

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-896

Notice of Amended Final Determination of Sales at Less Than Fair Value: Magnesium Metal from the People's Republic of China

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

EFFECTIVE DATE: March 29, 2005.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-6412.

SUPPLEMENTARY INFORMATION:

Amendment to Final Determination

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended, ("the Act"), on February 24, 2005, the Department of Commerce ("the Department") published its notice of final determination of sales at less than fair value ("LTFV") in the investigation of magnesium metal from the People's Republic of China ("PRC"). See *Notice of Final Determination of Sales at Less Than Fair Value: Magnesium Metal from the People's Republic of China*, 70 FR 9037 (February 24, 2005) ("*Final Determination*"), and corresponding memorandum to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, *Issues and Decision Memorandum for the Less-Than-Fair-Value Investigation of Magnesium Metal from the People's Republic of China*, dated February 16, 2005, ("*Issues and Decision Memorandum*"). On February 28, 2005, Tianjin Magnesium International Co., Ltd. ("Tianjin"), filed timely allegations stating that the Department made ministerial errors in its final determination. On March 7, 2005, Petitioners¹ filed comments rebutting Tianjin's ministerial error allegations.

After analyzing Tianjin's comments and Petitioners' rebuttal comments, we have determined that our calculations in the *Final Determination* for Tianjin included ministerial errors as defined in section 735(e) of the Act and 19 CFR 351.224(f). Therefore, in accordance

with section 735(e) of the Act, we are amending the final determination of sales at LTFV in the antidumping duty investigation of magnesium metal from the PRC for Tianjin. In addition, we based the margin in the *Final Determination* for Beijing Guangling Jinghua Science & Technology Co., Ltd. ("Guangling") on the weighted-average margin for the mandatory respondents covered by this investigation, excluding any rates that are zero, *de minimis*, or based entirely on adverse facts available. Because that rate has changed as a result of the correction of ministerial errors since the final determination, we have revised Guangling's rate accordingly. The revised weighted-average dumping margins are listed in the Amended Final Determination section, below.

Period of Investigation

The period of investigation ("POI") is July 1, 2003, through December 31, 2003.

Scope of Investigation

The products covered by this investigation are primary and secondary alloy magnesium metal regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by this investigation includes blends of primary and secondary magnesium.

The subject merchandise includes the following alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an "ASTM Specification for Magnesium Alloy"² and thus are outside the scope of the existing antidumping orders on magnesium from the PRC (generally referred to as "alloy" magnesium).

The scope of this investigation excludes the following merchandise: (1)

all forms of pure magnesium, including chemical combinations of magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an "ASTM Specification for Magnesium Alloy";³ (2) magnesium that is in liquid or molten form; and (3) mixtures containing 90 percent or less magnesium in granular or powder form, by weight, and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nepheline syenite, feldspar, alumina (Al₂O₃), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.⁴

The merchandise subject to this investigation is currently classifiable under items 8104.19.00 and 8104.30.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Allegation 1: Surrogate Value for Pure Magnesium

Tianjin contends that in the final determination the Department intended to rely on a time period that is contemporaneous with the POI for the valuation of pure magnesium, but rather used a value reflecting a different time period. Tianjin claims that, in the preliminary determination, the Department used the correct value of

³ This material is already covered by existing antidumping orders. See *Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation*, 60 FR 25691 (May 12, 1995), and *Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China*, 66 FR 57936 (November 19, 2001).

⁴ This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000-2001 investigations of magnesium from the PRC, Israel, and Russia. See *Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China*, 66 FR 49345 (September 27, 2001); *Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel*, 66 FR 49349 (September 27, 2001); *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation*, 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys because they are not chemically combined in liquid form and cast into the same ingot.

¹ U.S. Magnesium Corporation LLC, United Steelworkers of America, Local 8319, and Glass, Molders, Pottery, Plastics & Allied Workers International, Local 374.

² The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys*.

\$1,340 for RSM⁵ but in the final determination used a value of \$1,800+ for Tianjin.

Petitioners argue that section 735(e) of the Act and 19 CFR 351.224(f) define ministerial errors as “errors in addition, subtraction, or other arithmetic functions, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.” Thus, Petitioners contend that the Act and regulations explicitly provide that to be classified as a “ministerial error,” the Department’s action must involve arithmetic or keypunch errors or other types of unintentional errors. Petitioners, citing *Amended Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 66 FR 14883 (March 14, 2001), *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From Italy*, 64 FR 73244, (December 29, 1999), and *Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 42669 (July 11, 2000), argue that the Department has stated that if it intended to perform a calculation in a certain manner, it has made a methodological or policy choice, which by definition cannot be a ministerial error. Petitioners further contend that the Department cannot correct non-ministerial errors in the ministerial-error process.

Petitioners argue that the errors identified by Tianjin during the ministerial-error process do not involve arithmetic errors and are not the result of inaccurate copying or duplication. Further, Petitioners contend that the record shows that the Department intentionally chose to perform the calculations in the final determination in the manner that Tianjin now asserts constitutes a ministerial error. Therefore, Petitioners argue that the Department should reject Tianjin’s allegations of ministerial error with

respect to the valuation of pure magnesium.

Petitioners claim that a review of Comment 7 of the *Issues and Decision Memorandum*, and Attachment VI of the Memorandum to the File from Laurel LaCivita, Lilit Astvatsatrian and Steven Winkates, Case Analysts, through Robert Bolling, Program Manager, and Laurie Parkhill, Office Director: *Magnesium Metal from the People’s Republic of China: Factors Valuation Memorandum for the Preliminary Determination*, dated September 24, 2004 (“*Factor-Valuation Memorandum*”), shows that the Department intended to use the pure magnesium price of \$1,883 per metric ton. Petitioners further maintain that the Department further confirmed its intention to use the \$1,883 per metric ton value by rejecting Petitioners’ request to broaden the valuation period for pure magnesium. Petitioners assert that the Department used the \$1,883 value in the calculations for the preliminary determination for Tianjin, then stated specifically in the surrogate-value memorandum for the final determination that it intended no changes to surrogate values for raw materials in the final determination. Thus, Petitioners argue, because the Department used the value that it intended to use in the final determination, there was no ministerial error with respect to pure magnesium.

Department’s Position: In the preliminary determination, we explained that “we valued direct materials, energy, and packing materials using publicly available import prices reported in the *Monthly Statistics of the Foreign Trade of India* for the POI.” See memorandum to the file from Laurel LaCivita, Case Analyst, Lilit Astvatsatrian, Case Analyst, Steven Winkates, Case Analyst, through Robert Bolling, Program Manager, and Laurie Parkhill, Office Director, *Magnesium Metal from the People’s Republic of China: Factor Valuation Memorandum for the Preliminary Determination*, dated September 24, 2004 (“*Preliminary Factor-Valuation Memorandum*”), at 3. The value the Department cited in its preliminary factor-valuation memorandum was \$1,337.86 per metric ton. See *Preliminary Factor-Valuation Memorandum* at Attachment IV. However, in calculating Tianjin’s margin in the preliminary determination, we inadvertently used the value of \$1,882.94 per metric ton as the surrogate value for pure magnesium, rather than the figure identified in Attachment IV of the *Preliminary Factor-Valuation Memorandum*. Thus, the error made with respect to the valuation of pure magnesium for Tianjin

represents the type of inadvertent typographical error described in section 735(e) of the Act, and 19 CFR 351.224(f).

Because none of the interested parties made allegations of clerical errors with respect to the valuation for pure magnesium for Tianjin after the preliminary determination or in the case briefs, in the *Final Determination* we stated that we did not intend to change the surrogate values for raw materials, not realizing that we had inadvertently used an incorrect value for pure magnesium in the preliminary determination. See *Issues and Decision Memorandum* at Comment 7. As a result, we determine that the correct surrogate value for pure magnesium should be \$1,337.86 per metric ton as stated in the *Preliminary Factor-Valuation Memorandum*. See also the memorandum to the file from Lilit Astvatsatrian, Case Analyst, through Robert Bolling, Program Manager, *Magnesium Metal from the People’s Republic of China: Factor Valuation Memorandum for the Amended Final Determination*, dated March 22, 2005 (“*Amended Final Factor Valuation Memorandum*”), at 1, and memorandum to the file from Lilit Astvatsatrian, Case Analyst, through Robert Bolling, Program Manager, *Amended Final Analysis Memorandum for the Amended Final Determination of the Antidumping Duty Investigation of Magnesium Metal from the People’s Republic of China: Tianjin Magnesium International Co., Ltd. (“Tianjin”)*, dated March 22, 2005 (“*Tianjin Amended Final Analysis Memorandum*”), at 1–2. Therefore, for this amended final determination, we have revised our calculations to reflect a POI value for pure magnesium of \$1,337.86.

Allegation 2: Surrogate Value for No. 2 Flux

Tianjin contends that page 20 of its case brief explains that No. 2 flux is comprised of several elements, but that the Department inadvertently valued only one of them in its calculations for the *Final Determination*. Tianjin claims that “No. 2 flux is No. 2 flux, and not just one of its elements, else it would have been called by that element.”

Petitioners argue that Tianjin’s comment regarding No. 2 flux is not clear and does not specify an alleged ministerial error. Further, Petitioners argue, in the *Final Determination* the Department stated that it intended to value No. 2 flux using the same surrogate value it used in the preliminary determination because respondent did not provide an alternative value. See *Issues and Decision Memorandum*, at Comment 10.

⁵ In the preliminary determination, we determined that the following companies were collapsed members of the RSM group of companies for the purposes of this investigation: Nanjing Yunhai Special Metals Co., Ltd. (≥Yunhai Special≥), Nanjing Welbow Metals Co., Ltd. (≥Welbow≥), Nanjing Yunhai Magnesium Co., Ltd. (≥Yunhai Magnesium≥), Shanxi Wenxi Yunhai Metals Co., Ltd. (≥Wenxi Yunhai≥). See Memorandum to Laurie Parkhill, Director, Office 8, NME/China Group, from Laurel LaCivita, Senior Case Analyst, through Robert Bolling, Program Manager: *Antidumping Duty Investigation of Magnesium Metal from the People’s Republic of China: Affiliation and Collapsing of Members of the RSM Group and its Affiliated U.S. Reseller, Toyota Tsusho America, Inc.*, dated September 24, 2004.

Therefore, Petitioners contend that, because the Department used the value it intended to use for valuation of No. 2 flux, there is no ministerial error. **Department's Position:** First, we agree with petitioners that Tianjin's clerical error allegation with respect to No. 2 flux is not clear and that Tianjin does not specify exactly what clerical error it is alleging nor how to remedy the error. With respect to the valuation of No. 2 flux, the Department recognizes that the surrogate value used in the preliminary and final determinations may relate to only one of the three components which comprise No. 2 flux. As stated in the *Final Determination*, however, we find that this value constitutes the most appropriate information available on the record of this proceeding for purposes of valuing No. 2 flux.

While Tianjin argued in its case brief that "No. 2 flux consists of 0.46 kg of magnesium chloride, 0.49 kg of potassium chloride, and 0.08 kg of barium chloride," citing RSM's September 14, 2004 submission at Exhibit 11, pages 2.13 2.15, it provides no record evidence to substantiate its allocation methodology with respect to Tianjin. There is no information on the record of this proceeding concerning the chemical specifications of the No. 2 flux used by Tianjin in the production of subject merchandise. Therefore, in our *Final Determination*, we made no changes to the valuation methodology used in the preliminary determination. See *Issues and Decision Memorandum* at Comment 10.

It appears that Tianjin's allegation of a clerical error with respect to the valuation of No. 2 flux constitutes a request for a methodological change and, as such, does not meet the definition of ministerial error under section 735(c) of the Act, and 19 CFR 351.224(f). Consequently, we have made no changes to the valuation of No. 2 flux in this amended final determination.

Allegation 3: Surrogate Value for Packing Unskilled Labor

Tianjin states the Department used a surrogate value of \$1.90/hour for unskilled packing labor. Tianjin contends that this price is above the one listed on the Department's website for surrogate wage calculations.

The Petitioners did not comment on this issue.

Department's Position: We have determined that we made an inadvertent error in our *Final Determination* in calculating the unskilled packing labor rate. Our preliminary determination stated that "in accordance with 19 C.F.R. 351.408(c)(3), we applied the 2001 regression-based wage rate of US\$

0.90/hour calculated by the Department for the PRC, as posted on the Department's website at <http://ia.ita.doc.gov/wages/01wages/01wages.html>." See *Preliminary Factor-Valuation Memorandum*, at 4. However, in our preliminary and final determinations, we inadvertently used a \$1.90/hour rate to value unskilled packing labor. Therefore, for the amended final determination, we have revised the \$1.90/hour rate to be \$0.90/hour for valuation of unskilled packing labor.

Amended Final Determination

After analyzing all interested party comments and rebuttals, we have determined, in accordance with 735(e) of the Act and 19 CFR 351.224(e), that we made ministerial errors in our calculations performed for the final determination. Therefore, we are amending the final determination of sales at LTFV in the antidumping duty investigation of magnesium metal from the PRC. The revised dumping margins are as follows:

MAGNESIUM METAL FROM THE PRC

| Manufacturer/Exporter | Weighted-Average Margin |
|-----------------------|-------------------------|
| Tianjin | 49.66% |
| Guangling | 49.66% |

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all entries of subject merchandise from the PRC, entered or withdrawn from warehouse, for consumption on or after October 4, 2004, the date of publication of the *Preliminary Determination*. We will also instruct CBP to require cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart above. These instructions suspending liquidation will remain in effect until further notice.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: March 21, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-475-821]

Certain Stainless Steel Wire Rod from Italy: Notice of Court Decision and Suspension of Liquidation

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

SUMMARY: On March 9, 2005, in *AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc. and United Steel Workers of America, AFL-CIO/CLC v. United States and Acciaierie Valbruna S.r.l. and Acciaierie Di Bolzano S.p.A. v. United States*, Slip Op. 05-30 (*AL Tech II*), the Court of International Trade (CIT) affirmed the Department of Commerce's *Final Results of Redetermination Pursuant to Remand (Remand Results)*, dated October 27, 2004. Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit (CAFC) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department will continue to order the suspension of liquidation of the subject merchandise, where appropriate, until there is a "conclusive" decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct U.S. Customs and Border Protection (CBP) to liquidate all relevant entries from Acciaierie Valbruna S.r.l. (Valbruna) and Acciaierie Di Bolzano S.p.A. (Bolzano) and revise the cash deposit rates as appropriate.

EFFECTIVE DATE: March 29, 2005.

FOR FURTHER INFORMATION CONTACT:

Darla Brown, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

Following publication of the *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy*, 63 FR 40474 (July 29, 1998) (*Final Determination*) and *Notice of Countervailing Duty Order: Stainless Steel Wire Rod from Italy*, 63 FR 49334 (September 15, 1998), AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc. and United Steel Workers of America, AFL-CIO/CLC (collectively, AL Tech), the petitioners in this case, and the