables IV-2 to IV-3; PR at IV-3 to IV-4; Tables IV-2 to IV-3.

¹⁰⁸ CR at I-14, II-15 to II-17, Tables II-2 to II-5, and III-18 to III-19, Table III-7; PR at I-11; II-8 to II-10, Tables II-2 to II-5; and III-10, Table III-7.

¹⁰⁹ CR at IV-3 to IV-4, Tables IV-2 to IV-3; PR at IV-3 to IV-4, Tables IV-2 to IV-3.

imports from China to be unique in the marketplace.¹¹⁰ While some magnesium ingot imported from Russia and Israel was sold to grinders in the earlier part of the period of investigation, only a very small portion of these imports was sold to grinders in the latter part of the period.¹¹¹ On the other hand, virtually all of the granular magnesium imported from China was sold to grinders during the period of investigation.¹¹² Thus, given the differences in channels of distribution and the limited direct competition between subject imports from China and subject imports from Israel and Russia, for purposes of these preliminary determinations, we do not find a reasonable overlap of competition between imports from China and subject imports from Israel and Russia.¹¹³

IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND LTFV IMPORTS FROM ISRAEL AND ALLEGEDLY LTFV IMPORTS FROM RUSSIA¹¹⁴

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.¹¹⁵ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.¹¹⁶ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”¹¹⁷ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.¹¹⁸ 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.”¹¹⁹

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports from Israel and Russia.

A. Conditions of Competition

¹¹⁰ CR at I-14; PR at I-11.

¹¹¹ CR at IV-8, Table IV-6; PR at IV-6, Table IV-6.

¹¹² CR at IV-8, Table IV-6; PR at IV-6, Table IV-6.

¹¹³ We note that the parties have argued that granular magnesium imported from China has displaced sales of magnesium ingot to grinders. We will further examine this in any final phase investigations.

¹¹⁴ Commissioner Bragg joins in this discussion. She notes that the addition of subject imports from China to the injury analysis, pursuant to her decision to cumulate subject imports from China, Israel, and Russia, strengthens the conclusion that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports.

¹¹⁵ 19 U.S.C. § 1671b(a) and 1673b(a).

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

¹¹⁷ 19 U.S.C. § 1677(7)(A).

¹¹⁸ 19 U.S.C. § 1677(7)(C)(iii).

¹¹⁹ 19 U.S.C. § 1677(7)(C)(iii).

Pertinent conditions of competition in the U.S. market for pure magnesium are discussed in Section III.B.1, supra.

B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹²⁰

The volume of cumulated subject imports from Israel and Russia was *** metric tons in 1997, *** metric tons in 1998, and *** metric tons in 1999.¹²¹ Thus, while the volume of cumulated subject imports was lower in 1999 than in 1998, it was higher in 1999 than at the beginning of the period of investigation.¹²² As a share of U.S. apparent consumption, cumulated subject imports increased from *** percent in 1997 to *** percent in 1998, but then declined to *** percent in 1999.¹²³

For purposes of these preliminary determinations, we find the volume of cumulated subject imports from Israel and Russia, both in absolute terms and relative to consumption in the United States, to be significant.¹²⁴

C. Price Effects of the Subject Imports

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

- (I) *there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and*
- (II) *the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.*¹²⁵

¹²⁰ 19 U.S.C. § 1677(7)(C)(i).

¹²¹ CR at D-3, Table D-1; PR at D-3, Table D-1.

¹²² The volume of cumulated subject imports was also lower in interim 2000 (*** metric tons) than in interim 1999 (*** metric tons). CR at D-3, Table D-1; PR at D-3, Table D-1.

¹²³ CR at D-15, Table D-8, PR at D-10, Table D-8. The market share of cumulated subject imports was lower in interim 2000 (*** percent) than in interim 1999 (*** percent). Id.

¹²⁴ Commissioner Bragg notes that the addition of subject imports from China to the injury analysis, pursuant to her decision to cumulate subject imports from China, Israel, and Russia, strengthens the conclusion that the volume of subject imports is significant.

¹²⁵ 19 U.S.C. § 1677(7)(C)(ii).

The record indicates that subject imports of pure magnesium ingot from Israel and Russia were generally substitutable for the domestic like product. Information from U.S. producers, U.S. grinders, and importers indicates that domestic pure magnesium and pure magnesium imported from Israel and Russia are generally interchangeable.¹²⁶

Prices of subject imports from Israel and Russia declined throughout the period of investigation, in sales to aluminum producers, in sales to grinders, and in sales to ferroalloy producers.¹²⁷ Prices for domestic ingot declined during the period of investigation, with ingot sold to aluminum producers declining by *** percent, ingot sold to grinders declining by *** percent, and ingot sold for use in ferroalloy declining by *** percent.¹²⁸

The record indicates significant instances of underselling by cumulated subject imports from Israel and Russia throughout the period of investigation, both with respect to pure magnesium ingot sold to aluminum producers and with respect to pure magnesium ingot sold to grinders.¹²⁹ With respect to sales to aluminum producers, cumulated subject imports undersold domestic products in *** for which there were price comparisons, with margins of underselling ranging from *** percent to *** percent.¹³⁰ With respect to sales to grinders, cumulated subject imports undersold domestic products in *** quarters, and oversold domestic products in *** quarters, with margins of underselling ranging from *** percent to *** percent.¹³¹

We find, for purposes of these preliminary determinations, that cumulated subject imports from Israel and Russia have depressed domestic prices to a significant degree or prevented price increases, which otherwise would have occurred, to a significant degree.¹³²

¹²⁶ CR at II-15, Tables II-2 and II-3; PR at II-8 to II-9, Tables II-2 and II-3.

¹²⁷ CR at V-7, V-14; PR at V-5, V-8.

¹²⁸ CR at V-7, V-14; PR at V-5, V-8.

¹²⁹ We note that as sales of magnesium ingot from Israel and Russia to U.S. grinders declined, subject imports from Israel and Russia continued to undersell the domestic product in the aluminum end-use segment of the market through the end of the POI. CR at V-8 to V-9, Tables V-1 to V-2; PR at V-6, Tables V-1 to V-2.

¹³⁰ CR at V-8, Table V-1, and V-14 to V-15; PR at V-6, Table V-1, and V-9. The margins of underselling for sales to aluminum producers for subject imports from Israel ranged from *** percent to *** percent, while the margins of underselling for subject imports from Russia ranged from *** percent to *** percent. *Id.*

¹³¹ CR at V-9, Table V-2, and V-15; PR at V-6, Table V-2, and V-9.

¹³² Commissioner Bragg notes that the addition of subject imports from China to the injury analysis, pursuant to her decision to cumulate subject imports from China, Israel, and Russia, strengthens the conclusion that subject imports have depressed domestic prices to a significant degree or prevented price increases, which otherwise would have occurred, to a significant degree.

D. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.¹³³ 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.”^{134 135}

As discussed in Section III.B.4, the domestic industry experienced declines during the period of investigation in major indicators such as production, capacity utilization, shipments, sales, number of production and related workers, hours worked, wages paid, operating income and gross profit.¹³⁶ We note that there were *** confirmed lost sales allegations with respect to subject imports from Israel and Russia involving *** metric tons, and *** confirmed lost revenue allegations with respect to subject imports from Israel and Russia, involving *** metric tons.¹³⁷

Based on the record in this preliminary phase, we find that the significant and increasing volume of low priced cumulated subject imports from Israel and Russia had a significant negative impact on the U.S. industry.¹³⁸ Accordingly, we determine that there is a reasonable indication of material injury by reason of subject imports from Israel and Russia.

¹³³ 19 U.S.C. § 1677(7)(C)(iii). See also, SAA at 851, 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” Id. at 885.).

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

¹³⁵ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce estimated dumping margins of between 85.86 percent and 96.35 percent for Israel and of between 23.45 and 39.14 percent for Russia. 65 FR 68121, 68124-68125 (Nov. 14, 2000).

¹³⁶ As discussed in Section III.B.4, because of the risk of double counting, there are separate data for U.S. granular producers and U.S. ingot producers, and because of data limitations there are no combined financial data for all U.S. granular producers. We nonetheless analyze the effects of subject imports from Israel and Russia on the domestic industry as a whole.

¹³⁷ CR at V-16 to V-17, Tables V-5 and V-6; PR at V-9 to V-10, Tables V-5 and V-6.

¹³⁸ Commissioner Bragg notes that the addition of subject imports from China to the injury analysis, pursuant to her decision to cumulate subject imports from China, Israel, and Russia, strengthens the conclusion that subject imports had a significant adverse impact on the domestic industry. Accordingly, Commissioner Bragg determines that there is a reasonable indication of material injury by reason of subject imports from China, Israel, and Russia.

V. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS FROM CHINA¹³⁹

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.¹⁴⁰ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.¹⁴¹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”¹⁴² In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.¹⁴³ 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.”¹⁴⁴

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports from China.

A. Conditions of Competition

Pertinent conditions of competition in the U.S. market for pure magnesium are discussed in Section III.B.1, *supra*.

B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹⁴⁵

Subject imports from China increased by 110.3 percent in volume from 1997 to 1999. The volume of subject imports was 6,269 metric tons in 1997, 9,972 metric tons in 1998, and 13,185 metric tons in 1999.¹⁴⁶ While the volume of subject imports from China in interim 2000 was slightly lower than it was in interim 1999, the volume for the nine month interim period in 2000 (9,374 metric tons) was still

¹³⁹ Commissioner Bragg does not join Section V of this opinion. As discussed above, in performing her injury analysis in these investigations, Commissioner Bragg cumulates subject imports from China, Israel, and Russia.

¹⁴⁰ 19 U.S.C. § 1671b(a) and 1673b(a).

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

¹⁴² 19 U.S.C. § 1677(7)(A).

¹⁴³ 19 U.S.C. § 1677(7)(C)(iii).

¹⁴⁴ 19 U.S.C. § 1677(7)(C)(iii).

¹⁴⁵ 19 U.S.C. § 1677(7)(C)(i).

¹⁴⁶ CR at IV-4, Table IV-3; PR at IV-4, Table IV-3.

considerably higher than it was for the full year of 1997.¹⁴⁷ As a share of U.S. apparent consumption, subject imports from China increased from *** percent in 1997 to *** percent in 1998 to *** percent in 1999.¹⁴⁸

For purposes of these preliminary determinations we find the volume of subject imports from China, both in absolute terms and relative to consumption in the United States, to be significant.

C. Price Effects of the Subject Imports

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

- (I) *there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and*
- (II) *the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.*¹⁴⁹

Prices for subject imports of granular magnesium from China declined significantly during the period of investigation, declining by *** percent in sales to grinders of pure magnesium turnings, and by *** percent in sales to grinders of pure magnesium granules.¹⁵⁰ However, the record does not contain data regarding sales prices for comparable domestic products, since *** of domestic production of granular magnesium is internally consumed by the grinders.¹⁵¹ Thus we do not have specific comparable pricing data regarding price levels for the domestic granular magnesium. However, U.S. grinders and importers reported that Chinese producers, as well as Russian and Israeli producers, led U.S. pure magnesium prices downward.¹⁵² While granular magnesium is a higher value-added product than magnesium ingot, and accordingly would be expected to sell for a higher price, the data show that imported granular magnesium has been selling at prices lower than magnesium ingot in the United States.¹⁵³

Accordingly, we find for purposes of these preliminary determinations that subject imports from China have depressed domestic prices to a significant degree or prevented price increases, which otherwise would have occurred, to a significant degree. We intend to seek additional data in any final phase of these investigations, and to examine the effects of prices of granular magnesium on the prices of magnesium ingot.

D. Impact of the Subject Imports

¹⁴⁷ CR at IV-4, Table IV-3; PR at IV-4, Table IV-3. The volume of subject imports in interim 1999 was 9,663 metric tons. Id.

¹⁴⁸ CR at D-15, Table D-8, PR at D-10, Table D-8. The share of U.S. apparent consumption supplied by subject imports from China was *** percent in both interim 1999 and interim 2000. Id.

¹⁴⁹ 19 U.S.C. § 1677(7)(C)(ii).

¹⁵⁰ CR at V-14; PR at V-8.

¹⁵¹ CR at II-3; PR at II-1 to II-2.

¹⁵² CR at II-3; PR at II-2.

¹⁵³ Conference transcript at 38 (Button); CR at V-8 to V-11, Tables V-1 to V-4; PR at V-6, Tables V-1 to V-4.

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.¹⁵⁴ 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.”^{155 156}

As discussed in Section III.B.4, the domestic industry producing pure magnesium experienced declines during the period of investigation in major indicators such as production, capacity utilization, shipments, sales, number of production and related workers, hours worked, wages paid, operating income and gross profit.¹⁵⁷ As subject imports from China increased, with *** of them shipped to the desulfurization market,¹⁵⁸ the domestic industry’s shipments of magnesium ingot to the desulfurization market segment declined significantly.¹⁵⁹ Thus, the record suggests that the low-priced subject imports from China were substituted for the domestic like product in the desulfurization market, and gained market share at the expense of the domestic industry.

Based on the record in this preliminary phase, we find that the significant and increasing volume of low priced subject imports from China had a significant negative impact on the U.S. industry. Accordingly, we determine that there is a reasonable indication of material injury by reason of subject imports from China.

CONCLUSION

For the foregoing reasons, we determine there is a reasonable indication that an industry in the United States is materially injured by reason of imports of pure magnesium from Israel that are allegedly subsidized, and by reason of imports of pure magnesium from China, Israel, and Russia that are allegedly sold in the United States at less than fair value.

¹⁵⁴ 19 U.S.C. § 1677(7)(C)(iii). See also, SAA at 851, 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” Id. at 885.).

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

¹⁵⁶ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce estimated dumping margins of between 161.36 percent and 305.56 percent for China. 65 FR 68121, 68124 (Nov. 14, 2000).

¹⁵⁷ As discussed in Section III.B.4, because of the risk of double counting, there are separate data for U.S. granular producers and U.S. ingot producers, and because of data limitations there are no combined financial data for all U.S. granular producers. We nonetheless analyze the effects of subject imports from China on the domestic industry as a whole.

¹⁵⁸ CR at IV-8, Table IV-6; PR at IV-6, Table IV-6.

¹⁵⁹ CR at III-15, Table III-5; PR at III-9, Table III-5.

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**CONCURRING VIEWS OF COMMISSIONER THELMA J. ASKEY
CONCERNING IMPORTS FROM RUSSIA**

I find that there is a reasonable indication that a domestic industry producing pure magnesium ingot (“magnesium ingot”) is threatened with material injury by reason of imports from Russia that are alleged to be sold in the United States at less than fair value (“LTFV”). My discussions of the domestic like product, domestic industry, cumulation, conditions of competition and the legal standard for present material injury are contained in the Dissenting Views of Commissioners Marcia E. Miller, Jennifer A. Hillman, and Thelma J. Askey. I write separately to explain my determination that the domestic industry producing magnesium ingot is threatened with material injury by reason of subject imports from Russia.

Threat of Material Injury by Reason of LTFV Imports from Russia

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”² In making my determination, I have considered all factors that are relevant to this investigation.³

Based on an evaluation of the relevant statutory factors, I find that the domestic industry producing magnesium ingot is threatened with material injury by reason of imports of magnesium ingot from Russia that are alleged to be sold in the United States at less than fair value.

The data available in this preliminary investigation show that production capacity in Russia is *** and that the industry has *** available excess capacity. The record shows that the industry’s capacity increased over the POI, increasing from *** metric tons in 1997 to roughly *** metric tons in 1998 and 1999.⁴ Capacity in interim 2000 was higher than in interim 1999 and Russian producers projected a further increase in capacity in calendar years 2000 and 2001 relative to the 1999 level.⁵ The industry’s capacity utilization rate was ***, at roughly *** percent in each full year of the POI.⁶ While Russian exports to the

¹ 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

² 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.” *Metallwerken 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)). See also, *Calabrian Corp. v. United States*, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992) (citing H.R. Rep. No. 98-1156 at 174 (1984)).

³ 19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the product at issue. See, 19 U.S.C. § 1677(7)(F)(i)(I) and (VII).

⁴ CR and PR at Table VII-3.

⁵ In interim 1999, capacity was *** metric tons while it was *** in interim 2000. Capacity is projected to be *** in 2000 and 20001. CR and PR at Table VII-3.

⁶ CR and PR at Table VII-3. Because the Commission only received projected production data from one of the two Russian producers, overall projected capacity utilization for the industry is not available. See, CR and PR at Table VII-3.

United States declined after 1998,⁷ they have been the largest single source of imports into the U.S. market during the period⁸ and, given current capacity utilization levels and projected capacity increases, the Russian producers could ship as much as an additional *** metric tons per year of pure magnesium to the U.S. market. Further, the record shows that Russian producers export the *** of their production, further enhancing the likelihood that excess production may be shipped to the United States.⁹ The record also indicates that the European Union and Brazil each currently have antidumping duty orders in place on imports of pure magnesium ingot from Russia.¹⁰ Thus, it is likely that Russian producers will continue to view the United States as an attractive market given their limited access to these two large markets. Accordingly, I find that there is a reasonable indication that there is existing unused capacity in Russia indicating the likelihood of substantially increased subject imports from Russia into the United States.

Available pricing data show domestic prices declining throughout the period.¹¹ The record also shows Russian import prices declining and consistent underselling by Russian imports throughout the period, by margins of *** percent in most comparisons.¹² Accordingly, based upon the record in the preliminary phase of this investigation, I find that given their current trends, subject imports are likely to continue to undersell the domestic like product in the imminent future, and to suppress or depress prices for U.S. producers to a significant degree and increase demand for further imports from Russia.

I also find that increased volumes of subject imports may have a material adverse effect upon the performance of producers of the domestic like product. While the petitioning company's financial performance during most of the POI was ***¹³ the overall profitability of the industry declined during the period of investigation.¹⁴ Given my finding that subject import volumes are likely to increase and that such increases would have significant adverse depressing or suppressing effects upon domestic prices, there is a reasonable indication in this preliminary investigation that the declines in the industry's financial indicators may continue.¹⁵

⁷ Imports from Russia were 11,140 metric tons in 1997, 12,715 metric tons in 1998 and 9,998 in 1999. Imports declined further in interim 2000 relative to interim 1999, from 8,184 metric tons to 7,439 metric tons. CR and PR at Table D-7.

⁸ See, CR and PR at Table D-7.

⁹ Exports made up at least *** percent of Russian production in each year of the period. CR and PR at Table VII-3.

¹⁰ CR at VII-10, PR at VII-5.

¹¹ See, CR and PR at Tables V-1 & V-2.

¹² See, CR and PR at Table V-1. Imports from Israel also undersold the domestic like product, but by *** margins in most cases and with some instances of overselling. CR and PR at Tables V-1 & V-2. Moreover, imports from Israel were present in substantially smaller volumes than Russian imports. See, CR and PR at Table D-7.

¹³ CR at VI-7, PR at IV-4.

¹⁴ For example, the domestic industry's operating margin declined over the POI, dropping from *** percent in 1997 to *** percent in 1998, to *** percent in 1999 and to *** percent in interim 2000. Gross profits declined by *** percent, dropping from *** in 1997 to *** million in 1999, and dropping by another *** percent comparing interim periods, from *** in interim 1999 to *** in 2000. Inventories increased from *** metric tons in 1997 to *** metric tons in 1999, and a comparison of interim periods showed a further increase. CR and PR at Table D-7.

¹⁵ With respect to inventories of subject merchandise from Russia, data from U.S. importers show end of period inventories fluctuated over the POI: they were *** metric tons in 1997, *** metric tons in 1998, *** metric tons
(continued...)

Therefore, I find that the domestic industry producing magnesium ingot is threatened with material injury by reason of subject imports from Russia.

CONCLUSION

For the reasons stated above, I determine that the domestic industry producing pure magnesium ingot is threatened with material injury by reason of imports of pure magnesium ingot from Russia that are alleged to be sold in the United States at less than fair value.

¹⁵ (...continued)
in 1999, and they stayed constant comparing interim periods. CR and PR at Table VII-4. Available data show that Russian producers' inventories have been *** during the POI. See CR and PR at Table VII-3.

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**DISSENTING VIEWS OF COMMISSIONERS MARCIA E. MILLER,
JENNIFER A. HILLMAN, AND THELMA J. ASKEY**

Based on the record in these investigations, we find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of granular magnesium from China that are allegedly sold in the United States at less than fair value (“LTFV”), and imports of pure magnesium ingot from Israel that are allegedly sold in the United States at LTFV and imports of pure magnesium ingot from Israel that are alleged to be subsidized by the Government of Israel.¹ We also find that imports of pure granular magnesium from Russia and Israel that are allegedly sold at LTFV, and imports pure granular magnesium from Israel that are alleged to be subsidized by the Government of Israel, are negligible.

We note at the outset that this is the third time in 2000 that the Commission has evaluated the effects of imports of pure magnesium.² Accordingly, we have before us not only the record in these preliminary investigations, but the public records of the two prior sunset reviews on Canada and China as well. Thus the record in these preliminary investigations, which is more complete than is the case with some of our preliminary investigations, is supplemented by data from the prior reviews, providing us with a large quantity of probative information for our analysis.

I. The Legal Standard For Preliminary Determinations

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.³ In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”⁴

II. Domestic Like Product

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of subject merchandise, the Commission must first define the “domestic like product” and the “industry.” Section 771(4)(A) of the Tariff Act of 1930 (“the Act”) defines the relevant industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of the domestic like product constitutes a major proportion of the total domestic production of that

¹ There is no issue in these investigations regarding whether there is a reasonable indication that a domestic industry is materially retarded by reason of subject imports.

² See, *Pure Magnesium from China*, Inv. No. 731-TA-696 (Review), USITC Pub. 3346 (Aug. 2000); *Magnesium from Canada*, Inv. Nos. 701-TA-309-A-B and 731-TA-528 (Review), USITC Pub. 3324 (July 2000).

³ 19 U.S.C. § 1673b(a); see also *American Lamb Co. v. United States*, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); *Aristech Chemical Corp. v. United States*, 20 CIT 353, 354 (1996).

⁴ *American Lamb*, 785 F.2d at 1001 (Fed. Cir. 1986); see also *Texas Crushed Stone Co. v. United States*, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

product.”⁵ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with the article subject to an investigation.”⁶ The Commission’s decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁷ Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise alleged to be sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.⁸ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁹ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁰

In its notices of initiation, Commerce defined the imported merchandise from Israel and Russia within the scope of these investigations as including “imports of pure magnesium products,¹¹ regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes,” while the imported merchandise from China within the scope of the investigation includes all of the foregoing, except pure magnesium that is already covered by an existing

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(10).

⁷ See, e.g., *NEC Corp. v. United States*, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); *Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995); *Torrington Co. v. United States*, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes, and production employees; (5) customer or producer perceptions; and, where appropriate, (6) price. See, e.g., *Nippon*, 19 CIT at 455 n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation.

⁸ *Hosiden Corp. v. Advanced Display Manufacturers*, 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); *Torrington*, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

⁹ *Nippon Steel*, 19 CIT at 455; *Torrington*, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹⁰ *Hosiden Corp. v. Advanced Display Mfrs.*, 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); *Torrington*, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹¹ Pure magnesium includes: (1) products that contain at least 99.95 percent primary magnesium, by weight (“ultra-pure” magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (“pure” magnesium); and (3) products that contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, and that do not conform to an ASTM Specification for Magnesium Alloy (“off-specification pure” magnesium). Confidential Staff Report, as amended by memorandum INV-X-245, Nov. 27, 2000 and INV-X-246, Nov. 27, 2000 (“CR”), at I-8; Public Staff Report (“PR”) at I-7.

order, and classifiable under 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedules of the United States.¹² Thus, the scope for China excludes magnesium ingot.

Applying the Commission's traditional six-factor test,¹³ we define two domestic like products, namely pure magnesium ingot and pure granular magnesium.¹⁴

Physical characteristics and uses. Pure magnesium ingot and pure granular magnesium share some characteristics, but differ in size, dimensions, and shape.¹⁵ These differences result in varied characteristics and, consequently, in different end uses.

Pure magnesium ingot and pure granular magnesium have the same chemical composition. Whether in the ingot or granular form, pure magnesium (except "off-specification pure" magnesium) contains at least 99.8 percent magnesium by weight, is light weight, and has special metallurgical and chemical properties.¹⁶

Commonly produced by an electrolytic process (by Magnesium Corporation of America, or "Magcorp") or a silcothermic process (by Northwest Alloys, or "Northwest") in the United States, molten magnesium metal is refined and typically cast into ingots or slabs.¹⁷ Magnesium ingot is commonly used in the manufacture of aluminum alloys, often for use in beverage cans and in some automotive parts. Aluminum producers typically purchase pure magnesium ingot cast in larger shapes such as rounds, billets, peg-lock ingots or T-shapes.¹⁸ Magnesium ingots are also used in magnesium anodes for the protection of iron and steel in underground pipe and water tanks and various marine applications.¹⁹ Finally, smaller ingots

¹² CR at I-8; PR at I-6-7.

¹³ The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes, and production employees; (5) customer or producer perceptions; and, where appropriate, (6) price. *See, e.g., Nippon*, 19 CIT at 455 n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation.

¹⁴ We note that the Israeli respondents urged the Commission to include alloy magnesium with both pure ingot and pure granular magnesium in a single domestic like product, although their arguments were not well-developed. Dead Sea Magnesium ("DSM") and Government of Israel postconference brief at 14. The Commission in its recent decision concerning Canada addressed that issue, concluding that alloy and pure magnesium represent two distinct like products. *Magnesium from Canada*, Inv. Nos. 701-TA-309-A-B and 731-TA-528 (Review), USITC Pub. 3324 (July 2000). Nothing in this record leads us to reach a different conclusion.

¹⁵ CR at I-14; PR at I-10. Previous investigations have distinguished granular from magnesium ingot based upon size; granular magnesium being characterized as being of a maximum dimension of one inch. *Pure Magnesium from China*, Inv. No. 731-TA-696 (Review), USITC Pub. 3346 (Aug. 2000) at 5; *Magnesium from Canada*, Inv. Nos. 701-TA-309-A-B and 731-TA-528 (Review), USITC Pub. 3324 (July 2000) at 5-6; *Magnesium from China, Russia, and Ukraine*, Inv. Nos. 731-TA-696-698 (Final), USITC Pub. 2885 (May 1995) at 7-9. *See also Continuation of Antidumping Duty Order: Pure Magnesium from the People's Republic of China*, 65 Fed. Reg. 64422, 64423 (Oct. 27, 2000) ("[G]ranular primary magnesium (including turnings, chips and powder), having a maximum physical dimension (*i.e.*, length or diameter) of one inch or less, . . .").

¹⁶ CR at I-9 to I-10, I-14; PR at I-8 and I-10.

¹⁷ CR at I-11 to I-12; PR at I-8 to I-9.

¹⁸ CR at I-10 to I-12; PR at I-8 to I-9.

¹⁹ CR at I-10; PR at I-8.

or magnesium chips are used to produce granular magnesium through a grinding process.²⁰

Granular magnesium consists of pieces in various sizes (including raspings, turnings, granules, chips, and powders) that are produced from the machining or grinding of magnesium ingots or billets. Granular magnesium's primary end use is in steel desulfurization, for which it is blended with other desulfurizing agents (*e.g.*, lime and calcium carbide) to produce a desulfurizing reagent. Granular magnesium is also used in defense applications, such as military ordnance and flares, and is sold to chemical companies and pharmaceutical manufacturers.²¹

Granular magnesium is much more volatile than magnesium ingot. In producing granular magnesium, the particle size is finely reduced, and such particles are highly reactive, and will emit explosive hydrogen gas when they come into contact with moisture. Because of this volatility, granular magnesium must be treated with special precautions during the production process and in any shipping and handling processes.²²

In sum, magnesium ingot and granular magnesium share the same fundamental chemical composition in that they are both pure magnesium. However, there are also significant physical differences, including size and reactivity (which are essential to granular magnesium's use in desulfurization), and because of those differences, there are significant differences in end uses for ingot and granular magnesium.

Manufacturing Facilities and Employees. There is essentially no overlap between the two domestic producers of magnesium ingot and the six domestic producers of granular magnesium, and there are no common manufacturing facilities, equipment, or production employees used to produce both magnesium ingot and granular magnesium.²³

Petitioners state that this lack of overlap in manufacturing facilities and employees is a result of the historical separation between the producers of magnesium ingot and the grinders/producers of granular magnesium because of the latter's focus on providing technical services to the steel desulfurization market, not because of differences in the products or any technical complexity in producing granular magnesium.²⁴ Magcorp contends that it could add a state of the art grinding operation to its existing ingot plant for about \$2 million, which it characterizes as a relatively small investment (as compared to \$500 million to establish a new ingot facility).²⁵

²⁰ CR at I-12; PR at I-9.

²¹ CR at I-10, I-14 to I-16, II-1, Table III-5; PR at I-8 and I-10 to I-12, II-1, Table III-5.

²² Conference transcript at 78-79 (Tomer).

²³ Magcorp produces a small amount *** of granular magnesium (raspings, chips, turnings, etc.) as a result of its ingot finishing operations. Magcorp does not commercially sell any of the granular magnesium it produces. CR at I-14 and III-3; PR at I-11 and III-2; Conference transcript at 56 (Dorn); Petitioners' postconference brief at 7.

²⁴ Petitions, Volume I, at 42-43.

²⁵ Conference transcript at 15 (Legge).

Rossborough disputes this, contending that the \$2 million figure is much too low and does not take into account any activities beyond simple grinding.²⁶ Much of the grinders' additional work involves not simply the production of granular magnesium, but rather the production of a further downstream product, a desulfurization reagent mix, of which granular magnesium is one component.²⁷ Further, granular producers require not only grinding equipment but also specialized material handling equipment.²⁸

In sum, in the United States there is essentially no current overlap in facilities and employees in the production of granular magnesium and magnesium ingot. While the record suggests that while it might not be particularly difficult or costly for domestic ingot producers to add facilities to their plants to produce granular magnesium, they have not done so.

Interchangeability. *** contend that ingot and granular magnesium are always interchangeable, since granular magnesium is produced from ingot. However, *** of the granular magnesium producers stated that these products are not readily interchangeable in actual use.²⁹

Petitioners contend that granular magnesium is technically interchangeable with magnesium ingot, and could replace ingot in virtually every possible end use.³⁰ They note that granular magnesium is currently being substituted for magnesium ingot ***, and allege the ability to substitute in other traditional ingot applications.³¹ Rossborough states that ingot is not used and cannot practicably be used for steel desulfurization, the predominant use of granular magnesium.³²

Ingot cannot be used for steel desulfurization without first converting to granular form and there has been limited use of direct injection technology (which uses magnesium powder instead of ingot for aluminum alloying) by the aluminum industry.³³ Thus, there is little current interchangeability between granular and ingot. Granular can be used, but generally is not used, for some ingot applications. Ingot cannot be used for granular applications without being ground into granular form.

²⁶ Conference transcript at 84 (Tomer).

²⁷ CR and PR at II-1; Rossborough's postconference brief at 21. There is no contention that the Commission should expand its like product definition "downstream" to include such reagents. The Commission generally has not included in the domestic like product downstream articles not in the scope, although it has entertained the possibility of doing so in at least certain circumstances. *See, e.g., Creatine Monohydrate from the People's Republic of China*, Inv. No. 731-TA-814 (Preliminary) USITC Pub. 3177 (Apr. 1999) at 5; *Beryllium Metal and High-Beryllium Alloys from Kazakhstan*, Inv. No. 731-TA-746 (Final) USITC Pub. 3019 (Mar. 1997) at 5. Rossborough contends that those reagents would be, if imported, within the scope of the petitions. Rossborough's postconference brief at 1. However, the record does not indicate that these reagents are indeed within the scope of these investigations. They typically contain 90 percent or less magnesium. CR at I-10; PR at I-8.

²⁸ Remacor's postconference brief at 6.

²⁹ CR at I-14, II-14; PR at I-11 and II-8.

³⁰ Conference transcript at 25 (Kaplan).

³¹ Petitions, Vol. I, at 41; Petitioners' postconference brief at 5-6.

³² Rossborough's postconference brief at 16.

³³ CR at I-14; PR at I-10 to I-11.

Customer and Producer Perceptions. Because of the differences in end uses and customers for ingot and granular magnesium, there are corresponding differences in producer and customer perceptions.³⁴ The ingot producers perceive granular and ingot as the same product, at different levels of processing, while granular producers largely perceive them as different products.³⁵

Channels of Distribution. As noted above, granular magnesium and magnesium ingot are sold to largely different end users, and the channels of distribution reflect those differences. A *** of U.S. producers' shipments of pure magnesium ingot were transferred to related firms, accounting for *** percent of domestic shipments in 1999.³⁶ *** share of U.S. grinders' total shipments of pure granular magnesium was internally consumed, accounting for *** percent of shipments in 1999.³⁷ This internal consumption reflects the fact that the granular magnesium produced by the grinders is then used by them as the primary active ingredient to produce steel desulfurizing reagents;³⁸ these desulfurizing reagents are then shipped to the end user in the steel industry.³⁹ Safety precautions are required in transporting granular magnesium (powder) because of its volatility, and it is loaded, delivered, and offloaded under a nitrogen blanket, while magnesium ingot requires no such precautions.⁴⁰

Price. The record contains limited data concerning pricing, largely because most granular magnesium is internally consumed. However, there are obviously costs associated with grinding magnesium ingot into granular form, which Rossborough estimates to be six to fifteen cents per pound, and historically granular magnesium has carried a higher price reflecting those costs.⁴¹ Rossborough contends that the pricing relationship in the United States is currently skewed by the existence of antidumping duties against imports of magnesium ingot from China, and that world prices reflect a 15-20 percent premium for granular over ingot in accordance with the additional costs incurred in producing granular magnesium.⁴²

³⁴ CR at I-14; PR at I-10 to I-11. While the Commission did not send out purchaser questionnaires in these preliminary investigations, the purchasers of pure magnesium ingot are largely the grinders, who all responded with producer questionnaires. Accordingly, the Commission received substantial purchaser information concerning pure magnesium ingot.

³⁵ CR at I-13 to I-14; PR at I-10 to I-11. Grinders are purchasers of ingot, then producers of granular from that ingot, and then internal consumers of much of the granular that they have produced, which they use to produce desulfurizing reagent although the grinders do sell some granular magnesium directly to end users such as chemical companies. CR at I-15 n. 39, I-16; PR at I-11 n. 39, I-12. In most cases, the steel industry end user does not actually purchase granular magnesium, but rather purchases the reagent (Conference transcript at 81-82 (Leibowitz, Tomer)) and to that extent the steel industry's perceptions would not be relevant to our like product analysis. The relevant question goes to the perceptions of producers and customers of ingot and granular magnesium, not to the perceptions of producers and customers of the reagent end-use product.

³⁶ CR at II-1 to II-2; PR at II-1. ***, which accounted for *** percent of Northwest's 1999 U.S. shipments.

³⁷ CR at II-3; PR at I-2.

³⁸ CR at I-16, II-1; PR at I-12, II-1.

³⁹ CR at I-15 n.39, II-1; PR at I-11, n.39, II-1; Conference transcript at 81-82 (Leibowitz, Tomer).

⁴⁰ Conference transcript at 83 (Tomer).

⁴¹ Rossborough's postconference brief at 22; Petitions, Vol. I, at 41. It appears to be undisputed however, that granular imports from China are currently selling at prices lower than those for magnesium ingot. Conference transcript at 46 (Jones); Rossborough's postconference brief at 22.

⁴² Rossborough's postconference brief at 22.

The evidence with respect to several of our like product factors indicates some similarities between granular and ingot magnesium. However, the weight of the evidence on the record shows sufficient differences to indicate that pure ingot and pure granular magnesium represent two distinct like products. Thus, we find two like products, pure granular magnesium and pure magnesium ingot.⁴³

III. Pure Granular Magnesium

A. Domestic Industry

Section 771(4)(A) of the Act defines the relevant 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. . . .”⁴⁴ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.⁴⁵

We consider whether producers of granular magnesium, known as grinders, are appropriately included in the domestic industry. In deciding whether a firm qualifies as a domestic producer, the Commission generally has analyzed the overall nature of a firm's production-related activities in the United States and considered six factors:

- (1) source and extent of the firm’s capital investment;
- (2) technical expertise involved in U.S. production activities;
- (3) value added to the product in the United States;
- (4) employment levels;
- (5) quantity and type of parts sourced in the United States; and
- (6) any other costs and activities in the United States directly leading to production of the like product.

No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation.⁴⁶

In these investigations, petitioners argued that U.S. companies that grind magnesium ingot into granular magnesium do not meet any of these criteria, and therefore should not be included in the

⁴³ We note that this result is consistent with prior Commission practice. See *Pure Magnesium from China*, Inv. No. 731-TA-696 (Review), USITC Pub. 3346 (Aug. 2000) at 5; *Magnesium from Canada*, Inv. Nos. 701-TA-309-A-B and 731-TA-528 (Review), USITC Pub. 3324 (July 2000) at 5-6; *Magnesium from China, Russia, and Ukraine*, Inv. Nos. 731-TA-696-698 (Final), USITC Pub. 2885 (May 1995) at 7-9.

⁴⁴ 19 U.S.C. § 1677(4)(A).

⁴⁵ See e.g., *Certain Carbon Steel Plate from China, Russia, South Africa and Ukraine*, Inv. Nos. 731-TA-753-756 (Final), USITC Pub. 3076 at 9 (Dec. 1977).

⁴⁶ See *Citric Acid and Sodium Citrate from China*, Inv. No. 731-TA-863 (Preliminary), USITC Pub. 3277 at 8 (Feb. 2000); *Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea*, Inv. Nos. 701-TA-387-391, 731-TA-816-821 (Final), USITC Pub. 3273 at 9 (Jan. 2000).

domestic industry.⁴⁷ Rossborough, a domestic producer of granular magnesium, contends that its grinding operations constitute domestic production.⁴⁸

Several producers of granular magnesium provided information on the value added in converting ingots and chips into granular magnesium. The two different methods employed by the granular producers add value ranging from *** to *** percent for traditional grinding and from *** to *** percent for a more complex process. There were fewer production and related workers than was the case for the ingot producers, but the number of workers was not insubstantial, with *** workers in 1999.⁴⁹ Capital expenditures also were far less than for the magnesium ingot producers, but exceeded *** in 1999, with total assets of ***.⁵⁰ On balance, while we recognize that it is difficult for the granular producers to fully separate out their data as it relates to production of granular magnesium compared to production of the desulfurizing reagent that they sell, we find that the production-related activities of the granular magnesium producers are sufficient to constitute domestic production. We thus define the domestic granular magnesium industry to include all producers of the like product, ***.

B. Related Parties

Section 771(4)(B) of the Act allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or that are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.⁵¹ In these investigations, petitioners alleged that all domestic producers of granular magnesium are related parties and that appropriate circumstances exist to exclude them from the domestic industry.⁵² Rossborough argued that petitioners themselves are not producers of granular magnesium.⁵³

⁴⁷ Petitioners' postconference brief at 12-17.

⁴⁸ Rossborough's postconference brief at 29-31.

⁴⁹ CR/PR at Table III-9.

⁵⁰ CR/PR at Table VI-11.

⁵¹ *Sandvik AB v. United States*, 721 F. Supp. 1322, 1331-32 (CIT 1989), *aff'd without opinion*, 904 F.2d 46 (Fed. Cir. 1990); *Empire Plow Co. v. United States*, 675 F. Supp. 1348, 1352 (CIT 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (CIT 1992), *aff'd without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan*, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

⁵² Petitioners' postconference brief at 17.

⁵³ Rossborough's postconference brief at 32.

Three producers, ***, directly imported subject granular magnesium during the investigation period. Further, ***. Thus, these companies are related parties under 19 U.S.C. § 1677(4)(B)(i).⁵⁴ We consider whether appropriate circumstances exist to exclude any of these companies from the domestic industry.

*** is the *** domestic producer of granular magnesium, accounting for *** percent of domestic production in 1999 and *** percent in interim 2000. Its ratio of imports/purchases of subject merchandise to domestic production was *** percent in 1999 and *** percent in interim 2000.⁵⁵ *** stated that its reason for importing was “to remain competitive and to have an adequate supply of magnesium.”⁵⁶

*** is the *** largest domestic producer of granular magnesium, and accounted for *** percent of domestic production in 1999 and *** percent in interim 2000.⁵⁷ ***, when it imported *** metric tons of Chinese granular magnesium. The ratio of its subject imports to its production was *** percent for interim 2000.⁵⁸

*** is the *** largest producer of granular magnesium, accounting for *** percent of domestic production in 1999 and *** percent in interim 2000.⁵⁹ Its total imports and purchases of subject imports were *** metric tons in 1999 and *** metric tons in 2000,⁶⁰ resulting in a ratio of imports/purchases of subject granular merchandise to production of *** percent in 1999 and *** percent in interim 2000.⁶¹ ***⁶² *** stated that ***.⁶³

We do not find that appropriate circumstances exist to exclude any of these companies from the domestic industry. The three related parties represent *** of domestic production. We also note that their position on the petition ***. While their imports and purchases of subject imports ***,⁶⁴

C. Negligible Imports of Granular Magnesium

Imports from a subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.⁶⁵ The statute further provides that imports from a single country that comprise less than 3 percent of total imports of such merchandise may not be considered negligible if there are several countries subject to investigation with

⁵⁴ *** also purchased subject imports, but since these purchases totaled only very small volumes and there is no evidence that these companies otherwise control large volumes of imports, we do not find that these companies are related parties.

⁵⁵ CR at III-4-III-8; PR at III-3 to III-5.

⁵⁶ ***.

⁵⁷ CR at III-4-III-8; PR at III-3 to III-5.

⁵⁸ CR/PR at Table III-7.

⁵⁹ CR at III-4-III-8; PR at III-3 to III-5.

⁶⁰ CR/PR at Table III-7.

⁶¹ See CR/PR at Table III-7.

⁶² CR at III-4-III-8; PR at III-3 to III-5.

⁶³ ***.

⁶⁴ CR/PR at Table III-7.

⁶⁵ 19 U.S.C. § 1677(24)(A)(i)(I).

negligible imports and the sum of such imports from all those countries in the aggregate accounts for more than 7 percent of the volume of all such merchandise imported into the United States.⁶⁶

The statute also provides that, even if imports are found to be negligible for purposes of present material injury, they shall not be treated as negligible for purposes of a threat analysis should the Commission determine that there is a potential that imports from the country concerned will imminently account for more than 3 percent of all such merchandise imported into the United States, or that there is a potential that the aggregate volumes of imports from the several countries with negligible imports will imminently exceed 7 percent of all such merchandise imported into the United States.⁶⁷ By operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.⁶⁸

There were no subject granular magnesium imports from Israel and Russia over the period of investigation.⁶⁹ Thus, these imports are negligible under the statute for purposes of a present material injury determination. The lack of any subject imports over the period of investigation makes it highly unlikely that subject imports from either country will imminently exceed three percent of total imports. There is no indication on the record of any capacity in Israel for production of granular magnesium, and we therefore do not find that subject imports from Israel will imminently exceed three percent of total imports. Russian producers have a small capacity, *** metric tons, for granular pure magnesium production.⁷⁰ Given the absence of any imports of Russian granular magnesium and the low level of Russian capacity for this product, we find no potential that subject imports from Russia will imminently exceed three percent of total imports.

Thus, we find subject imports of pure granular magnesium from both Israel and Russia to be negligible for purposes of analysis of both present material injury and threat of material injury.

D. No Reasonable Indication of Material Injury by Reason of Allegedly LTFV Imports

In the preliminary phase of antidumping duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.⁷¹ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁷² The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."⁷³ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we

⁶⁶ 19 U.S.C. § 1677(24)(A)(ii).

⁶⁷ 19 U.S.C. § 1677(24)(A)(iv).

⁶⁸ 19 U.S.C. § 1671b(a)(1), 19 U.S.C. § 1673b(a)(1).

⁶⁹ CR/PR at Table IV-3.

⁷⁰ CR/PR at Table VII-3.

⁷¹ 19 U.S.C. § 1673b(a).

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

⁷³ 19 U.S.C. § 1677(7)(A).

consider all relevant economic factors that bear on the state of the industry in the United States.⁷⁴ 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.”⁷⁵

For the reasons discussed below, we determine that there is no reasonable indication that the domestic industry producing granular pure magnesium is materially injured by reason of subject imports from China that are allegedly sold in the United States at less than fair value.

1. Conditions of Competition

The main use of granular pure magnesium is to produce desulfurizing reagents for steelmaking.⁷⁶ These reagents consist of granular magnesium in powder form blended with other desulfurizing agents.⁷⁷ The other notable market for pure granular magnesium is the chemicals industry, which accounted for less than *** percent of granular magnesium commercial sales throughout the period of investigation.⁷⁸ Most production by domestic grinders consists of production of pure magnesium powder either by grinding down ingot or other forms of granular magnesium, such as chips and granules. Most of this powder is then used by the same grinder to produce its downstream desulfurization reagents.⁷⁹

The vast majority of domestically produced granular magnesium is captively consumed. Over the period of investigation, between *** and *** percent of U.S. producers’ shipments were internally consumed, in all cases by grinders that also produced downstream reagents for steel desulfurization.⁸⁰

Apparent consumption of granular pure magnesium has declined very slightly over the period of investigation, initially rising from 42,711 metric tons in 1997 to 43,533 metric tons in 1998, but then declining to 42,422 metric tons in 1999. Consumption was 30,625 metric tons in interim 2000, compared to 31,226 metric tons in interim 1999.⁸¹

⁷⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁷⁵ 19 U.S.C. § 1677(7)(C)(iii).

⁷⁶ In 1997, *** percent of total U.S. producers’ granular magnesium sales were to the desulfurization market; the figure was *** percent in 1998, *** percent in 1999, and *** percent in interim 2000. CR at III-13; PR at III-10.

⁷⁷ CR at I-10; PR at I-8.

⁷⁸ CR at III-13; PR at III-10.

⁷⁹ A small percentage of domestic shipments, roughly *** percent over the period of investigation, is of turnings, chips, and other forms of granular magnesium besides powder. CR/PR at Table III-4.

⁸⁰ CR at II-3; PR at II-2. No party has raised the issue of whether the captive production provision, 19 U.S.C. § 1677(7)(C)(iv) applies to the pure granular magnesium industry. We have, however, taken the high percentage of captive production into account as a condition of competition.

⁸¹ CR/PR at Table C-2.

Over the period of investigation, domestic grinders have increased their imports of granular magnesium, both subject and nonsubject. These grinders' subject imports and purchases of subject imports totaled *** metric tons in 1997, *** metric tons in 1998, and *** metric tons in 1999; they were *** metric tons in interim 2000, compared to *** metric tons in interim 1999.⁸² Their nonsubject imports rose from *** metric tons in 1997 to *** metric tons in 1998 and *** metric tons in 1999; they were *** metric tons in interim 2000 compared to *** metric tons in interim 1999.⁸³ Nearly *** of the subject imports were used for production of desulfurization reagents; the remainder (less than *** percent) were used ***.⁸⁴

Nonsubject imports of granular pure magnesium, almost entirely from Canada, have increased over the period examined, both in absolute volume and as a share of domestic apparent consumption. Nonsubject imports rose from 5,102 metric tons in 1997 to 5,433 metric tons in 1999. Nonsubject import volume was substantially higher in interim 2000 (5,358 tons) than in interim 1999 (3,386 tons). Nonsubject market share (by volume) rose from 11.9 percent in 1997 to 12.8 percent in 1999, and was 17.5 percent in interim 2000 compared to 10.8 percent in interim 1999.⁸⁵

2. Volume

Section 771(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."⁸⁶ The volume of subject imports of granular magnesium from China increased over the period of investigation, rising from 6,269 metric tons in 1997 to 13,185 metric tons in 1999. Subject import volume was lower in interim 2000, at 9,374 metric tons, than in interim 1999, when it was 9,663 metric tons. As a share of apparent U.S. consumption (by volume), subject imports rose from 14.7 percent in 1997 to 31.1 percent in 1999, but was essentially the same in interim 2000 (30.6 percent) as in interim 1999 (30.9 percent).⁸⁷ We find the volume and market share of the subject imports to be significant.

3. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁸⁸

⁸² CR/PR at Table III-7.

⁸³ Questionnaire Responses of ***. Grinders had no purchases of imports from nonsubject sources.

⁸⁴ CR/PR at Table IV-6 and Questionnaire Response of ***.

⁸⁵ CR/PR at Table C-2.

⁸⁶ 19 U.S.C. § 1677(7)(C)(i).

⁸⁷ CR/PR at Table C-2.

⁸⁸ 19 U.S.C. § 1677(7)(C)(ii).

There is little open-market pricing for granular pure magnesium, because a large portion of domestic production is captively consumed (ranging from *** to *** percent over the period of investigation).⁸⁹ Thus, *** of producers' shipments are effectively insulated from price effects. In addition, the *** of subject imports are imported or purchased by the granular magnesium producers themselves.⁹⁰ These producers grind either granular or ingot magnesium into other forms, mostly powder, which is then either sold in the open market or used to produce downstream products, mainly desulfurization reagents. All the subject imports were used in production of desulfurization reagents or ***.⁹¹

The record indicates that subject import prices declined over the period of investigation.⁹² However, no meaningful price comparisons are possible because substantially all the subject imports consist solely of turnings and granules sold to grinders, whereas open market shipments by domestic producers consist almost entirely of other forms (powders and chips) sold to end users. Moreover, all subject imports are used for either production of desulfurization reagents or ***;⁹³ there is no direct competition with the product of the domestic grinders that is sold on the open market for other uses.

Because of the lack of direct competition between subject imports and domestic producers' end-products, and the fact that the domestic producers are themselves the purchasers of *** of the subject imports, we find there is no significant underselling and that the subject imports did not adversely affect prices for the domestic like product to a significant degree.⁹⁴

4. Impact

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.⁹⁵ 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

⁸⁹ CR at II-3, PR at II-2.

⁹⁰ *Compare* Importers' and Producers' Questionnaire Responses of Grinders with CR/PR at Table C-2 (containing Census import data). The record contains no indication that end users other than grinders imported or purchased subject merchandise.

⁹¹ CR/PR at Table IV-6 and Questionnaire Response of ***.

⁹² CR/PR at Table V-4.

⁹³ CR/PR at Table IV-6 and Questionnaire Response of ***.

⁹⁴ No domestic producer of pure granular magnesium has made any specific allegations of lost sales or lost revenues with respect to granular magnesium. *** lost sales allegations were related to sales of its magnesium-based reagents, not pure granular magnesium.

⁹⁵ 19 U.S.C. § 1677(7)(C)(iii). *See also* Statement of Administrative Action ("SAA") at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.")

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.”^{96 97}

A significant factor in our analysis is the position the domestic industry has taken on the petition.
***.⁹⁸

We do not find that the subject imports had a material adverse impact on the domestic industry. Because most granular magnesium produced in the United States is internally consumed, the domestic producers are able to provide only limited meaningful data, especially with respect to sales value and profit/loss.⁹⁹ The data on the record indicate varied levels of performance among the individual producers.¹⁰⁰

Several indicators of the industry’s condition fell over the period of investigation,¹⁰¹ while capital expenditures rose¹⁰² and inventories remained at low levels.¹⁰³ However, the declines in certain indicators occurred as these producers were increasing their imports of the larger forms of granular magnesium, e.g., granules and chips, either from China or from nonsubject sources. Thus, while there may have been some curtailment of their own production, these same producers benefitted from imported granular magnesium, which they used to produce other granular products, such as magnesium powder. Thus, we cannot conclude that the imports are having a negative impact on the domestic industry. Rather, they are reducing costs for these producers in their production of downstream products, reducing the amount of processing necessary, and ensuring adequate supply of the raw material.

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

⁹⁷ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce identified estimated dumping margins based on export price to normal value comparisons ranging from 161.36 to 305.56 percent. 65 Fed. Reg. at 68,124.

⁹⁸ CR/PR at Table III-1. Rossborough and Remacor also stated that antidumping duties could injure the granular magnesium industry. Rossborough’s postconference brief at 9, 12; Remacor’s postconference brief at 1.

⁹⁹ We note that these data limitations result from the nature of the producers’ operations, and not from the limited time available to gather data in this preliminary investigation.

¹⁰⁰ For example, while sales declined for ***, they increased for ***. Only two producers, ***, could provide operating income/loss information for the entire period of investigation. *** operating income rose ***, from *** in 1997 to *** in 1999, although it was lower in interim 2000, at ***, than in interim 1999, when it was ***. *** operating income fell from *** in 1997 to *** in 1999. However, *** operating income was *** in interim 2000, compared to *** in interim 1999. We also note that *** sales volume declined because ***.

¹⁰¹ The industry’s capacity fell from 59,431 metric tons in 1997 to 57,435 metric tons in 1999. Production fell from 31,461 metric tons in 1997 to 23,827 metric tons in 1999, and capacity utilization fell from 52.9 percent in 1997 to 41.5 percent in 1999. CR /PR at Table III-2. U.S. shipments fell from 31,340 metric tons in 1997 to 23,804 metric tons in 1999. However, open-market shipments rose from *** metric tons in 1997 to *** metric tons in 1999. CR/PR at Table IV-9. The industry’s share of the total market fell from 73.4 percent in 1997 to 56.1 percent in 1999. CR at Table IV-12. Employment declined from 193 production and related workers in 1997 to 168 in 1999. CR/PR at Table III-9.

¹⁰² Capital expenditures rose from *** in 1997 to *** in 1998, then declined to *** in 1999. They were *** in interim 2000 compared to *** in interim 1999. R&D expenses fell over the period of investigation, but were fairly low throughout the period. CR/PR at Table VI-11

¹⁰³ CR/PR at Table III-8.

Therefore, based on the record in these investigations, we find that there is no reasonable indication that an industry in the United States is materially injured by reason of imports of granular pure magnesium from China that are allegedly sold in the United States at less than fair value.

E. No Reasonable Indication of Threat of Material Injury by Reason of Allegedly LTFV Imports

Section 771(7)(F) of the Act directs the Commission to determine whether the domestic industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹⁰⁴ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”¹⁰⁵ In making our determination, we have considered all factors that are relevant to this investigation.¹⁰⁶ Based on an evaluation of the relevant statutory factors, we find that there is no reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports from China.

As was the case with our present material injury analysis, a significant factor in our analysis of threat is the position the domestic industry has taken on the petition.

The record indicates that there may be unused production capacity in China to produce granular magnesium. In particular, there are a large number of magnesium producers in China, and exports of granular magnesium from China have been increasing over the period of investigation, both to the United States and to other export markets.¹⁰⁷ There is also potential for product-shifting, as a relatively low level of investment is required for producers of magnesium ingot to shift to production of granular magnesium. The record overall indicates that the recent increase in subject imports to the United States is likely to continue.

Inventories of subject imports increased from *** metric tons in 1997 to *** metric tons in 1998, but then fell to *** metric tons in 1999. Inventories were higher in interim 2000, at *** metric tons, than in interim 1999, when they were *** metric tons.¹⁰⁸

As discussed above, due to the nature of the market for this product, especially the large share of subject imports consumed by the industry itself, we do not find it likely that imports of subject merchandise will significantly depress or suppress domestic prices. The domestic industry, which produces various forms of granular magnesium, predominantly in powder magnesium form, as well as downstream products such as

¹⁰⁴ 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

¹⁰⁵ 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.” *Metallwerken 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). See also *Calabrian Corp. v. United States*, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

¹⁰⁶ 19 U.S.C. § 1677(7)(F)(I). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the product at issue. See, 19 U.S.C. § 1677(7)(F)(I)(I) and (VII).

¹⁰⁷ CR at VII-3, PR at VII-2. Because only two producers in China provided presentable data in response to the Commission’s questionnaire, our analysis of the industry in China is based primarily on publicly available information.

¹⁰⁸ CR/PR at Table C-2.

desulfurization reagents, has been benefitting from subject imports of the granular magnesium. Because subject imports ensure an adequate supply of the raw material and will provide cost savings to the domestic producers, we do not find any likely negative effect on the existing development and production efforts of the domestic industry. Nor do we find any other demonstrable trends indicating a likely threat of material injury. Rather, given the benefits domestic producers gain from importing subject merchandise, including reduced costs and increased supply, we find that the opposite effect is most likely.

Thus, we find that the domestic industry producing pure granular magnesium is not threatened with material injury by reason of subject imports from China.

IV. Pure Magnesium Ingot

A. Domestic Industry

Section 771 (4)(A) of the Act defines the relevant 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 . . .”¹⁰⁹ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.¹¹⁰ Thus, we define the domestic ingot magnesium industry to be Magcorp and Northwest.¹¹¹

B. Cumulation

Section 771(7)(G)(i) of the Act provides the general rule for cumulation for determining material injury.¹¹² This rule requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such subject imports compete with each other and with the domestic like product in the U.S. market.¹¹³ The statute provides an exception to cumulation for determining material injury with respect to subject imports from Israel.¹¹⁴ As we discuss below, because we find no reasonable indication of material injury or threat of

¹⁰⁹ 19 U.S.C. § 1677(4)(A).

¹¹⁰ See e.g., *Certain Carbon Steel Plate from China, Russia, South Africa and Ukraine*, Inv. Nos. 731-TA-753-756 (Final), USITC Pub. 3076, p. 9 (Dec. 1977).

¹¹¹ In these investigations, the two domestic producers, Magcorp and Northwest, ***. Thus, neither company is a related party.

¹¹² 19 U.S.C. § 1677(7)(G).

¹¹³ The Uruguay Round Agreements Act (“URAA”) relocated the provisions concerning cumulation to sections 771(7)(G) and 771(7)(H) of the Act, 19 U.S.C. §§ 1677(7)(G) and (H). Section 771(7)(G) concerns cumulation for determining material injury; section 771(7)(H) concerns cumulation for threat. Cumulation for threat purposes is discussed in section VII.B. below.

¹¹⁴ Section 771(G)(ii)(IV) of the Act. That provision states that the Commission shall not cumulatively assess the volume and effects of imports:

from any country that is a party to an agreement with the United States establishing a free trade area, which entered into force and effect before January 1, 1987, unless the Commission determines that a domestic industry is materially injured or threatened with material injury by reason of imports from that country.

(continued...)

material injury by reason of imports of pure magnesium ingot from Israel, we cannot cumulate subject imports from Israel and Russia.

C. Conditions of Competition

In evaluating the impact of subject imports on the domestic industry, the statute directs the Commission to consider all relevant factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹¹⁵ Conditions of competition relevant to the pure magnesium ingot market are discussed below.¹¹⁶

There are currently two domestic producers of pure magnesium ingot, Magcorp and Northwest. Northwest transfers the majority of its production to its corporate parent, Alcoa.¹¹⁷ Dow Magnesium exited the domestic market in November 1998.¹¹⁸

During the investigation period, U.S. apparent consumption fell by about *** percent.¹¹⁹ U.S. producers, importers, and purchasers were mixed in their demand outlooks, with most predicting steady demand or slow growth.¹²⁰ Pure magnesium ingot is sold mainly to aluminum producers with smaller amounts sold to producers of granular magnesium and for several other uses. Demand for pure magnesium is tied to demand in its primary end use markets, particularly demand for aluminum sheet used for production of beverage cans and other packaging.¹²¹

¹¹⁴ (...continued)

This provision was enacted in 1994 as part of the URAA. The legislative history states that “[i]mports from Israel may not be cumulated with imports from other countries unless the Commission first determines that the domestic industry is materially injured by reason of such imports from Israel.” (H.R. No. 103-826(I), at 75, reprinted in 1994 U.S.C.C.A.N. 3773, 3847; SAA at 180.) Thus, where, as here, an antidumping investigation involves both Israel and other countries, the Commission must first examine whether there is material injury, or threat thereof, to the domestic industry, by reason of imports from Israel. If, as here, this inquiry is answered in the negative, the Commission cannot cumulate the imports from Israel. This current investigation is the first application of this provision since its enactment.

¹¹⁵ 19 U.S.C. § 1677(7)(C)(iii).

¹¹⁶ Northwest Alloys transferred product to its corporate parent Alcoa, for use in producing aluminum alloy. CR at III-3 to III-4; PR at III-3. No party has raised the issue of whether the captive production provision, U.S.C. § 1677(7)(C)(iv), applies to the pure magnesium ingot industry. Because the domestic like product (pure magnesium ingot) is not the predominant input in the production of the downstream article, accounting for only about 1 percent of aluminum can body stock, the second criterion of the statute is not met. CR at II-11; PR at II-7. We have, however, taken the significant volume of captive production into account as a relevant condition of competition.

¹¹⁷ These transfers ranged between *** percent and *** percent of Northwest’s U.S. shipments over the period of investigation. CR at III-11, n. 28; PR at III-7, n. 28.

¹¹⁸ CR at III-1, n.1; PR at III-1, n.1.

¹¹⁹ CR/PR at Table D-7.

¹²⁰ CR at II-10; PR at II-6.

¹²¹ CR at II-10; PR at II-6.

Structural supply changes in the domestic industry have caused granular magnesium producers to seek out additional sources of supply, a trend that was heightened after Dow Chemical Company exited the U.S. magnesium ingot industry. Dow, which closed its production facilities in 1998, had been the *** domestic producer of pure magnesium.¹²² It was an important supplier of ingot to downstream grinders, especially given the significant level of the ingot industry's captive consumption.¹²³ Dow's exit has caused the producers of granular magnesium to seek out foreign sources of ingot, and, more importantly, to begin importing granular magnesium, primarily from China and Canada. This purchasing shift has led to a decrease by more than *** percent in sales of magnesium ingot to domestic granular magnesium producers.¹²⁴

The production processes for pure and alloy magnesium are similar and typically performed at common manufacturing facilities, with the same employees and basic equipment.¹²⁵ The domestic industry appears to have shifted some production away from pure magnesium toward alloy magnesium.¹²⁶ Respondents Solikamsk and Solimin Magnesium argued that alloy is a strong market for primary magnesium production, particularly related to demand in the automotive sector.¹²⁷

Domestic and imported pure magnesium are considered to be relatively close substitutes. Purchasers generally require their pure magnesium ingot suppliers to be certified or prequalified. Qualification factors include quality, price, reliability, size and shape of the ingot, and commitment to the market.¹²⁸ Avisma noted some differences in the Russian product compared to domestic and Israeli magnesium, based on ingot size and shape, and oxidation that occurs during transit.¹²⁹

The market for pure magnesium is price competitive. Purchasers reported contacting between two and five suppliers before making a purchase, although they also indicated that they do not change suppliers frequently. The departure of Dow from the domestic market caused several purchasers to change their buying habits during the investigation period.¹³⁰ Contracts continue to form the primary

¹²² CR at III-9; PR at III-5-III-6.

¹²³ The ingot industry's captive production in 1999 was nearly *** percent of total production. *** Some domestic purchasers responded that they had difficulty obtaining sufficient supply from domestic sources. *See, e.g.,* Questionnaire Response of ***.

¹²⁴ CR/PR at Table III-5.

¹²⁵ Alloy magnesium consists of magnesium and other metals, typically aluminum and zinc. It is principally used in structural applications, primarily in castings and extrusions for the automotive industry. Pure magnesium is seldom used in such applications because of its inferior tensile and yield strengths compared to alloy magnesium. *Magnesium from Canada*, USITC Pub. 3324, at I-7-8. Magcorp and Northwest can produce both pure and alloy magnesium. *Id.* at III-1.

¹²⁶ Avisma's postconference brief, at 19-20. The records from recent five-year reviews confirm that while there has been little recent growth in demand for pure magnesium, there has been significant growth in demand for alloy magnesium. *Magnesium from Canada*, USITC Pub. 3324, at II-4.

¹²⁷ Postconference brief of Solikamsk at 15-16.

¹²⁸ CR at II-12; PR at II-7.

¹²⁹ CR at II-17; PR at II-10.

¹³⁰ CR at II-12; PR at II-7.

basis through which pure magnesium ingot is sold, accounting for *** percent of total sales for domestic product, and *** percent and *** percent for the Israeli and Russian magnesium respectively.¹³¹ ***.¹³²

Another factor in the market is the presence of nonsubject imports. As noted earlier, the Commission has conducted two reviews this year of outstanding orders on pure magnesium ingot from Canada and China. Despite the Canada order, imports of magnesium from Canada have more than doubled during the investigation period, and accounted for over *** percent of the domestic market in 1999. Total nonsubject imports accounted for *** percent of domestic consumption in 1999.¹³³

D. Pure Magnesium Ingot from Israel

1. No Reasonable Indication of Material Injury

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹³⁴

The volume of imports from Israel rose from *** metric tons in 1997 to *** metric tons in 1998, declined to *** metric tons in 1999, and then were lower in interim 2000 relative to interim 1999, at *** metric tons in interim 2000 and *** metric tons in interim 1999.¹³⁵ These import levels corresponded to shares of domestic apparent consumption of *** percent in 1997, *** percent in 1998, *** percent in 1999 and *** percent in interim 2000.¹³⁶ Accordingly, the volume of imports from Israel rose early in the period of investigation, between 1997 and 1998, and then declined, most clearly comparing interim periods. Subject imports from Israel represented between *** percent and *** percent of total imports during the period of investigation.¹³⁷

Viewed in isolation, the volume and market share of subject imports from Israel could be significant. However, in light of the lack of price effect or impact on the domestic industry, as discussed below, we find that subject imports have not materially injured the domestic industry.

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹³⁸

¹³¹ CR at V-5; PR at V-4.

¹³² CR at V-5; PR at V-4.

¹³³ CR/PR at Tables IV-2 and D-3.

¹³⁴ 19 U.S.C. § 1677(7)(C)(i).

¹³⁵ CR/PR at Table D-7.

¹³⁶ CR/PR at Table D-7.

¹³⁷ CR/PR at Table D-1.

¹³⁸ 19 U.S.C. § 1677(7)(C)(ii).

Available price comparison data show both Israeli and Russian magnesium ingot underselling the domestic product throughout the investigation period.¹³⁹ However, Israeli underselling margins were lower than Russian margins in most instances and imports from Israel oversold the domestic like product in some comparisons.¹⁴⁰ The record indicates that other imports, both subject and nonsubject, were present in larger volumes than imports from Israel, which represented between *** and *** percent of total ingot imports during the investigation period. Moreover, domestic price drops are not correlated with subject imports volumes from Israel -- prices continued to fall as import volumes from Israel declined.

The record indicates that it was imports of granular magnesium that caused prices of ingot magnesium to fall. These imports captured most of the desulfurization market, reducing demand and prices for magnesium ingot. Domestic, Israeli and Russian producers all testified that imports of Chinese granular magnesium had a negative effect on the ingot magnesium market, particularly during the early part of the investigation period.¹⁴¹ In fact, the Israeli producers testified that they had been forced out of the desulfurization market early in the investigation period by imports from China.¹⁴²

In sum, we do not find that subject imports from Israel have depressed prices or prevented price increases which otherwise would have occurred, to a significant degree.

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”¹⁴³ 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 industry.”¹⁴⁴

The data show that over the investigation period the pure magnesium ingot industry experienced declines in some economic indicators, such as operating income, production, and market share.¹⁴⁵

¹³⁹ See CR/PR at Tables V-1, V-2 and V-3.

¹⁴⁰ See CR/PR at Tables V-1 and V-2.

¹⁴¹ See, e.g., Transcript at 27 (Koplan); Solikamsk postconference brief at 9-11; DSM postconference brief at 20.

¹⁴² Transcript at 108 (Goder). See also Importer Questionnaires (showing imports from Israel to the desulfurization market declined substantially in 1999 and 2000 from 1997 and 1998 levels).

¹⁴³ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”)

¹⁴⁴ 19 U.S.C. § 1677(7)(C)(iii).

¹⁴⁵ The domestic industry’s operating margin declined over the period of investigation, dropping from *** percent in 1997 to *** percent in 1998, to *** percent in 1999 and to *** percent in interim 2000. The domestic industry’s capacity utilization fluctuated over the investigation period, but exhibited a downward trend, declining from *** percent in 1997 to *** percent in 1999. Production also fell from *** metric tons in 1997 to *** metric tons in 1999; it was *** metric tons in interim 2000 compared to *** metric tons in interim 1999. The industry’s share of domestic apparent consumption declined, from *** percent in 1997 to *** percent in 1999.

(continued...)

However, the bulk of these changes occurred later in the investigation period, at the time that volumes of imports from Israel were declining.¹⁴⁶ For example, while operating margins declined between 1997 and 1998, the industry remained at a *** percent operating margin in 1998; it was only later, in interim 2000, that the industry's margin dropped to *** percent.¹⁴⁷ Declines also corresponded to a reduction in demand later in the period, which led to a decline in both domestic shipments and imports.¹⁴⁸

The records from our recent five-year reviews indicate that the domestic industry is shifting its product line from pure magnesium to alloy magnesium, given current and projected increases in demand for alloy products and flat and declining demand for pure magnesium.¹⁴⁹ Accordingly, it is likely that declines in the pure magnesium market in part reflect the shift in demand from pure to alloy magnesium.

While the industry as a whole experienced declines over the investigation period, the petitioning company, Magcorp, itself experienced *** financial conditions throughout most of the investigation period, particularly during the early period when import volumes from Israel increased.¹⁵⁰ We note that Magcorp sells *** in the merchant market, while *** of Northwest's shipments are related party transfers. Thus, Magcorp would be more affected by any injurious imports; yet, it performed ***. Moreover, the bulk of the decline in *** shipment levels occurred in the desulfurization market, the market in which imports from Israel also lost ground at the same time.¹⁵¹ Both appear to have lost market share to lower priced Chinese granular magnesium.¹⁵² Thus, granular magnesium imports from China, rather than imports of ingot from Israel, were the cause of declines in that area of the market. Moreover, as noted above, lower-priced imports from sources other than Israel make up *** of imports, further diluting the likelihood that *** and declining volumes from Israel are having a significant impact on the domestic industry.

¹⁴⁵ (...continued)

Employment and wages both declined, although productivity increased. CR/PR at Table D-7. Inventories increased from *** metric tons in 1997 to *** metric tons in 1999, and a comparison of interim periods showed a further increase. CR/PR at Table D-7.

¹⁴⁶ As discussed above, subject import volumes increased between 1997 and 1998 but then *** declined over the balance of the period of investigation. The initial increase was in response to Dow's exit from the market, CR/PR at III-1, n. 1, as purchasers were forced to look to alternate sources of supply, particularly given difficulties some purchasers reported with obtaining magnesium from other domestic suppliers. *See, e.g.*, Questionnaire Response of ***.

¹⁴⁷ CR/PR at Table D-7.

¹⁴⁸ U.S. apparent consumption declined from *** metric tons in 1997 to *** metric tons in 1999, with a further *** percent decline comparing interim periods. CR/PR at Table D-7. U.S. producer shipments declined by *** percent between 1997 and 1999, declining from *** metric tons in 1997 to *** metric tons in 1999. *Id.* While overall imports increased by *** percent between 1997 and 1999, they declined by *** percent between 1998 and 1999. *Id.*

¹⁴⁹ *Magnesium from Canada*, USITC Pub. 3324, at II-4.

¹⁵⁰ Magcorp's operating income ratio ranged from *** percent in 1997 to *** percent in 1999; Northwest's margins were *** percent in 1997 and *** percent in 1999. CR/PR at Tables VI-6 and VI-7.

¹⁵¹ The domestic industry's commercial shipments of grinding slab declined from *** metric tons in 1997 to *** metric tons in 1999. CR/PR at Table III-4.

¹⁵² Imports from China increased from 6,269 metric tons in 1997 to 13,185 metric tons in 1999. CR/PR at Table IV-3.

The record also points to other causes of declines in Magcorp's financial condition. The company took on a large quantity of debt early in the investigation period that appears to have yielded little to no benefit to the company's operations and interest payments on that debt have dragged down the company's performance.¹⁵³ This debt burden has also made it difficult for Magcorp to obtain additional financing. Moreover, the company itself has pointed to a downturn in domestic steel production as a *** cause of a decline in its shipments.¹⁵⁴

Therefore, we find that there is no reasonable indication that subject imports from Israel have had a substantial impact on the domestic industry.

2. No Threat of Material Injury by Reason of Subject Imports of Pure Magnesium from Israel

We cannot cumulate subject imports from Israel with those of Russia for purposes of conducting our threat analysis unless we first determine that the domestic industry is materially injured or threatened with material injury by reason of subject imports from Israel alone.¹⁵⁵ Because we conclude that imports from Israel are not threatening the domestic industry with material injury, we do not cumulate subject imports from Israel with those from Russia.

We have considered all of the relevant statutory threat factors when assessing whether the subject imports from Israel threaten to materially injure the domestic industry. For the reasons set forth below, we find that there is no reasonable indication that the domestic industry is threatened with material injury by reason of the subject imports from Israel.¹⁵⁶

In performing our threat analysis, we have first examined whether there is "any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports."¹⁵⁷ The record indicates that while the subject producer in Israel had *** unused capacity early in the period of investigation, its capacity utilization rate has been relatively higher later in the period of investigation, even as its exports to the United States have been declining.¹⁵⁸ The record also indicates that no other country maintains trade restrictions on Israeli imports that would limit Israeli exports to other markets.¹⁵⁹ Moreover,

¹⁵³ CR at VI-8, n. 10; PR at VI-4, n. 10.

¹⁵⁴ CR at VI-2, n. 7; PR at VI-3, n. 7.

¹⁵⁵ 19 U.S.C. § 1677(G)(ii)(IV).

¹⁵⁶ As required by the statute, when performing our threat analysis, we have considered the nature of the countervailable subsidy involved in this investigation. The Commerce Department has not assigned a CVD margin to the producer from Israel, DSM, although the petitioners have alleged a margin of over 20 percent. CR at I-7; PR at I-5.

¹⁵⁷ 19 U.S.C. § 1677(7)(F)(i)(II).

¹⁵⁸ DSM's pure magnesium ingot capacity utilization rates were *** percent in 1997, *** percent in 1998, *** percent in 1999 and *** percent in interim 2000. CR/PR at Table VII-2. Its pure magnesium capacity is projected to decline in 2000 and 2001, *id.*, consistent with its shifting of production capacity from pure to alloy production. CR at VII-6; PR at VII-3 to VII-4.

¹⁵⁹ See CR at VII-10; PR at VII-5.

DSM reported no plans to increase capacity in the imminent future.¹⁶⁰ Accordingly, we find no significant unused production capacity or actual or likely increases in production capacity in Israel that are likely to lead to substantially increased subject imports into the U.S. in the imminent future.

We have also considered whether there has been “a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports.”¹⁶¹ In this case, the volume of imports from Israel increased early in the period and then declined from 1998 onward.¹⁶² Moreover, the record indicates that the Israeli producer is shifting its production to nonsubject alloy magnesium.¹⁶³ Additionally, DSM has substantial contracts in place with Volkswagen, which is a 35 percent owner of DSM, and General Motors that result in a substantial portion of DSM’s production capacity being committed to produce alloy magnesium for those purchasers.¹⁶⁴ Accordingly, the record indicates that Israeli import volumes have been decreasing and are unlikely to increase to the detriment of U.S. producers.

Similarly, we have examined “whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports.”¹⁶⁵ As we explained in our injury views above, the record does not indicate that subject imports from Israel have had significant effects on the price of domestic merchandise. We do not find that this is likely to change, especially given the declining volume of subject imports. Accordingly, we find that Israeli imports are not entering the United States at prices that are likely to have a significant depressing or suppressing effect on domestic price or are likely to increase demand for further imports.

We have also considered the levels of “inventories of the subject merchandise.”¹⁶⁶ Israeli importer end of period inventories have been increasing, but remain relatively ***,¹⁶⁷ and Israeli producer end of period inventories increased between 1997 and 1998 but show a decrease in comparing 1998 with 1999 and interim 1999 with interim 2000 data.¹⁶⁸ Accordingly, we do not find that inventory levels of subject merchandise support a finding of a threat of material injury.

We are also directed to consider whether there is a “potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.”¹⁶⁹ The record indicates that there is a potential for shifting production lines between pure magnesium and alloy magnesium.¹⁷⁰ However, the record also indicates that both the domestic producers and the Israeli producer are in the process of shifting from pure magnesium to more

¹⁶⁰ See CR/PR at Table VII-2.

¹⁶¹ 19 U.S.C. § 1677(7)(i)(III).

¹⁶² Subject imports from Israel were *** metric tons in 1997, *** in 1998, *** in 1999, and *** in interim 2000 (compared with *** metric tons in interim 1999). CR and PR at Table D-7.

¹⁶³ CR at VII-6; PR at VII-3 to VII-4.

¹⁶⁴ CR at VII-4, n. 14; PR at VII-3, n. 14.

¹⁶⁵ 19 U.S.C. § 1677(7)(F)(i)(III).

¹⁶⁶ 19 U.S.C. § 1677(7)(F)(i)(V).

¹⁶⁷ See CR/PR at Table VII-4.

¹⁶⁸ See CR/PR at Table VII-2.

¹⁶⁹ 19 U.S.C. § 1677(7)(F)(i)(VI).

¹⁷⁰ CR at I-12; PR at I-9.

profitable alloy magnesium production, which is experiencing increased demand.¹⁷¹ Accordingly, it is unlikely that the Israeli producer will shift production from other products to subject pure magnesium production; rather, shifting is most likely in the other direction.

We also examined “the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.”¹⁷² The record shows that the domestic industry *** increased its capital expenditures over the period of investigation, with a *** percent increase between 1997 and 1999.¹⁷³ Research and development expenditures fluctuated over the period of investigation.¹⁷⁴ Thus, the record indicates that there have been little or no adverse effects on domestic capital expenditures and research and development efforts. Moreover, as discussed above in the material injury section, the record indicates that Israeli imports have had and will continue to have little or no impact on the domestic industry overall and, accordingly, have and will continue to have little or no impact on the industry’s ability to finance production and development efforts.¹⁷⁵

Finally, we are required by the statute to consider “any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).”¹⁷⁶ We do not find that the record in these investigations indicates that there are any demonstrable adverse trends suggesting that the subject imports from Israel will imminently materially injure the domestic industry.

In sum, we determine that the domestic industry producing pure magnesium ingot is not threatened with material injury by reason of the subject imports from Israel.

For the foregoing reasons, we determine that the domestic industry producing pure magnesium ingot is neither materially injured nor threatened with material injury by reason of imports of pure magnesium ingot from Israel that are alleged to be subsidized and to be sold in the United States at less than fair value.

¹⁷¹ CR at II-8 and VII-6; PR at II-5 and VII-3 to VII-4; *Magnesium from Canada*, USITC Pub. 3324, at II-4.

¹⁷² 19 U.S.C. § 1677(7)(F)(i)(VIII).

¹⁷³ Capital expenditures increased from *** in 1997 to *** in 1999, although there was a *** downturn comparing interim periods. CR/PR at Table D-7.

¹⁷⁴ See CR/PR at Table VI-11.

¹⁷⁵ As discussed above, Magcorp has taken on substantial debt and used the majority of the proceeds for purposes not related to the operation of the company. CR at VI-8, n. 10; PR at VI-4, n. 10. Thus, any difficulties regarding development and production efforts would primarily be due to the company’s financing situation.

¹⁷⁶ 19 U.S.C. § 1677(7)(F)(i)(IX).

**ADDITIONAL AND DISSENTING VIEWS OF COMMISSIONERS
MARCIA E. MILLER AND JENNIFER A. HILLMAN
ON PURE MAGNESIUM INGOT FROM RUSSIA**

In addition to our previously stated views with respect to China and Israel, we find, based on the record in this investigation, that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of pure magnesium ingot from Russia that are allegedly sold in the United States at less than fair value (“LTFV”).^{1 2}

I. No Reasonable Indication of Material Injury

Section 771(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”³

The volume of imports from Russia initially increased, from 11,140 metric tons in 1997 to 12,715 metric tons in 1998, before falling off substantially in 1999, to 9,998 metric tons, a 21 percent decline. Interim 2000 imports from Russia were 9 percent below those in interim 1999. Russia’s share of the U.S market also fell, but by lesser margins, due to the overall decline in domestic consumption.⁴ Imports from Israel, examined in concurrent investigations, increased from 1997 to 1998, before declining later in the period, while nonsubject imports remained relatively steady. We find that the volume and market share of subject imports from Russia are significant.

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

- (I) *there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and*
- (II) *the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.*⁵

Russian pure magnesium ingot is generally substitutable with its U.S. counterpart, but there are some differences in ingot size and quality. Price comparisons show that the Russian product was priced below the domestic magnesium ingot in *** instances, yielding relatively consistent margins of underselling, reflecting some differences between the products (including ingot size and shape, quality, and service).⁶ Further, Russian prices followed a generally declining trend similar to that of domestic ingot. Nevertheless, the record does not support a finding that price suppression or depression occurred because of the lower-priced Russian ingot. Despite changes in subject import volumes over the period, both up and down, domestic prices moved steadily downward. This suggests little correlation between prices of the subject Russian ingot

¹ There is no issue in these investigations regarding whether there is a reasonable indication that a domestic industry is materially retarded by reason of subject imports.

² See, Dissenting Views of Commissioners Marcia E. Miller, Jennifer A. Hillman, and Thelma J. Askey.

³ 19 U.S.C. § 1677(7)(C)(i).

⁴ CR/PR at Table D-7.

⁵ 19 U.S.C. § 1677(7)(C)(ii).

⁶ CR/PR at Table V-1.

and its domestic counterpart. Instead, we find that magnesium ingot prices in the U.S. market were substantially driven by prices for Chinese granular magnesium sold to grinders.

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.⁷ 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.”^{8 9}

We do not find that the subject imports had a material adverse impact on the domestic industry. As discussed in our dissenting views on pure magnesium ingot from Israel, despite some declining financial indicators for the domestic industry, its overall performance remains positive. Further, Magcorp, which competes most directly with the subject imports in the merchant market, *** operating results than the two companies combined. Subject import volumes from Russia have declined over the investigation period, falling most sharply toward the end of the period, when the domestic industry’s performance ***. Domestic prices for magnesium ingot moved downward throughout the period of investigation, and do not reflect changing volumes of subject imports from Russia, which fell since 1998.

As noted in our views on magnesium ingot from Israel, losses of ingot market share have occurred at the same time as shipments of Chinese granular magnesium to domestic grinders increased, at the expense of ingot shipments. Further shipment declines are likely related to shifts in the domestic industry toward greater production of alloy magnesium.

Therefore, we find that there is no reasonable indication that subject imports from Russia have had a substantial impact on the domestic industry.

II. No Reasonable Indication of Threat of Material Injury

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹⁰ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a

⁷ 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” *Id.* at 885).

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

⁹ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce identified estimated dumping margins based on export price to normal value comparisons ranging from 23.45 to 39.14 percent. 65 Fed. Reg. at 68,121, 68,125.

¹⁰ 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

whole.”¹¹ In making our determination, we have considered all factors that are relevant to this investigation.¹² Based on an evaluation of the relevant statutory factors, we find that there is no reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports of pure magnesium ingot from Russia.

The volume and market share of subject imports from Russia have been declining, both in absolute terms and as a share of apparent consumption. Subject imports peaked in 1998, and then fell in 1999 and in interim 2000, compared to interim 1999.¹³ These import trends do not indicate a likelihood of substantially increased imports in the imminently foreseeable future, especially given the increasing volumes of granular magnesium being purchased by grinders that have captured sales previously held by magnesium ingot.

Russia has *** decreased its level of available capacity in interim 2000. Projected capacity increases in the near future total an additional *** metric tons, an expansion of about *** percent. While the industry in Russia is export-oriented, its shipments to the home and third country markets were *** higher in interim 2000 than in interim 1999, and the industry has projected continued declines in shipments to the U.S. market.¹⁴ There is some potential for product-shifting by the industry in Russia, since Solikamsk, a producer of magnesium ingot, has a related granular magnesium producer, but this capacity is *** and has generally been focused on the Russian steel industry.¹⁵ In addition, both alloy and pure magnesium are produced using the same production facilities and workers. However, as discussed in our views on Israel, a more likely shift is from pure magnesium to alloy magnesium, given the growing demand for alloy products.

The record does not indicate that subject imports from Russia are likely to have a significant depressing or suppressing effect on domestic prices. As discussed above, there has been a steady price difference between domestic product and subject imports from Russia, reflecting in part differences in quality, ingot size and shape, and service. Moreover, as discussed above, the predominant factor leading down prices of pure magnesium ingot has been imports of pure granular magnesium from China. There is no evidence that this will change in the imminent future.

¹¹ 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.” Metallwerken 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). See also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

¹² 19 U.S.C. § 1677(7)(F)(I). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(I)(I) and (VII).

¹³ CR/PR at Table D-7.

¹⁴ CR/PR at Table VII-3.

¹⁵ CR at VII-8; PR at VII-5.

Importers' inventories of subject imports were at similar levels at the beginning and end of the period of investigation, and were essentially unchanged comparing interim periods.¹⁶ Russian producers' inventories were low, both in absolute terms and as a share of production and shipments, throughout the period of investigation.¹⁷

There is no indication of actual or potential negative effects on the existing development and production efforts of the domestic industry. The domestic industry's capital expenditures rose substantially over the period of investigation, from *** in 1997 to *** in 1999. While the level was somewhat lower in interim 2000 than in interim 1999 (*** and *** respectively), it was, on an annualized basis, still substantially higher than the level in 1997.¹⁸ The industry's R&D expenses remained basically the same between the beginning and end of the period of investigation.¹⁹

As discussed above, the financial condition of the domestic industry remains ***. Northwest is, to some extent, insulated from competition with imports due to its *** level of internal transfers to its related aluminum producer, Alcoa. Despite the fact that it sells *** in the merchant market, thereby competing more directly with the subject imports, Magcorp's financial results ***.²⁰ Any imminent impact to the financial health of the domestic industry is more likely to be affected by the shift toward greater purchases of the downstream granular magnesium product at the expense of magnesium ingot, by important end users (granular magnesium producers), than by increased purchases of magnesium ingot from Russia.

Based on all the above, and in the absence of any other demonstrable adverse trends, we find that the domestic industry producing pure magnesium ingot is not threatened with material injury by reason of subject imports from Russia.

¹⁶ Importers' inventories were *** metric tons in 1997, *** metric tons in 1998, and *** metric tons in 1999. Importers' inventories were *** metric tons in interim 1999 and *** metric tons in interim 2000. CR at Table VII-4.

¹⁷ Russian producers' inventories were *** metric tons in 1997, *** metric tons in 1998, and *** metric tons in 2000; they were *** metric tons in interim 1999 and *** metric tons in interim 2000. Producers' inventories as a share of production and shipments ranged between *** percent and *** percent over the period of investigation. CR/PR at Table VII-3.

¹⁸ CR/PR at Table VI-11.

¹⁹ R&D spending was *** in 1997, *** in 1998, and *** in 1999. It was *** in interim 1999 and *** in interim 2000. CR/PR at Table VI-11.

²⁰ CR/PR at Tables VI-6 and VI-7.