Magnesium From China and Russia

Investigations Nos.731-TA-1071 and 1072 (Final)

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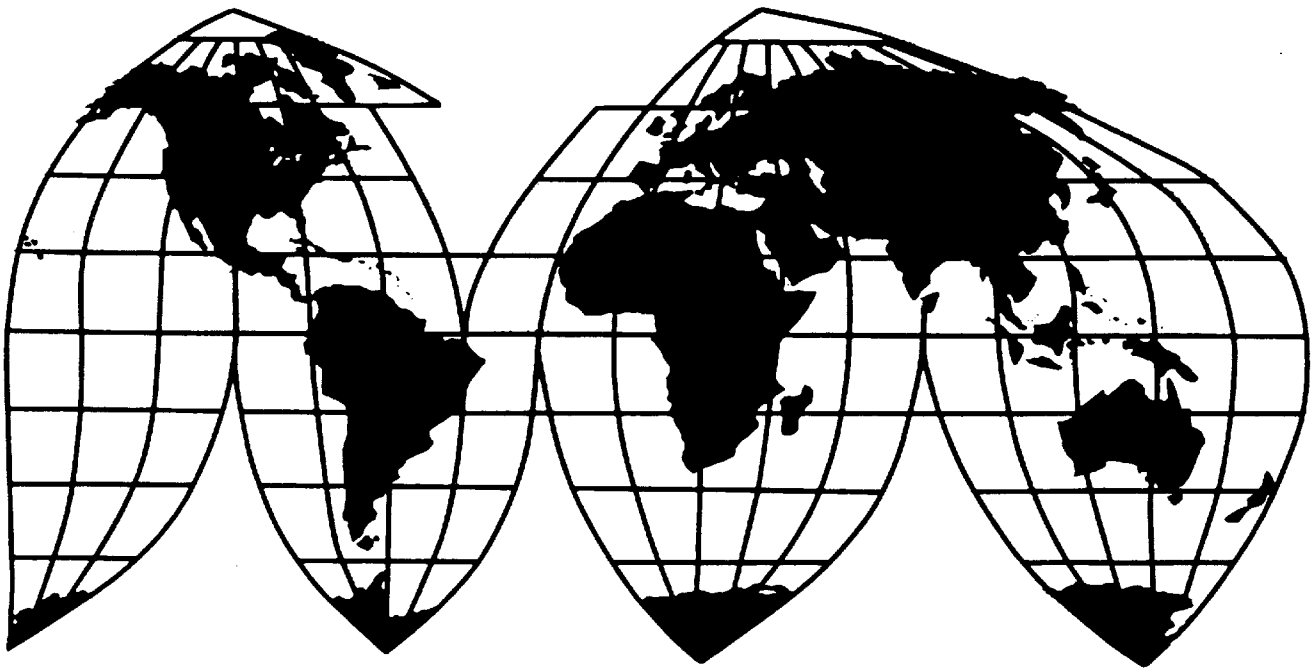
U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-1071-1072 (Final)

MAGNESIUM FROM CHINA AND RUSSIA

DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China and Russia of magnesium,[2] provided for in subheadings 8104.11.00, 8104.19.00, 8104.30.00, and 8104.90.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV). With regard to U.S. imports from China, the Commission also makes a negative finding with regard to critical circumstances.

BACKGROUND

The Commission instituted these investigations effective February 27, 2004, following receipt of a petition filed with the Commission and Commerce by US Magnesium Corp. ("US Magnesium"), Salt Lake City, UT; the United Steelworkers of America, Local 8319, Salt Lake City, UT; and the Glass, Molders, Pottery, Plastics & Allied Workers International, Local 374, Long Beach, CA. The final phase of these investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of magnesium from China and Russia were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of October 21, 2004 (69 FR 61860). The hearing was held in Washington, DC, on February 23, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[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 Marcia E. Miller and Jennifer A. Hillman voted with the majority, except that they found granular magnesium to be a separate like product and found subject imports of granular magnesium from Russia to be negligible.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine that an industry in the United States is materially injured by reason of imports of magnesium from China and Russia found to be sold in the United States at less than fair value ("LTFV").[1]

I. BACKGROUND

There are two principal types of magnesium: pure magnesium and alloy magnesium. Pure magnesium is typically used in the production of aluminum alloys for use in beverage cans and in some automotive parts, in iron and steel desulfurization, and as a reducing agent for various nonferrous metals (titanium, zirconium, hafnium, uranium, beryllium). Alloy magnesium is principally used in structural applications, primarily in castings (die, permanent mold, and sand) and extrusions for the automotive industry. Magnesium is produced through either a primary or secondary production process. In primary production, magnesium is produced from seawater or from magnesium-bearing ores. In secondary production magnesium is obtained by recycling aluminum alloys or magnesium-based scrap.

The petition was filed on February 27, 2004, by US Magnesium Corp.,[2] Salt Lake City, UT ("US Magnesium"); the United Steelworkers of America, Local 8319, Salt Lake City, UT; and the Glass, Molders, Pottery, Plastics & Allied Workers International, Local 374, Long Beach, CA. During the period January 2000 through September 2004, there were two firms that produced pure magnesium and six firms that produced alloy magnesium in the United States for commercial sale, and the Commission received questionnaire responses from all of these firms. The producers are located in Utah, Washington, Ohio, California, and Indiana.[3]

II. DOMESTIC LIKE PRODUCT

A. In General

In determining whether 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]

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[1] Commissioners Miller and Hillman voted with the majority of the Commission, except that they found granular magnesium to be a separate like product and found subject imports of granular magnesium from Russia to be negligible.

[2] US Magnesium is the successor company to Magnesium Corporation of America ("Magcorp"). Since December 1991, Magcorp has filed three previous petitions concerning magnesium imports from Canada, China, Israel, Russia, and/or Ukraine.

[3] See CR/PR at Table III-1.

[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 sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[10]

B. Product Description

Commerce's final determinations define the imported merchandise within the scope of these investigations as:

People's Republic of China

> 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, and 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

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[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).

conforming to an "ASTM Specification for Magnesium Alloy"[11] and thus are outside the scope of the existing antidumping orders on magnesium from China (generally referred to as "alloy" magnesium).

The scope of this investigation excludes: (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"[12]; (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, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[13]

The merchandise subject to this investigation is 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.[14]

Russia

The products covered by this investigation are primary and secondary pure and 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 pure and alloy magnesium metal products made from primary and/or secondary magnesium, including, without limitation,

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[11] 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.

[12] This material is already covered by existing antidumping orders. See Notice of Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Notice of 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 Notice of Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China, 66 FR 57936 (Nov. 19, 2001).

[13] This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000-2001 investigations of magnesium from China, 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.

[14] Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Magnesium Metal From the People's Republic of China, 70 Fed. Reg. 9037, 9038 (February 24, 2005).

magnesium cast into ingots, slabs, rounds, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: (1) products that contain at least 99.95 percent 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 magnesium, by weight (generally referred to as "pure" magnesium); and (3) chemical combinations of magnesium and other material(s) in which the magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, whether or not conforming to an "ASTM Specification for Magnesium Alloy."

The scope of this investigation excludes: (1) magnesium that is in liquid or molten form; and (2) 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, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[15]

The merchandise subject to this investigation is classifiable under items 8104.11.00, 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.[16]

C. Analysis

The principal like product issue in these final-phase investigations is whether pure and alloy magnesium are separate like products. None of the parties to these investigations have contested the finding in the preliminary determinations that cast and granular magnesium, and primary and secondary magnesium, are part of the same like product, and no new information has emerged in the final phase of these investigations that calls into question our earlier decision.[17]

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[15] This second exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000-2001 investigations of magnesium from China, 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.

[16] Magnesium Metal from the Russian Federation: Notice of Final Determination of Sales at Less Than Fair Value, 70 Fed. Reg. 9041, 9042 (February 24, 2005).

[17] Commissioners Miller and Hillman also find pure and alloy magnesium and primary and secondary magnesium to be part of the same like product, for the reasons discussed by the majority, with the exception that they find granular magnesium to be a separate like product, based on the additional information on grinders gathered in the final phase of these investigations and for the same reasons articulated in the previous investigation of Magnesium From China and Israel, Inv. Nos. 701-TA-403 and 731-TA-895-896 (Final), USITC Pub. 3467 (Nov. 2001) (Dissenting Views of Commissioners Marcia E. Miller and Jennifer Hillman). While ingot (cast) and granular magnesium share some basic properties, they differ in size, dimensions, shape, and other physical characteristics,
(continued...)

Petitioners contend that pure and alloy magnesium should be treated as a single like product. Petitioners argue that pure and alloy magnesium share certain essential physical characteristics, in that both are lightweight, low density and strong metals. Petitioners also argue that there is a large degree of overlap in end uses for pure and alloy magnesium, and that both are used in the production of aluminum alloys, reagents for iron and steel desulfurization, ferroalloys, and nodular iron; and in metal reduction and sand casting. They state that the aluminum alloying and desulfurization segments of the market traditionally used only pure magnesium, but have increasingly used alloy magnesium (especially from China) as the price gap between alloy and pure magnesium has closed. Petitioners dispute the claim made by some respondents that there are significant limitations on the use of magnesium alloy in aluminum production because of the beryllium content of the magnesium alloy. Petitioners claim that, because pure and alloy magnesium have overlapping uses in the production of aluminum alloys and desulfurization reagents, and in certain other applications,[18] the pure and alloy products are used interchangeably in a large segment of the magnesium market, and that segment of the market does not view the two as distinct products.[19]

Petitioners maintain that pure and alloy magnesium are sold in the same channels of distribution, in that they are both sold to end users.[20] Petitioners argue that the production facilities, processes and employees used in making pure and alloy magnesium are the same, but for the additional and relatively inexpensive further step of adding alloying agents before casting to produce the alloy product. For US Magnesium, switching from alloy production to pure production merely requires that the casting crucibles be cleaned and flushed, and a switch in the other direction does not even require this step.[21]

Finally, petitioners argue that the prices for pure and alloy have become closely correlated, and the price for alloy magnesium has declined so that it has converged with that for pure magnesium. To illustrate this convergence, petitioners point to the pricing data for products 1 and 4, to the average unit value data for the U.S. industry, to the import data in the record, and to hearing testimony by respondents' economic witness and by Alcoa's representative.[22]

Respondents[23] argue that pure and alloy magnesium are separate like products. They maintain

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[17] (...continued)
such as volatility; granular magnesium has a different end-use, namely steel desulfurization. There is no meaningful overlap in manufacturing facilities and employees, with granular magnesium for commercial sale being produced exclusively by grinders, which do not produce ingot magnesium. Ingot and granular magnesium are not interchangeable since ingot magnesium cannot be used for steel desulfurization without being converted to granular form; because of the differences in end uses, producer and customer perceptions differ, as do channels of distribution. Granular magnesium appears to command a price premium over ingot magnesium. See USITC Pub. 3467 (Dissenting Views of Commissioners Miller and Hillman); INV-CC-033.

[18] Petitioners contend that the two most significant uses, aluminum alloying and desulfurization, accounted for 47 percent and 13 percent, respectively, of total domestic primary magnesium use in 2003, and that substantial secondary alloy magnesium also is used in these segments. Petitioners' Prehearing Brief at 13.

[19] Petitioners' Prehearing Brief at 10-31.

[20] Petitioners' Prehearing Brief at 28.

[21] Petitioners' Prehearing Brief at 28-29.

[22] Petitioners' Prehearing Brief at 29-31.

[23] The respondents are: JVC AVISMA Titanium-Magnesium Works and VSMPO-Tirus, US, Inc. (collectively "Avisma"); Solikamsk Magnesium Works and Solimin Magnesium Corp. (collectively "Solikamsk"); Alcoa, Inc., and Alcan Corporation and Novelis, Inc. (collectively "Alcan").

that the physical characteristics of pure and alloy magnesium are very different because the alloying elements in the alloy product give it distinct physical characteristics, such as strength, ductility, workability, corrosion resistance, density, or castability.[24]

Respondents contend that the uses for pure and alloy magnesium are different, with pure magnesium used primarily in commercial and industrial applications (most notably as an alloying agent in aluminum alloys and as a desulfurization reagent), and alloy magnesium used primarily in structural applications (most notably diecasting parts for automobiles).[25] Alcan states that, although aluminum producers may occasionally use alloy magnesium, it has a strong preference for using pure magnesium because this allows for easier calibration and management in the aluminum alloying process.[26]

Respondents argue that the interchangeability between pure and alloy magnesium is very limited. First, they note that pure magnesium cannot be used in alloy applications, principally diecasting. In other words, there is only one-way substitutability of alloy for pure magnesium in certain applications. Furthermore, respondents maintain that the extent to which alloy magnesium is used in applications that were previously associated only with pure magnesium is limited. They stress that, because of its beryllium content, most alloy magnesium cannot be substituted for pure magnesium in aluminum production.[27]

Respondents argue that the channels of distribution for alloy and pure magnesium are different because the two products are sold to different kinds of customers (pure to aluminum and steel producers, and alloy to diecasters). They note that pure and alloy magnesium are never commingled.[28]

Respondents maintain that there are differences in the production facilities, processes and employees involved in making pure and alloy magnesium. They claim that specific melting and casting equipment is often used to make the two products. They also note that secondary magnesium producers use different facilities and employees to make alloy magnesium than US Magnesium uses to make pure magnesium, and that this distinction is important given that most alloy magnesium made in the United States is produced by firms other than US Magnesium.[29]

Respondents argue that customers and producers perceive pure and alloy magnesium to be different products, principally because of the beryllium content of most alloy magnesium.[30]

Finally, respondents maintain that the prices and pricing trends for pure and alloy magnesium are different.[31]

In previous investigations and sunset reviews involving magnesium of both types, and in its preliminary determinations in these investigations, the Commission found pure and alloy magnesium to be separate like products.[32] In these prior cases, that were brought against both pure and alloy

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[24] E.g., Avisma Prehearing Brief at 5-7.

[25] E.g., Avisma Prehearing Brief at 7-8.

[26] Alcan Prehearing Brief at 8.

[27] E.g., Avisma Prehearing Brief at 9-10.

[28] E.g., Alcoa Prehearing Brief at 7-8.

[29] E.g., Alcan Prehearing Brief at 10-11.

[30] E.g., AVISMA Prehearing Brief at 13.

[31] E.g., Avisma Prehearing Brief at 14.

[32] Magnesium from Canada, Inv. Nos. 701-TA-309 and 731-TA-528 (Final), USITC Pub. 1992 (Aug. 1992) at 8-11; Magnesium from China, Russia, and Ukraine, Inv. Nos. 731-TA-696-698 (Final), USITC Pub. 2885 (May 1995) at 7-9; Magnesium from Canada, Inv. Nos. 701-TA-309-A-B and 731-TA-528 (Review), USITC Pub. 3324 (July 2000) at 5-6; Pure Magnesium from China, Inv. No. 731-TA-696 (Review), USITC Pub. 3346 (August 2000) at 4-5.

magnesium, Commerce had defined two classes or kinds of merchandise.[33] The Commission found that although the companies that produced both pure and alloy magnesium did so with the same machinery and employees, and pure and alloy magnesium shared certain physical characteristics, the two products in the past had different principal end uses, were targeted for distinct markets, were generally not interchangeable, were perceived differently by customers due to their different end uses, and had different price trends as a result of their different markets.[34] Commerce defined the scope of subject merchandise in the present investigation on Russia as a single class or kind of merchandise encompassing both pure and alloy magnesium.[35] Based on the record in these investigations, we have concluded that circumstances have changed sufficiently so as to blur the dividing line between pure and alloy magnesium, and to warrant treating pure and alloy magnesium as a single domestic like product in these investigations.

Physical Characteristics and Uses. Pure and alloy magnesium share the basic physical characteristics of being lightweight and strong and having low density. Both products consist mostly of magnesium: pure magnesium contains at least 99.8 percent magnesium by weight, and alloy magnesium usually contains at least 90 percent. The two products differ from each other in that alloy magnesium has certain properties that improve its strength, ductility, workability, corrosion resistance, density, and castability, as compared with pure magnesium.[36]

In the past, pure magnesium was used principally in the production of aluminum alloys and as a reagent in iron and steel desulfurization, while alloy magnesium was used principally in structural applications, mostly in castings and extrusions for the automotive industry.[37] The record in these investigations generally supports petitioners' contention that alloy magnesium has increasingly been used in the same principal applications as pure magnesium: in aluminum production and in iron and steel desulfurization. For example, *** percent of domestic magnesium producers' reported total commercial shipments to the aluminum industry in 2003 were alloy magnesium.[38] The record also indicates that significant amounts of the subject imports of alloy magnesium were used in aluminum production.[39] For example, in 2003, *** percent of U.S. importers' reported commercial shipments of alloy magnesium from China, and *** percent of U.S. importers' reported commercial shipments of alloy magnesium from

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[33] In the 1992 Magnesium from Canada investigation the Commission initially found a single like product but on remand from a binational panel found pure and alloy magnesium to be separate like products.

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

[35] As noted, pure magnesium from China is already under order and is not subject merchandise here.

[36] Confidential Staff Report ("CR") at I-15, PR at I-12.

[37] The principal end uses for magnesium and the percentage of U.S. producers' total commercial shipments to each of these end uses in 2003 were as follows: (i) aluminum manufacturing – *** percent; (ii) granule/reagent production – *** percent; diecasting – *** percent; other uses – *** percent. See CR/PR at Table III-5.

[38] In 2003, US magnesium producers' total reported commercial shipments to the aluminum industry were *** metric tons, of which *** metric tons were alloy magnesium. CR/PR at Table III-5.

[39] Generally, we limit our domestic like product analysis to the activities and conditions affecting the domestic industry. In this case, however, because petitioners are in effect arguing that the domestic like product that is like imports of alloy magnesium from China should be expanded to encompass pure magnesium, we believe it is appropriate to examine whether the imported product is in fact used in the United States for the same purposes as the purported domestic like product, in order to determine what product is "like" the subject imports. Thus, in this context we do not agree with Alcoa's argument that "the use of imported alloy products by aluminum alloyers can not provide a basis for a like product decision" (Alcoa Posthearing Brief at 3), but view such data as having some relevance in the unusual circumstances presented here.

Russia, were shipped to aluminum producers.[40] Although aluminum producers may have a preference for using pure magnesium in aluminum production, the record shows that they are using significant quantities of alloy magnesium. Indeed, a representative of a major aluminum producer described in this proceeding "the development of new technology that permits the domestic production of high-quality magnesium from scrap material" as the "biggest change in the magnesium industry." He forecast that the proportion of his firm's magnesium needs that would be met by recycled alloy magnesium would continue to grow dramatically over the next few years and would surpass the quantity of magnesium obtained from other sources.[41] Alcan, an aluminum producer, stated in this proceeding that *** percent of its magnesium purchased for aluminum production is alloy magnesium.[42] Aluminum producers reported purchases of alloy magnesium from U.S. producers and subject imports at levels that were not insignificant relative to their purchases of pure magnesium. In 2003, U.S. aluminum producers reported purchasing *** metric tons of alloy aluminum and *** metric tons of pure aluminum from U.S. producers and subject imports.[43]

The record also supports petitioners' contention that a significant amount of secondary alloy magnesium is used in iron and steel desulfurization.[44]

Manufacturing Facilities and Employees. Primary production of pure and alloy magnesium generally occurs in the same facilities and by the same employees, except that additional equipment and labor is involved for the additional step of adding alloying elements.[45] The amount of value added to the magnesium in the alloying phase is not substantial.[46] Where alloy magnesium is made in secondary production (i.e., by recyclers), the manufacturing facilities and employees involved are different from those involved in the production of pure magnesium (which is made only in primary production).

Interchangeability and Customer and Producer Perceptions. The record shows a significant degree of substitutability of alloy magnesium for pure magnesium in aluminum production and iron and steel desulfurization, market segments that accounted for most of U.S. magnesium producers' commercial shipments in 2003.[47] The majority of the domestic producers reported increasing substitution of pure magnesium by Chinese alloy magnesium.[48] Many reporting importers also acknowledged at least some competition between pure and alloy magnesium.[49] Aluminum alloyers had mixed responses when asked how difficult it would be to use pure and alloy magnesium interchangeably.[50] The one desulfurizer addressing this issue reported that it would not be difficult to interchange pure and alloy in its

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[40] In 2003, U.S. importers' reported commercial shipments of alloy magnesium from China were *** metric tons, of which *** metric tons were shipped to aluminum producers; and U.S. importers' reported commercial shipments of alloy magnesium from Russia were *** metric tons, of which *** metric tons were shipped to aluminum producers. CR /PR at Table IV-5.

[41] Conference Transcript at 118 and 148 (Yosowitz, Alcan); see also Hearing Transcript at 163-64 (Dery, Alcan).

[42] Alcan Prehearing Brief at 9.

[43] CR/PR at Tables II-5-7.

[44] CR/PR at Table III-5. Of the *** metric tons of magnesium that U.S. producers shipped to granule and reagent producers in 2003, *** metric tons were alloy magnesium, and *** metric tons were pure or ultra-pure magnesium.

[45] CR at I-18, PR at I-15.

[46] Conference Transcript at 85-86 (Legge, US Magnesium).

[47] In 2003, U.S. producers' commercial shipments were made to different market segments in the following proportions: *** percent to aluminum producers, *** percent to diecasters, *** percent to granule/reagent producers, and *** percent to other users. CR at III-8, PR at III-4.

[48] CR at II-2, PR at II-2.

[49] CR at II-3, PR at II-2.

[50] CR at II-3, PR at II-2.

production.[51] On the other hand, diecasters were unanimous in reporting that the use of pure magnesium would be extremely difficult or impossible to use in their process.[52]

Channels of Distribution. Both pure and alloy magnesium are sold to end users. The use of alloy magnesium by aluminum producers, and iron and steel producers, in lieu of pure magnesium, has led to a greater overlap in the classes of end users that use both types of magnesium.[53]

Price. The information on the record generally supports petitioners' claim that the prices for pure and alloy magnesium have converged.[54]

Conclusion. In sum, based on the shared essential physical characteristics; the overlap in the uses of pure and alloy magnesium, especially in aluminum production; the recognition by many industry participants of increased competition between pure and alloy magnesium; the same general channels of distribution for pure and alloy magnesium; and the convergence in prices for the two types of magnesium, we find pure and alloy magnesium to be part of the same like product.

III. DOMESTIC INDUSTRY

The domestic industry is defined as "the producers as a [w]hole of a domestic like product . . . ."[55] 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.[56] Based on our like product determination, we find one domestic industry consisting of all producers of magnesium.[57]

We include grinders that produce granular magnesium in this domestic industry.[58] In deciding whether a firm qualifies as a domestic producer, the Commission generally analyzes the overall nature of a firm's production-related activities in the United States.[59] Despite the limited information available to

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[51] CR at II-3-II-4, PR at II-2.

[52] CR at II-3, PR at II-2 and Posthearing Statement of Meridian Technologies, Inc., Lunt Manufacturing Co., Inc., Spartan Light Metal Products, Inc., and Gibbs Die Casting Corporation at 3.

[53] CR at I-21-I-22, PR at I-17.

[54] This convergence can be seen in U.S. producers' prices for two of the pricing products for which the Commission gathered information: Product 1, pure magnesium, and Product 4, an alloy magnesium. In the 2000-2001 period, the alloy magnesium commanded a premium, selling in the range of $***-$*** per pound, as compared with quarterly prices for the pure magnesium of $***-$*** per pound. By interim 2004, that premium had all but disappeared, with the alloy magnesium selling in the range of $***-$*** per pound, and the pure magnesium selling in the range of $***-$*** per pound. CR/PR at Tables V-1 and V-5.

[55] 19 U.S.C. § 1677(4)(A).

[56] 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).

[57] *** imported the subject merchandise and is thus a related party. ***. CR/PR at Table IV-1 n.14. Because these imports are *** compared with *** domestic production (*** in 2003 (CR/PR at Table III-2), and because ***, we do not find it appropriate to exclude the company from the domestic industry as a related party as defined under 19 U.S.C. §1677(4)(B).

[58] For the reasons discussed by the majority, Commissioners Miller and Hillman also find that grinders engage in sufficient production-related activity to be considered domestic producers, but find grinders to be a separate industry based on their like product finding that granular magnesium is a separate like product. See also, Magnesium From China and Israel, USITC Pub. 3467 (Dissenting Views of Commissioners Miller and Hillman).

[59] The Commission generally considers six factors:

(1) source and extent of the firm's capital investment;

(continued...)

us on this issue in these investigations, we are persuaded that it is appropriate to include grinders in the domestic industry, based on the relatively high amount of value added by grinders,[60] and the fact that we included grinders in the domestic industry in our most recent prior investigation involving magnesium (after fully analyzing the overall nature of grinders' production-related activities in the United States).[61] [62]

IV. CUMULATION [63] [64]

A. In General

For purposes of evaluating the volume and price effects for a determination 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.[65] In assessing whether

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[59] (...continued)
(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 domestic 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, e.g., Citric Acid and Sodium Citrate from China, Inv. No. 731-TA-863 (Prelim.), USITC Pub. 3277 at 8 (Feb. 2000); Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea, Invs. Nos. 701-TA-387 to 391, 731-TA-816 to 821 (Final), USITC Pub. 3273 at 9 (Jan. 2000); see also Large Newspaper Printing Presses from Germany and Japan, Invs. Nos. 731-TA-736 to 737 (Final), USITC Pub. 2988 at 8-9 (Aug. 1996).

[60] The value added for the grinding operations of the three grinders from which we received data, considered collectively, ranged from *** percent to *** percent over the period of investigation. Memorandum INV-CC-033.

[61] Pure Magnesium from China and Israel, Inv. Nos. 701-TA-403 and 731-TA-895-96 (Final), USITC Pub. 3467 (November 2001) at 9-11.

[62] Very near the end of these investigations, the Commission learned that some magnesium diecasters produce secondary alloy magnesium by recycling scrap generated in their diecasting operations. Memorandum INV-CC-036. Almost all of this recycled magnesium is internally consumed by the diecasters. Because these diecasters appear to be engaging in the identical or a similar production process as that which secondary magnesium producers use, we also consider these diecasters to be domestic producers of magnesium. However, we do not have sufficient information to be able to include data concerning these recycling operations in our data for the domestic industry.

[63] The record in these investigations indicates that import quantities of the relevant subject imports for each subject country exceeded the 3 percent statutory negligibility threshold during the pertinent period. CR/PR at Table IV-2. Accordingly, we find that the subject imports are not negligible as defined by 19 U.S.C. § 1677(24).

[64] As noted previously, Commissioners Miller and Hillman found granular magnesium to be a separate domestic like product, and found that imports of granular magnesium from Russia are negligible. During the 12-month period immediately preceding the filing of the petition, official Commerce statistics show no imports of granular magnesium from Russia. Imports of granular magnesium from China are not at issue in these investigations as granular magnesium from China is covered by an existing antidumping order. Official Commerce Statistics; CR/PR at Table IV-2, n.3.

[65] 19 U.S.C. § 1677(7)(G)(i).

subject imports compete with each other and with the domestic like product,[66] 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.[67]

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.[68] Only a "reasonable overlap" of competition is required.[69]

B. Analysis

The threshold requirement for cumulation has been satisfied because the petitions with respect to China and Russia were filed on the same day.

Based on the record in these investigations, we find that there is a reasonable overlap of competition between subject imports of magnesium from China and Russia and between these imports and the domestic like product. First, there is a significant degree of fungibility between imports from China and Russia, and between these imports and the domestic like product. No party has argued that magnesium of the same type (i.e., pure or alloy magnesium) is not fungible, regardless of whether it is obtained domestically or from China or Russia. U.S. producers, importers and purchasers of magnesium generally reported that magnesium of the same type was always or frequently interchangeable, regardless of the source.[70] Although imports from Russia were mainly pure magnesium, and the scope of the

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[66] 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).

[67] 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).

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

[69] 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.").

[70] CR/PR at Tables II-1 and II-2. The one exception to this general consensus regarding interchangeability is the comparison by importers of magnesium produced in the United States with subject imports from China. Half of the importers reported that the products were always or frequently interchangeable, and half reported that they were only (continued...)

investigation with regard to China is limited to alloy magnesium, imports of alloy magnesium from Russia were not insignificant.[71] Furthermore, the degree of fungibility between subject imports from China and subject imports from Russia is greater than the amount of imports of alloy magnesium from Russia would suggest. As discussed above in connection with the definition of the domestic like product, there is a significant proportion of the imports of alloy magnesium from China that was sold to aluminum producers, where they would be in direct competition with imports of pure and alloy magnesium from Russia, and with domestically-produced pure and alloy magnesium. In addition, alloy magnesium from all three sources is purchased by U.S. diecasters, as reported in questionnaire responses.[72] Also, the record indicates, based on questionnaire responses, that in 2003, *** percent of U.S. producers' reported commercial shipments were to diecasters, as were *** percent of reported shipments of subject imports from China, and *** percent of reported shipments of subject imports from Russia. The vast majority of reported shipments were to aluminum producers: *** percent of U.S. producers' shipments (including both pure and alloy); *** percent of shipments of Chinese subject product (all alloy); and *** percent of shipments of Russian subject product (including both pure and alloy).[73]

Second, the record indicates that subject imports from China and Russia are sold in the same geographic markets as the domestic like product.[74]

Third, while the channels of distribution for imports from China and Russia appear to be somewhat different – ***[75] – in both cases sales are made to end users and not to distributors that maintain inventories. The same is true for the domestic like product.[76] Finally, the import statistics make clear that subject imports from both China and Russia have entered the U.S. market in significant quantities during each year of the period of investigation, and accordingly have been simultaneously present in the U.S. market.[77]

In sum, we find that there is a reasonable overlap of competition between the subject imports of magnesium from China and Russia, and between the subject imports and the domestic like product. Consequently, we cumulate subject imports of magnesium from China and Russia for purposes of these final determinations.

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[70] (...continued)
sometimes interchangeable. CR/PR at Table II-2.

[71] The percentage of total magnesium imports from Russia that consisted of alloy magnesium was 5.4 percent in 2001, 12.2 percent in 2001, 17.1 percent in 2002, 19.6 percent in interim 2003, and 12.2 percent in interim 2004. See CR/PR at Table IV-2.

[72] CR/PR at Tables II-5-7. Diecasters reported purchases of alloy magnesium in 2003 as follows: U.S. product – *** metric tons; subject imports from China – *** metric tons; subject imports from Russia – *** metric tons.

[73] CR at Tables III-5, IV-5.

[74] See CR/PR at Tables IV-6 and IV-7. Respondents did not contest this issue.

[75] Avisma Postconference Brief at 17.

[76] CR at I-25, PR at I-20.

[77] CR/PR at Table IV-8.

V. MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

A. General Legal Standards

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.[78] 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.[79] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[80] In assessing whether 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.[81] 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."[82]

For the reasons stated below, we determine that the domestic industry producing magnesium is materially injured by reason of subject imports of magnesium from China and Russia.

B. Conditions of Competition

The following conditions of competition are pertinent to our analysis of the impact of magnesium imports from China and Russia on the domestic industry.[83]

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[78] 19 U.S.C. §§ 1671b(a) and 1673b(a).

[79] 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).

[80] 19 U.S.C. § 1677(7)(A).

[81] 19 U.S.C. § 1677(7)(C)(iii).

[82] 19 U.S.C. § 1677(7)(C)(iii).

[83] CR/PR at Table IV-2. At the request of Petitioners, we collected data for, and have used, a four-year period of investigation, encompassing 2000 through 2003, and the first nine months of 2004. Petitioners argued that a three-year period of investigation, beginning with 2001, would provide distorted results because, according to petitioners, US Magnesium *** its production capacity in that year as it modernized its production facility with new electrolytic cells; and because of US Magnesium's bankruptcy filing in that year. Petition at 55. None of the respondents objected to this expansion of the normal three-year period of investigation. Hearing Transcript at 182-84. We view an expanded period as appropriate under the circumstances. Data for 2000 were collected during the preliminary phase of these investigations and are not necessarily a consistent database with data for 2001 through 2003 (which were collected during the final phase of the investigations) because some domestic producers responding to the Commission's questionnaires revised the information that they provided for 2001 through 2003 from the preliminary to the final phase of these investigations. These revisions slightly affected the data for production, commercial shipments, net sales, inventories, cost of goods sold, and employment. We note that our determination would have been the same had we used a period of investigation beginning in 2001.

1. Demand Conditions

Magnesium of the same type (i.e., pure or alloy) is a fungible, commodity product, for which price is an important factor in purchasing decisions.[84] Demand for magnesium is derived from the demand for the applications in which magnesium is used, namely, aluminum production, diecasting, and iron and steel desulfurization, and thus generally follows the cyclical demand in the industries that consume magnesium, which, in turn, generally tracks overall economic activity. There are few products that substitute widely for pure and alloy magnesium.[85] While data for consumption of pure magnesium showed *** declines overall during the period of investigation (although rising at the end of the period),[86] parties generally reported no change or slight increases in demand.[87] Demand in the aluminum sector began to strengthen particularly in 2004, and spot prices started rising. Prices for alloy magnesium sold to diecasters were higher than prices for pure magnesium at the beginning of the period of investigation, but they converged later in the period.[88] Domestically-produced magnesium is sold predominantly through short- or long-term contracts (although one secondary magnesium producer reported making most of its sales on the spot market). Subject imports are more likely to be sold on the spot market.[89]

2. Supply Conditions

There were two domestic primary producers of both pure and alloy magnesium during the period of investigation: US Magnesium (the successor to Magcorp) and Northwest Alloys. Northwest Alloys, which produced mostly pure magnesium captively for Alcoa's internal consumption, closed its plant and ceased production in October 2001. There were also four domestic secondary producers of magnesium,[90] and three grinders.[91] Secondary magnesium production has become more significant in recent years.[92]

The supply of pure and alloy magnesium was affected by the bankruptcy of Magcorp (the predecessor of US Magnesium) in August 2001. At least one purchaser reported ***.[93] The supply of alloy and especially pure magnesium also was affected by US Magnesium's plant modernization program, which *** the company's production capacity in 2001 and 2002.[94] Most pure magnesium is used in aluminum production,[95] and some aluminum producers stressed the importance of having a

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[84] See CR/PR at Table II-11.

[85] CR at II-16-17, PR at II-10.

[86] Apparent U.S. consumption was *** metric tons in 2000, *** metric tons in 2001, *** metric tons in 2002, *** metric tons in 2003, *** metric tons in interim 2003, and *** metric tons in interim 2004. CR/PR at Tables IV-9 and C-6.

[87] CR at II-15-16, PR at II-9.

[88] See CR/PR at Tables V-1, V-2, and V-5.

[89] CR at V-3, PR at V-2-V-3.

[90] Three of the four secondary producers (Amacor, Garfield Alloys, and Halaco) do not currently produce magnesium. After the end of the period of investigation, a January 2005 fire at Amacor's production facility temporarily halted its production. Garfield Alloys' production facility was destroyed in a fire on December 29, 2003. Halaco filed for bankruptcy in 2002 and ceased production in 2004. CR/PR at Table III-1.

[91] Memorandum INV-CC-033.

[92] CR at II-10, PR at II-6.

[93] Alcan Prehearing Brief at 4.

[94] CR at III-6, PR at III-3.

[95] CR at I-22, PR at I-17.

diversified source of supply and not having to rely on a single supplier.[96]

Primary magnesium producers that use the electrolytic process (i.e., US Magnesium) have a strong incentive to maintain a continuous level of production because the electrolytic cells used to make primary magnesium must be kept in constant operation to avoid their deterioration and significant rebuilding costs.[97] Therefore, when faced with price competition, primary magnesium producers will tend to cut prices to maintain production volume.

Finally, non-subject imports from several countries have been an important source of supply throughout the period of investigation.[98] Pure and alloy ingot magnesium from Canada are currently subject to a countervailing duty order and imports of pure ingot magnesium and pure granular magnesium from China are currently subject to antidumping duty orders.[99] Certain non-subject supply sources were idled during the period of investigation, including Norsk Hydro in Norway, Pechiney in France in 2001, and Noranda's Magnola plant in Canada in 2003.[100]

C. 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."[101]

The volume of cumulated subject imports increased by 70.2 percent from 2000 to 2003, a period during which apparent U.S. consumption of pure magnesium fell ***. Subject imports were 20,356 metric tons in 2000, 21,223 metric tons in 2001, 28,632 metric tons in 2002, 34,651 metric tons in 2003, 24,918 metric tons in interim 2003, and 32,179 metric tons in interim 2004. Subject imports from China of alloy magnesium increased by 93.5 percent from 2000 to 2003, as imports from China of pure magnesium, subject to an existing antidumping order, declined by 99.3 percent over the same period.[102]

Apparent U.S. consumption fell by *** percent over the 2000-2003 period, but rose by *** percent from interim 2003 to interim 2004.[103] The market share of subject imports *** from 2000 to 2003, at the same time as the domestic industry's market share declined (although not to the same degree).[104] Subject imports increased from *** percent of U.S. apparent consumption in 2000, to *** percent in 2001, to *** percent in 2002, and to *** percent in 2003.[105] The market share of subject imports rose further over the interim periods, from *** percent in interim 2003 to *** percent in interim

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[96] Alcan Prehearing Brief at 4-5, Alcoa Prehearing Brief at 15-16.

[97] CR at I-17 n.50, PR at I-14 n.50.

[98] Non-subject imports of magnesium were 62,351 metric tons in 2000, 36,962 metric tons in 2001, 46,771 metric tons in 2002, 34,706 metric tons in 2003, 26,144 metric tons in interim 2003, and 30,853 metric tons in interim 2004. CR/PR at Table IV-2 and C-6. The U.S. market share of these non-subject imports was *** percent in 2000, *** percent in 2001, *** percent in 2002, *** percent in 2003, *** percent in interim 2003, and *** percent in interim 2004. CR/PR at Tables IV-10 and C-6.

[99] CR/PR at Table I-1.

[100] CR at II-13, PR at II-8.

[101] 19 U.S.C. § 1677(7)(C)(i).

[102] CR/PR at Tables C-4-5.

[103] Apparent U.S. consumption was *** metric tons in 2000, *** metric tons in 2001, *** metric tons in 2002, *** metric tons in 2003, *** metric tons in interim 2003, and *** metric tons in interim 2004. CR/PR at Tables IV-9 and C-6.

[104] We recognize that some of the gain in market share by subject imports was at the expense of non-subject imports.

[105] CR/PR at Table C-6.

2004.[106] U.S. producers lost market share overall during the period of investigation. The domestic industry's share of U.S. apparent consumption was *** percent in 2000, *** percent in 2001, *** percent in 2002, *** percent in 2003, *** percent in interim 2003, and *** percent in interim 2004.[107] The ratio of subject imports to production increased *** during the period of investigation. The ratio of subject imports to production was *** percent in 2000, *** percent in 2001, *** percent in 2002, *** percent in 2003, *** percent in interim 2003, and *** percent in interim 2004.[108]

We find the volume of cumulated subject imports of magnesium, and the increase in that volume, both in absolute terms and relative to production and consumption in the United States, to be significant.

D. 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.[109]

The record indicates that subject imports of magnesium from China and Russia were generally substitutable for the domestic like product. Information from U.S. producers, importers and purchasers indicates that domestic magnesium and magnesium imported from China and Russia of the same type (i.e., pure or alloy) are generally interchangeable.[110] As discussed previously, a significant amount of imported pure and alloy magnesium was sold in competition with domestically-produced pure and alloy magnesium,[111] and the record indicates that price is an important factor in magnesium purchasing decisions.[112] The record also indicates that a majority of domestically-produced magnesium is sold pursuant to short- or long-term contracts for the delivery of the product for an extended period of time, whereas the subject imports are more likely to be sold on the spot market.[113] Renegotiation of existing contracts was described as an infrequent occurrence by most producers and exporters.[114]

The Commission sought quarterly pricing data for four types of magnesium (one pure and three alloy) from U.S. producers and from importers. Prices of domestically-produced magnesium and the subject imports generally fell from 2000 to 2003, and then rose in interim 2004.[115] The quarterly price comparison data show substantial underselling by subject imports during most of the period of

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[106] CR/PR at Table IV-10.

[107] CR/PR at Tables IV-10 and C-6.

[108] See CR/PR at Tables III-2, IV-2 and C-6.

[109] 19 U.S.C. § 1677(7)(C)(ii).

[110] CR/PR at Tables II-1 and II-2.

[111] See, e.g., CR/PR at Table V-2.

[112] Most purchasers reported that price and availability were their most important purchasing factors. CR/PR at Table II-11.

[113] According to petitioners, because of increasing subject imports, ***. CR at V-3 n.7, PR at V-2 n.7.

[114] CR at V-3, PR at V-2.

[115] CR at V-4, PR at V-3, CR/PR at Tables V-1 to V-5.

investigation. Overall, the subject imports undersold the domestic product in 54 of 74 possible quarterly comparisons. The instances of overselling by subject imports occurred largely in the first three quarters of 2004,[116] and may be attributed at least in part to the filing of the petition in these investigations.[117] For Product 1 (pure magnesium), imports from Russia undersold the U.S. product in 15 of 19 comparisons, with margins ranging from 0.8 percent to 21.2 percent.[118] [119] [120] For Product 2 (alloy magnesium sold to aluminum alloyers and meeting ASTM specifications), comparisons between the domestic product and subject imports were possible in only two quarters, and the Chinese product undersold the domestic product in both quarters, with margins of 33.3 percent and 40 percent.[121] For Product 3 (alloy magnesium sold to aluminum alloyers and not meeting ASTM specifications), the Commission received no pricing data for subject imports and price comparisons are thus not possible. For Product 4 (alloy magnesium sold to diecasters and meeting ASTM specifications), the subject imports from China and Russia undersold the U.S. product in 24 of 34 comparisons, with margins ranging from 0.2 percent to 17.4 percent.[122] Based on the foregoing, we find the underselling by subject imports from China and Russia to be significant.

The price comparison data also indicate that subject imports depressed domestic prices to a significant degree during that part of the period of investigation preceding the filing of the petition. For each product for which price comparisons were possible for the entire period of investigation (Products 1 and 4) prices declined throughout the period of investigation until approximately the first quarter of 2004.[123] For example, the price of domestic Product 1 fell from $*** per pound in the first quarter of 2000, to $*** per pound in the fourth quarter of 2003, before rising to $*** per pound in the first quarter of 2004.[124] The price of domestic Product 4 fell from $*** per pound in the first quarter of 2000, to $*** per pound in the fourth quarter of 2003, and remained stable in interim 2004.[125] In general, domestic price declines were correlated with subject import price declines during 2000-2004.

As noted above, U.S. producers generally sold magnesium by contract whereas most subject imports were sold on the spot market. Contract prices for U.S. producers for 2004 were negotiated at the

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[116] CR/PR at Tables V-1, V-2, and V-5. Because subject imports are more likely than the domestic product to be sold on the spot market, and because spot prices are quicker to change in response to market conditions than contract prices, we would expect the prices of subject imports to increase more quickly than domestic prices during a period of rising prices such as interim 2004.

[117] Petitioners' Posthearing Brief at 9, n.42, and Exhibits 5 and 8.

[118] CR/PR at Table V-1. There are no comparisons with imports from China for this product because the scope of the investigation for China does not encompass pure magnesium.

[119] Our normal price comparison methodology only compares sales of comparable products, so that we make "apples to apples" price comparisons. Given that alloy magnesium is, as noted above, competing to at least some extent with pure magnesium for sales to purchasers, we also compared sales of U.S. Product 1 (pure magnesium) with subject imports of Product 2 (an alloy magnesium sold to aluminum producers). In this comparison, imports from China and Russia undersold the U.S. product in 13 of 19 comparisons, with margins ranging from 5.9 percent to 34.5 percent. CR/PR at Table V-2. We note that the level of underselling is commensurate with that found above.

[120] Chairman Koplan notes that he gives price comparisons between U.S. product 1 (pure magnesium) and subject imports of Product 2 (an alloy magnesium sold to aluminum producers and meeting ASTM specifications for alloy) less weight in his overall pricing analysis, particularly regarding instances of overselling and underselling, because they are not directly comparable products.

[121] CR/PR at Table V-3.

[122] CR/PR at Table V-5.

[123] CR/PR at Tables V-1, V-2, and V-5. The only exception is Product 4, for which domestic prices stabilized, albeit at low levels, during 2003.

[124] CR/PR at Table V-1.

[125] CR/PR at Table V-5.

end of 2003, when, according to petitioners, spot prices began to rise somewhat due in part to supply uncertainty when Noranda in Canada closed its Magnola plant.[126] However, spot prices rose very sharply in 2004, after the petition was filed in February 2004, likely as a result of the petition[127] as well as strengthening demand.[128] Because subject imports are sold mainly on the spot market, the subject import prices in 2004 may reflect these higher spot prices, whereas the U.S. contract prices for 2004 would have reflected the lower end of 2003 spot prices. This explains in part the overselling during 2004. Higher contract prices negotiated in 2004 for 2005 were due in part to the filing of the petition and pending investigations and therefore do not detract from our finding of adverse price effects and current material injury by reason of the subject imports.

We note also that purchasers confirmed a number of the lost sales and lost revenue allegations made by petitioners, and that these instances of lost sales and lost revenues involved substantial tonnage.[129]

Based on the foregoing we find that cumulated imports of magnesium from China and Russia have undersold the domestic like product and depressed domestic prices to a significant degree.

D. Impact of the Subject Imports

Section 771(7)(C)(iii) of the Act 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.[130] 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." [131]

Consistent with our finding that the volume of cumulated subject imports, and the increases in that volume, were significant, and that there was significant underselling and price depression, we find that cumulated subject imports are having a significant adverse impact on the domestic magnesium

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[126] Petitioners' Posthearing Brief at 13.

[127] Petitioners' Posthearing Brief at 9, n.42 and Exhibit 8.

[128] Commissioner Pearson believes that the sharp increase in magnesium spot prices in 2004 was primarily due to strengthening global demand for magnesium and other metal products. Commissioner Pearson notes that prices for other metal products, such as steel scrap, hot-rolled steel sheet, cold-rolled steel sheet, and tin also increased substantially in 2004. Alcoa's Posthearing Brief, Exhibit 5.

[129] CR/PR at Tables V-6 through V-9. In addition, there were some lost sale allegations that, although unconfirmed, nonetheless involved situations where purchasers chose to buy lower-priced subject imports. See, E.g., CR at V-23, PR at V-8 , Response of ***.

[130] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851. "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." SAA at 885.

[131] 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 final determinations, Commerce found dumping margins of 91.31 percent and 141.49 percent for alloy magnesium from China, and ranging from 18.65 percent to 22.28 percent for magnesium from Russia. Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Magnesium Metal From the People's Republic of China, 70 Fed. Reg. 9037, 9040 (February 24, 2005), and Magnesium Metal from the Russian Federation: Notice of Final Determination of Sales at Less Than Fair Value, 70 Fed. Reg. 9041, 9045 (February 24, 2005).

industry. Most of the domestic industry's trade and financial indicators were unfavorable and worsened during the period of investigation, until interim 2004, when the petition in these investigations was filed.[132] Production and shipments declined *** overall throughout the period of investigation.[133] The industry's capacity utilization rate was *** throughout the period of investigation, although it improved *** in 2003.[134] As detailed above, the domestic industry's market share fell overall, at the same time as the subject imports gained market share. Employment in the magnesium industry also declined overall.[135] The significant increase in volume and market share of subject imports materially contributed to the declines in the domestic industry's sales and employment.

The domestic industry's financial condition was *** over the period of investigation. Its operating income fell from *** in 2000, to *** in 2001, *** in 2002, and *** in 2003. The industry's *** from *** in interim 2003 to a *** in interim 2004.[136]

The industry's *** were mainly the result of a combination of lower domestic sales volumes and lower unit values on those domestic sales.[137] By taking market share and depressing prices, subject imports contributed to the industry's *** financial performance throughout the period of investigation. We recognize that the domestic industry's performance improved at the end of the period of investigation, especially in interim 2004. We attribute this improvement, at least in part, to the pendency of these investigations. Moreover, as described above, the domestic industry continued to incur losses in interim

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[132] As noted above, Northwest Alloys (a subsidiary of Alcoa) ceased magnesium production in September 2001, and US Magnesium's production capacity was curtailed in 2001 and 2002 as a result of its plant modernization program. We have taken these factors into account in considering the industry's capacity, production, shipments, and employment data. In 2001, Northwest Alloys' capacity was *** metric tons, its production was *** metric tons, its shipments were *** metric tons, and the number of its production and related workers was ***. CR/PR at Table III-2 and Northwest Alloys' Questionnaire Response. The parties to these investigations disputed the role of subject imports in Northwest Alloys' closure. Petitioners contend that subject imports contributed to the plant's closure. Petitioners' Posthearing Brief at 10-12. Alcoa disputes this. Hearing Transcript at 158 (Fessenden, Alcoa Flexible Packaging). We note that a contemporaneous press release by Alcoa attributed the closure of the Northwest Alloys plant to "high production costs and unfavorable market conditions." CR at III-6, PR at III-3. Its June 25, 2001 application for trade adjustment assistance cited low-cost imports from China, Russia, and Canada as a reason for declines in sales and production. Petitioners' Prehearing Brief, Exhibit 6. We note that Northwest Alloys' inability to recoup its production costs would have been at least in part attributable to the effect of subject imports in depressing prices.

[133] Production declined from *** metric tons in 2000, to *** metric tons in 2001, to *** metric tons in 2002, and then increased to *** metric tons in 2003. CR/PR at Table III-2. Production declined from *** metric tons in interim 2003, to *** metric tons in interim 2004. Shipments fell from *** metric tons in 2000, to *** metric tons in 2001, to *** metric tons in 2002, and then increased to *** metric tons in 2003. CR/PR at Table C-6. Shipments increased from *** metric tons in interim 2003, to *** metric tons in interim 2004. CR/PR at Table III-3. Separate data were collected from the grinders but were not combined with any of the other domestic industry data; to do so would result in double-counting.

[134] The domestic industry's capacity utilization declined from *** percent in 2000, to *** percent in 2001, and then rose to *** percent in 2002, and to *** percent in 2003. Capacity utilization was *** percent in interim 2003, and *** in interim 2004. CR/PR at Tables III-2 and C-6.

[135] The number of production and related workers declined from *** in 2000, to *** in 2001, to *** in 2002, and then rose to *** in 2003. The number of production and related workers declined from *** in interim 2003 to *** in interim 2004. CR/PR at Tables III-8 and C-6. Hours worked declined from *** in 2000, to *** in 2001, to *** in 2002, and to *** in 2003. Hours worked were *** in interim 2003 and *** in interim 2004. CR/PR at Tables III-8 C-3, and C-6. Wages paid declined from $*** in 2000, to $*** in 2001, to $*** in 2002, and then rose *** to $*** in 2003. Wages paid were $*** in interim 2003 and $*** in interim 2004. CR/PR at Tables III-8 and C-6.

[136] CR/PR at Table VI-1.

[137] The unit values of the industry's commercial sales per metric ton were $*** in 2000, $*** in 2001, $*** in 2002, $*** in 2003, $*** in interim 2003, and $*** in interim 2004. CR/PR at Table VI-1.

2004. Improvement in the industry's performance in 2004 was to be expected, given its improved efficiency, higher capacity utilization rates, lower costs, and the stronger market demand. However, subject imports remained a significant presence in the U.S. market, and U.S. prices continued to be suppressed, as is evident from the suppressed unit values for U.S. producers' sales.[138] Halaco, a secondary magnesium producer, which ceased production in 2004 after filing for bankruptcy in 2002, ***.[139]

We have considered respondents' arguments that any injury to the domestic industry was caused by factors other than the subject imports. These other factors identified by respondents include: costs incurred by Magcorp and US Magnesium in connection with Magcorp's bankruptcy and modernization efforts; alleged corporate mismanagement of Magcorp and US Magnesium and alleged financial looting of Magcorp by its corporate parent; lawsuits against Magcorp and US Magnesium by the U.S. Environmental Protection Agency; a lawsuit against US Magnesium by Magcorp's bankruptcy trustee; rising energy costs; and over-supply by non-subject imports, particularly imports from Noranda's Magnola plant in Canada. We recognize that U.S. Magnesium's "M" cell modernization project, which began in March 2001 and was completed in September 2002, and its bankruptcy proceeding, which lasted from August 2001 to June 2002, may have created uncertainty in the market. However, U.S. Magnesium continued to produce magnesium throughout the entire period of investigation. Moreover, any uncertainty early in the period does not explain the injury that the company suffered due to depressed magnesium prices throughout the period of investigation. With respect to alleged corporate mismanagement of Magcorp and U.S. Magnesium, the record indicates that *** during the period of investigation.[140] The evidence in the record also does not indicate that imports from Canada contributed significantly to the injury to the domestic industry. We note that imports from Canada during the period of investigation were at much higher prices than the subject imports.[141] Finally, in response to respondents' contention that any injury to the domestic industry was caused by rising energy costs, we note that domestic producers were unable to pass any rising costs on to their customers, due to the price depression caused by subject imports prior to the filing of the petition in these investigations.[142] In sum, the record shows that the subject imports contributed importantly to the domestic industry's injury and that these alleged "other causes" were not sufficient to sever the causal nexus that we have found between subject imports and the domestic industry's weakened state.

In sum, we find that cumulated subject imports of magnesium have had a significant adverse impact on the U.S. industry.

VI. CRITICAL CIRCUMSTANCES

In its final antidumping duty determination concerning alloy magnesium from China, Commerce found that critical circumstances exist for two producers in China, Tianjin Magnesium International Co.,

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[138] CR/PR at Tables C-3, C-6.

[139] In 2003, Halaco produced *** metric tons of secondary aluminum, accounting for *** percent of total U.S. magnesium production. CR/PR at Table III-1.

[140] ***.

[141] The unit values of imports from Canada were $3,002 in 2001 (as compared with $2,003 for subject imports), $2,718 in 2002 (as compared with $1,869 for subject imports), $2,774 in 2003 (as compared with $1,891 for subject imports), $2,741 in interim 2003 (as compared with $1,860 for subject imports), and $*** in interim 2004 (as compared with $2,373 for subject imports). CR/PR at IV-2.

[142] The domestic industry's cost of goods sold per metric ton was $*** in 2000, $*** in 2001, $*** in 2002, $*** in 2003, $*** in interim 2003, and $*** in interim 2004. CR/PR at Tables VI-1 and C-6.

Ltd. and Beijing Guangling Jinghua Science & Technology Co., Ltd.[143] Because we have determined that the domestic magnesium industry is materially injured by reason of subject imports from China, we must further determine "whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the remedial effect of the antidumping order to be issued."[144] The SAA indicates that the Commission is to determine "whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order."[145]

The statute further provides that in making this determination the Commission shall consider, among other factors it considers relevant –

> (I) the timing and the volume of the imports,
> (II) a rapid increase in inventories of the imports, and
> (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.[146]

Consistent with Commission practice,[147] in considering the timing and volume of subject imports, we consider import quantities prior to the filing of the petition with those subsequent to the filing of the petition using monthly statistics on the record regarding those firms for which Commerce has made an affirmative critical circumstance determination.

The petition in this case was filed on February 27, 2004, and suspension of liquidation occurred on October 4, 2004. Information on monthly exports from the two Chinese firms for which Commerce made an affirmative critical circumstances determination is presented in table IV-3 of the staff report, based on U.S. Customs data for exports. Comparing the six-month period September 2003 through February 2004 with the six-month period March 2004 through August 2004, exports for which Commerce made affirmative critical circumstances determinations increased from *** metric tons to *** metric tons. Commerce import data for the larger of the two companies, ***, show a steadier increase from *** metric tons in the six months before the petition was filed to *** metric tons in the six months after the petition was filed.[148]

We also have considered the extent to which there was an increase in inventories of the subject imports. We do not have information regarding inventories that is specific to imports from the two producers in China with respect to which Commerce made its affirmative critical circumstances finding. Nor do we have information regarding U.S. importers' inventories of subject imports from China for the six-month periods before and after the filing of the petitions. We note that U.S. importers' reported inventories of subject imports from China were *** metric tons in interim 2003 and *** metric tons in interim 2004.[149]

Despite the increase in imports and possible increase in inventories, we find that the imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine

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[143] Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal From the People's Republic of China, 70 FR 9037, 9038 (February 24, 2005)

[144] 19 U.S.C. § 1673d(b)(4)(A)(i).

[145] SAA at 877.

[146] 19 U.S.C. § 1673d(b)(4)(A)(ii).

[147] See, e.g., Carbazole Violet Pigment 23 From China and India, Inv. Nos. 701-TA-437 and 731-TA-1060 and 1061 (Final), USITC Pub. 3744 at 26 (Dec. 2004); and Certain Frozen Fish Fillets from Vietnam, Inv. No. 731-TA-1012 (Final), USITC Pub. 3617 at 20-22 (Aug. 2003).

[148] Memorandum INV-CC-036.

[149] CR/PR at Table VII-3.

seriously the remedial effect of the antidumping duty order to be issued. We make this finding in light of the significant increase in demand for magnesium in interim 2004,[150] and the increase in prices in the latter part of the period of investigation.[151] Accordingly, we make a negative finding with respect to critical circumstances.

CONCLUSION

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

[150] Apparent U.S. consumption of magnesium increased from *** metric tons in interim 2003 to *** metric tons in interim 2004, or by almost *** percent. CR/PR at Table IV-9.

[151] We note that imports from China oversold the domestic product in all quarterly price comparisons in interim 2004, in many cases by substantial margins. CR/PR at Tables V-2 and V-5.

PART I: INTRODUCTION

BACKGROUND

These investigations were instituted in response to a petition filed with the U.S. International Trade Commission ("Commission") and the U.S. Department of Commerce ("Commerce") on February 27, 2004, by US Magnesium Corp. ("US Magnesium"),[1] Salt Lake City, UT; the United Steelworkers of America, Local 8319, Salt Lake City, UT;[2] and the Glass, Molders, Pottery, Plastics & Allied Workers International, Local 374, Long Beach, CA.[3] The petition alleged that an industry in the United States is materially injured, or threatened with material injury, by reason of imports from China of alloy magnesium[4] and imports from Russia of pure magnesium and alloy magnesium[5] that are alleged to be sold in the United States at less than fair value ("LTFV"). Information relating to the background of these investigations is presented in the tabulation below.

[1] US Magnesium is the successor company to Magnesium Corporation of America ("Magcorp"). On August 3, 2001, Magcorp filed for protection under Chapter 11 of the U.S. Bankruptcy Code. The bankruptcy court authorized the sale of substantially all of Magcorp's assets to US Magnesium. The sale was completed in June 2002. For additional information on the bankruptcy proceedings, *see Part VI: Financial Experience of U.S. Producers*. Since December 1991, Magcorp filed three previous petitions concerning magnesium imports from Canada, China, Israel, Russia, and/or Ukraine. *See* table I-1.

[2] Union represents workers at US Magnesium's production facility in Rowley, UT.

[3] Union represents workers at Halaco Engineering Co.'s ("Halaco's") production facility in Oxnard, CA. Halaco was a manufacturer of alloy magnesium produced from recycling magnesium-based scrap (secondary magnesium). Halaco is not a petitioner; however, it supports the petition. *See* Petition at exh. 3.

[4] The subject merchandise from China consists of alloy magnesium metal products made from primary and/or secondary magnesium that contain 50 percent or greater, but less than 99.8 percent, magnesium by weight, that conform to an "American Society of Testing and Materials ("ASTM") Specification for Magnesium Alloy." The subject merchandise from China is provided for in subheadings 8104.19.00 and 8104.30.00 of the Harmonized Tariff Schedule of the United States ("HTS").

There is currently an antidumping duty order on pure magnesium ingot from China (order No. A-570-832, 60 FR 25691, May 12, 1995) that was continued after an affirmative expedited sunset review (65 FR 55047, September 12, 2000), and an antidumping duty order on pure magnesium in granular form from China (order No. A-570-864, 66 FR 57936, November 19, 2001).

The above-referenced orders also include "off-specification" pure magnesium (alloy magnesium that contains 50 percent or greater but less than 99.8 percent magnesium by weight, that does not conform to an ASTM specification for alloy magnesium). However, for purposes of the current investigation, "off-specification pure" magnesium from China is classified as nonsubject alloy magnesium since, by definition, it contains less than 99.8 percent magnesium by weight. For a more detailed description of the scope, *see* the section entitled *The Subject Product* in Part I of this report.

[5] The subject merchandise from Russia, as defined by Commerce, consists of pure and alloy magnesium metal products made from primary and/or secondary magnesium that contain 50 percent or greater magnesium by weight, whether or not conforming to an "ASTM Specification for Magnesium Alloy." The subject merchandise from Russia is provided for in subheadings 8104.11.00, 8104.19.00, 8104.30.00, and 8104.90.00 of the HTS. For a more detailed description of the scope, *see* the section entitled *The Subject Product* in Part I of this report.

Effective date	Action	*Federal Register* citation
February 27, 2004	Petition filed with Commerce and the Commission; Commission institutes investigations	69 FR 11041, March 9, 2004
March 25, 2004	Initiation of investigations by Commerce	69 FR 15293, March 25, 2004
May 17, 2004	Commission's preliminary determinations	69 FR 29329, May 21, 2004
October 4, 2004	Commerce's preliminary determinations	69 FR 59187 (China), 59197 (Russia), October 4, 2004[1]
October 4, 2004	Commission's scheduling of its final phase investigations	69 FR 61860, October 21, 2004[1]
February 23, 2005	Commission's hearing[2]	NA
February 24, 2005	Commerce's final determinations	70 FR 9037, February 24, 2005
March 23, 2005	Commission's vote	NA
April 11, 2005	Commission's determinations to Commerce	NA

[1] *Federal Register* notices beginning with the Commission's scheduling notice are presented in app. A.
[2] A list of witnesses that appeared at the hearing is presented in app. B.

ORGANIZATION OF REPORT

Section 771(7)(B) of the Tariff Act of 1930 (the "Act") (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--

> *shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and. . . may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.*

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

> *In evaluating the volume of imports of merchandise, 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.*
> . . .

> *In evaluating the effect of imports of such merchandise on prices, 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.*
> . . .
> *In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to*
> *. . . (I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) 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 domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.*

Information on the subject merchandise, final margins of dumping, and domestic like product is presented in *Part I*. Information on conditions of competition and other relevant economic factors is presented in *Part II*. *Part III* presents information on the condition of the U.S. producers, including data on capacity, production, shipments, inventories, and employment. The volume and pricing of imports of the subject merchandise are presented in *Parts IV and V*, respectively. *Part VI* presents information on the financial experience of U.S. producers. The statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury are presented in *Part VII*.

MAJOR FIRMS INVOLVED IN THE U.S. MAGNESIUM MARKET

Apparent U.S. consumption of magnesium was *** metric tons and valued at $*** in 2003. The U.S. producers consist of both a primary producer,[6] US Magnesium, that produces magnesium from raw material, and secondary producers that produce magnesium from recycling aluminum alloys or magnesium-based scrap. There are four known U.S. secondary producers of magnesium: (1) Advanced Magnesium Alloys Corp. ("Amacor"); (2) Garfield Alloys, Inc. ("Garfield Alloys"); (3) Halaco

[6] Another primary producer of magnesium, Northwest Alloys, Inc. ("Northwest Alloys"), a subsidiary and captive producer for Alcoa, Inc., ceased production of magnesium in 2001.

Engineering, Inc. ("Halaco"); and (4) MagReTech, Inc. ("MagReTech").[7] Major reporting U.S. importers of magnesium from China are: ***. U.S. importers of magnesium from Russia include: ***.[8] The largest U.S. purchasers of magnesium include aluminum manufacturers, diecasters, and producers which manufacture iron and steel desulfurization reagents for the steel industry.[9]

SUMMARY DATA

A summary of data collected in these investigations is presented in appendix C.[10] U.S. industry data are based on the questionnaire responses of six firms believed to represent virtually all U.S. production of pure and alloy magnesium during the period examined (January 1, 2001 through September 30, 2004).[11] Data on U.S. imports are based on official import statistics of Commerce, except as noted.[12] Data on the industry in China are based on the questionnaire responses of three firms believed to have accounted for approximately *** percent of Chinese exports of the subject merchandise to the United States in 2003. Data on the industry in Russia are based on the questionnaire responses of two firms that accounted for virtually all Russian exports of the subject merchandise to the United States in 2003.[13]

PREVIOUS INVESTIGATIONS

Countervailing Duty and Antidumping Investigations

The Commission has conducted countervailing duty and/or antidumping investigations on magnesium concerning five countries: Canada, China, Israel, Russia, and Ukraine. Table I-1 presents actions taken by the Commission and Commerce with respect to these previous investigations.

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[7] Garfield Alloys ceased production of magnesium in 2003. Halaco ceased production of magnesium in 2004. Amacor has temporarily ceased production in 2005.

[8] *See* Part IV of this report for information regarding the U.S. importers.

[9] *See* Part II of this report for information regarding the U.S. purchasers.

[10] Tables C-1 and C-4 present data on pure magnesium; tables C-2 and C-5 present data on alloy magnesium; and tables C-3 and C-6 present data on all magnesium.

[11] For additional information on responding U.S. producers and U.S. producer coverage, *see Part III: U.S. Production, Shipments, and Employment*.

During the preliminary phase of these investigations, at the request of petitioners, the Commission collected four years of data beginning in 2000. US Magnesium gave two reasons for its request: (1) Magcorp filed for bankruptcy in 2001, and (2) there was a transitional period in 2001 in converting from older production cells to newer production cells, which resulted in a drop in capacity. Petitioners concluded that 2000 would be much more useful to look at as the base year than 2001. Data regarding the U.S. industry including 2000 data appear in appendix C, tables C-4, C-5, and C-6.

[12] For additional information on responding U.S. importers and U.S. importer coverage, *see Part IV: U.S. Imports, Apparent Consumption, and Market Shares*.

[13] For additional information on responding foreign producers and foreign producer coverage, *see Part VII: Threat Considerations*.

Table I-1
Magnesium: Actions taken by the Commission and Commerce

Action	Date of action	*Federal Register* citation
Canada:		
Commission's affirmative determinations in Invs. Nos. 701-TA-309 and 731-TA-528 (Final)	08/26/1992	57 FR 38696
Countervailing duty order issued (C-122-814)[1] *(pure and alloy ingot)*	08/31/1992	57 FR 39390
Antidumping duty order issued (A-122-814)[2] *(pure ingot)*	08/31/1992	57 FR 39392
Institution of five-year reviews (full)	08/02/1999	64 FR 41961
Commission's affirmative determinations in five-year reviews	08/02/2000	65 FR 47517
Continuation of countervailing and antidumping duty orders [3] [4] *(pure and alloy ingot)*	08/16/2000	65 FR 49964
Revocation of the antidumping duty order[5]	12/07/2004	69 FR 70649
China:		
Commission's affirmative determination in Inv. No. 731-TA-696 (Final) *(pure ingot)*[6]	05/17/1995	60 FR 26456
Antidumping duty order issued[8] (A-570-832) *(pure ingot)*	05/12/1995	60 FR 25691
Institution of five-year sunset review (expedited)	04/03/2000	65 FR 17531
Commission's affirmative determination in five-year review	09/12/2000	65 FR 55047
Continuation of antidumping duty order[7] *(pure ingot)*	08/03/2000	65 FR 47713
Commission's affirmative determination in Inv. No. 731-TA-895 (Final) *(pure granular)*	11/20/2001	66 FR 58162
Antidumping duty order issued (A-570-864)[8] *(pure granular)*	11/19/2001	66 FR 57936
Israel:		
Institution of Invs. Nos. 701-TA-403 and 731-TA-896 (Preliminary)	10/25/2000	65 FR 63888
Commission's negative determinations in Invs. Nos. 701-TA-403 and 731-TA-896 (Final)	11/20/2001	66 FR 58162
Russia:		
Commission's affirmative determination in Inv. No. 731-TA-697 (Final) *(pure ingot)*[6]	05/17/1995	60 FR 26456
Antidumping duty order issued (A-821-805) *(pure ingot)*	05/12/1995	60 FR 25691
Institution of five-year sunset review (expedited)	04/03/2000	65 FR 17531
Revocation of antidumping duty order[9]	07/07/2000	65 FR 41944
Termination of five-year review	07/17/2000	65 FR 44076
Institution of Inv. No. 731-TA-897 (Preliminary) *(pure ingot and granules)*	10/25/2000	65 FR 63888
Commerce's negative final antidumping determination (A-821-813)	09/27/2001	66 FR 49347
Commission terminates Inv. No. 731-TA-897 (Final)	10/04/2001	66 FR 50680
Ukraine:		
Commission's affirmative determination in Inv. No. 731-TA-698 (Final) *(pure ingot)*[6]	05/17/1995	60 FR 26456
Antidumping duty order issued (A-823-806) *(pure ingot)*	05/12/1995	60 FR 25691
Upon reconsideration Commission made a negative determination	June 1998	([10])
Revocation of the antidumping duty order	08/24/1999	64 FR 46182

[1] The countervailing duty order on Canada is on pure and alloy magnesium ingot.
[2] The antidumping duty order on Canada is on pure magnesium ingot.
[3] Based on its sunset review, Commerce found the following weighted-average countervailing duty margins: Norsk Hydro Canada, 1.84 percent *ad valorem*; and all others, 4.48 percent *ad valorem* (65 FR 41444, July 5, 2000).
[4] In its initial sunset review, Commerce found the following weighted-average antidumping duty margins: Norsk Hydro Canada, 21.00 percent *ad valorem*; and all others, 21.00 percent *ad valorem* (65 FR 41436, July 5, 2000). Excluded from the order was Timminco Limited.
[5] Commerce revoked the antidumping duty order on magnesium from Canada retroactively effective August 1, 2000 after the NAFTA Binational Panel's final decision.
[6] The Commission made a negative determination with respect to alloy magnesium.
[7] The antidumping duty order on China is on pure magnesium ingot. In its initial "sunset" review, Commerce found the weighted-average antidumping duty margin to be 108.26 percent *ad valorem* (65 FR 47713, August 3, 2000).
[8] Commerce found the weighted-average antidumping duty margin for Minmetals to be 24.67 percent *ad valorem* and 305.56 percent *ad valorem* for all other manufacturers and exporters in China.
[9] On September 5, 2000, Commerce issued a correction to the revocation order making the effective date of revocation May 12, 2000 (65 FR 53700, September 5, 2000).
[10] No corresponding *Federal Register* citation.

Source: Various *Federal Register* notices.

On August 26, 1992, the Commission published its affirmative determinations in investigations Nos. 701-TA-309 and 731-TA-528 (Final): Magnesium From Canada.[14] On May 17, 1995, the Commission published its affirmative determinations in investigations Nos. 731-TA-696-698 (Final): Pure Magnesium From China, Russia, and Ukraine.[15] On April 28, 1998, the U.S. Court of International Trade ("CIT") remanded the Commission's original determination with respect to Ukraine, and upon reconsideration, the Commission made a negative determination with respect to imports of pure magnesium from Ukraine.[16] On November 20, 2001, the Commission published its determinations in investigations Nos. 701-TA-403 and 731-TA-895-896 (Final): Pure Magnesium From China and Israel.[17] The Commission made an affirmative determination with respect to imports of pure granular magnesium from China, and made a negative determination with respect to imports of pure ingot and pure granular magnesium from Israel.[18]

Five-Year Reviews

On August 2, 1999, the Commission instituted five-year (sunset) reviews concerning the countervailing and antidumping duty orders on imports of pure and alloy magnesium ingot from Canada.[19] On August 2, 2000, the Commission published its affirmative determinations in these reviews.[20] On April 3, 2000, the Commission instituted reviews on imports of pure magnesium ingot from China and Russia. On July 17, 2000, Commerce published notice that the review on imports from Russia was terminated.[21] On September 12, 2000, the Commission published its affirmative determination with respect to imports of pure magnesium ingot from China.[22]

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[14] 57 FR 38696, August 26, 1992. *See Magnesium From Canada*, Invs. Nos. 701-TA-309 and 731-TA-528 (Final), USITC Publication 2550 (August 1992).

[15] 60 FR 26456, May 17, 2000. *See Pure Magnesium From China, Russia, and Ukraine*, Invs. Nos. 731-TA-696-698 (Final), USITC Publication 2885 (May 1995).

[16] *See Magnesium From Ukraine (Views on Remand)*, Inv. No. 731-TA-698 (Remand), USITC Publication 3113 (June 1998).

[17] 66 FR 58162, November 20, 2001. *See Magnesium From China and Israel*, Invs. Nos. 701-TA-403 and 731-TA-895-896 (Final), USITC Publication 3467 (November 2001).

[18] Effective October 17, 2000, the Commission instituted investigation No. 731-TA-897 (Preliminary): Magnesium From Russia (65 FR 63888, October 25, 2000). On September 27, 2001, Commerce published its negative final antidumping determination with respect to Russia (66 FR 49347, September 27, 2001). Subsequently, on September 27, 2001, the Commission terminated its investigation with respect to Russia (66 FR 50680, October 4, 2001).

[19] 64 FR 41961, August 2, 1999.

[20] 65 FR 47517, August 2, 2000. Commerce later revoked the antidumping duty order on magnesium from Canada effective August 1, 2000 after the NAFTA Binational Panel's final decision. *See* 69 FR 70649, December 7, 2004.

[21] 65 FR 44076, July 17, 2000. The review was terminated because of a lack of participation by domestic producers. The original antidumping order on Russia excluded the two major Russian magnesium producers, AVISMA and Solikamsk. *See* original antidumping duty order, 60 FR 25691, May 12, 1995.

[22] 65 FR 55047, September 12, 2000.

Other Investigations

On December 17, 1999, the Commission received a request from the United States Trade Representative ("USTR") for an investigation under section 332(g) of the Tariff Act of 1930 for the purpose of providing advice concerning possible modifications to the U.S. Generalized System of Preferences ("GSP") for several products including alloy and granular magnesium. Subsequently, on December 23, 1999, the Commission instituted investigation No. 332-410.[23] The Commission held a public hearing on February 2, 2000, and presented its advice to the USTR on March 16, 2000.[24] In a Presidential Proclamation of June 29, 2000, the President added granular magnesium to the list of GSP-eligible articles.[25]

NATURE AND EXTENT OF SALES AT LTFV

On February 24, 2005, Commerce published its final determinations in the *Federal Register*.[26] Commerce's final weighted-average dumping margins for alloy magnesium from China and for pure and alloy magnesium from Russia are presented in the tabulation below.

Country/Exporter	Weighted-average dumping margins (*percent ad valorem*)
China	
Tianjin Magnesium International Co., Ltd.	91.31
Beijing Guangling Jinghua Science & Technology Co., Ltd.	91.31
All others	141.49
Russia	
JSC Avisma Magnesium-Titanium Works	22.28
Solikamsk Magnesium Works	18.65
All others	21.45

[23] 64 FR 73574, December 30, 1999.

[24] *See Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences*, Inv. No. 332-410, USITC Publication 3288 (March 2000).

[25] *Proclamation 7325 of June 29, 2000 to Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes*, 65 FR 41315, July 3, 2000.

[26] *See* 70 FR 9037 (China), 9041 (Russia), February 24, 2005.

THE SUBJECT PRODUCT

Scope (China)

Commerce has defined the product subject to investigation with respect to China as the following–[27]

> 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, and 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"[28] and thus are outside the scope of the existing antidumping orders on magnesium from China (generally referred to as "alloy" magnesium).
>
> The scope of this investigation excludes: (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 that (*sic*) 99.8 percent, by weight, that do not conform to an "ASTM Specification for Magnesium Alloy;"[29] (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, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[30]

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[27] 69 FR 15293, March 25, 2004.

[28] 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.*

[29] This material is already covered by existing antidumping orders. *See* Notice of Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation, and Ukraine, 66 FR 57936 (November 11, 2001); Notice of 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 Notice of Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China, 66 FR 57936 (November 19, 2001).

[30] This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000-01 investigations of magnesium from China, 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

(continued...)

The merchandise subject to this investigation is 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.

Scope (Russia)

Commerce has defined the product subject to investigation with respect to Russia as the following–[31]

> The products covered by this investigation are primary and secondary pure and 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 pure and alloy magnesium metal products made from primary and/or secondary magnesium, including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: (1) products that contain at least 99.95 percent 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 magnesium, by weight (generally referred to as "pure" magnesium); and (3) chemical combinations of magnesium and other material(s) in which the magnesium content is 50 percent or greater, but less that (*sic*) 99.8 percent, by weight, whether or not conforming to an "ASTM Specification for Magnesium Alloy."[32]
>
> The scope of this investigation excludes: (1) magnesium that is in liquid or molten form; and (2) 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, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke,

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[30] (...continued)
(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 are not cast into the same ingot.

[31] 69 FR 15293, March 25, 2004.

[32] 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.*

silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[33]

The merchandise subject to this investigation is classifiable under items 8104.11.00, 8104.19.00, 8104.30.00, and 8104.90.00 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.

U.S. Tariff Treatment

Table I-2 presents current tariff rates for magnesium. In addition to the general column-1 duty rates, certain imports from Canada and China are subject to antidumping and/or countervailing duty orders. Imports from China of pure magnesium in ingot and granular form[34] are currently subject to antidumping duty orders,[35] and are therefore excluded from the scope for China. Imports from Canada of pure and alloy magnesium ingot are currently subject to a countervailing duty order,[36] and imports from certain firms in Canada of pure magnesium were until recently subject to an antidumping duty order.[37]

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[33] This second exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000-01 investigations of magnesium from China, 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 are not cast into the same ingot.

[34] The HTS does not distinguish granular magnesium by pure or alloy chemistry. However, based on information obtained in the previous investigation on granular magnesium from China, granular magnesium is typically pure magnesium or "off-specification" pure magnesium (alloy magnesium not meeting ASTM specifications for alloy magnesium).

Imports of granular magnesium from China have declined precipitously since the imposition of preliminary (and subsequently final) antidumping duties on April 30, 2001 (66 FR 21314, April 30, 2001). Imports of granular magnesium from China (HTS subheading 8104.30.00) were 3,014 metric tons in 2001, 82 metric tons in 2002, and 13 metric tons in 2003.

[35] Antidumping duty order (A-570-832) (pure magnesium ingot) was issued on May 12, 1995 (60 FR 25691, May 12, 1995). Based on its first sunset review, Commerce found the weighted-average antidumping duty margin to be 108.26 for all manufacturers and exporters in China (65 FR 47713, August 3, 2000).

Antidumping duty order (A-570-864) (granular magnesium) was issued on November 19, 2001, imposing weighted-average antidumping duty margins of 24.67 to 305.56 percent *ad valorem* (66 FR 57937, November 19, 2001).

[36] Countervailing duty order (C-122-814) (pure and alloy magnesium ingot) was issued on August 31, 1992 (57 FR 39390, August 31, 1992). Based on its first sunset review, Commerce found the following weighted-average countervailing duty margins: Norsk Hydro Canada, 1.84 percent *ad valorem*; and all others, 4.48 percent *ad valorem* (65 FR 41444, July 5, 2000).

[37] Antidumping duty order (A-122-814) (pure magnesium ingot) was issued on August 31, 1992 (57 FR 39392, August 31, 1992). Based on its first sunset review, Commerce found the following weighted-average antidumping duty margins: Norsk Hydro Canada, 21.00 percent *ad valorem*; and all others, 21.00 percent *ad valorem* (65 FR 41436, July 5, 2000). Timminco Limited was excluded from the order. On December 7, 2004, this order was revoked retroactively to August 1, 2000 (69 FR 70649, December 7, 2004).

Import data for China presented throughout this report are based on HTS subheading 8104.19.00,[38] and import data for Russia are based on HTS subheadings 8104.11.00, 8104.19.00, and 8104.30.00.

Table I-2
Magnesium: Tariff rates, 2005

HTS provision	Article description[1]	General[2]	Special[3]	Column 2[4]
		Rates *(percent ad valorem)*		
8104.11.00 (pure magnesium ingots)	Magnesium and articles thereof: Unwrought magnesium: Containing at least 99.8 percent by weight of magnesium	8.0	Free[5]	100.0
8104.19.00 (alloy magnesium ingots)	Magnesium and articles thereof: Unwrought magnesium: Other	6.5	Free[6]	60.5
8104.30.00 (magnesium granules)[7]	Magnesium and articles thereof: Raspings, turnings and granules, graded according to size; powders	4.4	Free	60.5

[1] An abridged description is provided for convenience; however, an unabridged description may be obtained from the respective headings, subheadings, and legal notes of the HTS.
[2] Normal trade relations, formerly known as the most-favored-nation duty rate, applicable to imports from China and Russia.
[3] For eligible goods under the Generalized System of Preferences, African Growth and Opportunity Act, Caribbean Basin Economic Recovery Act, Andean Trade Preference Act, Israel Free Trade Agreement, Jordan Free Trade Agreement, Chile Free Trade Agreement, Singapore Free Trade Agreement, Australia Free Trade Agreement, and NAFTA-originating goods of Canada and Mexico.
[4] Applies to imports from a small number of countries that do not enjoy normal or preferential trade relations duty status.
[5] Imports from Singapore enter at a rate of 4.0 percent *ad valorem*.
[6] Imports from Chile enter at a rate of 4.8 percent *ad valorem* and imports from Singapore enter at a rate of 3.2 percent *ad valorem*.
[7] Magnesium granules may be either pure magnesium or alloy magnesium.

Note: Commerce's preliminary determination on Russia mentions subheading 8104.90.00 of the HTS in its scope for alloy magnesium. This subheading is a basket category entitled, "other." In this report, import statistics for alloy magnesium do not include this subheading because wrought or worked magnesium, which is not within the scope of these investigations, enters the United States under this subheading.

Source: Harmonized Tariff Schedule of the United States (2005).

Description and Uses

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

[38] Based on information obtained in the previous investigation on granular magnesium from China, granular magnesium is typically pure magnesium or "off-specification" pure magnesium (alloy magnesium not meeting ASTM specifications for alloy magnesium). Since such imports are currently under antidumping duty orders and excluded from the scope of the current investigation, imports of granular magnesium (HTS subheading 8104.30.00) are not included in the subject import data for China presented throughout this report.

Pure magnesium in unwrought form[39] contains at least 99.8 percent magnesium by weight.[40] Alloy magnesium (or magnesium alloy) consists of magnesium and other metals, typically aluminum and zinc, containing less than 99.8 percent magnesium by weight but more than 50 percent magnesium by weight, with magnesium the largest metallic element in the alloy by weight. Alloy magnesium is typically produced to meet various ASTM specifications for alloy magnesium such as AM50A, AM60B, and AZ91D.[41] "Off-specification pure" magnesium is magnesium that contains 50 percent or greater, but less than 99.8 percent, magnesium by weight, that does not conform to an ASTM specification for alloy magnesium.[42]

Pure magnesium is widely used in commercial and industrial applications because it is easily machined and lightweight, has a high strength-to-weight ratio, and has special chemical and electrical properties. Pure magnesium also has special metallurgical and chemical properties that allow it to alloy well with metals such as aluminum. Pure magnesium is typically used in the production of aluminum alloys for use in beverage cans and in some automotive parts, in iron and steel desulfurization, as a reducing agent for various nonferrous metals (titanium, zirconium, hafnium, uranium, beryllium), and in magnesium anodes for the protection of iron and steel in underground pipe and water tanks and various marine applications.

Alloy magnesium is principally used in structural applications, primarily in castings (die, permanent mold, and sand) and extrusions for the automotive industry. Alloy magnesium has certain properties that improve its strength, ductility, workability, corrosion resistance, density, or castability compared to pure magnesium. Pure magnesium is seldom used in structural applications, because its specific tensile and yield strengths are low.

Primary magnesium is magnesium produced by decomposing raw materials into magnesium metal, containing less than 50 percent of recycled magnesium-based scrap. Secondary magnesium is magnesium produced by recycling magnesium-based scrap, containing less than 50 percent of primary magnesium.

Granular magnesium consists of all physical forms of magnesium other than ingots, such as raspings, turnings, granules, and powders.[43] Granular magnesium is typically used in the production of magnesium-based desulfurizing reagent mixtures that are used in the steelmaking process to reduce the

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[39] "Unwrought" magnesium is pure magnesium that has not been worked in any way. "Wrought" magnesium is magnesium that has been worked into a desired shape. For example the working of the magnesium to produce extrusions, rolled product, forgings, etc. Wrought magnesium is not within the scope of these investigations.

[40] Ultra-high purity ("UHP") magnesium is unwrought magnesium containing at least 99.95 percent magnesium by weight and is used as a reagent in the pharmaceutical and chemical industries. Commodity-grade magnesium is unwrought magnesium containing at least 99.8 percent magnesium but less than 99.95 percent magnesium by weight and is most commonly used in the aluminum alloying industry.

In the preliminary phase of these investigations, U.S. firms Reade Manufacturing Co.; Magnesium Elektron North America, Inc.; and Hart Metals, Inc. (manufacturers and suppliers of particulate magnesium–chips, granules, and powders) submitted a letter stating that UHP is not substitutable with other grades of magnesium, ***, and that antidumping duties on UHP would ***. Letter of March 24, 2004.

[41] The ASTM specifications designate the chemical composition of the alloy. The first two letters designate the two alloying elements most prevalent in the alloy (e.g., A for aluminum, M for manganese, or Z for zinc), while the numbers represent the percent of other elements contained in the alloy, by weight. For example, AZ91D contains 9 percent aluminum, 1 percent zinc, and 90 percent magnesium. *See* ASTM Standard "Specification for Magnesium Alloys in Ingot Form for Sand Castings, Permanent Mold Castings, and Die Castings," Designation B 93/B 93M, Annual Book of ASTM Standards, presented in the petition at exh. 27.

[42] For purposes of these investigations, "off-specification pure" magnesium is classified as alloy magnesium since, by definition, it contains less than 99.8 percent magnesium by weight.

[43] Granular magnesium may be either pure or alloy magnesium. However, based on information obtained in the previous investigation on granular magnesium from China, granular magnesium is typically pure magnesium or "off-specification" pure magnesium (alloy magnesium not meeting ASTM specifications for alloy magnesium).

sulfur content of steel.[44] Lesser amounts of granular magnesium are used in defense applications, such as military ordnance and flares.

Production Processes

Primary Magnesium

Most magnesium is derived from magnesium-bearing ores (dolomite, magnesite, brucite, and olivine) or seawater and well and lake brines.[45] Large deposits of dolomite are widely distributed throughout the world, and dolomite is the principal magnesium-bearing ore found in the United States. Magnesium-bearing ores are mined by open-pit methods, and concentration is usually performed near the mine site due to the high cost of transporting ore. Magnesium is also produced from well and lake brines containing dissolved magnesium salts. In the United States, US Magnesium produces magnesium using brines from the surface waters of the Great Salt Lake in Utah, while former producer Northwest Alloys used dolomite in its process.[46]

Magnesium metal is produced by either an *electrolytic process* or a *silicothermic process*, with the electrolytic process dominating in terms of the volume of United States and world production.[47] The silicothermic process (also known as the Pidgeon process) is used by a majority of the largest producers in China, while the electrolytic process is used by both producers in Russia.[48] The silicothermic process is said to be less cost-effective than the electrolytic process for production of magnesium.[49]

In the electrolytic process, seawater or brine is evaporated and treated to produce a concentrated solution of magnesium chloride, which is further concentrated and dried to yield magnesium chloride powder. The powder is then melted, further purified, and fed into electrolytic cells operating at 700° Celsius. Direct electrical current is sent through the cells to break down the magnesium chloride into chlorine gas and molten magnesium metal.[50] The metal rises to the surface where it is guided into storage wells and cast into ingots. US Magnesium uses the electrolytic method to produce magnesium. A schematic diagram of US Magnesium's production process is presented in figure I-1.

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[44] U.S. grinders typically sell three different steel desulfurization blends: (1) containing 90 percent pure magnesium powder and 10 percent lime; (2) containing 25 percent magnesium and 75 percent lime; and (3) containing 8-10 percent magnesium with the remainder lime and calcium carbonate. Fluorspar and a fluidizer are also incorporated in these products.

[45] The magnesium content of magnesium-bearing ores typically ranges from nearly 22 percent for dolomite to 69 percent for brucite. The magnesium content of seawater is 0.13 percent, which is much lower than that of the lowest grade of magnesium ore deposits; however, seawater has the advantage of being abundant, accessible, and extremely uniform in its magnesium content, allowing for easier standardization of the refining process.

[46] Northwest Alloys ceased production in October 2001.

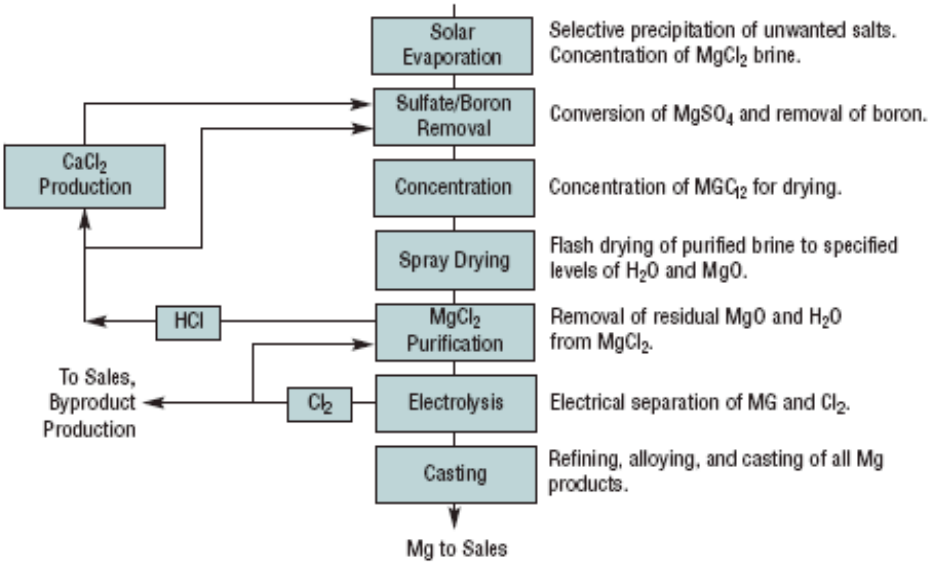
[47] In Canada, a new process to recover magnesium from asbestos tailings was commercialized in 2000 by Noranda Magnesium (Deborah A. Kramer, *Magnesium, Its Alloys and Compounds*, U.S. Geological Survey Open-File Report 01-341, p. 23). However, in March 2003, Noranda announced the idling of its Métallurgie Magnola plant in Danville, Quebec for an indefinite duration. *See* company press release of Métallurgie Magnola, Inc., March 24, 2003. At present, it has not announced the reopening of this facility.

[48] Deborah A. Kramer, *Magnesium, Its Alloys and Compounds*, U.S. Geological Survey Open-File Report 01-341, pp. 11-12. The raw material source for silicothermic production in China is dolomite ($MgCO_3 \cdot CaCO_3$). The raw material source for electrolytic production in Russia is carnallite ($MgCl_2 \cdot KCl \cdot 6H_20$).

[49] *See* testimony of Mr. Ozzie Wilkinson, Manager, Public Affairs, Northwest Alloys, Inc., transcript of hearing in Invs. Nos. 701-TA-403 and 731-TA-895-896 (Final), pp. 148 and 174.

[50] The electrolytic cells must be kept in constant operation. If they are shut down, a "refractory lining" requires rebuilding which is very costly and time consuming. Petitioners' posthearing brief, p. 31.

Figure I-1
Schematic diagram of US Magnesium's production process



Source: *Mining Best Practices Case Study, Office of Industrial Technologies, Energy Efficiency and Renewable Energy, U.S. Department of Energy, August 2001*.

As part of a $50 million modernization effort begun in 1998 to modernize its magnesium-making capacity,[51] US Magnesium began in 2000 to replace its older cell technology with newer third-generation "M-cell"[52] technology developed by the company. The company replaced ***. According to US Magnesium, these cell improvements have permitted the firm to achieve the following cost reductions:

- *Electrical power*–***;
- *Manpower*–***;
- *Maintenance*–***; and
- *Chlorine emissions*–***.[53]

[51] In addition to the installation of more energy efficient and environmentally friendly electrolytic "M-cell" technology, the modernization efforts include installation of a melt purification system, the addition of new and larger transport vehicles, and installation of a direct chill caster. (Robert E. Brown, ""M-Cell Modernization Improves US Magnesium Process and Environmental Performance," *Light Metal Age*, June 2003, p. 2.) According to US Magnesium, implementation of its modernization plan has resulted in a ***-percent reduction in overall production costs.

[52] M-cell technology uses large, specially-treated electrodes, a reduced inter-electrode distance, and channeled magnesium collection to optimize magnesium production. US Magnesium believes the operating characteristics of its M-cells rival the most advanced designs currently available in the industry. (Robert E. Brown, *M-Cell Modernization Improves US Magnesium Process and Environmental Performance*, Light Metal Age, June 2003, p. 5).

[53] According to US Magnesium, chlorine releases have been reduced by more than 90 percent during the last six years as a result of its modernization efforts. *See* conference transcript (Legge), pp. 19-20.

In the silicothermic process, magnesium-bearing ores, typically dolomite, are the primary feed material. Calcined dolomite, ferrosilicon, and alumina are ground, heated, and briquetted. The briquets are subsequently reduced in a heated vacuum, producing magnesium vapor. The vapor is crystallized in a condensing chamber, melted, and ladled into casting forms. Northwest Alloys produced magnesium metal using the silicothermic process.

Once the electrolytic or silicothermic reduction of magnesium is completed, the manufacturing processes used for the production of both pure and alloy magnesium ingot are very similar. In the U.S. facility that produces both pure magnesium and alloy magnesium (US Magnesium's facility), the same production workers tend to work on both lines.[54]

Primary magnesium is typically cast into ingots or slabs. Aluminum producers typically purchase larger pure cast shapes such as rounds, billets, peg-lock ingots, or T-shapes. Producers of magnesium powder for steel desulfurization applications typically purchase smaller ingots or magnesium "chips" that are then ground into powder[55] and used internally to produce magnesium-based reagent mixtures or, to a lesser extent, pyrotechnic products.[56]

Secondary Magnesium[57]

Secondary magnesium is produced from recycling aluminum alloys or magnesium-based "scrap."[58] Magnesium scrap arrives at the recycler in a trailer either in a loose form or contained in boxes. After the magnesium is separated from other alloys by the recycler, the sorted magnesium is heated in a steel crucible to nearly 675 degrees C. Alloying elements such as aluminum, manganese, or zinc can then be added to the liquid magnesium and the alloyed magnesium can then be transferred to ingot molds by hand ladling, pumping, or tilt pouring. Magnesium scrap can also be generated by the direct grinding of scrap into powder for iron and steel desulfurization applications. Finally, magnesium contained in used aluminum beverage cans typically remains with the recycled can since virtually all aluminum beverage can scrap is melted and converted into body stock and then converted into new aluminum beverage cans.

DOMESTIC LIKE PRODUCT ISSUES

In the preliminary phase of these investigations, the Commission addressed three domestic like product issues: (1) whether both pure and alloy magnesium should be included in one domestic like

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[54] In the petition, US Magnesium noted that "{t}he core production process of pure and alloy magnesium is the same, up to the point when alloys are added to pure magnesium to make alloy magnesium, an additional step that adds relatively little value. The companies that make both pure and alloy magnesium do so using the same machinery, equipment, and workers for both." Petition, p. 19.

[55] Magnesium chips are ground into powder using a particle reduction process. Magnesium powder can also be produced by atomization of molten pure magnesium; however, this technique is less frequently used than grinding.

[56] The scopes of the current investigations specifically exclude "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." 69 FR 59190 and 59199, October 4, 2004.

[57] Information from this section is drawn from Deborah A. Kramer, *Magnesium Recycling in the United States in 1998*, Flow Studies for Recycling Metal Commodities in the United States, pp. E5-E6.

[58] Magnesium-based scrap is typically divided into one of two categories. Old magnesium-based scrap consists of postconsumer scrap such as automotive parts, helicopter parts, lawnmower decks, and used tools. Old magnesium-base scrap is sold to scrap processors. New magnesium-based scrap typically falls into one of four types. Type I is high-grade scrap recovered from diecasting operations and uncontaminated with oils. Types II, III, and IV are lower-grade scraps, typically either oil-contaminated scrap, dross from magnesium-processing operations, and chips and fines. Type I scrap is either reprocessed at the diecasting facility or sold to a scrap processor. The other types of scrap are either used directly in steel desulfurization applications (chips and fines) or sold to scrap processors.

product, (2) whether primary and secondary magnesium should be included in one domestic like product, and (3) whether cast and granular magnesium should be included in one domestic like product.[59] These issues are discussed separately below.[60]

Pure vs. Alloy Magnesium

Petitioners argue that the domestic like product in these investigations is "primary and secondary pure and alloy magnesium in all cast and granular forms, shapes, and sizes," and that "no clear dividing lines exist along the continuum that would warrant the definition of multiple like products . . ."[61] Respondents Alcan; Alcoa; JSC AVISMA Titanium-Magnesium Works ("AVISMA")/VSMPO-Tirus, US, Inc. ("VSMPO"); Solikamsk; and diecaster parties argue that there are two domestic like products in these investigations (pure magnesium and alloy magnesium) and that there is a "bright line" between them.[62] In its preliminary determinations, the Commission found that "on balance . . . pure and alloy magnesium constitute separate domestic like products" and stated that "it would seek further information on this issue in any final phase investigations."[63] The following discussion of domestic like product factors focuses on the issue of pure magnesium versus alloy magnesium.

Physical Characteristics and Uses

Pure magnesium contains not less than 99.8 percent magnesium by weight. It is typically sold to end users who then combine it with other elements, typically aluminum, for use in a final product. A magnesium ingot in its pure state generally has little direct commercial application except when alloyed.

Alloy magnesium consists of chemical combinations of magnesium and other materials in which the magnesium content is 50 percent or greater but less than 99.8 percent by weight, whether or not conforming to an ASTM specification for magnesium alloy. Alloy magnesium has a high strength-to-weight ratio and is easily machined, making it ideal for use in a number of structural components; for example, the alloying elements contained in alloy magnesium are critical in imparting to the product the structural characteristics necessary for use in diecasting applications.

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

[60] In the preliminary phase of these investigations, Nanjing Yunhai Magnesium Co., Ltd.; Nanjing Welbow Metals Co., Ltd.; Toyota Tsusho Corp.; and Toyota Tsusho America, Inc. contended that automotive qualified alloy magnesium used in diecasting was a separate domestic like product. *See* letter of March 24, 2004, filed by their counsel. In the final phase of these investigations, however, these firms have neither advanced this domestic like product argument nor supplied the Commission with questionnaire responses.

[61] Petition, vol. 1, pp. 24-25; *Magnesium From China and Russia*, Invs. Nos. 731-TA-1071-1072 (Preliminary), USITC Publication 3685 (April 2004), p. 7. Petitioner's prehearing brief, pp. 11-31.

[62] *Magnesium From China and Russia*, Invs. Nos. 731-TA-1071-1072 (Preliminary), USITC Publication 3685 (April 2004), p. 7; respondent Alcoa's prehearing brief, pp. 3-9; respondent AVISMA/VSMPO's prehearing brief, pp. 1-14; respondent Solikamsk's prehearing brief, pp. 3-8; respondent Alcan's prehearing brief, pp. 5-13; and posthearing statement of Meridian Technologies, Inc., Lunt Manufacturing Co., Inc., Spartan Light Metal Products, Inc., and Gibbs Die Casting, Inc., pp. 2 and 3.

[63] Ibid., p. 10.

Common Manufacturing Facilities and Production Employees

For US Magnesium, the only current U.S. producer of pure magnesium, the production process for pure and alloy magnesium is identical to the point when alloys are added to the pure magnesium to make alloy magnesium. US Magnesium makes both pure and alloy magnesium using the same machinery, equipment, and workers.[64] Producers of secondary magnesium produce only alloy magnesium, and thus their production facilities are only for alloy magnesium.

Interchangeability

Pure magnesium and alloy magnesium generally have different end uses, but there is an overlap in that both pure magnesium and alloy magnesium produced in the United States have been used by aluminum producers and in the manufacture of reagents used in iron and steel desulfurization.[65] Pure magnesium is generally used in aluminum alloys and in certain other applications because of its special metallurgical and chemical properties.[66] At the same time, pure magnesium's lack of structural integrity excludes it from structural applications served by alloy magnesium, which is primarily used in diecasting of various structural parts for automobiles. Because of the need for structural integrity, automotive manufacturers must certify that suppliers possess both the physical equipment and the technical ability to produce automotive-grade alloy magnesium. Domestically produced alloy magnesium is not generally used as a substitute for pure magnesium, in part because it contains other elements that may not be acceptable for the particular application; however, both it and pure magnesium are used by aluminum producers.

Customer and Producer Perceptions

Historically, customers of domestically produced pure magnesium were largely distinct from customers of domestically produced alloy magnesium. However, aluminum alloyers, which historically purchased solely pure magnesium for its metallurgical properties as it alloys well with aluminum, have also purchased alloy magnesium. Other firms purchase pure magnesium for its chemical properties. On the other hand, customers, principally automotive diecasters, purchase alloy magnesium because of its structural and mechanical properties.

Channels of Distribution

The vast majority of domestically produced and subject imported pure and alloy magnesium is transported directly from a magnesium production facility (in the case of U.S. producers) and from a distribution or warehouse center (in the case of the imported product) to end users in full truckload lots by either contract or common carriers, with lesser amounts transported by rail. Most pure magnesium ingots are shipped in standard 12-, 25-, 50-, 250-, and 500-pound bar sizes; most alloy magnesium ingots are shipped in standard 12-, 25-, and 50-pound bar sizes. Alloy ingots may vary somewhat in dimension as some diecasters require bar of a certain dimension to fit the specific configuration of their furnace.

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[64] Petitioner stated that to switch production from alloy to pure it requires a 12-hour shift to "flush" the alloying elements out of the system in order to produce pure magnesium. It also stated that switching from pure to alloy takes considerably less time. Hearing transcript (Legge), p. 93-94.

[65] *See* table III-5 for U.S. producers' reported U.S. commercial shipments of pure and alloy magnesium by end use.

[66] Petitioner argues that the substitutability of alloy magnesium by aluminum manufacturers is a relatively new practice that accelerated during the period examined as antidumping duties were recently (in 1995 and 2001) imposed on pure magnesium from China. Petitioners' posthearing brief, p. 5.

In 2003, domestically produced pure magnesium was mostly sold to aluminum producers, whereas a plurality of U.S. producers' alloy magnesium was sold to diecasters (see table III-5).

Price

Prices for pure magnesium and alloy magnesium obtained in these investigations are presented in Part V of this report. Price data were requested for (1) pure magnesium ingots containing at least 99.8 percent magnesium but less than 99.95 percent magnesium; (2) alloy magnesium ingots containing less than 99.8 percent magnesium sold to aluminum alloyers and meeting ASTM specifications for alloy magnesium; (3) alloy magnesium ingots containing less than 99.8 percent magnesium sold to aluminum alloyers and not meeting ASTM specifications for alloy magnesium; and (4) alloy magnesium ingots containing less than 99.8 percent magnesium sold to diecasters and meeting ASTM specifications for alloy magnesium.

Previous Commission Findings Concerning Pure Magnesium and Alloy Magnesium

In the antidumping and countervailing duty investigations entitled *Magnesium From Canada* (1992), the Commission found a single domestic like product consisting of all primary magnesium (pure and alloy).[67] However, a U.S.-Canada binational panel convened under the (pre-NAFTA) U.S.-Canada Trade Agreement ordered the Commission to make new determinations based on separate U.S. industries producing pure magnesium and alloy magnesium. On remand, the Commission found two separate domestic like products (pure magnesium and alloy magnesium). In the antidumping investigations entitled *Magnesium from the People's Republic of China, Russia, and Ukraine* (1995), the Commission found pure magnesium and alloy magnesium to be separate domestic like products.[68] In the review investigations entitled *Magnesium from Canada* (2000), the Commission did not revisit the issue of like product as no party argued for a different like product definition in the review investigations.[69] In the review investigation entitled *Pure Magnesium from China* (2000), the Commission defined the domestic like product as pure magnesium, including off-spec pure magnesium.[70] In the antidumping and countervailing duty investigations on *Pure Magnesium from China and Israel* (2001), the Commission found the domestic like product to consist of "pure magnesium that includes both granular magnesium and magnesium ingot."[71]

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[67] *Magnesium from Canada*, Invs. Nos. 701-TA-309 (Final) and 731-TA-528 (Final), USITC Publication 1992, August 1992, p. 11.

[68] *Magnesium from the People's Republic of China, Russia, and Ukraine*, Invs. Nos. 731-TA-696-698 (Final), USITC Publication 2885, May 1995, p. 9. The Commission also defined the domestic product like the imported pure magnesium product to include off-spec pure magnesium. Ibid.

[69] *Magnesium from Canada*, Invs. Nos. 701-TA-309-A-B and 731-TA-528 (Review), USITC Publication 3324, July 2000, p. 6.

[70] *Pure Magnesium from China*, Inv. No. 731-TA-696 (Review), USITC Publication 3346, August 2000, p. 5.

[71] *Pure Magnesium from China and Israel*, Invs. Nos. 701-TA-403 and 731-TA-895-896 (Final), USITC Publication 3467, November 2001, p. 9.

Primary vs. Secondary Magnesium

In the preliminary phase of these investigations, the Commission also addressed the domestic like product issue concerning primary versus secondary alloy magnesium.[72] The Commission noted that "virtually all secondary production is of alloy magnesium . . . if secondary magnesium is compared with primary alloy magnesium, it is clear that the products are similar in terms of physical characteristics and uses, interchangeability, customer and producer perceptions, channels of distribution, and price." The Commission further noted, however, that "the products are not like each other in terms of manufacturing facilities and employees, because primary magnesium is made by US Magnesium through the primary production process (i.e., be decomposing raw materials into magnesium metal) where secondary magnesium is made, largely by firms other than US Magnesium, through a recycling process." The Commission also noted that "if secondary magnesium is compared with all primary magnesium (i.e., pure and alloy magnesium) the similarities between primary and secondary products become more attenuated because of the differences between pure and alloy magnesium." The Commission ultimately found that primary and secondary magnesium are part of the same domestic like product and that secondary magnesium is part of the domestic like product consisting of alloy magnesium.[73] The following discussion of domestic like product factors focuses on the issue of primary magnesium versus secondary magnesium.

Physical Characteristics and Uses

Most primary and secondary alloy magnesium is similar physically and chemically. However, higher purity secondary alloy magnesium, typically produced from scrap recovered from used automotive parts, is acceptable for use in automotive diecasting applications.

Common Manufacturing Facilities and Production Employees

Primary and secondary alloy magnesium are normally produced in separate facilities using separate production processes and employees. Only US Magnesium currently produces primary magnesium in the United States, using magnesium-bearing brine from the Great Salt Lake in Utah as the raw material. Secondary alloy magnesium is produced by recyclers from delivered scrap which is melted in a steel crucible.

Interchangeability and Channels of Distribution

Primary and secondary alloy magnesium can be used interchangeably in automotive diecasting applications if appropriate methods are utilized to assure the purity of the secondary magnesium by removing impurities such as copper. Primary and secondary alloy magnesium are generally sold directly to end users through common channels of distribution.

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[72] *Magnesium From China and Russia*, Invs. Nos. 731-TA-1071-1072 (Preliminary), USITC Publication 3685 (April 2004), p. 10. Petitioners contend that primary and secondary magnesium are a single domestic like product. Petitioners' prehearing brief, pp. 32-38. Respondents have not commented on primary magnesium versus secondary magnesium.

[73] Ibid.

Customer and Producer Perceptions

Because primary and higher-purity secondary alloy magnesium are largely identical products and are interchangeable for the same purposes, principally automotive diecastings, neither consumers nor producers perceive them to be significantly different products. Lower-purity secondary magnesium, which does not meet ASTM specifications, is not interchangeable with primary magnesium for use in automotive (structural) applications because of potential contamination problems. For most other, non-structural, magnesium applications, e.g., use in beverage containers, low-purity secondary magnesium is interchangeable with primary magnesium.[74]

Cast vs. Granular Magnesium

In the preliminary phase of these investigations, the Commission also addressed the domestic like product issue concerning cast versus granular magnesium.[75] The Commission noted that in a prior investigation on magnesium it had found that granular and ingot (cast) magnesium are produced in a continuum of forms and sizes, without any clear dividing line, that they share the same chemical properties, are sold through similar channels of distribution, are interchangeable at least for significant end uses (particularly in desulfurization), and use the same manufacturing facilities and employees up to the grinding stage.[76] Citing a lack of evidence that the domestic like product analysis had changed in any way since the prior magnesium investigation, the Commission again found that cast and granular magnesium are part of the same domestic like product.[77] The following discussion of domestic like product factors focuses on the issue of cast magnesium versus granular magnesium.

Physical Characteristics and Uses

The chemical compositions of cast and granular magnesium are identical since granular magnesium is typically ground from cast magnesium.

Common Manufacturing Facilities and Production Employees

The production facilities, processes, and employees of cast and granular magnesium are the same until the grinding stage.

Interchangeability

Cast and granular magnesium are considered to be interchangeable for preparation for use in the steel desulfurization market. Firms known as grinders are able to use either cast or granular magnesium to produce products required by the steel industry. A producer of reagents for iron and steel desulfurization can have both granular magnesium and cast magnesium ground to customer specifications.

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[74] ***.

[75] *Magnesium From China and Russia*, Invs. Nos. 731-TA-1071-1072 (Preliminary), USITC Publication 3685 (April 2004), p. 10. Petitioners contend that cast and granular magnesium are a single domestic like product. Petitioners' prehearing brief, pp. 38-40. Respondents did not comment on cast magnesium versus granular magnesium.

[76] *Magnesium From China and Israel*, Invs. Nos. 701-TA-404 and 731-TA-895-896 (Final), USITC Publication 3467 (November 2001), pp. 8-9.

[77] *Magnesium From China and Russia*, Invs. Nos. 731-TA-1071-1072 (Preliminary), USITC Publication 3685 (April 2004), p. 11.

Customer and Producer Perceptions

Producers of reagents for iron and steel desulfurization perceive not only granular but also cast magnesium as potentially usable in the production of these reagents because these producers are able to grind cast magnesium to the appropriate size requirements.

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

U.S. MARKET SEGMENTS AND CHANNELS OF DISTRIBUTION

According to the International Magnesium Association ("IMA"), the four principal industrial uses of magnesium are aluminum alloying; structural uses (including diecasting,[1] thixomolding, sand casting, and magnesium wrought products); iron and steel desulfurization; and electrochemical and other.[2] Traditionally, these magnesium markets have been supplied by magnesium in three general product divisions: primary vs. secondary magnesium, pure vs. alloy magnesium, and cast vs. granular magnesium. In the past, pure primary magnesium was used in cast form for aluminum alloying and in cast or granular form for iron and steel desulfurization, while primary alloy magnesium was used in diecasting (which requires alloy and cannot use pure).[3]

Pure vs. Alloy Magnesium

Petitioners allege that due to efforts to avoid antidumping duties on Chinese pure magnesium, Chinese alloy magnesium is used increasingly by aluminum alloyers, who are interested only in the magnesium content of what they buy, and hence can use alloy magnesium as easily as pure magnesium.[4] In addition, US Magnesium, the only remaining U.S. producer of primary magnesium, reports that it is also facing increased competition from U.S. producers of secondary magnesium, almost always in alloy form. US Magnesium contends that secondary alloy magnesium competes with its pure magnesium as well.[5] Thus, petitioners allege that they have seen increased competition for primary pure magnesium from both domestic secondary alloy magnesium and Chinese primary alloy magnesium.[6]

Respondents have stated that alloy magnesium is not necessarily substitutable for pure magnesium. They have contended, for example, that secondary alloy magnesium for the diecasting industry usually contains beryllium, and thus cannot be used in aluminum cans, which pursuant to FDA requirements must not contain beryllium.[7] Alcoa characterized the majority of the alloy product as containing beryllium, which Alcoa said means that it cannot use it.[8] Alcan, however, said that it had

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[1] Diecasters purchase magnesium (almost always alloy magnesium) and use it to manufacture auto parts that are then sold to automobile manufacturers. However, staff has learned that ***. Staff has sent a questionnaire to ***. See staff conversation with ***.

[2] Tables III-5 and IV-4 present questionnaire data for shipments by end use.

[3] *See* conference transcript (Kaplan), pp. 27 and 30.

[4] *See* conference transcript (Dorn), pp. 7-8; (Kaplan), pp. 27 and 30; and (Button), pp. 53-55.

[5] US Magnesium also cites the shrinking spread between pure and alloy magnesium prices over 2000-03 as evidence of the increased competition between pure and alloy magnesium. *See*, conference transcript (Kaplan), pp. 28, 30, and 33-34.

[6] Petitioners further allege that this new type of competition has developed mostly since 2000. Secondary magnesium has been around since the 1960s or 1970s, but its production has increased recently with the higher availability of scrap magnesium. *See* conference transcript (Button, Kaplan, and Dorn), pp. 71-74.

[7] *See* written statement of Wise Alloys LLC, March 24, 2004, p. 1. Alcoa contends that primary alloy magnesium, the alloy magnesium imported from China for sometime use in aluminum alloying, does not contain beryllium. See prehearing brief of Alcoa, p. 4.

[8] *See* conference transcript (McHale), pp. 149-150. In the preliminary investigations, Alcoa characterized beryllium's problem as being a hazardous substance inappropriate for use in food containers. In the final investigations, Alcoa also emphasized beryllium as a hazardous substance that could endanger the lives of its workers in an open furnace plant. *See* hearing transcript (McHale), p. 252. Alcoa also stated in the hearing that the ASTM standards for the alloy magnesium it purchased had recently changed, mandating the use of beryllium in

developed processes for using secondary alloy magnesium in aluminum alloying, and began doing so in 2003. It said that it is also concerned about beryllium, and that its processes using secondary magnesium cleanse the material of beryllium.[9]

Producer and importer questionnaires in the final phase of these investigations showed more acknowledgment that alloy and pure magnesium do sometimes compete with each other. *** saw increasing substitution of pure magnesium by Chinese alloy magnesium. *** stated that this substitution occurred in the aluminum alloying and iron and steel desulfurization markets, and noted that it does not face substitution of pure for alloy, especially in the diecasting market where diecasters require alloy magnesium.[10] Seven importers (***) acknowledged at least some competition between pure and alloy magnesium.[11] However, *** and four importers (***) did not see any competition between pure and alloy magnesium.

Purchasers were asked how difficult it would be to use pure and alloy magnesium interchangeably in their firms' applications. Aluminum alloyers had mixed responses. *** said that pure and alloy magnesium are not interchangeable because the majority of alloy magnesium contains beryllium. *** also said that it would be unacceptable to interchange pure and alloy magnesium for the products it produces. *** said that current purchasing specifications require pure magnesium. However, *** said that pure and alloy magnesium are not different as long as the other elements in the alloy magnesium would fit within the chemical specifications of the user. It added that typical magnesium content in its end-use products is between 0.1 percent and 1.5 percent, so any additional elements would not be in large quantities. *** said that while it is easier to use either pure or alloy, both could be used with the proper management.

Diecasters were unanimous (among those who answered the question) that interchanging pure and alloy magnesium would be at best extremely difficult and most likely impossible, citing customers' specifications. However, desulfurizer *** said that it would not be difficult to interchange pure and alloy for desulfurization except in specialty products. Among other end users, *** said that pure and alloy magnesium were interchangeable, but the other eight end users described interchangeability as difficult to impossible.[12]

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alloys it bought before with no beryllium. However, petitioners stated that ASTM standards have mandated beryllium since 2000. *See* hearing transcript (McHale and Dorn), pp. 156 and 336.

[9] *See* hearing transcript (Dery), pp. 164-166. ***.

[10] In addition, ***.

[11] For example, *** said it is possible to use alloy magnesium in aluminum alloying. *** said that generally Chinese alloy magnesium competes with other pure magnesium, but that pure magnesium does not compete with alloy magnesium in traditionally alloy end uses. *** added that the cost of the alloy magnesium used in aluminum alloying will reflect the greater inconvenience of using "the wrong tool for the job." In its preliminary phase questionnaire, *** said that its sales of Chinese alloy magnesium compete with pure magnesium from Russia and other countries. *** said that over half of aluminum alloyers will accept alloy magnesium in place of pure magnesium. *** also said that Chinese AM50A alloy magnesium without beryllium competes with pure magnesium in the aluminum and ferroalloy industries. *** said that alloy magnesium from any country can be substituted for pure magnesium in small quantities for desulfurization uses.

[12] Petitioners' prehearing brief notes that the purchaser questionnaires of *** include reported purchases of both pure and alloy magnesium, for *** respectively. *See* petitioners' prehearing brief, pp. 12-13.

Primary vs. Secondary Magnesium

Purchasers were also asked how difficult it would be to use primary and secondary magnesium interchangeably. Aluminum alloyers were again divided. *** stated that secondary magnesium was unacceptable for their end uses. *** said that scrap magnesium contains beryllium, and *** said that it has not found a reliable source of secondary magnesium that will meet its specifications consistently. However, *** said that secondary magnesium can be used in place of primary magnesium with proper controls on beryllium and zinc content. *** said that interchanging primary and secondary magnesium is more difficult than interchanging pure and alloy, but not impossible. It explained that secondary magnesium usually has broader ranges than primary magnesium.

Among diecasters, though, five firms said that primary and secondary magnesium could be used interchangeably as long as other specifications and qualifications were met. Only *** described interchangeability as impossible. *** stated that it prefers a relationship with at least one primary producer, as secondary producers need to work with the challenge of securing available scrap magnesium. *** said that primary and secondary magnesium were interchangeable for its desulfurization uses. Among other end users, two said that they could use primary and secondary magnesium interchangeably and five said that they could not.

Primary Pure vs. Secondary Alloy Magnesium

Producers and importers were asked if they sell secondary alloy magnesium to aluminum manufacturers. Among producers, *** said no, but *** said it had for *** years and *** said it had for *** years.[13] Among importers, 12 said they did not. However, *** said that it began selling *** to *** U.S. customers of pure magnesium. Additionally, *** said that it sold small amounts of secondary alloy to ***, but that its supplier was ***.

Producers and importers were asked if their customers for secondary alloy magnesium that meets ASTM specifications were different than their customers for such magnesium that does not meet ASTM specifications. Producer *** said no, while *** said yes. *** said sometimes, and continued that while diecasters always request secondary alloy that meets ASTM specifications, customers that historically purchased pure magnesium do not always require that secondary magnesium meet ASTM specifications. Among importers, three said no, but *** said yes, and continued that aluminum alloyers can use secondary magnesium that does not meet ASTM specifications, but that diecasters always need ASTM specification magnesium.[14]

Also, aluminum alloyers were asked if they had purchased both primary pure magnesium and secondary alloy magnesium. *** said it had, since 2003, and that it used both products in the same applications. *** said that both products "certainly" can be used interchangeably, but close attention to

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[13] Petitioners stated that while there may have been past sales of domestic secondary alloy magnesium to aluminum alloyers in the past, it characterized such sales as "very small," and characterized the current more widespread use of alloy magnesium in aluminum alloying as driven by lower-priced subject imports of alloy magnesium. *See* hearing transcript (Button), p. 118.

[14] Producers and importers were asked how frequently their customers specify that their magnesium must meet ASTM specifications. *** said almost exclusively, *** said rarely, and *** said it depends on the customer. Seven importers said always or normally, with *** noting that all of its *** magnesium customers require material that meets ASTM specifications. However, three importers said that the need for ASTM specification depends on the customer. Among those three, *** said that its customers of BM90 and VM90 do not specify that their purchases must meet ASTM specifications. *** said that extruders would not demand ASTM-specified material, but that diecasters would. Purchasers were also asked how often the magnesium they purchased meets ASTM specifications. Twenty-two said always, two (***) said usually, and two (***) said sometimes.

specifications is necessary. However, *** said that the products could not be used interchangeably. *** added that it had processed small quantities of secondary magnesium in trials, but had not qualified any supplier of secondary magnesium.

Geographic Markets

Three producers and nine importers described their market for magnesium as being a national market or encompassing more than one region of the United States. Three producers and one importer described only one U.S. region as their market.[15]

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Both petitioners and respondents described magnesium production at some producers as a process that cannot be shut on and off easily. Once production is running at an electrolytic cell, it is not easy to shut it off. Thus, magnesium production can sometimes continue even in an atmosphere of falling prices, with production being sold at any price available. Petitioners cited this explanation for their low-priced sales of magnesium overseas, and respondents cited it as an explanation for low U.S. magnesium prices in 2002, when there was more magnesium production in the United States and Canada.[16]

In terms of producing pure versus alloy magnesium, petitioners allege that switching between pure and alloy is relatively easy, both in the United States (at US Magnesium) and in Russia (at both AVISMA and Solikamsk).[17] US Magnesium describes switching from pure magnesium to alloy magnesium as not requiring any additional steps (other than adding alloy), while switching from alloy magnesium production to pure magnesium production requires only "flushing" of the lines so that alloys are not present anymore.[18] Russian respondent AVISMA stated that ***, it cannot readily shift production between pure and alloy magnesium.[19]

Ten importers and producer *** saw no change in the product range or marketing of pure magnesium. However, *** said that aluminum alloyers are becoming increasingly comfortable with using alloy magnesium instead of pure magnesium because of low-priced imports of Chinese alloy magnesium. *** said that inexpensive imports from China and Russia had reduced U.S. magnesium prices from 2001 to 2003. *** said that it had ***. *** said that many Western producers had exited the pure magnesium business, and that the Chinese and Russians now supply 65 percent of the Western world market, with China accounting for the vast majority.

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[15] US Magnesium reported that *** percent of its sales were to customers more than 1,000 miles from its plant, and *** said that *** percent of its sales were more than 1,000 miles from its plant. However, *** reported that most of their sales were 100-1,000 miles from their plants. *** said that *** percent of its sales were less than 100 miles from its plant, *** percent were between 100 and 1,000 miles from its plant, and *** percent were more than 1,000 miles from its plant. Eight importers reported that a majority of their sales were between 100 and 1,000 miles from their plants, with two reporting that a majority of their sales were further away and three reporting that the majority of their sales were within 100 miles.

[16] *See* hearing transcript (Button, Tissington, and Hunkins), pp. 44, 108, and 194.

[17] *See* hearing transcript (Lutz), p. 55.

[18] *See* hearing transcript (Legge), p. 76.

[19] *See* posthearing brief of AVISMA/VSMPO, p. 3.

Whereas ten importers and three producers stated that there had been no change in the product range or marketing of alloy magnesium, two importers cited increased demand from new uses for magnesium in the automotive industry. *** again cited its ***. *** cited aluminum alloyers' new demand for alloy magnesium, provided that the material is beryllium-free. Among producers, *** said that alloy magnesium, particularly from China, is being increasingly used in aluminum alloying and iron and steel desulfurization. *** again cited the increased acceptance of alloy magnesium by aluminum alloyers, and gave the example of ***.

From information supplied in purchaser questionnaires, magnesium supplies appear to be becoming tighter in the U.S. market. Purchasers were asked if they had had any difficulties securing supplies of magnesium from any suppliers. Twelve said no, although one of those 12, ***, said that it had terminated a supply contract with ***. *** also reported ***. Those purchasers who had not had difficulty often said that the existence of contracts was the reason. However, eleven purchasers said that they had had difficulty securing supplies of magnesium (and one more said "not really" but expressed concern as it anticipated its own higher demand for magnesium). Three purchasers cited difficulties with securing supply from US Magnesium. Additionally, *** cited difficulty with US Magnesium, Northwest Alloys, and U.S. secondary magnesium producers. Two other producers (in addition to *** above) cited difficulties with securing supply from Russian sources. In addition, *** said that there had been supply problems in 1995, spurring Chinese producers to add capacity. It said that the current antidumping investigations had made Chinese supply tight while non-Chinese supply has not risen to compensate, making magnesium supply tight or unavailable in the second half of 2004 and into 2005. *** also said that the announcement of these investigations had forced the replacement of some supply sources.

Domestic Production

Based on available information, U.S. pure magnesium producers are likely to respond to changes in demand with small changes in the quantity of shipments of U.S.-produced pure magnesium to the U.S. market. The main contributing factors to the small degree of responsiveness of supply are the ***, falling export shipments, falling inventories, and the lack of production alternatives. Likewise, U.S. alloy magnesium producers are likely to respond to changes in demand with small changes in the quantity of shipments of U.S.-produced alloy magnesium to the U.S. market. The main contributing factors to the moderate-to-small degree of responsiveness of supply are the ***[20] *** tempered by ***, falling inventories, and the lack of production alternatives.

U.S. magnesium production is divided between US Magnesium, a producer of primary pure and alloy magnesium, and secondary alloy magnesium producers. US Magnesium went through a period of plant improvements in 2001-02. It has been pursuing a modernization plan that has resulted in higher capacity, lower raw material costs, and better environmental performance. However, the changes also required a temporary disruption in US Magnesium's production in 2001 and 2002, and their success allegedly remains dependent on trade action against subject imports.[21] Furthermore, any shutdown of the plant, even temporarily, will cause damage to the production equipment, a condition that necessitates continuous production.[22]

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[20] ***.

[21] *See* conference transcript (Legge), pp. 14-23. In addition, ***.

[22] *See* conference transcript (Button), p. 47. In addition, respondents described US Magnesium's ultimate owner as having "siphoned off" cash that could have been used for important investments in plant upgrades. They added that US Magnesium's continuing difficulties can be laid at the feet of its continuing legal and financial problems due to lawsuits over its environmental record and bankruptcy. *See* conference transcript (Stern), p. 112.

US Magnesium produces both pure and alloy primary magnesium, as well as secondary alloy magnesium. Pure and alloy magnesium are produced on the same production equipment until casting, with alloy magnesium being cast with other alloying elements while pure is cast directly into ingots.[23] US Magnesium's electrolytic cell production method must be kept in constant operation to avoid deterioration of the cells.[24]

U.S. production of primary pure magnesium has been dropping since 1998, with Dow Magnesium exiting the market in 1998 and Northwest Alloys ceasing production in 2001. US Magnesium characterized these exits as reducing the supply of U.S.-produced primary magnesium by two-thirds.[25] However, Alcoa noted that its Northwest Alloys plant, while shuttered, is still intact.[26]

There has, however, been growth in the production of secondary magnesium producers in the United States, although that growth has recently been curtailed by fires and bankruptcy. Amacor began shipments of secondary magnesium in ***, but a January 2005 fire in one of its warehouses has disrupted production.[27] Moreover, secondary producer Garfield reported a fire in its plant in December 2003 that ***. Finally, producer Halaco declared bankruptcy in September 2004 and is currently not producing. Production of secondary magnesium also remains vulnerable to the availability of scrap magnesium. Secondary producer *** reported that ***.[28]

U.S. producers reported that they produced no other products on their magnesium production equipment, except for byproducts of magnesium production (such as chlorine). U.S. producers' capacity utilization rose *** in 2003, especially for pure magnesium, but some additional capacity remains (especially for alloy magnesium). Inventories as a percent of shipments dropped over 2000-03, but exports of U.S.-produced pure magnesium grew over the same period.

Subject Imports

Based on available information, the Chinese producers of alloy magnesium are likely to respond to changes in demand with large changes in the quantity of shipments of magnesium to the U.S. market while the Russian producers of pure and alloy magnesium are likely to respond to changes in demand with moderate changes in the quantity of shipments of magnesium to the U.S. market. Both Chinese and Russian shipments of magnesium to the United States increased substantially from January 2001 through September 2004. Increased Chinese shipments of alloy magnesium to the U.S. market seem to be due to continually increasing Chinese capacity, ***. On the other hand, increases in the shipments of Russian pure and alloy magnesium to the U.S. market ***. With rising capacity utilization for pure magnesium, ***, and ***, the Russian response to increased U.S. demand may be more constrained. In addition, Chinese and Russian producers are constrained by a lack of production alternatives and some difficulties for new Chinese producers in qualifying their material with customers. The 2002 U.S. Geological

[23] *See* petitioners' prehearing brief, p. 54.

[24] *See* petitioners' prehearing brief, p. 47.

[25] *See* conference transcript (Legge), p. 13. Alcoa described the closing of Northwest Alloys as being due to its status as a "high-cost" producer, and characterized the closing as unrelated to imports of Chinese or Russian magnesium. *See* conference transcript (Leibowitz), pp. 102-103. A June 22, 2001 press release of Alcoa stated that the facility would shut down "due to high production costs and unfavorable market conditions."

[26] *See* conference transcript (Leibowitz), p. 156.

[27] *See*, for example, prehearing brief of Solikamsk and Solimin, p. 12.

[28] ***.

Survey (USGS) characterized world magnesium production as shifting to China, where lower cost magnesium supply has been growing.[29]

China

Based on available information, Chinese producers are likely to respond to changes in demand with large changes in the quantity of shipments of magnesium to the U.S. market. The main contributing factors to the high degree of responsiveness of supply are overall capacity levels, inventories, export markets, and production alternatives. While the lack of production alternatives would constrain the supply responsiveness, they are not likely to outweigh the effects of the high potential supply.

Currently, almost all imports of magnesium from China consist of primary alloy magnesium. Petitioners alleged that there are 150-200 magnesium producers in China with a combined capacity of as much as 700,000 metric tons, a level that they characterized as almost twice global demand.[30] However, Alcoa stated that it has been hearing of difficulties for Chinese producers trying to supply the U.S. market.[31] Respondents also said that Chinese capacity is restrained by higher energy and transportation costs, and that these cost increases are causing higher prices.[32]

Russia

Based on available information, Russian producers are likely to respond to changes in demand with moderate changes in the quantity of shipments of magnesium to the U.S. market. The main contributing factor to the moderate degree of responsiveness of supply is the disputed level of capacity. Petitioners (pointing to past publicly released information on Russian capacity) and Russian producers have presented different versions of Russian capacity that would have very different implications for the degree of Russian responsiveness to price movements.[33]

Commission data on Russian production and shipments would seem to suggest that increased shipments of Russian magnesium to the United States have come at the expense of shipments of Russian magnesium to the rest of the world. If these data are accurate, Russian capacity is ***and future shipments ***. However, petitioners point out that Russian producers stated in the preliminary investigations that their capacity was at its limit, and have since increased shipments to the United States by 26 percent.[34]

Currently, the bulk of U.S. imports of Russian magnesium is primary pure magnesium, although there have been some imports of Russian alloy magnesium since 2000. Russian respondents described Russian producers AVISMA and Solikamsk as currently producing “flat-out” and AVISMA as unable to

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[29] *See Magnesium* in *U.S. Geological Survey Minerals Yearbook 2002*, p. 47.6. The 2003 USGS described China as continuing to increase its production capacity. *See Magnesium* in *U.S. Geological Survey Minerals Yearbook 2003* p. 46.4.

[30] *See* conference transcript (Button and Dorn), pp. 57 and 99, and a 2003 article, “China’s magnesium capacity to jump 46 percent in 2003” from *Platt’s Metal Week* in the petition at exhibit 5. In 2002, USGS estimated Chinese capacity at 300,000 metric tons per year. See Deborah A. Kramer, *Magnesium, Minerals Yearbook 2002*, U.S. Geological Survey, table 7. ***.

[31] *See* conference transcript (McHale), p. 106. In addition, see postconference brief of Tianjin Magnesium at exhibits B, C, D, E, and F.

[32] *See* conference transcript (Roberts and Gammons), pp. 124 and 137.

[33] See petitioners’ postconference brief at 42-43 and conference transcript (Roberts), p. 124.

[34] *See* hearing transcript (Lutz), p. 56.

supply more magnesium than it committed to for 2004.[35] However, Russian shipments of pure and alloy magnesium were up *** in January-September 2004 compared to January-September 2003.

Nonsubject Imports

Magnesium capacity has been diminishing in many nonsubject countries. Although Magnola Metallurgy started production in Canada in 2001 with a plant that reached a capacity of 58,000 metric tons, it closed that plant in 2003. Another Canadian producer, Timminco, shut down primary magnesium production for several months starting in January 2004.[36] In addition, French magnesium production capacity has been reduced by 17,000 metric tons and Norwegian capacity has been reduced by 42,000 metric tons.[37] Petitioners have submitted news articles attributing many of these shutdowns to competition with Chinese magnesium.[38] *** described China and Russia as now supplying 65 percent of the European and North American magnesium markets, with the vast majority of that subject country supply being from China. In the preliminary phase of the investigations, Dead Sea Magnesium of Israel submitted a letter stating that "China and Russia have been the downward price leaders in the U.S. market for magnesium for the last several years."[39]

U.S. Demand

Demand Characteristics

Magnesium demand consists of three major segments--aluminum alloying, diecasting, and iron and steel desulfurization-- plus miscellaneous other uses. Demand for all of these end uses generally tracks overall economic activity, and has increased over at least the last two years, but may be showing some signs of easing, especially in autos. In 2003 and early 2004, Chinese demand for aluminum was reportedly causing world shortages in aluminum and driving up worldwide aluminum demand.[40] Moreover, Chinese leaders are trying to curb their own country's aluminum output by withdrawing tax incentives. Barclays Capital predicts that worldwide aluminum prices will average $1,850 per metric ton in 2005, up from $1,711 per metric ton in 2004.[41] However, U.S. automakers are expecting a tough year in 2005 due to the heavy (but increasingly ineffective) use of incentives recently and increased competition from imported automobiles.[42] (Diecasters produce for the automotive industry and to automotive manufacturer specifications, but may supply "tier one" automotive suppliers rather than automotive manufacturers directly.)[43] Steel demand in the United States, the driver behind desulfurization demand for magnesium, is showing continued strength, though some analysts forecast declines in prices in 2005.[44] However, the correlation between the strength of the overall U.S. and world

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[35] *See* conference transcript (Roberts), pp. 123-124.

[36] *See* petitioners' prehearing brief, p. 51.

[37] *See* conference transcript (Roberts), p. 121.

[38] *See* petitioners' prehearing brief, p. 51.

[39] March 25, 2004 letter of Dead Sea Magnesium, submitted by Akin Gump Strauss Hauer and Feld LLP.

[40] *See World Faces Aluminum Shortage as China Demand Soars*, Agence France Presse, March 11, 2004.

[41] *See Aluminum may rise above $2,000*, Business Day, December 20, 2004.

[42] *See Big Three Face Bleak New Year*, Detroit News, January 28, 2005.

[43] *See* hearing transcript (Ferguson), p. 209.

[44] *See Steel Inside Track*, World Steel Dynamics, February 2005.

economies and magnesium demand also means that any general economic slowdown would also probably mean a slowdown in magnesium demand.

Demand Trends

Respondents described overall magnesium demand as cyclical, following the wider economy and industrial activity. They described one price and demand trough as having taken place in 1991, followed by rising demand until 1996, and then falling demand until another trough was hit in 2001. However, they described demand as currently rising.[45]

For pure magnesium, *** reported that U.S. demand has fallen because imported alloy magnesium was being increasingly used instead of pure magnesium in aluminum alloying and iron and steel desulfurization. *** stated that demand has increased, citing general economic conditions. Four importers stated that demand has increased, with *** estimating the increase at 2-3 percent yearly and *** describing the increase as considerable. Importers attributed the growth to new capacity in aluminum and increased aluminum use in automobile manufacturing. However, five importers saw pure magnesium demand as unchanged and two saw pure magnesium demand as shrinking.[46]

For alloy magnesium, four producers stated that U.S. demand had increased, citing higher automotive demand and alloy magnesium's low price relative to pure magnesium. Thirteen importers agreed, with *** describing uses for alloy magnesium as growing approximately 4.3 percent per year in the United States but eight percent per year in Europe. *** estimated that demand had increased 10 percent yearly because of the automotive industry. *** said that demand increased because fuel efficiency's rising importance has driven automakers to seek more magnesium alloy die cast parts. *** said that demand was stronger for aerospace castings.[47] *** cited aluminum alloying as one reason demand for alloy magnesium had risen. Two importers stated that demand for alloy magnesium was unchanged.

Among purchasers, three aluminum alloyers reported that demand for their products had increased, citing an improved overall U.S. economy. Two other aluminum alloyers said that demand for their products had not changed, while *** stated that its demand had decreased because ***. Alcoa said that demand for its aluminum is increasing, and that it is using less scrap aluminum in its production, meaning that it needs to produce more primary aluminum (which will require magnesium).[48] Six diecasters stated that demand for their products had increased, citing customer design requirements and the lower cost of magnesium alloy for use in automotive applications.[49] ***, however, reported that demand for its products had decreased. *** said that demand for its products was unchanged. Among other purchasers of magnesium, three said that demand for their products had decreased, three said that it had increased, and one said that it was unchanged.

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[45] *See* conference transcript (Stern), p. 111.

[46] In addition, the IMA reports that total world production of primary magnesium went from 366,900 metric tons in 2000 down to 330,180 metric tons in 2001 and back up to 364,959 metric tons in 2002. *See* www.intlmag.org/aboutIMA.html. The IMA has not updated its statistics since 2002.

[47] Additionally, *** said that its customers are increasingly preferring magnesium to aluminum. However, it said that the product it requires, ***, is available in the United States only from one company, and that US Magnesium will not make it. It said that it can only acquire the product from one U.S. producer, one Canadian producer, and Chinese producers.

[48] *See* hearing transcript (McHale), pp. 177-178.

[49] ***.

Substitute Products

Producers and importers generally reported that there were few, if any, regular substitutes for magnesium. Three producers and 13 importers stated that aluminum, steel, magnesium alloys, and/or plastics can at least occasionally substitute for magnesium.[50] *** stated that there are no substitutes for magnesium in aluminum cans, but that in diecasting there can be other downstream products made from aluminum, steel, or plastic instead of magnesium. It added that calcium carbide can substitute for magnesium in steel desulfurization and aluminum and zinc can substitute for magnesium in electrochemical end uses. In its preliminary phase investigation questionnaire response, *** reported that in diecasting, aluminum, steel, and plastics can be total substitutes for magnesium if the magnesium price is too high (specifically, if magnesium becomes more than *** times the price of aluminum), although *** stated that any such substitution would be longer-term. However, one producer and four importers stated that there were no substitutes for magnesium, or that they did not know of any.

Eight importers and four producers said that the prices of magnesium substitutes had not had an impact on magnesium prices. *** said that there could be a minor effect, but *** said that automotive companies are "very sensitive" to the relative prices of magnesium and its substitutes.

Among purchasers, 12 said that there were no substitutes for magnesium (or that they had no knowledge of any). Ten firms did cite substitutes for magnesium, including aluminum, plastic, and steel in diecasting for automotive parts and calcium carbide in iron and steel desulfurization. *** explained that, in its diecasting, aluminum may be substituted for magnesium, but that magnesium must be used where the lighter weight justifies the increased cost. Aluminum alloyers did not mention any substitutes, and *** said that there is no substitute for beryllium-free magnesium.

At the hearing, US Magnesium forecast a decline in demand for magnesium used in diecasting starting around 2006-07, due to a major automotive manufacturer switching from magnesium to aluminum. US Magnesium described this change as unrelated to the filing of this case.[51] At the hearing, diecasters said that with magnesium prices at $1.50 per pound, many of their customers (automotive manufacturers) would not put magnesium in future designs.[52] However, petitioners pointed out that prices are also rising for magnesium substitutes.[53]

End Uses and Cost Share

In their questionnaire responses, few producers (***) and importers expressed detailed knowledge of the cost share that magnesium accounts for in their customers' products. *** said that both pure and alloy magnesium are used in aluminum alloying (less than *** percent of the cost of production) and desulfurization (*** percent of the cost of production). It also said that pure magnesium can be used in making nodular iron and ferroalloys, metal reduction, electro-chemical corrosion protection (*** percent of the cost of production), and chemicals (*** percent of the cost of production). It added that alloy magnesium is used in diecasting (*** percent of the cost of production), gravity casting (*** percent of the cost of production) and wrought products (less than *** percent of the cost of production). Generally, importers estimated magnesium to be 1-10 percent of the cost of aluminum and a higher percentage of the cost of iron and steel desulfurization and diecasting. However, *** said that magnesium may account for *** percent of the cost of thixomolding. Petitioners described diecasting as

[50] *** said that aluminum was a substitute for magnesium in diecasting, plastic a substitute in engine valve covers, and stamped steel a substitute in vehicle instrument panels.

[51] *See* hearing transcript (Tissington), pp. 83-84.

[52] *See* hearing transcript (Arh, Roels, and Sparks), pp. 172-175.

[53] *See* hearing transcript (Dorn), p. 339.

an expensive process where raw materials play a lesser role in the final end product. They said that while magnesium prices had dropped in recent years, the volume demanded by diecasters had not risen comparably.[54] However, aluminum alloyer Alcan described itself as disadvantaged when competing with foreign aluminum producers who can source their magnesium free from U.S. antidumping duties.[55]

Purchasers of pure magnesium cited aluminum alloying as an end use, with the magnesium accounting for no more than three percent of the aluminum produced, whether in billet, coil, or container form. However, purchasers of pure magnesium who cited other end uses, such as specialty powders, wrought alloy products, and ferrosilicon, cited much higher shares of magnesium, up to 95 percent for wrought products. Purchasers of alloy magnesium cited automotive products (including gear casings, housings, and steering wheels), power tools, bicycle parts, ferrosilicon, and aluminum alloying (cited by ***[56] and ***). Diecasters generally estimated that the cost share of their products accounted for by the cost of alloy magnesium was in the range of 25-40 percent.[57]

SUBSTITUTABILITY ISSUES

Factors Affecting Purchasing Decisions

Certification and Qualification

Magnesium purchasers require qualification in addition to ASTM certification, and qualification standards are stringent enough to eliminate some suppliers at some times. Some diecasting qualification is more stringent than aluminum alloying qualification[58] or more general diecasting qualification, and involves qualifying for use in the automotive parts of the "big three"-- General Motors (GM), Ford, and DaimlerChrysler, ***.[59] Respondents described this as a 12-14 month process that allows the qualified supplier to charge higher prices.[60] However, petitioners said that ***.[61]

Petitioners allege that Chinese magnesium was not qualified initially (i.e., 1995) to supply the diecasting market, but that some Chinese material can now supply both the diecasting and the less stringent portions of the aluminum alloying market.[62] Nanjing Yunhai Magnesium Co. and Nanjing Welbow Metals Co. are currently certified to supply Toyota Group and DaimlerChrysler, and stated that fewer than five Chinese producers (including Nanjing) have the technical capabilities to be certified by

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[54] *See* conference transcript (Button and Kaplan), p. 76.

[55] *See* conference transcript (Yosowitz), p. 119. ***.

[56] ***.

[57] Spartan Light Metal described magnesium as a "very important" cost of diecasting. *See* hearing transcript (Hunkins), p. 200.

[58] However, Wise Alloys, a magnesium purchaser and producer of aluminum can stock, describes its process of qualifying a supplier as a three-to-six month process that involves meeting FDA requirements and Wise's volume needs. *See* written statement of Wise Alloys LLC, March 24, 2004 at 2.

[59] *See* conference transcript (Kaplan), p. 75, and ***.

[60] *See* conference transcript (Gammons), p. 152.

[61] *See* prehearing brief of petitioners, exhibit 1, p. 5. Gibbs also said that different automakers may have different levels of qualification standards. *See* hearing transcript (Ferguson), p. 208.

[62] *See* conference transcript (Kaplan), p. 30.

North American automakers.[63] On the other hand, several purchasers at the hearing stated that Chinese producers have limited qualifications from major automakers and are thus not major suppliers for the diecasting market.[64]

***.[65] In addition, some secondary magnesium is reportedly becoming more widely accepted as qualified for automotive end uses.[66]

In addition to certification issues, several magnesium purchasers who testified at the conference on behalf of respondents stated that having alternative sources of supply was important. Though some characterized US Magnesium as an effective supplier, they said that US Magnesium's legal and financial difficulties made these purchasers nervous about its future capability of maintaining supply.[67]

Comparisons of Domestic Products and Subject Imports

Producers, importers, and purchasers were asked to assess how interchangeable magnesium from the United States was with magnesium from subject countries and nonsubject countries. Producers, importers, and purchasers were asked to compare pure and alloy magnesium separately. Their answers are summarized in tables II-1 and II-2.[68]

Table II-1
Magnesium: U.S. producers', importers', and purchasers' perceived degree of interchangeability of pure magnesium produced in the United States and in other countries

	Number of firms reporting											
	U.S. producers				U.S. importers				U.S. purchasers			
Country comparison	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. Russia	***	***	***	***	3	7	0	0	10	2	1	0
U.S. vs. nonsubject	***	***	***	***	3	5	1	0	8	2	1	0
Russia vs. nonsubject	***	***	***	***	3	5	1	0	8	1	1	0

Note: A = Always; F = Frequently; S = Sometimes; N = Never.

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

[63] *See* postconference brief of Nanjing and Toyota Tsusho, pp. 2-3 and exh. 2. In addition, Jim Gammons of Erie Shore Marketing stated that Tianjin Magnesium International Co. is in the process of being certified by automakers. *See* conference transcript (Gammons), pp. 151-152.

[64] *See* hearing transcript (Hunkins and Roehl), pp. 200-201.

[65] Staff conversation with ***.

[66] *See* conference transcript (Kaplan), pp. 84-85.

[67] *See* conference transcript (McHale and Yosowitz), pp. 107 and 115-116.

[68] There were numerous related parties who submitted multiple questionnaires. For the purposes of this report, staff has counted all questionnaires as having one "vote" in the following tabulations.

Table II-2
Magnesium: U.S. producers', importers', and purchasers' perceived degree of interchangeability of alloy magnesium produced in the United States and in other countries

Country comparison	Number of firms reporting											
	U.S. producers				U.S. importers				U.S. purchasers			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. China	3	2	0	0	3	3	6	0	7	5	3	1
U.S. vs. Russia	3	2	0	0	4	8	1	0	8	6	3	0
U.S. vs. nonsubject	3	2	0	0	3	5	2	0	8	4	3	0
China vs. Russia	3	2	0	0	4	5	3	0	7	3	3	0
China vs. nonsubject	3	2	0	0	3	4	3	0	7	2	3	0
Russia vs. nonsubject	3	2	0	0	3	4	3	0	7	2	3	0

Note: A = Always; F = Frequently; S = Sometimes; N = Never.

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

Among producers, ***, citing articles in American Metal Market and ***, stated that U.S. pure magnesium is increasingly substituted for by Chinese alloy magnesium. It also stated in ***. Among importers, *** said that there are many factors that minimize the ability of one producer's pure magnesium to substitute for another, citing quality, cleanliness, and sizes and shapes available from US Magnesium but not from Chinese and Brazilian producers, nor from Solikamsk. It added that alloy magnesium from different producers is not interchangeable with diecasters, as each producer is qualified by the consumer and often by the consumer's customer. It did say, though, that some aluminum alloyers may find alloy magnesium from different sources more interchangeable. *** added that Chinese alloy magnesium is only sometimes interchangeable with U.S. alloy magnesium as Chinese producers have tried but rarely passed the stringent approval process for auto industry diecasters. *** said that *** are never interchangeable with magnesium ingots produced by U.S. producers. It added that two out of three U.S. magnesium producers have stopped making *** except on a tolling basis, and the third requires ***. *** said that Chinese production, which is thermal reduction and not electrolytic, cannot always reach the desired low levels of some residual elements such as silicon, manganese, and lead. Alcoa described magnesium as "as much a commodity as aluminum, copper, lead, tin" and stated that magnesium from different national sources is interchangeable.[69]

Among purchasers, regarding alloy magnesium, *** said that while certified alloy magnesium from both U.S. and subject countries can be used interchangeably, not all firms in the United States or subject countries have been certified, and noted specifically that US Magnesium had not been certified. *** also noted that while it had not purchased beryllium-free alloy magnesium manufactured in the United States, it had purchased that product from China, in limited quantities. No diecasters provided any comparisons, usually because they did not use pure magnesium.

Producers and importers were asked to assess how often differences other than price were significant in sales of magnesium from the United States, subject countries, or nonsubject countries. Producers and importers were asked to compare pure and alloy magnesium separately. Their answers are summarized in tables II-3 and II-4.

[69] *See* conference transcript (McHale), p. 151.

Table II-3
Magnesium: U.S. producers' and importers' perceived importance of factors other than price in sales of pure magnesium produced in the United States and in other countries

Country comparison	Number of firms reporting							
	U.S. producers				U.S. importers			
	A	F	S	N	A	F	S	N
U.S. vs. Russia	***	***	***	***	0	2	5	2
U.S. vs. nonsubject	***	***	***	***	0	2	5	2
Russia vs. nonsubject	***	***	***	***	0	1	5	2

Note: A = Always; F = Frequently; S = Sometimes; N = Never.

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

Table II-4
Magnesium: U.S. producers' and importers' perceived importance of factors other than price in sales of alloy magnesium produced in the United States and in other countries

Country comparison	Number of firms reporting							
	U.S. producers				U.S. importers			
	A	F	S	N	A	F	S	N
U.S. vs. China	0	1	3	2	3	0	6	2
U.S. vs. Russia	0	1	3	2	1	0	8	2
U.S. vs. nonsubject	0	1	3	2	1	1	6	2
China vs. Russia	0	1	3	2	2	0	8	2
China vs. nonsubject	0	1	3	2	1	0	6	2
Russia vs. nonsubject	0	1	3	2	1	1	6	2

Note: A = Always; F = Frequently; S = Sometimes; N = Never.

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

Importer *** said that technical support, quality, and reliability were important factors other than price. *** said that its central concern was product range, as it can only obtain ***. *** said that the high quality of Russian magnesium is important, and confirmed by approval letters it attached to its questionnaire. Importer *** said that magnesium from the United States and "certain countries" sometimes has an advantage over magnesium from other countries in terms of consistent quality, reliability, technical support, and recycling services.

U.S. Purchasers

The Commission received questionnaires from 26 purchasers of magnesium. ***.

Six purchasers (***) were aluminum alloyers. Nine were diecasters. One, ***, is a distributor for the ***. Another, ***, was an iron and steel desulfurizer. The other eight purchasers purchased magnesium for other uses, including sand castings for aerospace and magnesium ferrosilicon for auto ductile iron.

Twenty-five of 26 purchasers reported familiarity with U.S. domestic magnesium, 16 reported familiarity with Chinese magnesium, 17 reported familiarity with Russian magnesium, and 21 purchasers reported familiarity with magnesium from nonsubject countries, especially Canada and Israel but also including Brazil and England. In terms of reporting actual purchases, tables II-5 through II-8 present a complete list of which purchasers reported purchasing from which countries in 2003. (Not all purchasers were able to report their purchases.)

Table II-5
Magnesium: Purchasers' reported purchases of U.S. magnesium for particular end uses in 2003

* * * * * * *

Table II-6
Magnesium: Purchasers' reported purchases of Chinese magnesium for particular end uses in 2003

* * * * * * *

Table II-7
Magnesium: Purchasers' reported purchases of Russian magnesium for particular end uses in 2003

* * * * * * *

Table II-8
Magnesium: Purchasers' reported purchases of magnesium from nonsubject countries for particular end uses in 2003

* * * * * * *

Purchasers were asked if the relative shares of their purchases from different countries had changed in the last three years. Seven purchasers reported increasing their relative share of purchases from U.S. suppliers, citing the competitiveness of U.S. supply and volume contracts.[70] Eight purchasers reported decreasing their relative share of purchases from U.S. suppliers, citing the closure of U.S. producers, price, and some U.S. suppliers not being qualified with GM.[71]

Three purchasers reported increasing their relative shares of purchases of Chinese magnesium,[72] and *** reported reducing its relative share of purchases of Chinese magnesium due to reliability. Five purchasers reported increasing their relative shares of purchases of Russian magnesium,[73] and eight reported reducing their relative shares of purchases of Russian magnesium.[74] Six purchasers reported increasing their relative shares of purchases of magnesium from nonsubject countries, citing price, availability, and qualification with GM. Israel was cited five times, Canada twice, and England once. Five purchasers reported reducing their relative shares of purchases of magnesium from nonsubject countries due to price and availability. Canada and Israel were each cited three times.

[70] ***.

[71] *** said that they had reduced their purchases of domestic magnesium because of the closure of Northwest Alloys. *** said that price or price increases drove their decision to reduce purchases of domestic magnesium. ***. *** cited the closures of Northwest Alloys, Garfield, and Halaco.

[72] ***. ***.

[73] ***. ***.

[74] ***.

Purchasers were also asked to report their annual purchases of magnesium from each subject country and the United States. Tables II-9 and II-10 summarize trends for particular end uses based on their responses for 2001-03.

Table II-9
Magnesium: Purchaser volume trends, pure magnesium

Country	Purchase volumes up 2001-03 (*Number of purchasers*)	Purchase volumes down 2001-03 (*Number of purchasers*)
Russian pure for aluminum	4	2
Russian pure for diecasting	0	0
Russian pure for desulfurization	0	0
Russian pure for other	3	3
Nonsubject pure for aluminum	4	1
Nonsubject pure for diecasting	0	0
Nonsubject pure for desulfurization	0	0
Nonsubject pure for other	2	3
U.S. pure for aluminum	2	5
U.S. pure for diecasting	0	0
U.S. pure for desulfurization	0	0
U.S. pure for other	1	3

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

Table II-10
Magnesium: Purchaser volume trends, alloy magnesium

Country	Purchase volumes up 2001-03 (*Number of purchasers*)	Purchase volumes down 2001-03 (*Number of purchasers*)
Chinese alloy for aluminum	2	0
Chinese alloy for diecasting	5	0
Chinese alloy for desulfurization	0	1
Chinese alloy for other	2	0
Russian alloy for aluminum	1	0
Russian alloy for diecasting	3	1
Russian alloy for desulfurization	0	0
Russian alloy for other	0	0
Nonsubject alloy for aluminum	0	0
Nonsubject alloy for diecasting	2	4
Nonsubject alloy for desulfurization	0	0
Nonsubject alloy for other	1	2
U.S. alloy for aluminum	1	1
U.S. alloy for diecasting	3	4
U.S. alloy for desulfurization	1	0
U.S. alloy for other	0	1

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

Most purchasers reported contacting two to six suppliers when purchasing, with *** reporting that there are five principal global suppliers, and it consults with each before purchasing. Nine purchasers said that they had not changed suppliers since January 1, 2001, while 16 said that they had, and cited supply shortages, plant shutdowns, and/or price as reasons. Sixteen purchasers said they were not aware of any new suppliers, while ten said that they were, naming Amacor, AVISMA, US Magnesium, Noranda (Canada), Dead Sea (Israel), Nanjing Weibow (China), and Shanxi Wenxi Yinguang (China).

Ten purchasers said that they had not experienced changes in their purchasing patterns in the last three years, but 13 said that they had. *** said that it had begun using two- and three-year contracts instead of its previous one-year contracts. *** said that in 2003 it began using a significant quantity of secondary magnesium. *** reported that its Russian supplier (***) stopped supplying it in August 2003 when *** withdrew from the U.S. market by diverting material to Europe. *** stated that no U.S. supply was available at the time, and that consequently *** bought from ***. *** said that they had increased their purchases due to increased production, but *** both reported reducing their purchases due to reduced production. *** stated that it was investigating its purchases more closely, comparing suppliers more carefully, and considering more sources. *** reported that once Chinese magnesium became qualified, it began purchasing *** percent of its magnesium from China and *** percent from Canada. *** noted that it added inventory as a result of supply problems and the risk of sourcing offshore.

Few or no purchasers reported purchasing from only one supplier or country. *** said that its current supplier (***) is its only approved supplier, but that ***. *** said that it purchases from only one country[75] due to ***. *** said that it purchased the majority of its magnesium from the United States due to competitive pricing and favorable logistics. *** reported competing with their suppliers; *** said that its supplier *** is related to its major competitor, ***. Sixteen purchasers said that they did not compete with their suppliers.

Purchasers were asked how often they knew the producer of the magnesium that they purchased. Twenty purchasers said always, four said usually, one said sometimes, and one said never. Purchasers were also asked how often they and their customers were aware of the country of origin of the magnesium that they purchase. With regard to whether they were aware if their own purchases were U.S. magnesium or imported magnesium, 23 purchasers said always and three said usually. With regard to whether their customers were aware of the country of origin of their purchases, nine said always, six said usually, nine said sometimes, and two said never.

Available data indicate that availability, price, and quality are the most important factors that influence purchasing decisions for magnesium.[76] Purchasers were asked to list the top three factors that they consider when choosing a supplier of magnesium. Table II-11 summarizes responses to this question. Purchasers were also asked to describe the importance of various purchasing factors, as summarized in table II-12. Price was an important factor for most purchasers, but many purchasers also reported not always buying the lowest price magnesium available.[77] Summaries of purchaser comparisons of domestic, subject, and nonsubject magnesium are presented in tables II-13 and II-14.

Table II-11
Magnesium: Ranking of purchasing factors by purchasers

Factor	Number of firms reporting		
	Number 1 factor	Number 2 factor	Number 3 factor
Price/cost	8	10	5
Availability	8	6	2
Quality	6	7	5
Contracts	3	--	--
Qualified with customers	1	--	--
Delivery	--	3	2
Credit extension	--	--	3
Size and shape	--	--	2

Note.--Other factors mentioned include range, technical assistance, origin, and packaging. These answers were not included above.

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

[75] ***.

[76] When asked what defines the quality of magnesium, purchasers listed many factors, including consistently meeting specifications, purity and lack of oxidation (for aluminum alloyers), chemistry, inclusions, and meeting ASTM and/or firm specifications (for diecasters).

[77] When asked how often they purchase the magnesium offered to them at the lowest price, one purchaser said always, 12 said usually, eight said sometimes, and five said never.

Table II-12
Magnesium: Importance of purchasing factors

Factor	Number of firms reporting			
	Very important	Somewhat important	Not important	No answer
Availability	26	0	0	0
Delivery terms	19	7	0	0
Delivery time	21	4	1	0
Discounts offered	9	12	4	1
Extension of credit	13	11	2	0
Price	23	2	1	0
Minimum quantity requirements	8	8	10	0
Multiple sourcing	6	15	5	0
Packaging	10	15	1	0
Product consistency	24	2	0	0
Quality meets industry standards	22	4	0	0
Quality exceeds industry standards	15	6	5	0
Product range	5	16	5	0
Reliability of supply	25	0	1	0
Technical support/service	12	10	4	0
U.S. transportation costs	10	13	3	0
Other	4	0	0	22

Note.--Other factors mentioned include ingot design, size, shape, and whether U.S.-produced.

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

Table II-13
Magnesium: Number of purchasers' comparisons of U.S.-produced and imported pure magnesium

Factor	U.S. vs. Russia[1]			U.S. vs. nonsubject[1]			Russia vs. nonsubject[1]		
	S	C	I	S	C	I	S	C	I
Availability	1	10	0	1	9	0	0	5	0
Delivery terms	0	10	1	0	10	0	0	5	0
Delivery time	2	9	0	2	8	0	0	3	2
Discounts offered	0	8	2	0	9	1	0	5	0
Extension of credit	0	11	0	0	10	0	0	5	0
Lower price[2]	0	7	3	1	7	2	1	4	0
Minimum quantity requirements	0	11	0	0	10	0	0	5	0
Packaging	1	10	0	0	10	0	0	5	0
Product consistency	0	11	0	0	10	0	0	5	0
Quality meets industry standards	0	11	0	0	10	0	0	5	0
Quality exceeds industry standards	0	11	0	0	10	0	0	5	0
Product range	1	10	0	0	10	0	0	5	0
Reliability of supply	1	9	1	1	8	1	0	5	0
Technical support/service	5	5	0	1	9	0	0	4	1
U.S. transportation costs	0	9	1	0	8	2	0	4	1
Other	0	1	0	0	2	0	0	0	0

[1] S = first named source superior, C = products comparable, I = first named source inferior.
[2] A rating of superior means that the price is generally lower. For example, if a firm reports "U.S. superior," it means that the price of the U.S. product is generally lower than the price of the imported product.

Note.– Nonsubject consists of Brazil, Canada, and Israel.

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

Table II-14
Magnesium: Number of purchasers' comparisons of U.S.-produced and imported alloy magnesium

Factor	U.S. vs. China[1]			U.S. vs. Russia[1]			U.S. vs. nonsubject[1]		
	S	C	I	S	C	I	S	C	I
Availability	3	6	3	3	1	0	4	10	1
Delivery terms	4	7	1	0	4	0	2	12	1
Delivery time	5	7	0	3	1	0	3	10	2
Discounts offered	1	9	1	0	3	1	1	9	3
Extension of credit	1	10	0	0	4	0	1	12	1
Lower price[2]	0	0	12	0	2	2	1	7	7
Minimum quantity requirements	0	11	1	0	4	0	1	12	2
Packaging	0	12	0	0	4	0	1	14	0
Product consistency	3	9	0	0	4	0	1	14	0
Quality meets industry standards	0	12	0	0	4	0	1	12	2
Quality exceeds industry standards	3	9	0	0	4	0	1	12	2
Product range	1	8	3	0	4	0	1	9	5
Reliability of supply	8	4	0	2	2	0	3	8	4
Technical support/service	8	4	0	2	2	0	2	6	7
U.S. transportation costs	0	12	0	0	4	0	2	13	0
Other	0	0	0	0	0	0	0	0	0

[1] S = first named source superior, C = products comparable, I = first named source inferior.
[2] A rating of superior means that the price is generally lower. For example, if a firm reports "U.S. superior," it means that the price of the U.S. product is generally lower than the price of the imported product.

Table continued on next page.

Table II-14–*Continued*
Magnesium: Number of purchasers' comparisons of U.S.-produced and imported alloy magnesium

Factor	China vs. Russia[1]			China vs. nonsubject[1]			Russia vs. nonsubject[1]		
	S	C	I	S	C	I	S	C	I
Availability	0	0	1	1	4	3	1	3	2
Delivery terms	0	1	0	0	6	2	0	6	0
Delivery time	0	1	0	0	6	2	0	4	2
Discounts offered	0	1	0	0	7	1	0	6	0
Extension of credit	0	1	0	0	6	2	0	6	0
Lower price	1	0	0	8	0	0	3	3	0
Minimum quantity requirements	0	1	0	1	6	1	0	6	0
Packaging	0	1	0	0	8	0	0	6	0
Product consistency	0	1	0	0	8	0	0	6	0
Quality meets industry standards	0	1	0	0	6	2	0	6	0
Quality exceeds industry standards	0	1	0	0	5	3	0	6	0
Product range	0	1	0	0	6	2	0	4	2
Reliability of supply	0	1	0	0	4	4	0	4	2
Technical support/service	0	1	0	0	4	4	0	1	5
U.S. transportation costs	0	1	0	0	8	0	0	6	0
Other	0	0	0	0	0	0	0	0	0

[1] S = first named source superior, C = products comparable, I = first named source inferior.
[2] A rating of superior means that the price is generally lower. For example, if a firm reports "U.S. superior," it means that the price of the U.S. product is generally lower than the price of the imported product.

Note.–Nonsubject consists of Brazil, Canada, England, and Israel.

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

When asked how often U.S.-produced pure magnesium meets minimum quality specifications for their or their customers' uses, 14 purchasers said always and two said usually. When asked how often subject country pure magnesium meets minimum quality specifications, nine purchasers said always and four said usually. When asked how often nonsubject country pure magnesium meets minimum quality specifications, nine purchasers said always and two said usually, citing countries Brazil, Canada, France, and Israel.

When asked how often U.S.-produced alloy magnesium meets minimum quality specifications for their or their customers' uses, 15 purchasers said always, two said usually, one said sometimes, and one (***) said rarely or never. When asked how often subject country alloy magnesium meets minimum quality specifications, 12 purchasers said always, seven said usually, and one said sometimes. When asked how often nonsubject country alloy magnesium meets minimum quality specifications, nine said always, one said usually (citing Brazil, Canada, England, and Israel), and an additional one (***) said rarely or never for Canada and Israel.

Twenty-two purchasers reported that they required approval of suppliers for 100 percent of their purchases, while three reported that they required approval of suppliers for 75-95 percent of their purchases. Only *** did not require certification. Approval was usually based on automotive certifications and acceptance (for diecasters), ASTM and/or ISO standards, quality, price, availability,

and commitment to supply. Approving a new supplier is usually based on quality testing followed by trial orders, and can take from one month to two years.

Twenty-four purchasers reported that no suppliers had failed to receive approval. However, *** said that *** from China had been rejected due to cavities, and *** said that it knew of numerous suppliers who had not been able to qualify with GM and/or DaimlerChrysler.

When asked if they ever specifically ordered magnesium from one country over others, seven purchasers said that they did, with four of those mentioning the United States as at least one of the countries; reasons cited include use of product for military applications, close supply, and consistent availability. The other three named or implied subject countries (when duties are not in place) or England. However, 19 purchasers said that they did not order magnesium from one country instead of others, with *** explaining that it bases its purchasing on qualified suppliers' contract proposals for quantity and price.

Similarly, when purchasers were asked if certain grades or types of magnesium are only available from a single country source, 22 said no and four said yes. The three who said yes generally cited particular sizes and shapes, with *** citing *** as a difficult product to secure from US Magnesium.

When asked why they had sometimes purchased more expensive magnesium when less expensive magnesium was available, purchasers cited a variety of reasons including availability, multiple sourcing, technical assistance, and delivery. *** said that it had paid more for North American supply as a hedge against instability in foreign supply. *** said that it purchases from China due to high quality at a lower price; however, it added that it had limited its purchases from US Magnesium because ***. *** added that it purchases from US Magnesium when the price is acceptable, but the issues of *** have limited *** purchases from US Magnesium.

ELASTICITY ESTIMATES

Elasticity estimates are discussed below.

U.S. Supply Elasticity

The domestic supply elasticity for pure and alloy magnesium depends on factors such as the level of excess capacity, the ability to shift production to alternate products, and the availability of alternate markets. For pure magnesium, the producer has ***, but limited alternative production possibilities and ***. Analysis of these factors indicates that the domestic producer of pure magnesium has *** ability to alter domestic shipments in response to a change in the relative price of pure magnesium. An estimate in the range of 1 to 2 is suggested. For alloy magnesium, producers have *** and ***, but limited alternative production possibilities and ***. Analysis of these factors indicates that the domestic producers of alloy magnesium have little ability to alter domestic shipments in response to a change in the relative price of alloy magnesium. An estimate in the range of 1.5 to 3 was suggested in the staff prehearing report.

Petitioners objected to staff's characterization of capacity utilization as *** and concluded that U.S. supply was thus more price elastic.[78] Capacity utilization for pure magnesium was *** for 2003 and the first three quarters of 2004. For alloy, capacity utilization is now low, but it should be noted that *** have since exited production, leaving only US Magnesium and MagReTech, whose capacity utilizations are ***. Staff is maintaining its estimates from the prehearing report.

[78] *See* petitioners' prehearing brief, pp. 44-45.

U.S. Demand Elasticity

The U.S. demand elasticity for pure and alloy magnesium depends on the availability of substitute products as well as the share of pure and alloy magnesium in the production cost of downstream products. There are few exact substitutes for pure and alloy magnesium. While the cost share of pure magnesium in downstream products is much lower than that of alloy magnesium, purchasers of both pure and alloy are highly price sensitive. Based on the available information, the aggregate demand for pure and alloy magnesium was estimated to be in the range of -0.5 to -1.5 for the prehearing report.

Petitioners objected to staff's upper bound estimate (-1.5) as "significantly overstated" based on the lack of substitute products and the generally low cost shares reported by magnesium users.[79] Based on petitioners' discussion and purchasers' testimony at the hearing that changes in the diecasting industry may take years to occur (and would involve switching to other products with increasing prices), staff is revising its estimate to -0.5 to -1.0.

Substitution Elasticity

The elasticity of substitution depends on the extent of product differentiation between the domestic and imported products. Product differentiation depends on factors such as the range of products produced, quality, availability, and the reliability of supply. Based on available information, subject pure and alloy magnesium are substitutable for domestic pure and alloy magnesium in many end uses; nonetheless there are some distinctions between U.S. and subject pure and alloy magnesium based on issues of quality, availability, and product range. In addition, there is some capability of aluminum alloyers to use alloy magnesium, although it does not appear it is possible for diecasters to use pure magnesium. Based on these factors, staff estimates the substitution elasticity between domestic pure and alloy magnesium and that imported from subject countries to be in the range of 3 to 5.

[79] *See* petitioners' prehearing brief, p. 44, fn. 160.

PART III: U.S. PRODUCTION, SHIPMENTS, AND EMPLOYMENT

Information on capacity, production, shipments, inventories, and employment is presented in this section of the report and is based on the questionnaire responses of six firms believed to represent virtually all of U.S. production of pure and alloy magnesium during the period examined.

The Commission sent U.S. producer questionnaires to 15 possible U.S. producers of magnesium.[1] Six firms responded that they produced the subject merchandise during the period examined (January 1, 2001 through September 30, 2004) (table III-1). *** reported that they produce ***. Six firms (***) indicated that they did not produce the subject merchandise during this period.[2] Two firms (Remag Alabama, and Subsurface Materials Corp.) did not respond to the Commission's questionnaire.[3]

U.S. PRODUCERS

Table III-1 presents a list of U.S. producers responding to the Commission's questionnaire, the locations of corporate headquarters, the positions taken with respect to the petition, reported U.S. production and shares of U.S. production of magnesium in 2003, and whether the firms produced pure and/or alloy magnesium during the period examined.

Two firms, US Magnesium and Northwest Alloys, produced pure magnesium during the period examined. Six reporting firms produced alloy magnesium during this same period. US Magnesium and Northwest Alloys were the only primary magnesium producers while four reporting firms were solely secondary magnesium producers.

[1] *See* petition, exhs. 1 and 2.

[2] ***.

[3] ***.

Table III-1
Magnesium: U.S. producers, locations of corporate headquarters, positions on the petition, reported U.S. production and shares of U.S. production in 2003, and types of magnesium produced in January 2001 through September 2004

Firms	Location	Position on the petition	U.S. production in 2003		Products produced	
			Quantity *(metric tons)*	Share *(percent)*	Pure	Alloy
Primary:						
Northwest Alloys[1]	Addy, WA	Oppose	0	0	✔	✔
US Magnesium[2]	Salt Lake City, UT	Petitioner	***	***	✔	✔
Secondary:						
Amacor[3]	Anderson, IN	***	***	***		✔
Garfield Alloys[4]	Garfield Hts, OH	Support	***	***		✔
Halaco[5]	Oxnard, CA	Support	***	***		✔
MagReTech[6]	Bellevue, OH	Support	***	***		✔
Total			***	100.0	2	6

[1] Northwest Alloys, Addy, WA, is a wholly owned subsidiary of Alcoa, Inc., Pittsburgh, PA. Northwest Alloys ceased operations and production of magnesium on October 1, 2001.

[2] US Magnesium, Salt Lake City, UT, is a wholly owned subsidiary of Renco Group, Inc., New York, NY. US Magnesium is the successor company to Magcorp. On August 3, 2001, Magcorp filed for protection under Chapter 11 of the U.S. Bankruptcy Code. The bankruptcy court authorized the sale of substantially all of Magcorp's assets to U.S. Magnesium. The sale was completed in June 2002.

[3] Amacor is a producer of secondary alloy magnesium that began operations in 2001. On April 3, 2003, Amacor purchased Xstrata Magnesium Corporation (XMC) from Xstrata PLC, Zug, Switzerland, for $1.2 million. The major asset of XMC is a magnesium recycling plant in Anderson, IN. The Xstrata plant was commissioned in 2000 to recycle scrap to produce magnesium alloy for the U.S. auto industry. *See Xstrata Sells Magnesium Division*, Recycling Today, April 8, 2003, retrieved at http://www.recyclingtoday.com/news/news.asp?ID=3901 on April 5, 2004. A January 2005 fire at its production facility has temporarily halted its production.

[4] Garfield Alloys, Garfield Heights, OH, is ***. Garfield Alloys's production facility was destroyed in a fire on December 29, 2003. The firm has not resumed production of magnesium. ***.

[5] On July 24, 2002, Halaco Engineering filed for chapter 11 bankruptcy protection, citing unfairly traded imports from China and Russia as a contributing cause of its financial ills. On September 23, 2004, it ceased production of magnesium, ***.

[6] MagReTech, Bellevue, OH, is ***.

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

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

U.S. producers' capacity, production, and capacity utilization data are presented in table III-2. U.S. producers' capacity to produce pure magnesium, alloy magnesium, and pure and alloy magnesium combined is well below apparent U.S. consumption of these products.

Table III-2
Magnesium: U.S. producers' capacity, production, and capacity utilization, by types, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

Primary Magnesium

There is currently one U.S. producer of primary magnesium, petitioner US Magnesium. Previous U.S. producers of primary magnesium included Northwest Alloys and Dow Chemical Co. ("Dow Chemical").

Northwest Alloys, a subsidiary of Alcoa which was a captive producer of primary magnesium for Alcoa, idled its production facility in September 2001. Alcoa stated that high electricity prices in the Northwest United States rendered the Addy, WA facility too expensive to operate and thus led to its decision to close the facility.[4] Alcoa also stated that the production facility was not closed due to imports of allegedly unfairly traded magnesium from Russia or China.[5] A June 22, 2001 press release of Alcoa stated that the facility would shut down "due to high production costs and unfavorable market conditions."

Dow Chemical, a producer in previous magnesium investigations, ceased operations at its 65,000 metric ton magnesium production facility in Freeport, TX, in November 1998 after its plant suffered extensive damage from lightning strikes and flooding. Dow indicated at the time of its decision not to rebuild the plant and that its decision was based on "global market conditions."[6]

***.[7] It stated that the capacity of the plant with 30 new "M-cells" and the 30 older "S-cells" was 39,000 metric tons per year of electrolytic production and 43,000 metric tons per year of total pure and alloy magnesium ingot production.[8] On September 23, 2004, US Magnesium issued a press release which stated that it would further expand its Utah production facility to 51,000 metric tons of capacity, to be available in June 2005. The press release also stated that plans and financing for further expansion to

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[4] Hearing transcript (Fessenden), pp. 158-159.

[5] Ibid., at p. 158. Petitioner disputes this explanation and argues that Northwest management made statements in the press regarding low-priced imports from China and Russia and filed an application for Trade Adjustment Assistance for the 300 Northwest Alloys employees who lost their jobs, citing low-priced imports from Canada, China, and Russia. See Petitioner's posthearing brief, pp. 10-12.

[6] *See Pure Magnesium From China and Israel*, Invs. Nos. 731-TA-403 and 731-TA-895-896 (Final), USITC Publication 3467, November 2001, pp. 22-23.

[7] ***.

[8] *See* conference transcript (Legge), p. 18. US Magnesium stated that the M-cell modernization plan did not expand its capacity, but rather significantly increased its efficiency, reduced per unit cost of production, and reduced toxic emissions. Petitioners' posthearing brief, exhibit 1, p. 11.

US Magnesium's original modernization plan called for the installation of 60 M-cells, rather than 30, which would have increased its capacity to 55,000 metric tons per year. However, deteriorating market conditions allegedly caused by low-priced imports from China and Russia frustrated the original plan and necessitated the 2001 chapter 11 bankruptcy filing. *See* hearing transcript (Legge), p. 21.

59,000 to 73,000 metric tons of capacity were being pursued "subject to successful resolution of current antidumping trade petitions . . ."[9]

Secondary Magnesium

The Commission received U.S. producer questionnaires from four U.S. secondary producers of magnesium: (1) Amacor, (2) Garfield Alloys, (3) Halaco, and (4) MagReTech.

Amacor is a producer of secondary alloy magnesium that began operations in 2001. Amacor has ceased production temporarily as a result of a January 2005 fire at its Anderson, IN production facility. Production is estimated to resume within three to six months.[10]

Garfield Alloys and MagReTech ***. On December 29, 2003, a fire destroyed Garfield Alloys' magnesium recycling plant. Garfield Alloys' owners ***.[11] Some of Garfield Alloys' production has been ***.

Halaco has ceased operations. On July 24, 2002, Halaco filed for protection under chapter 11 of the bankruptcy code, citing competition from low-priced imports as a major contributing factor to its financial decline. On September 23, 2004, Halaco *** closed its production facility in Oxnard, CA, ***.[12]

U.S. PRODUCERS' SHIPMENTS

Data on U.S. producers' shipments, by types, are presented in table III-3. Table III-4 presents data on U.S. producers' commercial shipments by type of magnesium. Data on U.S. producers' commercial shipments by end users and by types are presented in table III-5.

Shipments of pure magnesium accounted for *** percent of U.S. producers' commercial U.S. shipments in 2003. Alloy magnesium accounted for *** percent of U.S. producers' commercial U.S. shipments. In 2003, commodity-grade pure magnesium ingots accounted for *** percent of U.S. commercial shipments of primary magnesium and alloy magnesium ingots (meeting ASTM specifications) accounted for *** of the remainder. During the same period, *** percent of U.S. commercial shipments of secondary magnesium consisted of alloy magnesium which meet ASTM specifications and the remainder, *** percent, consisted of alloy magnesium which did not meet ASTM specifications.

Over *** percent of the U.S. producers' commercial U.S. shipments of pure magnesium in 2003 went to aluminum manufacturers, whereas U.S. producers' commercial U.S. shipments of alloy magnesium in 2003 were *** (table III-5). *** of U.S. producers' commercial shipments of all magnesium in 2003 (*** percent) went to aluminum manufacturers, while *** percent went to diecasters, *** percent to granule/reagent producers, and *** percent to other users.

Table III-3
Magnesium: U.S. producers' shipments, by types, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

[9] Press release of US Magnesium, September 23, 2004. *See* ***. Hearing transcript (Legge), p. 24.

[10] *See* hearing transcript (Lutz), p. 57.

[11] U.S. producer questionnaire response of Garfield Alloys.

[12] U.S. producer questionnaire of Halaco, p. 4.

Table III-4
Magnesium: U.S. producers' commercial U.S. shipments, by types, 2003 and January-September 2004

* * * * * * *

Table III-5
Magnesium: U.S. producers' commercial U.S. shipments, by end users and by types, 2003 and January-September 2004

* * * * * * *

U.S. PRODUCERS' PURCHASES AND DIRECT IMPORTS

*** reported that they either purchased magnesium from *** from a U.S. importer or directly imported the product themselves. ***[13] ***. ***. Information on reported U.S. producers' purchases and direct U.S. imports is presented in table III-6.

Table III-6
Magnesium: U.S. producers' production and purchases/imports from *, by types and sources, 2001-03, January-September 2003, and January-September 2004**

* * * * * * *

U.S. PRODUCERS' INVENTORIES

Data on U.S. producers' inventories of domestically produced magnesium are presented in table III-7. Because of difficulties in the reporting of inventories as a result of toll shipments and various reporting anomalies, the inventory data for alloy magnesium are questionable and should be used with caution.

Table III-7
Magnesium: U.S. producers' end-of-period inventories, by types, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

U.S. producers' employment data are presented in table III-8.

Table III-8
Magnesium: Average number of production and related workers, hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, by types, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

[13] ***.

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

The Commission sent questionnaires to the 25 possible importers identified in the petition[1] and to 23 additional firms identified as importers by U.S. Customs and Border Protection ("Customs"), and received usable responses from 18 firms.[2] Because of incomplete coverage from questionnaire responses, data for imports presented throughout this section are based on official statistics of Commerce, except as noted.[3] A list of U.S. importers of the subject merchandise responding to the Commission's questionnaires is presented in table IV-1.

Table IV-1
Magnesium: U.S. importers, company locations, and subject merchandise imported, by types and by sources, 2003

* * * * * * *

U.S. IMPORTS

Table IV-2 presents data on U.S. imports of subject merchandise.[4] Neither U.S. imports of pure magnesium from Russia nor U.S. imports of alloy magnesium from China or Russia account for less than 3 percent of total U.S. imports; such imports are therefore, not negligible.[5]

[1] *See* petition at exh. 10 (China) and exh. 11 (Russia).

[2] The following firms responded that they did not import magnesium into the United States during the period examined: ***.

[3] Data from questionnaire responses are used for shipments by types, shipments by end users, and U.S. importers' inventories.

[4] Counsel for Solimask Magnesium Works, a producer of magnesium in Russia, has alleged that official U.S. import data for 2004 from *** are in error. They allege that imports of magnesium reagents (which are nonsubject products), which they allege are properly classified under HTS statistical reporting numbers 3824.90.9150 and 3824.90.9190, were misclassified as granular magnesium under HTS subheading 8104.30.00. Counsel argues that this misclassification error is the cause of the surge in imports. Commission staff has contacted the U.S. importer responsible for the imports in question, ***, and found ***. ***. See January 31, 2005 email from ***. According to proprietary data obtained from Customs, *** imported *** metric tons of *** with a landed-duty paid value of $*** from January 2004 through September 2004. Thus, in table IV-2, U.S. import data for pure magnesium from *** in the January-September 2004 period have been adjusted to remove this product which is not within the scope of these investigations.

[5] The Tariff Act provides for the termination of an investigation if imports of the subject product from a country are less than 3 percent of total imports, or, if there is more than one such country, their combined share is less than or equal to 7 percent of total imports, during the most recent 12 months for which data are available preceding the filing of the petition.

Table IV-2
Magnesium: U.S. imports, by sources, 2001-03, January-September 2003, and January-September 2004

Source	2001	2002	2003	Jan.-Sept. 2003	Jan.-Sept. 2004
	Quantity *(metric tons)*				
Pure magnesium:[1]					
Russia[2]	11,259	14,631	18,035	12,132	16,683
Nonsubject:					
Canada	3,094	8,265	3,036	2,407	***
China[3]	3,151	173	101	93	***
Israel[4]	2,817	5,845	4,785	3,484	***
All other sources	4,526	2,665	2,328	1,536	***
Subtotal, nonsubject	13,588	16,948	10,250	7,520	9,473
Total, pure magnesium	24,846	31,579	28,285	19,652	26,156
Alloy magnesium:[5]					
Subject:					
China	9,321	11,964	12,906	9,827	13,171
Russia	643	2,036	3,710	2,958	2,326
Subtotal, subject	9,965	14,001	16,616	12,786	15,497
Nonsubject:					
Canada	13,592	25,810	21,920	16,430	16,865
China[6]	0	0	0	0	0
Israel	5,072	2,574	961	919	2,901
All other sources	4,710	1,440	1,574	1,275	1,613
Subtotal, nonsubject	23,374	29,823	24,455	18,624	21,379
Total, alloy magnesium	33,339	43,824	41,071	31,410	36,875
All magnesium:					
Subject:					
China	9,321	11,964	12,906	9,827	13,171
Russia	11,902	16,668	21,745	15,091	19,008
Subtotal, subject	21,223	28,632	34,651	24,918	32,179
Nonsubject:					
Canada	16,685	34,075	24,956	18,837	***
China	3,151	173	101	93	***
Israel	7,890	8,419	5,747	4,403	***
All other sources	9,236	4,104	3,902	2,811	***
Subtotal, nonsubject	36,962	46,771	34,706	26,144	30,853
Total, all magnesium	58,185	75,403	69,356	51,062	63,031

Table continued. See footnotes at end of table.

Table IV-2--*Continued*
Magnesium: U.S. imports, by sources, 2001-03, January-September 2003, and January-September 2004

Source	2001	2002	2003	Jan.-Sept. 2003	Jan.-Sept. 2004
	Value *($1,000)*[7]				
Pure magnesium:[1]					
Russia[2]	22,229	28,541	34,468	23,045	36,312
Nonsubject:					
Canada	9,201	21,923	8,859	6,971	***
China[3]	6,726	304	257	216	***
Israel[4]	8,312	14,981	11,859	8,578	***
All other sources	11,872	6,597	5,780	3,758	***
Subtotal, nonsubject	36,111	43,805	26,756	19,523	26,301
Total, pure magnesium	58,340	72,346	61,224	42,568	62,613
Alloy magnesium:[5]					
Subject:					
China	18,744	20,613	24,020	17,801	35,084
Russia	1,529	4,355	7,050	5,492	4,958
Subtotal, subject	20,273	24,967	31,069	23,294	40,042
Nonsubject:					
Canada	40,893	70,710	60,364	44,669	49,275
China[6]	(8)	(8)	(8)	(8)	(8)
Israel	16,024	7,031	2,407	2,302	9,454
All other sources	18,091	7,076	7,069	5,569	7,967
Subtotal, nonsubject	75,008	84,817	69,841	52,540	66,697
Total, alloy magnesium	95,282	109,784	100,910	75,834	106,739
All magnesium:					
Subject:					
China	18,744	20,613	24,020	17,801	35,084
Russia	23,758	32,896	41,517	28,538	41,271
Subtotal, subject	42,502	53,508	65,537	46,339	76,355
Nonsubject:					
Canada	50,094	92,632	69,223	51,640	***
China	6,726	304	257	216	***
Israel	24,336	22,013	14,267	10,880	***
All other sources	29,964	13,673	12,850	9,327	***
Subtotal, nonsubject	111,119	128,622	96,597	72,063	92,997
Total, all magnesium	153,622	182,130	162,134	118,402	169,352

Table continued. See footnotes at end of table.

Table IV-2--*Continued*
Magnesium: U.S. imports, by sources, 2001-03, January-September 2003, and January-September 2004

Source	2001	2002	2003	Jan.-Sept. 2003	Jan.-Sept. 2004
	Unit value *(per metric ton)*				
Pure magnesium:[1]					
Russia[2]	$1,974	$1,951	$1,911	$1,899	$2,177
Nonsubject:					
Canada	2,974	2,652	2,918	2,896	***
China[3]	2,135	1,761	2,535	2,311	***
Israel[4]	2,950	2,563	2,478	2,462	***
All other sources	2,623	2,476	2,483	2,446	***
Average, nonsubject	2,658	2,585	2,610	2,596	2,776
Average, pure magnesium	2,348	2,291	2,164	2,166	2,394
Alloy magnesium:[5]					
Subject:					
China	2,011	1,723	1,861	1,811	2,664
Russia	2,378	2,138	1,900	1,857	2,132
Average, subject	2,035	1,783	1,870	1,822	2,584
Nonsubject:					
Canada	3,009	2,740	2,754	2,719	2,922
China[6]	(8)	(8)	(8)	(8)	(8)
Israel	3,159	2,732	2,504	2,504	3,259
All other sources	3,841	4,915	4,491	4,369	4,938
Average, nonsubject	3,209	2,844	2,856	2,821	3,120
Total, alloy magnesium	2,858	2,505	2,457	2,414	2,895
All magnesium:					
Subject:					
China	2,011	1,723	1,861	1,811	2,664
Russia	1,996	1,974	1,909	1,891	2,171
Average, subject	2,003	1,869	1,891	1,860	2,373
Nonsubject:					
Canada	3,002	2,718	2,774	2,741	***
China	2,135	1,761	2,535	2,311	***
Israel	3,085	2,615	2,483	2,471	***
All other sources	3,244	3,331	3,293	3,318	***
Average, nonsubject	3,006	2,750	2,783	2,756	3,014
Average, all magnesium	2,640	2,415	2,338	2,319	2,687

[1] Consists of HTS subheadings 8104.11.00 (pure magnesium ingot) and 8104.30.00 (granular magnesium).
[2] Imports of pure magnesium from Russia were subject to provisional antidumping duties from April 30, 2001, through September 27, 2001.
[3] Imports from China of pure magnesium ingot (in metric tons) were 137 in 2001, 91 in 2002, and 89 in 2003, and are currently subject to antidumping duty order A-570-832 (60 FR 25691, May 12, 1995). Imports of granular magnesium from China (in metric tons) were 3,014 in 2001, 82 in 2002, and 13 in 2003, and are currently subject to antidumping duty order A-570-864 (66 FR 57936, November 11, 2001).
[4] Imports of pure magnesium from Israel were subject to provisional antidumping duties from April 30, 2001, through November 20, 2001.
[5] Consists of HTS subheading 8104.19.00 (alloy magnesium ingot).
[6] Imports of "off-specification pure" magnesium (alloy magnesium not meeting ASTM specifications for alloy magnesium) from China entering under the alloy magnesium ingot subheading are currently subject to antidumping duty order A-570-832 (60 FR 25691, May 12, 1995).
[7] Landed, duty-paid.
[8] Not applicable.

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

Source: Compiled from official Commerce statistics.

CRITICAL CIRCUMSTANCES

On December 28, 2004, petitioners filed an amendment to the petition which contained an allegation of critical circumstances necessitated by what they described as a dramatic surge in imports from China just prior to the filing of the petition. On February 24, 2005, Commerce made an affirmative final determination of critical circumstances for two Chinese exporters: Tianjin Magnesium International Co., Ltd. ("Tianjin") and Guangling Jinghua Science and Technology Co., Ltd. ("Guangling"). Commerce found that critical circumstances did not exist for "all other" Chinese exporters. *See* 70 FR 9037, February 24, 2005.

If the Commission determines that an industry in the United States is materially injured by reason of LTFV imports of magnesium from China, it must further determine "whether the imports subject to the affirmative {Commerce critical circumstances} determination . . . are likely to undermine seriously the remedial effect of the antidumping duty order to be issued."[6] The statute further provides that in making this determination, the Commission shall consider:

> (I) the timing and the volume of the imports,
> (II) a rapid increase in inventories of the imports, and
> (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.[7]

Monthly import data[8] for the six-month period before and after the filing of the petition (September 2003-February 2004 and March 2004-August 2004), are presented in table IV-3.

Table IV-3
Alloy magnesium: Exports to the United States from Chinese firms subject to Commerce's affirmative final determination of critical circumstances, by month, September 2003 through August 2004

* * * * * * *

U.S. IMPORTERS' SHIPMENTS

Data on U.S. importers' shipments by types are presented in table IV-4. With regard to reported U.S. commercial shipments of imports of alloy magnesium from China in 2003, *** were of primary magnesium (*** percent of which ***).[9] With regard to U.S. commercial shipments of imports of pure and alloy magnesium from Russia in 2003, *** were of primary magnesium (*** percent of which ***).

Table IV-5 presents U.S. importers' shipments by end users. With respect to U.S. commercial shipments of imports of alloy magnesium from China in 2003, *** percent to aluminum manufacturers and *** percent to diecasters.[10] With respect to subject imports from Russia, in 2003, *** percent went to aluminum manufacturers, *** percent to diecasters, and *** percent to granule producers.

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[6] Section 735(b)(4)(A)(i) of the Act (19 U.S.C. § 1673d(b)(4)(A)(i)).

[7] Section 735(b)(4)(A)Iii) of the Act (19 U.S.C. § 1673d(b)(4)(A)(ii)).

[8] In the absence of available monthly U.S. import data from the specific firms in China (Tianjin and Guangling), table IV-3 presents these firms' exports of alloy magnesium to the United States, by month. These proprietary data were obtained from Customs.

[9] Data for U.S. importers' U.S. commercial shipments from China are equivalent to well under 50 percent of imports from China, as not all importers from China provided data in response to the Commission's questionnaire.

[10] Ibid.

Table IV-4
Magnesium: U.S. importers' reported commercial U.S. shipments, by types and by sources, 2003 and January-September 2004

* * * * * * *

Table IV-5
Magnesium: U.S. importers' commercial U.S. shipments, by end users and by sources, 2003 and January-September 2004

* * * * * * *

CUMULATION CONSIDERATIONS

In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors: (1) fungibility, (2) presence of sales or offers to sell in the same geographical market, (3) common or similar channels of distribution, and (4) simultaneous presence in the market. Issues concerning fungibility and channels of distribution are addressed in Part II of this report. Geographical markets and presence in the market are discussed below.

Geographical Markets and Presence in the Market

Based on official U.S. import statistics, the principal U.S. customs districts of entry by far for pure magnesium from Russia during the period examined were Baltimore, MD and Philadelphia, PA. The principal U.S. customs district of entry by far for alloy magnesium from Russia during this period was Baltimore, MD. The principal U.S. customs districts of entry for alloy magnesium from China during the period examined were Detroit, MI; Baltimore, MD; Chicago, IL; St. Louis, MO; and Los Angeles, CA. Table IV-6 presents U.S. imports of pure magnesium by U.S. Customs district for 2001 through September 2004. Table IV-7 presents U.S. imports of alloy magnesium by U.S. Customs district for the same period.

Alloy magnesium from China and pure magnesium from Russia were imported into the United States in each month during the period examined, and alloy magnesium from Russia was imported in each month except for April through October 2001 and July of 2002 (table IV-8).

Table IV-6
Pure magnesium: U.S. imports from Russia, by customs district, 2001-03, January-September 2003, and January-September 2004

Source/customs district	2001	2002	2003	January-September	
				2003	2004
	Quantity *(metric tons)*				
Russia					
Baltimore, MD	11,123	6,531	4,454	1,836	3,944
Boston, MA	0	0	0	0	566
Detroit, MI	0	0	0	0	35
New York, NY	136	0	0	0	597
Osdensburg, NY	0	0	0	0	42
Philadelphia, PA	0	8,100	13,581	10,297	11,498
Total	11,259	14,631	18,035	12,132	16,683

Source: Compiled from official Commerce statistics (HTS subheadings 8104.11.00 and 8104.30.00).

Table IV-7
Alloy magnesium: U.S. imports from China and Russia, by customs district, 2001-03, January-September 2003, and January-September 2004

Source/customs district	2001	2002	2003	January-September	
				2003	2004
	Quantity *(metric tons)*				
China					
Anchorage, AK	(1)	0	0	0	0
Baltimore, MD	854	3,965	2,045	2,025	3,050
Buffalo, NY	19	0	0	0	0
Chicago, IL	1,968	1,537	1,176	1,021	1,462
Cleveland, OH	205	0	640	261	1,410
Dallas-Forth Worth, TX	196	0	51	51	0
Detroit, MI	2,305	1,878	3,774	2,562	1,794
Great Falls, MT	34	0	629	325	374
Houston, Galveston, TX	168	35	19	0	20
Laredo, TX	171	4	71	52	159
Los Angeles, CA	657	1,408	1,375	1,278	1,583
Minneapolis, MN	0	0	0	0	32
Mobile, AL	0	0	320	32	0
New Orleans, LA	493	0	368	248	569
New York, NY	57	159	348	348	0
Pembina, ND	0	0	0	0	20
Philadelphia, PA	0	0	9	9	101
San Francisco, CA	0	491	14	14	179
Savannah, GA	137	205	171	171	118
Seattle, WA	865	120	284	204	1,259
St. Louis, MO	1,192	2,161	1,595	1,210	1,040
Tampa, FL	0	0	19	19	0
Total	9,321	11,964	12,906	9,827	13,171
Russia					
Baltimore, MD	643	2,010	3,377	2,625	2,009
Buffalo, NY	0	0	0	0	4
Detroit, MI	0	0	0	0	20
Los Angeles, CA	0	0	1	1	0
New York, NY	0	27	58	58	0
Philadelphia, PA	0	0	274	274	293
Total	643	2,036	3,710	2,958	2,326

[1] Less than 0.5 metric tons.

Source: Compiled from official Commerce statistics (HTS subheading 8104.19.00).

Table IV-8
Magnesium: U.S. imports from China and Russia, by month, 2001-September 2004

Source	Jan.	Feb.	March	April	May	June	July	August	Sept.	Oct.	Nov.	Dec.	Total
	Quantity *(metric tons)*												
2001:													
Pure													
Russia	797	718	855	1,184	136	178	1,264	824	1,211	1,390	1,116	1,586	11,259
Alloy													
China	918	751	1,150	690	680	320	709	787	562	823	1,163	767	9,321
Russia	96	116	99	0	0	0	0	0	0	0	138	194	643
Total alloy	1,014	868	1,249	690	680	320	709	787	562	823	1,301	961	9,965
2002:													
Pure													
Russia	424	1,377	1,116	1,064	1,007	1,274	1,753	1,407	1,428	785	1,630	1,366	14,631
Alloy													
China	966	520	865	908	1,126	1,050	1,285	1,117	999	1,017	925	1,186	11,964
Russia	496	138	97	395	471	139	0	136	78	38	40	8	2,036
Total alloy	1,462	658	962	1,303	1,597	1,189	1,285	1,252	1,077	1,055	966	1,194	14,001
2003:													
Pure													
Russia	1,849	1,146	1,391	1,365	1,213	837	1,251	1,574	1,507	1,473	1,449	2,981	18,035
Alloy													
China	2,464	1,133	1,421	800	808	608	866	923	804	971	828	1,280	12,906
Russia	20	38	463	613	231	316	647	356	273	446	155	150	3,710
Total alloy	2,484	1,171	1,884	1,413	1,039	924	1,513	1,280	1,077	1,417	983	1,430	16,616
2004:													
Pure													
Russia	1,809	1,279	1,477	1,897	1,316	2,908	2,510	1,070	2,418				16,683
Alloy													
China	1,626	1,366	2,245	1,046	1,054	1,381	1,671	965	1,817				13,171
Russia	176	241	396	256	227	310	161	238	321				2,326
Total alloy	1,802	1,607	2,641	1,302	1,281	1,692	1,832	1,202	2,138				15,497

Source: Compiled from official Commerce statistics (pure magnesium, HTS subheadings 8104.11.00 and 8104.30.00 and alloy magnesium, HTS subheading 8104.19.00).

APPARENT U.S. CONSUMPTION

Table IV-9 presents data on apparent U.S. consumption of magnesium.

Table IV-9
Magnesium: U.S. shipments of domestic product, U.S. imports, by sources, and apparent U.S. consumption, 2001-03, January-September 2003, and January-September 2004

Source	2001	2002	2003	Jan.-Sept. 2003	Jan.-Sept. 2004
	Quantity *(metric tons)*				
Pure magnesium:[1]					
U.S. producers' domestic shipments	***	***	***	***	***
U.S. imports from–					
Russia	11,259	14,631	18,035	12,132	16,683
Nonsubject:					
Canada	3,094	8,265	3,036	2,407	***
China[2]	3,151	173	101	93	***
Israel[3]	2,817	5,845	4,785	3,484	***
All other sources	4,526	2,665	2,328	1,536	***
Subtotal, nonsubject	13,588	16,948	10,250	7,520	9,473
Total imports	24,846	31,579	28,285	19,652	26,156
Apparent U.S. consumption	***	***	***	***	***
Alloy magnesium:[4]					
U.S. producers' domestic shipments	***	***	***	***	***
U.S. imports from–					
Subject:					
China	9,321	11,964	12,906	9,827	13,171
Russia	643	2,036	3,710	2,958	2,326
Subtotal, subject	9,965	14,001	16,616	12,786	15,497
Nonsubject:					
Canada	13,592	25,810	21,920	16,430	16,865
China[5]	0	0	0	0	0
Israel	5,072	2,574	961	919	2,901
All other sources	4,710	1,440	1,574	1,275	1,613
Subtotal, nonsubject	23,374	29,823	24,455	18,624	21,379
Total imports	33,339	43,824	41,071	31,410	36,875
Apparent U.S. consumption	***	***	***	***	***
All magnesium:					
U.S. producers' domestic shipments	***	***	***	***	***
U.S. imports from–					
Subject:					
China	9,321	11,964	12,906	9,827	13,171
Russia	11,902	16,668	21,745	15,091	19,008
Subtotal, subject	21,223	28,632	34,651	24,918	32,179
Nonsubject:					
Canada	16,685	34,075	24,956	18,837	***
China	3,151	173	101	93	***
Israel	7,890	8,419	5,747	4,403	***
All other sources	9,236	4,104	3,902	2,811	***
Subtotal, nonsubject	36,962	46,771	34,706	26,144	30,853
Total imports	58,185	75,403	69,356	51,062	63,031
Apparent U.S. consumption	***	***	***	***	***

Table continued. See footnotes at end of table.

Table IV-9--*Continued*
Magnesium: U.S. shipments of domestic product, U.S. imports, by sources, and apparent U.S. consumption, 2001-03, January-September 2003, and January-September 2004

Source	2001	2002	2003	Jan.-Sept. 2003	Jan.-Sept. 2004
	Value *($1,000)*				
Pure magnesium:[1]					
U.S. producers' domestic shipments	***	***	***	***	***
U.S. imports from–					
Russia	22,229	28,541	34,468	23,045	36,312
Nonsubject:					
Canada	9,201	21,923	8,859	6,971	***
China[2]	6,726	304	257	216	***
Israel[3]	8,312	14,981	11,859	8,578	***
All other sources	11,872	6,597	5,780	3,758	***
Subtotal, nonsubject	36,111	43,805	26,756	19,523	26,301
Total imports	58,340	72,346	61,224	42,568	62,613
Apparent U.S. consumption	***	***	***	***	***
Alloy magnesium:[4]					
U.S. producers' domestic shipments	***	***	***	***	***
U.S. imports from–					
Subject:					
China	18,744	20,613	24,020	17,801	35,084
Russia	1,529	4,355	7,050	5,492	4,958
Subtotal, subject	20,273	24,967	31,069	23,294	40,042
Nonsubject:					
Canada	40,893	70,710	60,364	44,669	49,275
China[5]	0	0	0	0	0
Israel	16,024	7,031	2,407	2,302	9,454
All other sources	18,091	7,076	7,069	5,569	7,967
Subtotal, nonsubject	75,008	84,817	69,841	52,540	66,697
Total imports	95,282	109,784	100,910	75,834	106,739
Apparent U.S. consumption	***	***	***	***	***
All magnesium:					
U.S. producers' domestic shipments	***	***	***	***	***
U.S. imports from–					
Subject:					
China	18,744	20,613	24,020	17,801	35,084
Russia	23,758	32,896	41,517	28,538	41,271
Subtotal, subject	42,502	53,508	65,537	46,339	76,355
Nonsubject:					
Canada	50,094	92,632	69,223	51,640	***
China	6,726	304	257	216	***
Israel	24,336	22,013	14,267	10,880	***
All other sources	29,964	13,673	12,850	9,327	***
Subtotal, nonsubject	111,119	128,622	96,597	72,063	92,997
Total imports	153,622	182,130	162,134	118,402	169,352
Apparent U.S. consumption	***	***	***	***	***

[1] Consists of HTS subheadings 8104.11.00 (pure magnesium ingot) and 8104.30.00 (granular magnesium).
[2] Imports from China of pure magnesium ingot are currently subject to antidumping duty order A-570-832 (60 FR 25691, May 12, 1995). Imports of granular magnesium from China are currently subject to antidumping duty order A-570-864 (66 FR 57936, November 11, 2001).
[3] Imports of pure magnesium from Israel were subject to provisional antidumping duties from April 30, 2001, through November 20, 2001.
[4] Consists of HTS subheading 8104.19.00 (alloy magnesium ingot).
[5] Imports of "off-specification pure" magnesium (alloy magnesium not meeting ASTM specifications for alloy magnesium) from China entering under this subheading are currently subject to antidumping duty order A-570-832 (60 FR 25691, May 12, 1995).

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

Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.

U.S. MARKET SHARES

Table IV-10 presents data on U.S. market shares of magnesium.

Table IV-10
Magnesium: U.S. market shares, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

Respondents stated that energy costs, especially natural gas prices, are a major factor in magnesium production. They cited high energy costs in Washington State as a cause for the closure of Northwest Alloys, and added that US Magnesium had tried to purchase natural gas from Alcoa because US Magnesium had not forward-hedged natural gas before a recent rise in natural gas prices.[1] [2]

Transportation Costs to the U.S. Market

Transportation costs for magnesium from China and Russia to the United States (excluding U.S. inland costs) are estimated to be approximately 7.4 percent of the total landed U.S. cost for magnesium from China and 3.2 percent of the total landed U.S. cost for magnesium from Russia.[3]

U.S. Inland Transportation Costs

Most producers and importers estimated U.S. inland transportation costs as between one and seven percent of the total delivered cost of magnesium. Sellers generally arrange transportation.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Russian ruble fluctuated over January 2000 through September 2004, depreciating somewhat and then recovering. However, the real value of the Russian ruble appreciated substantially over the same period. The nominal value of the Chinese yuan (fixed against the dollar) was flat. Nominal and real values of the Russian ruble are presented in figure V-1.[4]

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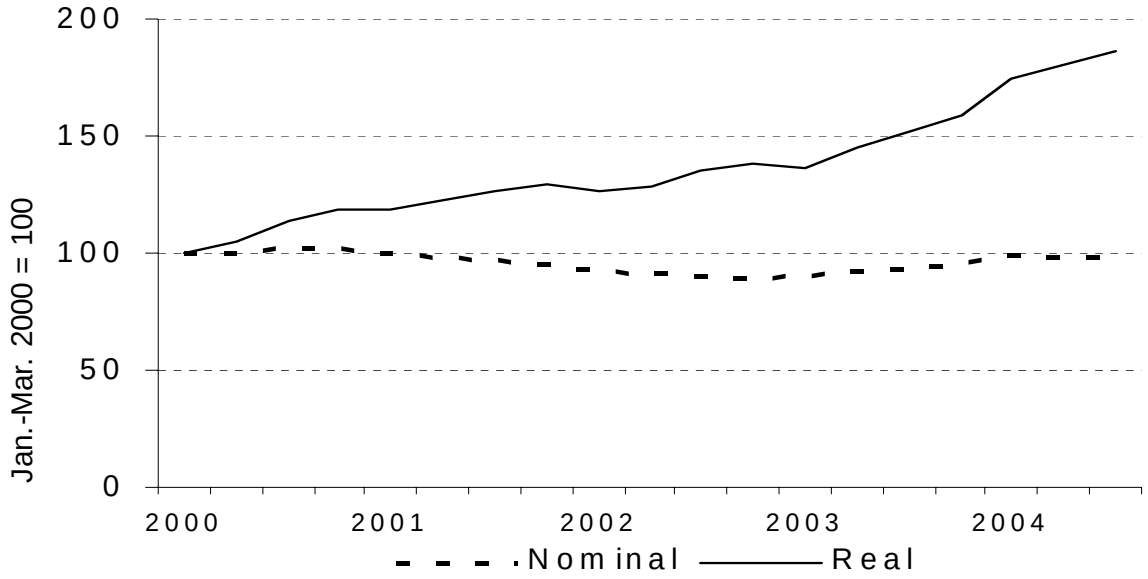
[1] *See* conference transcript (McHale and Stern), pp. 108 and 110.

[2] Petitioners also noted higher energy prices and said that as they were unable to pass these costs along due to (allegedly) dumped imports, they were caught in a "cost-price squeeze." *See* conference transcript (Legge), p. 15.

[3] These estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value, for the period October 2003 through September 2004.

[4] China does not publish a producer price index, so no real currency values were calculated for the yuan. The rise in the Russian real exchange rate reflects the fact that the Russian producer price index rose more than the U.S. producer price index over the period examined.

Figure V-1
Exchange rates: Indices of the nominal and real exchange rates of the Russian ruble relative to the U.S. dollar, by quarters, January 2000- September 2004



Source: International Monetary Fund, *International Financial Statistics* (imfstatistiscs.org), January 2005, January 2004, and June 2002.

PRICING PRACTICES

Pricing Methods

Alcoa describes magnesium as a commodity that is not sold on exchanges only because of the relatively small volumes sold and the difficulty in storing it.[5] Published pricing data are available from American Metal Market and other organizations.[6] Producers and importers determine price both by transaction-by-transaction negotiations and by contracts for multiple shipments.

US Magnesium reported that *** percent of its sales were under contracts of more than one year (long-term), *** percent were under contracts of a year or less (short-term), and *** percent of its sales were spot. Domestic secondary magnesium producers had wide differences in their types of sales; *** made *** percent of its sales as short-term sales, *** made *** percent of its sales as spot sales, *** made *** percent of its sales as long-term sales, and *** made *** percent of its sales under short-term or long-term contracts. Among importers, three (***) reported that 85 percent or more of their sales were on a spot basis; four (***) reported that half or more of their sales was under long-term contracts; and two (***) reported that their sales were under short-term contracts. Renegotiation of existing contracts was described as an infrequent occurrence by most producers and importers.[7] The contracts of ***.

[5] *See* conference transcript (McHale), p. 151.

[6] Alcoa said that it was skeptical about the accuracy of Metals Week pricing, since most purchasers purchase under annual contracts, and thus Metals Week pricing is based on the more limited spot market purchases. *See* hearing transcript (McHale) p. 191. Petitioners stated similar criticisms in their prehearing brief at pp. 52-53.

[7] However, ***.

Many of the largest annual magnesium contracts are set at the end of the calendar year for the following year.[8] Petitioners and respondents differ over what role spot prices play in influencing contract prices, with petitioners stating that spot prices play little to no role, or at least less of a role than the amount of competition from other suppliers.[9] However, respondents stating that spot price trends do affect contract negotiations.[10] Petitioners added that whether a contract is short- or long-term is not related to whether the sale is to diecasters or aluminum alloyers.[11]

Among U.S. producers, *** reported that *** of their sales were from inventory while *** reported that a majority of their sales was produced to order. Importers' responses were split between four firms that reported that a majority of their sales was from inventory and six firms that reported that a majority of their sales was produced to order. Sales from inventory usually had a delivery time of one week for both producers and importers. However, produced-to-order sales were usually delivered in one to three months by importers and one to four weeks by ***.

Sales Terms and Discounts

Magnesium is usually sold directly to the end user on a delivered basis and arranged by the seller, with discounts (if any) being based on volume or length of contract. Since many transactions are negotiated, discounts may not be "official" but rather handled on a case-by-case basis.

General Price Trends

Prices of magnesium from both US Magnesium and subject imports fell from 2001 to 2003, but some prices show a sharp rise in 2004. Respondents said that contract prices for magnesium sold to aluminum manufacturers were in the $1.45 to $1.55 per pound range for 2005.[12] Spot prices have risen over 2004 and 2005 as well.[13] Respondents attributed lower prices for US Magnesium to its attempt to regain market share after production changes that lowered production over 2001 and 2002.[14] One respondent also described prices of Chinese magnesium as now higher than the prices of secondary alloy magnesium from domestic producers.[15]

In the preliminary phase of the investigations, both petitioners and Alcoa stated that historically, alloy magnesium was (or should be) less expensive than pure magnesium, but petitioners said that recent competition between pure and alloy magnesium had erased much of the gap between the two.[16] Respondents explained that alloy should be less expensive per pound as the alloys added are usually less expensive than the magnesium. One respondent, though, said that its magnesium alloy is more expensive than pure magnesium, as the beryllium often added to alloy magnesium is expensive, as is the work to

[8] *See* hearing transcript (Tissington), p. 60.

[9] *See* hearing transcript (Tissington), pp. 60-61, 90-91, and 110.

[10] *See* hearing transcript (Arh), pp. 191-192.

[11] *See* hearing transcript (Tissington), p. 110.

[12] *See* hearing transcript (Reilly), p. 169.

[13] *See* prehearing brief of Alcan p. 16.

[14] *See* conference transcript (Reilly), p. 128.

[15] *See* conference transcript (Gammons), p. 137.

[16] *See* conference transcript (Kaplan and McHale), pp. 71 and 164.

add the alloys.[17] However, in the hearing, US Magnesium said that historically, alloy and pure have had varying relative prices, but that their prices have converged since 2000.[18]

Purchasers were asked to identify any price leaders in the magnesium market over the period January 2001-September 2004. Two purchasers (***) said that there were none. Ten purchasers identified US Magnesium as a price leader, citing its price moves either up (leading other suppliers) or down (in order to gain volume). Two purchasers identified Solimin as a price leader, with *** saying that *** led prices down over 2001-04, and *** saying that while identifying a price leader was difficult, *** seemed competitive in lowering prices to maintain market share. Three purchasers (***) identified Avisma as a price leader, with *** stating that Avisma had raised prices in 2003 at the same time as Israeli producer Dead Sea. Four purchasers identified Chinese suppliers as market leaders, usually citing their lower prices. Four purchasers (aforementioned ***) named nonsubject producers as price leaders.

PRICE DATA

The Commission requested U.S. producers and importers of magnesium to provide quarterly data for the total quantity and f.o.b. value of magnesium that was shipped to unrelated customers in the U.S. market. Data were requested for the period January 2000 through September 2004.[19] The products for which pricing data were requested are as follows:

> ***Product 1***.--Pure magnesium ingots containing at least 99.8 percent magnesium but less than 99.95 percent magnesium.
>
> ***Product 2***.–Alloy magnesium ingots containing less than 99.8 percent magnesium sold to aluminum alloyers and meeting ASTM specifications for alloy magnesium.
>
> ***Product 3***.--Alloy magnesium ingots containing less than 99.8 percent magnesium sold to aluminum alloyers and not meeting ASTM specifications for alloy magnesium.
>
> ***Product 4***.--Alloy magnesium ingots containing less than 99.8 percent magnesium sold to diecasters and meeting ASTM specifications for alloy magnesium.

Five U.S. producers, five importers of Chinese magnesium, and five importers of Russian magnesium provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters. Product 1 pricing data reported by these firms accounted for approximately *** percent of U.S. producers' shipments of pure magnesium and *** percent of U.S. importers' shipments of Russian pure magnesium in 2003. Pricing data for products 2 through 4 accounted for approximately *** percent of U.S. producers' shipments of alloy magnesium, *** percent of U.S. importers' shipments of Chinese alloy magnesium, and *** percent of U.S. importers' shipments of Russian alloy magnesium in 2003.

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[17] *See* conference transcript (Gammons), p. 155.

[18] *See* hearing transcript (Tissington), p. 92.

[19] Although the Commission's questionnaires in the final phase of these investigations requested trade data beginning in 2001, they requested pricing data beginning in 2000. Trade data (but not pricing data) were obtained beginning in 2000 in the preliminary phase of these investigations.

Price Comparisons

Product 1 is a pure magnesium product. Among domestic producers, data were supplied by ***. Among importers, data were supplied by the following ***. Products 2 and 3 are alloy magnesium products sold to aluminum alloyers. In the preliminary phase of the investigations, petitioners stated that this product can compete with the U.S. pure product. Among domestic producers, *** supplied *** of product 2 data for 2000 and 2001, and *** supplied data for product 3. Among *** supplied data for product 2[20] and *** provided data for product 3. *** supplied data for product 2.

In the preliminary phase of the investigations, petitioners alleged that product 1 competes with products 2 and 3; both petitioners and respondents have noted that domestic producers of secondary alloy magnesium (included in products 2 and 3) compete with U.S. producers' product 1.[21] Data for product 1 are presented in table V-1. Data for imported product 2, with margins of underselling relative to U.S. product 1 from table V-1, are presented in table V-2. Data for U.S. and imported product 2, with margins of imported product 2 underselling relative to U.S. product 2, are presented in table V-3. Data for U.S. product 3 are presented in table V-4. (No importers submitted data for product 3.) Figures V-2 through V-5 present prices and volumes for the main data series from tables V-1 through V-4. These figures and tables allow comparisons of U.S. pure primary magnesium prices against both imported primary pure and alloy magnesium and domestically produced secondary alloy magnesium.

From January 2000 through September 2004, U.S. producers' prices of product 1 declined by *** percent on volumes that dipped in 2001 and then rose, while over the same period, prices of imports of Russian product 1 fell *** percent on increasing volume. Russian product 1 undersold U.S. product 1 in 15 of 19 comparisons, with margins ranging from 0.8 percent to 21.2 percent. In the remaining four instances, the Russian product was priced above the domestic product with margins ranging from 1.2 to 4.4 percent.

There are no pricing data for Chinese product 2 in 2000, but prices of imports of Chinese product 2 rose *** percent from January 2001 to September 2004 on fluctuating volume. Chinese product 2 undersold U.S. product 1 in 11 of 15 comparisons, with margins ranging from 5.9 percent to 34.5 percent. In the remaining four instances, the Chinese product was priced above U.S. product 1, with margins ranging from 14.1 to 39.8 percent. ***.

Russian product 2 was a low-volume product that undersold U.S. product 1 in two of four comparisons, with margins of *** and *** percent. It oversold U.S. product 1 in two quarters with margins of *** and *** percent. U.S. product 2 was also a low-volume product only available in 2000 and 2001. Prices for U.S. product 3 rose by *** percent over January 2000 to September 2004, with most of the rise coming in 2004.[22] ***. No subject import data were received for product 3.

Product 4 is an alloy product for diecasters. Among U.S. producers, *** supplied data, though the majority of the data were from ***. Among importers of Chinese magnesium, *** supplied data. ***.[23] Among importers of Russian magnesium, *** supplied data. Data for product 4, alloy magnesium sold to diecasters, are presented in table V-5 and figures V-6 and V-7.

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[20] ***.

[21] *See*, for example, petition, pp. 31-32.

[22] ***.

[23] *See* staff conversation with ***. Another importer, ***, supplied one quarter of data in the preliminary phase of the investigations but did not respond to Commission questionnaires in these final phase investigations.

For product 4 during January 2000-September 2004, U.S. producers' prices fell by *** percent while prices of imports of Russian product fell by *** percent. (Chinese prices for product 4 were not available for 2000.) Chinese product 4 undersold U.S. product 4 in 10 of 15 comparisons, with margins ranging from 5.6 percent to 12.4 percent. In the remaining five instances, (***), Chinese product 4 oversold U.S. product 4 with margins ranging from 0.1 percent to 31.7 percent. ***. Russian product 4 undersold U.S. product 4 in 14 of 19 comparisons, with margins of underselling ranging from 0.2 percent to 17.4 percent. In the remaining five quarters, the Russian product was priced above the domestic product; margins of overselling ranged from 0.5 percent to 2.9 percent.

Many of the margins of overselling observed come ***. Petitioners attribute this overselling to the filing of the petition raising subject import prices[24] and ***.[25] However, respondents allege that prices had fallen in 2002 and 2003 due to increased supply from U.S. secondary producers as well as Canada and Australia, and began to rise again in 2004 as several producers exited the market and demand improved.[26]

Pricing data for all subject countries combined on products 2 and 4 are presented in appendix D.

Table V-1
Magnesium: Weighted-average f.o.b. selling prices and quantities as reported by U.S. producers and importers of product 1, and margins of underselling/(overselling), by quarters, January 2000-September 2004

* * * * * * *

Table V-2
Magnesium: Weighted-average f.o.b. selling prices and quantities of product 1 as reported by U.S. producers and product 2 as reported by U.S. importers, and margins of underselling/(overselling), by quarters, January 2000-September 2004

* * * * * * *

Table V-3
Magnesium: Weighted-average f.o.b. selling prices and quantities of product 2 as reported by U.S. producers and U.S. importers, and margins of underselling/(overselling), by quarters, January 2000-September 2004

* * * * * * *

Table V-4
Magnesium: Weighted-average f.o.b. selling prices and quantities as reported by U.S. producers of product 3, by quarters, January 2000-September 2004

* * * * * * *

Table V-5
Magnesium: Weighted-average f.o.b. selling prices and quantities as reported by U.S. producers and importers of product 4, and margins of underselling/(overselling), by quarters, January 2000-September 2004

* * * * * * *

[24] *See* hearing transcript (Button) pp. 51-52.

[25] *See* petitioners' prehearing brief, pp. 64-67.

[26] *See* hearing transcript (Hunkins), pp. 194 and 227-228.

Figure V-2
Magnesium: Weighted-average selling prices, as reported by U.S. producers and importers of products 1, 2, and 3, by quarters, January 2000-September 2004

* * * * * * *

Figure V-3
Magnesium: Quantities, as reported by U.S. producers and importers of products 1, 2, and 3, by quarters, January 2000-September 2004

* * * * * * *

Figure V-4
Magnesium: Weighted-average selling prices, as reported by U.S. producers and importers of product 2, by quarters, January 2000-September 2004

* * * * * * *

Figure V-5
Magnesium: Quantities, as reported by U.S. producers and importers of product 2, by quarters, January 2000-September 2004

* * * * * * *

Figure V-6
Magnesium: Weighted-average selling prices, as reported by U.S. producers and importers of product 4, by quarters, January 2000-September 2004

* * * * * * *

Figure V-7
Magnesium: Quantities, as reported by U.S. producers and importers of product 4, by quarters, January 2000-September 2004

* * * * * * *

LOST SALES AND LOST REVENUES

The Commission requested U.S. producers of magnesium to report any instances of lost sales or lost revenues they experienced due to competition from imports of magnesium from China and/or Russia since January 2000 in the preliminary phase of the investigations, and since January 2001 in the final phase. *** reported *** of the following allegations. *** said that *** have had lost sales and revenues, but could not submit any specific allegations because ***.

Allegations from the Preliminary Phase of the Investigations

In the preliminary phase, the 54 lost sales allegations totaled $*** and involved *** metric tons of magnesium, and the 42 lost revenue allegations totaled $*** and involved *** metric tons of magnesium. Staff contacted the listed purchasers and a summary of the information obtained follows in

tables V-6 through V-9 and the text descriptions below.[27] In the final phase, staff has contacted non-responding purchasers from the preliminary phase.

***.[28]

Table V-6
Magnesium: Lost revenue allegations reported by * in the preliminary phase of the investigations, involving aluminum alloyers**

*	*	*	*	*	*	*

Table V-7
Magnesium: Lost revenue allegations reported by * in the preliminary phase of the investigations, involving diecasters**

*	*	*	*	*	*	*

Table V-8
Magnesium: Lost sales allegations reported by * in the preliminary phase of the investigations, involving aluminum alloyers**

*	*	*	*	*	*	*

Table V-9
Magnesium: Lost sales allegations reported by * in the preliminary phase of the investigations, involving diecasters**

*	*	*	*	*	*	*

***,[29] ***.
***.[30]
***[31] ***.
***.[32]
***.[33]
***.[34]
***.[35]
***.[36] ***.
***.[37] ***.

---

[27] The allegations in tables V-6 and V-8 involve aluminum alloyers. In these allegations, ***. In tables V-7 and V-9, the allegations involve diecasters, and ***.

[28] *See* letter from ***.

[29] ***.

[30] *See* e-mail from ***.

[31] *See* fax from ***.

[32] *See* fax from ***.

[33] *See* staff conversation with ***.

[34] *See* fax from ***.

[35] *See* fax from ***.

[36] *See* fax from ***.

[37] *See* staff conversation with ***.

***.[38] ***.
***.[39] ***.
***.[40]

Allegations from the Final Phase of the Investigations

In the final phase, *** submitted two lost revenue allegations totaling $*** and involving *** metric tons of magnesium as well as 11 lost sales allegations totaling $*** and involving *** metric tons of magnesium. These additional allegations are presented in tables V-10 through V-12 and in the following discussion.

Table V-10
Magnesium: Lost revenue allegations reported by * in the final phase of the investigations, involving diecasters**

* * * * * * *

Table V-11
Magnesium: Lost sales allegations reported by * in the final phase of the investigations, involving aluminum alloyers**

* * * * * * *

Table V-12
Magnesium: Lost sales allegations reported by * in the final phase of the investigations, involving diecasters**

* * * * * * *

***.[41]
***.[42] ***.
***.[43]
***.[44] ***.
***.[45]
***.[46]
***.[47]

[38] *See* fax from ***.
[39] *See* fax from ***.
[40] *See* fax from ***.
[41] *See* fax from ***.
[42] *See* fax from ***.
[43] *See* fax from ***.
[44] *See* fax from ***.
[45] *See* fax from ***.
[46] *See* fax from ***.
[47] *See* fax from ***.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

During the period examined, US Magnesium[1] and Northwest Alloys[2] provided usable financial data on their operations producing pure and alloy magnesium while Amacor, Garfield, Halaco,[3] and MagReTech[4] provided usable financial data on their commercial and tolling operations producing alloy magnesium. These reported data are believed to represent the vast majority of U.S. production of pure and alloy magnesium in the periods examined.

OPERATIONS ON PURE AND ALLOY MAGNESIUM

The Commission requested financial data from producers of pure magnesium as well as from producers of alloy magnesium. Differences between data for pure and alloy magnesium reported in the trade and financial sections of the Commission's producers' questionnaire mostly are attributable to ***. Differences in these data for alloy magnesium from the preliminary phase staff report are partly because *** reported in these final phase investigations and are partly attributable to the more extensive use of estimates to split non-tolling operations from tolling in the preliminary phase; also, ***. The Commission's questionnaire in the final phase of the investigations also requested that producers of alloy magnesium report financial data for their tolling operations on behalf of other firms.

The industry producing magnesium in the United States includes firms that produce pure magnesium and firms that produce alloy magnesium by combining pure magnesium and alloying ingredients, or remelting and processing magnesium-containing scrap. Several of these scrap processors obtain their input raw material magnesium scrap at no cost and provide a fee-based processing service whereby alloy magnesium in usable form is returned to the company that provides the scrap. In order to

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[1] US Magnesium resulted from the asset sale from bankruptcy of Magcorp on June 24, 2002. It is the successor to that firm and its direct parent is the Renco Group, a holding company that is, in turn, owned by Mr. Ira Rennert and certain family trusts. US Magnesium reported on a fiscal year basis that ends on ***. Commission staff tied US Magnesium's questionnaire financial data to its audited financial statements for 2003. US Magnesium's response to questions regarding "other causes of injury," including respondents' allegations that the owners withdrew $150 million from Magcorp, driving it into bankruptcy, and that US Magnesium has a potential $900 million liability that arises from environmental lawsuits, is presented in appendix E.

[2] Northwest Alloys (Addy, WA), an operating unit of Alcoa, provided data in the Commission's prior investigations of pure magnesium (*see Pure Magnesium from China and Israel*, Invs. Nos. 701-TA-403 and 731-TA-895-896 (Final), USITC Publication 3467 (November 2001)). In its press release of June 22, 2001, Alcoa announced that it would shut down Northwest Alloys as of October 1, 2001 "due to high production costs and unfavorable market conditions." (Electricity costs escalated sharply in the U.S. Pacific Northwest as a result of a power crisis.) Alcoa also stated that its magnesium requirements would be sourced through its worldwide contacts. In its questionnaire response it stated that it in fact had stopped producing magnesium by ***, and it provided ***.

[3] Halaco, a subchapter S corporation, filed a Chapter 11 bankruptcy petition on July 24, 2002, and *** closed its Oxnard, CA, plant on September 23, 2004. It reported for the full calendar years 2001-03 and January-September 2003. It was able to provide sales data for January-September 2004, and its costs were estimated based on its January-September 2003 costs. Halaco was the target of several environmental lawsuits related to its disposal of used oil, air emissions, industrial water discharge, and its slag heap located adjacent to the Ormond Beach wetlands in Ventura County, CA.

[4] Garfield Alloys and MagReTech are ***. Garfield's plant burned in December 2003, resulting in the complete loss of production and most company records ***. Certain sales and cost data for commercial operations and tolling were estimated. Fax from ***. Amacor, Garfield, Halaco, and MagReTech reported ***.

assist the Commission in its consideration of the results of U.S. producers in these investigations, this part of the report presents financial data in the following order:

Table VI-1 presents financial data for the operations on pure and total alloy magnesium (which includes non-toll and tolled alloy magnesium) aggregated.

Table VI-2 presents data on pure magnesium only; table VI-3 presents these data on a firm-by-firm basis.

Table VI-4 presents data for total alloy magnesium (aggregated for the non-toll and tolled operations on alloy magnesium); table VI-5 presents these data on a firm-by-firm basis.

Additional data presenting the results of operations on non-tolled alloy magnesium are presented in appendix F.

Table VI-1
Magnesium: Results of operations of U.S. firms on pure and total alloy magnesium, fiscal years 2001-03, January-September 2003, and January-September 2004

* * * * * * *

The average unit values (AUV) shown in table VI-1 should be used with caution as tolling fees and costs of tolling are lower than those of commercial sales or than those of internal consumption or transfers. The data in table VI-1 were adjusted to eliminate the double- counting of tolling by *** and the commercial sales of that tolled alloy magnesium by ***, also reducing other factory costs and toll conversion fees.

Table VI-2
Pure magnesium: Results of operations of U.S. firms, fiscal years 2001-03, January-September 2003, and January-September 2004

* * * * * * *

Table VI-3
Pure magnesium: Results of operations of U.S. firms, by firm, fiscal years 2001-03, January-September 2003, and January-September 2004

* * * * * * *

Table VI-4
Total alloy magnesium: Aggregated results of non-toll and tolling operations of U.S. firms, fiscal years 2001-03, January-September 2003, and January-September 2004

* * * * * * *

Table VI-5
Total alloy magnesium: Aggregated results of non-toll and tolling operations of U.S. firms, by firm, fiscal years 2001-03, January-September 2003, and January-September 2004

* * * * * * *

With respect to the data for pure magnesium (table VI-2), the quantity and value of total sales fell *** between 2001 and 2002, mainly attributable to Northwest's cessation of production;[5] sales quantity increased between 2002 and 2003 as did sales value even though the average unit value of sales declined between the two years.[6] Two factors may have played a role in the increase in quantity: one was the small increase in U.S. industrial production, and the other was US Magnesium's emergence from bankruptcy in late June 2002. Also contributing to an increase in sales between 2002 and 2003 was an increase in volume as US Magnesium's new "M" cell operations ramped up.[7] Between January-September 2003 and the same period in 2004, total sales quantity fell, but the fall was mitigated by an increased unit sales value, leading to an increase in sales. Total cost of goods sold fell *** between 2001 and 2002, again because of the exit of Northwest and because US Magnesium recognized a *** in 2001.[8] Thereafter, COGS fluctuated with sales volume although unit COGS declined between 2002 and 2003 as well as between January-September 2003 and January-September 2004 because of increased production efficiencies at US Magnesium that are attributable to its new cell technology.[9] The value of selling, general, and administrative (SG&A) expenses irregularly increased between 2001 and 2003, and declined between January-September 2003 and the same period in 2004. Changes in selling expenses partly reflect changes in freight charges on shipments of finished product, which, in turn, vary with sales volume. General and administrative expenses include accrued overhead items. In the case of US Magnesium, 2003 G&A expenses include ***[10] and an accrual for environmental liabilities of $***.[11] Beginning in 2004, US Magnesium expects to incur expenses on an annual basis for ***.[12]

Data for US Magnesium's energy costs incurred in the production of pure magnesium are shown in table VI-6.

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[5] The *** reduction in raw material costs between 2001 and 2002 is *** attributable to the exit of Northwest Alloys. The firm was a *** producer and its inputs and production process contribute to raw material costs. *See,* Joint Alcoa/Northwest posthearing brief, p. 12. Northwest's raw material inputs were composed of ***. Total raw materials and electricity totaled $*** in 2001, or *** percent of its total COGS in that year. Northwest also consumed natural gas in producing dolomite and in the refining process which it included in other factory costs. Natural gas costs were $*** in 2001. In contrast, US Magnesium uses magnesium chloride brine (water high in salt) which it obtains at low or no cost from the Great Salt Lake, and it initially uses solar evaporation ponds in which the brine is concentrated. Conference transcript, pp. 14-15 (Mr. Legge). US Magnesium's brine costs were $*** in 2001; in that same year it included "process materials" in raw materials worth $***; these two items together were *** percent of total COGS. Energy costs, including charges for natural gas and electricity, were included in other factory costs and totaled $*** in 2001.

[6] *See* US Magnesium's prehearing brief, pp. 65-66 for reasons behind the *** between 2002 and 2003. This was expanded upon in US Magnesium's posthearing brief, exh. 1, pp. 27-31 ***, and pp. 21-27 ***.

[7] Petition, p. 70.

[8] *See* note 3 in table VI-2.

[9] Energy costs of electricity and natural gas have risen *** between 2002 and 2003. Natural gas is used to further refine molten magnesium that comes from the firm's electrolytic cells. Natural gas also is used to produce alloy magnesium by melting pure magnesium in a furnace. Electricity at high amperage is consumed in the production of pure magnesium in the firm's electrolytic cells–to separate magnesium chloride brine from chlorine and other elements. "Energy" is classified with ***, and is ***. Although the new "M" cells may be more efficient than the cells they replace, the costs of both electricity and natural gas have risen, affecting pure and alloy production costs. *See* US Magnesium's posthearing brief, exh. 1, pp. 1-2 regarding *** and p. 11 regarding ***. Also, *see* Alcoa/Northwest joint prehearing brief, pp. 38-39 regarding natural gas and electricity rate increases in Utah.

[10] US Magnesium's audited financial statements for 2003; the total was allocated between pure and alloy magnesium based on the relative ratio of sales values.

[11] Conversation with *** on February 23, 2005; the total was allocated between pure and alloy magnesium based on the relative ratio of sales values.

[12] E-mail from ***, March 1, 2005.

Table VI-6
Pure magnesium: Energy costs of US Magnesium, fiscal years 2001-03, January-September 2003, and January-September 2004

* * * * * * *

With respect to the data for alloy magnesium (table VI-4), both sales quantity and value increased between 2001 and 2003 before declining *** between January-September 2003 and the same period in 2004. The average unit value of sales fell *** between 2001 and 2002, declined between 2002 and 2003, and declined again between January-September 2003 and the same period in 2004. COGS fell *** between 2001 and 2002, affected by US Magnesium's accrual of *** in 2001;[13] COGS is approximately flat between 2001 and 2003 when the *** is excluded, as changes in raw material costs (which increased between 2001 and 2003), direct labor (which irregularly decreased between the two years), and declines in other factory costs canceled each other out. Other factory costs were relatively steady between January-September 2003 and January-September 2004 despite the decline in sales volume; other factory costs increased as a ratio to net sales and on a per-unit basis. As with pure magnesium, this also may be related to rising energy costs (natural gas is used to melt magnesium-containing scrap). Direct labor charges also increased in value, as a ratio to net sales, and on a per-unit basis between January-September 2003 and the same period in 2004.

Data for US Magnesium's energy costs incurred in the production of alloy magnesium are shown in table VI-7.

Table VI-7
Alloy magnesium: Energy costs of US Magnesium, fiscal years 2001-03, January-September 2003, and January-September 2004

* * * * * * *

Less energy is required to process scrap in making alloy magnesium compared with pure magnesium. Changes between the interim periods are affected by US Magnesium's *** and by increases in electricity and natural gas costs.[14]

Tolling of Alloy Magnesium

In tolling (or toll conversion) operations, one firm, the tollee, typically arranges for another firm, the toller, to produce usable magnesium metal alloy by recycling magnesium-containing scrap that is provided by the tollee. The tollee typically purchases the magnesium scrap raw materials and other materials and arranges delivery of the scrap to the toller. The toller processes it and charges a conversion charge, or tolling fee for the service. *** reported data on tolling. With the exception of ***, most of the tolling reported in the Commission's questionnaire was performed on behalf of firms making downstream products, primarily fabricated diecast parts for the automotive industry. Differences in these data compared with the prehearing staff report reflect an additional reporting firm, ***; this firm also accounted for the ***. Only ***. When combining tolling with the commercial sales, the double-counting has to be eliminated. Hence, the sales data of *** have been adjusted for the alloy magnesium that *** tolled on its behalf. The unit values for the combined data are lower than the values for non-toll operations since commercial sales and tolling services are different and the cost structures of the two activities differ as well, as described earlier. Tolling data on alloy magnesium are included in table VI-1

[13] *See* note 3 in table VI-2.

[14] *See* US Magnesium's posthearing brief, exh. 1, p. 1, for a discussion of its efforts to manage energy cost volatility.

(pure and total alloy) and in table VI-4 (total alloy, the aggregate of non-toll and tolled alloy). Data on the non-toll alloy operations of U.S. firms are presented in appendix F.

Value Added

Alloy magnesium typically is produced by recycling magnesium-bearing scrap and adding pure magnesium and/or alloying materials to it to achieve the desired magnesium alloy. US Magnesium reported sales of "total alloy" magnesium that included what it called "primary alloy" which is alloy magnesium that ***, as discussed and presented earlier in this section of the report.[15] The value-added ratios are calculated for the reporting companies together and separately for US Magnesium's operations on total alloy magnesium (which includes ***), its primary alloy, and ***, and are presented in table VI-8.

Table VI-8
Alloy magnesium: Value-added data, fiscal years 2001-03, January-September 2003, and January-September 2004

* * * * * * *

The ratios for total alloy magnesium are reduced by ***. The ratios for 2001 are influenced by ***, while the ratios for January-September 2004 are influenced by ***. Changes in the ratios between other periods reflect changes in the relative costs of raw materials to total COGS. Similar calculations for tolling only results in ratios of *** percent to *** percent, which result from tollers having small or no raw material costs.

Variance Analysis

A variance analysis based upon the results of the U.S. firms on their operations producing all magnesium (*i.e.*, the data in table VI-1) is not presented here. This is because a variance analysis, which provides an assessment of changes in profitability as a result of changes in volume, sales prices, and costs, is effective when the product under examination is homogeneous through the periods examined, with little or no variation in product mix. In these investigations, there are several events which decrease the value of a variance analysis – a major producer exiting the industry, the entry of another producer with high start-up costs, US Magnesium's ***, and the increasing amounts of product toll-processed throughout the periods for which data were collected.

In the alternative, the staff has prepared variance analyses (tables F-5 and F-6) based upon the results of the U.S. firms on their operations producing pure magnesium and non-toll alloy magnesium. As explained in appendix F, these analyses may provide some amplifying information regarding the effects of changes in profitability for these specific products due to changes in volume, sales prices, and costs. However, the analyses are affected by many of the same events that are present in the data in table VI-1, and therefore should be used with caution.

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

The responding firms' data on capital expenditures and their research and development ("R&D") expenses for the production of pure and total alloy magnesium are shown in table VI-9.

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[15] The calculations for total alloy are based on US Magnesium's response to question III-10. The calculations for "primary alloy" are based on the breakouts that are included in app. B to US Magnesium's producer questionnaire response.

Table VI-9
Magnesium: Value of capital expenditures and R&D expenses of U.S. firms, fiscal years 2001-03, January-September 2003, and January-September 2004

* * * * * * *

ASSETS AND RETURN ON INVESTMENT

The Commission's questionnaire requested data on assets used in the production, warehousing, and sale of magnesium to compute return on investment ("ROI") for 2001 to 2003. The data for total net sales and operating losses are from table VI-1. Operating income was divided by total net sales, resulting in the operating income ratio. Total net sales was divided by total assets, resulting in the asset turnover ratio. The operating income ratio was then multiplied by the asset turnover ratio, resulting in ROI; the expanded form of this equation shows how the profit margin and total assets turnover ratio interact to determine the return on investment.

U.S. producers' total assets and their ROI are presented in table VI-10. The total assets utilized in the production, warehousing, and sales of magnesium fell from 2001 to 2002, *** attributable to Northwest's exit from the industry and ***.

Table VI-10
Magnesium: Value of assets used in the production, warehousing, and sale, and return on investment, fiscal years 2001-03

* * * * * * *

CAPITAL AND INVESTMENT

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of pure and alloy magnesium from Russia and alloy magnesium from China on their firms' growth, investment, and ability to raise capital or development and production efforts (including efforts to develop a derivative or more advanced version of the product). Their responses are shown in appendix E.

PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations.[1] Information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V, and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

Data on the industry in China are based on the questionnaire responses of three firms[2] believed to account for approximately *** percent of Chinese exports of subject alloy magnesium to the United States in 2003.[3] Data on the industry in Russia are based on the questionnaire responses of two firms that account for virtually all exports of subject merchandise to the United States in 2003.[4]

THE INDUSTRY IN CHINA

China is the world's largest producer of primary magnesium (pure and alloy magnesium) by far, with production in 2002 estimated to be 230,000 metric tons, or 54 percent of worldwide production, and estimated to be 300,000 metric tons in 2003.[5]

There are conflicting figures and estimates on the levels of capacity and production of magnesium in China. Petitioners indicated that a representative of the China Magnesium Association was quoted in the press as stating that China's capacity to produce magnesium was 480,000 to 500,000 metric tons in 2002 (with production of 268,000 metric tons), and that capacity would increase to 700,000 metric tons in 2003.[6] Petitioners also presented a number of press clippings discussing planned capacity increases.[7] However, in the preliminary phase of these investigations, respondents pointed out problems for the magnesium industry in China: Alcoa discussed price increases for Chinese magnesium "driven by supply shortages and rising costs for inputs such as wages, energy, ferrosilicon, and freight,"[8] and respondent Alcan mentioned "recent contract problems with Chinese suppliers" and "numerous reports of Chinese

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[1] *See* 19 U.S.C. § 1677(7)(F)(i)).

[2] No producer of magnesium from China submitted a questionnaire response to the Commission in the final phase of these investigations. In the preliminary phase of these investigations, the Commission received foreign producer questionnaires from ***. Therefore, the data on the Chinese industry, presented in table VII-1, are taken from those companies' submissions from the Commission's preliminary phase of these investigations.

[3] Based on a comparison of the quantity of Chinese producers' reported export shipments to the United States to the quantity of official import statistics of Commerce. Customs identified 27 Chinese firms exporting alloy magnesium from China to the United States in 2003. The petition identified 24 possible Chinese exporters of magnesium to the United States in 2000-03.

[4] Based on a comparison of the quantity of Russian producers' reported export shipments to the United States to the quantity of official import statistics of Commerce.

[5] Deborah A. Kramer, *Magnesium, Minerals Yearbook 2002*, U.S. Geological Survey, table 7; Deborah A. Kramer, *Magnesium Metal, U.S. Geological Survey, Mineral Commodity Summaries*, January 2004, p. 103.

[6] Petitioners' postconference brief, pp. 40-41, citing USGS, *Minerals Industry Surveys: Magnesium in the Second Quarter 2003* (August 2003, p. 2, and *Chinese Magnesium Hot in Europe, but seen moderating*, Platts Metal Week, August 4, 2003, p. 15. ***.

[7] *See* e.g., petition exhibits 5, 40-43, and 45, and petitioners' postconference brief, exhibit A-20.

[8] Alcoa's postconference brief, p. 33.

suppliers canceling orders and reneging long-term contracts."[9] According to the U.S. Geological Survey ("USGS"), magnesium producers in China "continue to announce planned capacity increases, although some {firms} have delayed previously announced plans because of a sharp rise in fuel costs and raw material and freight restrictions."[10]

Information on reporting Chinese producers' production capacity, production, shipments, and inventories is presented in table VII-1.

Table VII-1
Alloy magnesium: Data for the reporting firms in China, 2000-03, and projections for 2004-05

* * * * * * *

THE INDUSTRY IN RUSSIA

Information on Russian producers' production capacity, production, shipments, and inventories is presented in table VII-2. AVISMA and Solikamsk are Russia's largest magnesium producers.[11] In 2003, *** percent of total shipments of magnesium from Russia were exported to the United States. AVISMA and Solikamsk reported that in 2003, *** percent of their shipments of magnesium were to other export markets, ***. From 2001 to 2003, the volume of shipments exported from Russia to the United States increased by *** percent while the volume of shipments exported to other world markets decreased by *** percent. Producers' capacity in Russia remained relatively flat from 2001 to 2003 and is projected to *** in 2004 and 2005.[12] Production increased from 2001 to 2003 by *** percent and was projected to decline *** from 2003 to 2004.[13] Solikamsk reported that its largest U.S. importers are ***. AVISMA reported that its largest U.S. importer is ***.

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[9] Alcan's postconference brief, pp. 25-26.

[10] *Mineral Industry Surveys*, *Magnesium in the Fourth Quarter 2003*, USGS, February 2004, p. 2. Specific firms mentioned by the USGS as having plans to increase capacity in 2004 were Shanxi Qizhen Magnesium Corp.; Guangling Jinghua Corp.; Shanxi Zhongyin Corp.; Minhe Magnesium Co.; Winca Magnesium (Hebi) Co., Ltd.; and Hebi Jianghai Smelting Co., Ltd. However, Xinlihua Magnesium Powder Co. "abandoned its plans to begin magnesium alloy production at its plant in Shanxi Province {in December 2003} because it did not receive provincial governmental approval to purchase the necessary equipment" and a "management restructuring at Shanxi Datong Zhongjin Magnesium Industry Co. was expected to delay the company's planned primary magnesium expansion." Ibid., p. 2. Producers mentioned as having expanded capacity in 2003 include the above-mentioned Shanxi Qixzhen Magnesium Corp. and Guangling Jinghua Corp. (which opened a new magnesium alloy production line in December 2003 to replace a smaller-capacity older line), and Shanxi Wenxi Baiyu Co., Jilin North Industrial Silicon Corp., and Ningxia Huayuan Magnesium Smelter. USGS, Mineral Industry Surveys, Magnesium in the Third Quarter 2003, November 2003, p. 2.

[11] Commerce's notice of preliminary determination of sales at LTFV mentions an unnamed third producer of magnesium in Russia, which sold an "extremely small" amount compared to known exports of magnesium from Russia to the United States. 69 FR 59197, October 4, 2004.

[12] AVISMA stated that it ***. Respondent AVISMA's prehearing brief, pp. 44-45. Petitioner argues that AVISMA's capacity is understated, citing a 60,000 metric ton capacity figure displayed on AVISMA's website. Petitioner's prehearing brief, p. 90. ***. Respondent AVISMA's posthearing brief, p. 8.

In the preliminary phase of these investigations, petitioner alleged that Solikamsk had announced plans in 2000 to expand its production capacity by 17,000 short tons. Solikamsk stated that ***. Petitioner also alleged that a pilot program was underway in Russia to recover magnesium from asbestos tailings and to create a production facility capable of producing approximately 60,000 short tons. Solikamsk stated that ***. Respondent Solikamsk's prehearing brief, pp. 25-26. AVISMA stated that ***. Respondent AVISMA's prehearing brief, p. 45.

[13] AVISMA stated that it ***. Respondent AVISMA's posthearing brief, p. 3.

According to the U.S. Geological Survey, AVISMA produced 26,000 short tons of pure and alloy magnesium in 2003, mostly in the form of ingot for the aluminum industry. AVISMA currently exports much of its production, with more than 50 percent exported to North American aluminum producers and significant amounts to European aluminum consumers. Since 1995, AVISMA has been producing automotive grade AZ91D, AM50A, AM60B, and AM60A magnesium alloys.[14]

Table VII-2
Magnesium: Data on the industry in Russia, 2001-03, January-September 2003, January-September 2004, and projections for 2004-05

* * * * * * *

U.S. IMPORTERS' INVENTORIES

Table VII-3 presents data on U.S. importers' end-of-period inventories for the period examined.

Table VII-3
Magnesium: U.S. importers' end-of-period inventories of imports, by sources, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

U.S. IMPORTERS' CURRENT ORDERS

Importers were requested to indicate whether their firm imported or arranged for the importation of magnesium from China or Russia for delivery after September 30, 2004. Of the responding importers, five importers (***) responded that they did arrange for importation of magnesium after September 30, 2004. The tabulation below presents the quantity, type, and country of origin of these arranged imports.

* * * * * * *

ANTIDUMPING DUTY ORDERS IN THIRD-COUNTRY MARKETS

India reportedly applied definitive antidumping duties on imports of magnesium from China from July 24, 1998 until May 1, 2003. The duties were withdrawn upon a request by the affected domestic industry.[15] Since 1999, the European Union had an antidumping duty order on imports of pure magnesium (unwrought unalloyed magnesium) from China, that expired in 2003.[16] In April 2003, Brazil initiated antidumping investigations on imports from China of magnesium ingot and magnesium powder and on October 11, 2004, imposed antidumping duties.[17]

[14] Deborah A. Kramer, *Magnesium, Minerals Yearbook 2001,* U.S. Geological Survey, pp. 48.6-48.7.

[15] Postconference brief of petitioners, exh. A, p. 4.

[16] *See Notice of the Impending Expiry of Certain Anti-Dumping Measures (C 2003/C 230/2), Official Journal of the European Union,* September 26, 2003.

[17] Petition, p. 89, and exh. 55; U.S. importer's questionnaire of ***.

APPENDIX A

FEDERAL REGISTER NOTICES

accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: October 18, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–23612 Filed 10–20–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1071 and 1072 (Final)]

Magnesium From China and Russia

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–1071–1072 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 201673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports of alloy magnesium from China and of pure and alloy magnesium from Russia, provided for in subheadings 8104.11.00, 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this phase of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: Effective Date: October 4, 2004.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of alloy magnesium from China and pure and alloy magnesium from Russia are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on February 27, 2004, by U.S. Magnesium Corp., Salt Lake City, UT; the United Steelworkers of America, Local 8319, Salt Lake City, UT; and the Glass, Molders, Pottery, Plastics & Allied Workers International, Local 374, Long Beach, CA.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protetive Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of these investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on February 8, 2005, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on February 23, 2005, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 16, 2005. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 18, 2005, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is February 15, 2005.

Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 2, 2005; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before March 2, 2005. On March 16, 2005, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 18, 2005, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: October 18, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–23613 Filed 10–20–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree, Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on October 6, 2004, a proposed Consent Decree in United States and the *State of Colorado* v. *Asarco, Inc.,* an action for injunctive relief and the reimbursement of response costs pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.*, was lodged with the United States District Court for the District of Colorado, Civil Action No. 04–RB–2070 (CBS).

In this action, the United States and the State of Colorado sought injunctive relief to require defendant to perform certain remedial actions at the Vasquez Boulevard/Interstate 70 Superfund Site, located in Denver, Colorado, and to reimburse the United States and the State of Colorado for response costs incurred at the Site. Pursuant to the proposed Consent Decree, Asarco will remove and dispose of contaminated soils from 100 residential properties within the Site, and reimburse the United States and the State of Colorado for future response costs incurred at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to United States and the *State of Colorado* v. *Asarco, Inc.,* D.J. Ref. DJ# 90–11–3–138/7.

The Consent Decree may be examined at U.S. EPA Region 8, 999 18th Street, Suite 500, Denver, Colorado, 80202. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj. gov*), fax no. (202) 514-0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check made payable to the United States Treasury in the amount of $10.25 for the Consent Decree only or $109.75 for the Consent Decree plus Appendices (25 cents per page reproduction cost).

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division, United States Department of Justice.

[FR Doc. 04–23498 Filed 10–20–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on September 29, 2004, a proposed Consent Decree in *United States of America, The State of New Mexico, and The New Mexico Office of Natural Resources Trustee* v. *The Burlington Northern and Santa Fe Railway Company*, Civil Action No. CIV–04–1101 JH RHS, was lodged with the United States District Court for the District of New Mexico.

In this action the United States, on behalf of the United States Department of the Interior, the United States Fish and Wildlife Service (''DOI''), and the Attorney General of the State of New Mexico, on its own behalf and on behalf of The State of New Mexico and The New Mexico Office of Natural Resources Trustee (''NMONRT''), sought damages from The Burlington Northern and Santa Fe Railway Company (''BNSF'') for injury to, destruction and loss of natural resources, under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9607(a), resulting from the release of hazardous substances from the AT & SF Albuquerque Superfund Site, located in Albuquerque, Bernalillo County, New Mexico. The Complaint alleges that hazardous substances, including PCP, zinc chloride, creosote and its constituents, were released from a wood treatment plant owned and operated by Defendant BNSF's predecessor to the environment, resulting in injury to wildlife habitat and groundwater resources. The Consent Decree provides for BNSF to pay a total of $1.09 million to resolve the claims alleged in the Complaint. The Consent Decree also resolves BNSF's claim that the Federal government is partially responsible for

CHLORINATED ISOCYANURATES FROM THE PRC SECTION A RESPONDENTS

Manufacturer/exporter	Original preliminary margin (percent)	Amended preliminary margin (percent)
Changzhou Clean Chemical Co., Ltd.	140.27	111.03
Liaocheng Huaao Chemical Industry Co., Ltd.	140.27	111.03
Shanghai Tian Yuan International Trading Co., Ltd.	140.27	111.03
Sinochem Hebei Import & Export Corporation	140.27	111.03
Sinochem Shanghai Import & Export Corporation	140.27	111.03

The collection of bonds or cash deposits and suspension of liquidation will be revised accordingly and parties will be notified of this determination, in accordance with section 733(d) and (f) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (''ITC'') of our amended preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of the *Preliminary Determination* or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: February 17, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–3688 Filed 2–23–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal From the People's Republic of China

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

Final Determination

We determine that magnesium metal from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV'') as provided in section 735 of Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Final Determination Margins'' section of this notice.

DATES: Effective Date: February 24, 2005.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Lilit Astvatsatrian, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4243 and (202) 482–6412, respectively.

Case History

The Department of Commerce (''the Department'') published its preliminary determination of sales at LTFV on October 4, 2004. *See Preliminary Determination of Sales at Less Than Fair Value: Magnesium Metal from the People's Republic of China*, 69 FR 59187, (October 4, 2004) (''*Preliminary Determination*''). The Department selected two mandatory respondents [1] and received a Section A response from a third company requesting a rate separate from the PRC-wide entity.[2] Since the *Preliminary Determination*, the Department conducted verification of RSM and Tianjin in both the PRC and the United States, where applicable. *See* the *Verification Section* below for additional information. On November 22, 2004, the parties [3] submitted surrogate-value information. On December 2, 2004, the parties submitted rebuttals to those surrogate-value submissions. On December 28, 2004, the petitioners submitted an allegation of critical circumstances in accordance with section 733(e)(1) of the Act and 19 CFR 351.206(c)(1). On January 4, 2005, the Petitioners, RSM, and Tianjin submitted case briefs, and on January 10, 2005, all three parties submitted rebuttal briefs. On January 11, 2005, the Department invited all parties to comment on the petitioners' allegation of critical circumstances and requested RSM, Tianjin, and Guangling to report the quantity and value of their shipments of subject merchandise to the United States on a monthly basis for the period January 2003 through December 2004. On January 19, 2005, RSM and Tianjin provided the requested information. Guangling did not respond to the Department's request for information. On February 3, 2005, the Department published its preliminary determination of critical circumstances in which it found that critical circumstances exist with regard to imports of magnesium metal from the PRC for Tianjin, Guangling, and the PRC-wide entity. *See Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China*, 70 FR 5606 (February 3, 2005) (''*Critical Circumstances Determination*''). On February 7, 2005, the petitioners submitted comments on the Department's preliminary determination of critical circumstances. None of the respondents provided comments or rebuttals on the Department's preliminary determination of critical circumstances.

[1] Tianjin Magnesium International Co., Ltd. (''Tianjin''), and the RSM companies. 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. In addition, we calculated a separate rate for China National Nonferrous Metals I/E Corp. Jiangsu Branch (''Jiangsu Metals''). *See* Memorandum to Laurie Parkhill, Director, Office 8, NME/China Group, from Laurel LaCivita, Senior Case Analyst and Lilit Astvatsatrian, Case Analyst, through Robert Bolling, Program Manager: *Separate Rates Memorandum*, dated September 24, 2004.

[2] Beijing Guangling Jinghua Science & Technology Co., Ltd. (''Guangling'').

[3] The parties include RSM, Tianjin, and the petitioners (U.S. Magnesium LLC, United Steelworkers of America, Local 8319 and Glass, Molders, Pottery, Plastics & Allied Workers International, Local 374). Guangling did not submit case or rebuttal briefs.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding are addressed in the memorandum from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting 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, which is hereby adopted by this notice (''*Issues and Decision Memorandum*''). A list of the issues which parties raised and to which we respond in the *Issues and Decision Memorandum* is attached to this notice as an Appendix. The *Issues and Decision Memorandum* is a public document and is on file in the Central Records Unit (''*CRU*''), Main Commerce Building, Room B–099, and is accessible on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the memorandum are identical in content.

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'' [4] 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'' [5]; (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, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[6]

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.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the mandatory respondents for use in our final determination (*see* the Department's verification reports on the record of this investigation, located in the CRU, with respect to Jiangsu Metals, Yunhai Special, Welbow, Bada, Tianjin, and Toyota Tsusho America, Inc. (''TAI'')). For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records as well as original source documents provided by respondents.

Surrogate Country

In the *Preliminary Determination*, we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) India is at a level of economic development comparable to that of the PRC; (2) Indian manufacturers produce comparable merchandise and are significant producers of aluminum; (3) India provides the best opportunity to use appropriate, publicly available data to value the factors of production. *See Preliminary Determination*, 69 FR at 59191. For the final determination, we made no changes to our findings with respect to the selection of a surrogate country.

Critical Circumstances

As described below in the section concerning the application of adverse facts available (''AFA''), we are applying total AFA to the group of RSM companies which includes Jiangsu Metals and TAI. As part of total AFA for the RSM companies, we determine that RSM and Jiangsu Metals are not eligible for a separate rate and, therefore, remain a part of the PRC-wide entity. Therefore, we revised our critical-circumstances analysis to include imports from RSM and Jiangsu Metals in the total quantity of imports from the PRC-wide entity during the base and comparison periods. As a result of this change, we have determined that critical circumstances do not exist with respect to the PRC-wide entity. Additionally, for this final determination we continue to find that critical circumstances exist for Tianjin and Guangling. For further details regarding the Department's critical-circumstances analysis *see* the Memorandum from Laurel LaCivita, Case Analyst, to Laurie Parkhill, Office Director, AD/CVD Enforcement, *Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China (the ''PRC'')—Affirmative Final Determination of Critical Circumstances*, dated February 16, 2005 (''*Final Critical Circumstances Memorandum*'').

Separate Rates

In the *Preliminary Determination*, the Department found that Guangling, which provided a response to Section A

[4] 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.*

[5] 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).

[6] 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.

of the antidumping questionnaire, was eligible for a rate separate from the PRC-wide rate. The margin we established in the Preliminary Determination for Guangling was 140.09 percent. Because the rates of the selected mandatory respondents have changed since the *Preliminary Determination*, we have recalculated the rate applicable to Guangling. The final rate is 91.36 percent.

As discussed below, the Department has determined to apply AFA with respect to the RSM companies. In addition, we have determined that there is no reliable basis for granting the RSM companies a separate rate. Accordingly, the RSM companies have not overcome the presumption that they are part of the PRC-wide entity and, therefore, entries of their merchandise will be subject to the PRC-wide rate.

Adverse Facts Available

Section 776(a)(2) of the Act provides that the Department shall apply ''facts otherwise available'' if, *inter alia*, an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act provides further that the Department may use an adverse inference when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, and is not so incomplete that it cannot be used and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

In the *Preliminary Determination*, we calculated a dumping margin of 128.11 percent for RSM based on the information it reported in its questionnaire responses. *See Preliminary Determination.* We conducted verification of the RSM companies in the PRC and in the United States.

In the *Preliminary Determination*, we determined that the RSM group of companies and Jiangsu Metals were affiliated under sections 771(33)(E) and (F) of the Act. *See Preliminary Determination* at 59192. Additionally, we determined that TAI and the RSM group of companies were affiliated under sections 771(33)(E) and (F) of the Act. *See Preliminary Determination* at 59192. There has been no information placed on the record since the *Preliminary Determination* that contradicts our affiliation determinations. Therefore, for the final determination, we continue to find that RSM, Jiangsu Metals, and TAI are affiliated under the statute.

Based on record evidence gathered as a result of the verification of TAI, RSM's affiliated customer in the United States, and pursuant to the statutory requirements of the Act, the Department has determined that the RSM Group and its affiliates impeded this investigation, provided unverifiable information, and did not cooperate to the best of their ability to comply with the Department's requests for information. Therefore, we determine that the use of AFA is warranted with respect to all of TAI's sales of subject merchandise whether exported through RSM or Jiangsu Metals for the purposes of the final determination of this investigation. *See* our response to Comment 1 in the *Decision Memorandum* for a further discussion of this issue.

In the *Preliminary Determination*, the Department granted RSM and Jiangsu Metals separate rates based on the information provided in their questionnaire responses. *See* memorandum to Laurie Parkhill, Office Director, China/NME Group, through Robert Bolling, Program Manager, from Laurel LaCivita, Senior Case Analyst and Lilit Astvatsatrian, Case Analyst, *Preliminary Determination: Magnesium Metal from the People's Republic of China: Separate-Rates Memorandum (''Separate Rates Memorandum*''), dated September 24, 2004, at 13. Because we found that RSM's affiliate TAI did not cooperate to the best of its ability and are applying AFA to all of TAI's sales of subject merchandise in the United States, we have determined that RSM and Jiangsu Metals, which produced and/or exported the subject merchandise, do not qualify for separate rates. *See* our response to Comment 3 in the *Issues and Decision Memorandum* for a further discussion of this issue.

Corroboration of the Adverse-Facts-Available Rate

In the *Preliminary Determination,* in accordance with sections 776(b) of the Act, we assigned an AFA rate to the PRC-wide entity based on a calculated margin derived from information obtained in the course of the investigation and placed on the record of this proceeding. At the *Preliminary Determination,* we applied a rate of 177.62 percent. Based on comments we received from interested parties which changed our calculations of the respondents margins, we have determined to change the AFA rate we applied in the *Preliminary Determination.*

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. The SAA provides that to ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *Ibid.* The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Ibid.* As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.

We find that the export-price and normal-value information in the petition is reliable and relevant and, therefore, have determined that the information has probative value. *See* Memorandum from Lilit Astvatsatrian to Laurie Parkhill, dated February 16, 2005, *Corroboration of the PRC-Wide Adverse Facts-Available Rate*. Accordingly, we find that the highest margin based on that information, 141.49 percent, is corroborated within the meaning of section 776(c) of the Act.

Furthermore, there is no information on the record that demonstrates that the rate we have selected is an inappropriate total AFA rate for the companies in question. Therefore, we consider the selected rate to have probative value with respect to the firms in question and to reflect the appropriate adverse inference.

The PRC-Wide Rate

Because we begin with the presumption that all companies within a non-market-economy (''NME'') country are subject to government control and because only the companies listed under the ''Final Determination Margins'' below have overcome that presumption, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. *See Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China,* 65 FR 25706 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from the respondents listed in the ''Final Determination Margins'' section below (except as noted).

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made changes in our margin calculations for Tianjin. We did not calculate a margin using the information RSM provided because we determined the margin for RSM based on total AFA. For discussion of the company-specific changes we made since the preliminary determination to our calculations of Tianjin's final margin, *see* Memorandum to the File from Lilit Astvatsatrian, Case Analyst, through Robert Bolling, Program Manager, *Analysis Memorandum for the Final Determination of the Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China: Tianjin Magnesium Co., Ltd. (''Tianjin'') (''Final Analysis Memorandum''),* dated February 16, 2005. We made the following changes to the margin calculations:

- We determined the profit ratios for the Indian surrogate companies as a percentage of the cost of manufacturing, selling, general and administrative expenses, and interest.
- We calculated the surrogate value for the subject merchandise produced by Yinguang Metal based on its purchases of pure magnesium from affiliated and unaffiliated suppliers rather than by using surrogate values for inputs used to produce the raw magnesium produced and supplied to Yinguang by Yangyu Magnesium, an affiliated supplier.

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the Period of Investigation:

MAGNESIUM METAL FROM THE PRC

Manufacturer/Exporter	Weighted-Average Margin
Tianjin	91.31
Guangling	91.31
PRC-Wide Rate*	141.49

*Not a separate rate; also applies to the RSM companies and Jiangsu Metals.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Bureau of Customs and Border Protection (''CBP'') to continue to suspend liquidation of all entries of subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after October 4, 2004 for the RSM group of companies.

With respect to Tianjin and Guangling, we will direct the U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all entries of magnesium metal from the PRC that are entered, or withdrawn from warehouse, on or after 90 days before the date of publication of the *Preliminary Determination*. CBP shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These instructions suspending liquidation will remain in effect until further notice.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(I)(1) of the Act.

Dated: February 16, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix

Issues in the Issues and Decision Memorandum

Issues With Respect to RSM

[FR Doc. E5–760 Filed 2–23–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–819]

Magnesium Metal from the Russian Federation: Notice of Final Determination of Sales at Less Than Fair Value

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

Final Determination

We determine that magnesium metal (''magnesium'') from the Russian Federation (''Russia'') is being, or is likely to be, sold in the United States at less-than-fair value (''LTFV''), as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Final Determination Margins'' section of this notice.

EFFECTIVE DATE: February 24, 2005.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley at (202) 482–3148 or Kimberley Hunt at (202) 482–1272 (Avisma); and Josh Reitze at (202) 482–0666 (SMW); AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Case History

On October 4, 2004, the Department of Commerce (''the Department'') published its preliminary determination of sales at LTFV of magnesium metal from Russia. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Magnesium Metal From the Russian Federation,* 69 FR 59197 (October 4, 2004) (*Preliminary Determination*). Since the *Preliminary Determination,* the following events have occurred. On October 8, 2004, Solikamsk Magnesium Works (''SMW'') requested a public hearing. On October 18, 2004, SMW provided a revised version of its U.S. sales database that included all sales invoiced during the period of investigation. The Department conducted verification of JSC AVISMA Titanium-Magnesium Works' (''Avisma'') and SMW's sales and cost questionnaire responses from October 25, 2004, to November 5, 2004.[1] Petitioners[2] requested a hearing on October 28, 2004, and on November 3, 2004, Avisma requested one as well. On November 8 and November 9, 2004, respectively, Petitioners and the USEC Inc. and United States Enrichment Corporation (collectively, ''USEC''), submitted comments regarding Russian energy prices. On November 10, 2004, Avisma requested that the Department reject this submission as USEC is not a party to the proceeding. On November 12, 2004, USEC rebutted Avisma's November 10 submission; on November 18, 2004, Avisma filed a rebuttal to Petitioners' November 8, 2004, submission.

The Department conducted verification of SMW's U.S. affiliate, Solimin Magnesium Corporation (''Solimin''), on December 6 and 7, 2004.[3] The Department conducted verification of Avisma's U.S. affiliate, VSMPO-Tirus, U.S., Inc. (''Tirus''), on December 13 and 14, 2004,[4] and of SMW's other U.S. affiliate, CMC Cometals (''Cometals''), on December 16 and 17, 2004.[5]

On January 4, 2005, Petitioners submitted ''previously unavailable'' information on the Russian energy market. Avisma, on January 5, and SMW, on January 6, 2005, requested that Petitioners' ''untimely'' submission be removed from the record. During the weeks of January 3rd and January 10th, the Department held meetings with several parties on the energy issue and memoranda documenting these meetings have been placed on the record of this investigation. On January 7, 2005, the Department extended the time limits on the submission of factual information and accepted the Petitioners' submission. On January 14, 2005, Avisma argued that the Department should not rely on the information contained in Petitioners' January 4, 2005, submission.

On January 7, 2005, Petitioners, Avisma, SMW, and Northwest Alloys, Inc. and Alcoa, Inc. (collectively, ''Alcoa''), submitted case briefs. SMW submitted a rebuttal brief on January 12 and Petitioners and Avisma submitted rebuttal briefs on January 13, 2005.

On January 12, 2005, the Department requested comments on a methodological issue related to the cost of electricity. On January 14, 2005, Alcoa submitted comments; on January 18, 2005, Avisma and USEC also submitted comments. On January 18, 2005, Petitioners made three submissions, the first two calling for Avisma's and Alcoa's submissions to be struck from the record and the third responding to the Department's request for comment. On January 19, 2005, Avisma made another submission arguing the relevance of Petitioners' January 18, 2005, submission. On January 21, 2005, Petitioners submitted rebuttal comments to Alcoa's January 14, 2005, submission and Avisma's January 18, 2005, submission. On

[1] *See* Memorandum to the File, from Sebastian Wright, Magnesium Metal From The Russian Federation: Verification Report for JSC AVISMA Titanium-Magnesium Works, December 23, 2004 (*Avisma Verification Report*); Memorandum to Neal M. Halper from Robert Greger, *et al.*, Verification Report on the Cost of Production and Constructed Value Data Submitted by JSC AVISMA Titanium-Magnesium Works, December 30, 2004 (*Avisma Cost Verification Report*); *See* Memorandum to the File from Maria MacKay and Mark Hoadley; Magnesium Metal From The Russian Federation: Verification Report for Solikamsk Magnesium Works (*SMW Verification Report*); and Memorandum to Neal M. Halper from Ernest Gziryan, *et al;* Verification Report on the Cost of Production and Constructed Value Data Submitted by Solikamsk Magnesium Works, December 30, 2004 (*SMW Cost Verification Report*), on file in the Central Records Unit, Room B–099 of the Main Commerce building (''CRU'').

[2] Petitioners in this investigation are U.S. Magnesium Corporation, LLC; United Steelworkers of America, Local 8319; and Glass, Molders, Pottery, Plastics and Allied Workers International, Local 374.

[3] Memorandum to the File, from Joshua Reitze and Kimberley Hunt, Magnesium Metal From The Russian Federation: U.S. Sales Verification, December 29, 2004 (*Solimin Verification Report*), on file in the CRU.

[4] Memorandum to the File, from Sebastian Wright and Mark Hoadley; Magnesium Metal From The Russian Federation: Verification Report for JSC AVISMA Titanium-Magnesium Works, December 30, 2004 (*Tirus Verification Report*), on file in the CRU.

[5] Memorandum to the File, from Joshua Reitze and Kimberley Hunt, Magnesium Metal From The Russian Federation: U.S. Sales Verification (Cometals), December 30, 2004 (*Cometals Verification Report*), on file in the CRU.

January 21, 2005, Avisma and SMW both filed rebuttals to Petitioners' January 18, 2005, comments.

A public hearing was held on January 21, 2005. On January 26, 2005, Alcoa made a submission, requested at the hearing by the Department, stating that, in its view, the information presented at the hearing had already been placed on the record of the proceeding.

Period of Investigation

The period of investigation (''POI'') is January 1, 2003, through December 31, 2003. *See* 19 CFR § 351.204(b)(1).

Scope of Investigation

For the purpose of this investigation, the product covered is magnesium metal (also referred to as magnesium) from Russia. The products covered by this investigation are primary and secondary pure and 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 of 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 pure and alloy magnesium metal products made from primary and/or secondary magnesium, including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: (1) Products that contain at least 99.95 percent 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 magnesium, by weight (generally referred to as ''pure'' magnesium); and (3) chemical combinations of magnesium and other material(s) in which the magnesium content is 50 percent or greater, but less that 99.8 percent, by weight, whether or not conforming to an ''ASTM Specification for Magnesium Alloy.''

The scope of this investigation excludes: (1) Magnesium that is in liquid or molten form; and (2) 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, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[6]

The magnesium subject to this investigation is classifiable under item numbers 8104.11.00, 8104.19.00, 8104.30.00, and 8104.90.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS item numbers are provided for convenience and customs purposes only. The written description of the merchandise under investigation is dispositive.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Avisma and SMW for use in this final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the Respondents.

Energy Costs

In the original petition for the imposition of antidumping duties on U.S. imports of magnesium from Russia, Petitioners alleged that Russian energy costs are distorted by excessive Russian government involvement in the energy sector. Citing section 773(f)(1)(A) of the Act, Petitioners requested that the Department adjust Respondents' reported energy costs to account for the effects of this government involvement and to reflect better what they considered to be true, market-based energy costs. Petitioners argued that the use of the qualifying word ''normally'' demonstrates that the Department has the authority to disregard reported costs under certain circumstances.

In the *Notice of Initiation of Antidumping Duty Investigations: Magnesium Metal From the People's Republic of China and the Russian Federation,* 69 FR 15293 (March 25, 2004) (''*Initiation Notice*''), the Department recognized the complexity of valuing energy costs and stated its intention to examine this issue during the course of this investigation. On July 30, 2004, Petitioners submitted additional information to support their claim that Russian government involvement resulted in gas and electricity prices that do not reflect ''economic reality.'' Petitioners again argued that the Department has the legal authority to disregard or adjust the energy costs reported by Respondents to account for this distortion, and suggested options for correcting the effects of this distortion. On September 1 and 3, 2004, Avisma responded that the Department does not have the authority to disregard Respondents' reported costs and that there is no precedent for doing so. Furthermore, Avisma argued that there is no evidence that the prices Avisma pays for energy are distorted. In Avisma's view, all of the analyses of the Russian energy prices which had been submitted by Petitioners for the record were based on speculation about future capital costs, and were not relevant to this antidumping investigation. SMW submitted comments on September 15, 2004, which endorsed Avisma's legal analysis.

In its *Preliminary Determination,* the Department did not adjust Respondents' reported electricity costs, but indicated that it would be willing to consider new or updated factual information on the issue of whether electricity prices in Russia are distorted such that the Department should make an adjustment to the specific prices charged to Respondents for purposes of the final determination.[7] On November 8, 2004, Petitioners submitted additional information in support of their arguments for disregarding or adjusting Respondents' reported electricity costs. On November 9, 2004, USEC argued that the Department should adjust Russian electricity prices in this proceeding and should consider similar adjustments in future proceedings. On November 12, 2004, USEC further argued that the Department should proceed with caution in accepting reported input purchase prices in countries that have recently been graduated to market-economy status. On November 18, 2005, Avisma submitted a rebuttal to Petitioners' claims, arguing that the Department has no authority to make an

[6] This second exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from China, 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.

[7] In the *Preliminary Determination,* the Department focused on electricity costs because electricity is the energy input that is significant in the production of magnesium.

adjustment to the costs reflected in Respondents' books and records.

On January 4, 2005, Petitioners submitted information on the sale of a privately-held Russian energy firm to a state-controlled Russian energy firm. On January 6, 2005, the Department notified parties that it would allow this new information to remain on the record and permitted interested parties to rebut such information in accordance with section 351.301(c)(1) of its regulations. On January 12, 2005, the Department issued a memorandum outlining two possible adjustments that could be made to Respondents' reported electricity purchases, in the event the Department decided that an adjustment was appropriate. *See* Memorandum to the File from Lawrence Norton, Energy Pricing in the Antidumping Duty Investigation on Magnesium from the Russian Federation (January 12, 2005). The Department invited interested parties to comment on the possible adjustments. On January 14, 2005, Alcoa responded, arguing that an adjustment would neither be warranted nor consistent with the statute. On January 18, 2005, Avisma responded stating that neither the Department's proposed adjustments, nor any other adjustments would be appropriate in this antidumping investigation. Avisma argued that there is no legal basis for making such an adjustment and the Department has no authority to do so. Also on January 18, 2005, USEC responded to the proposed adjustments, reiterating again that the Department should preserve maximum flexibility for future proceedings. On the same date, Petitioners submitted an argument in favor of one of the possible adjustments, but also argued that the adjustment should be inflated to make it contemporaneous with the POI.

After carefully analyzing all of the evidence and arguments on the record of this proceeding, the Department has determined that, while such adjustments are permissible, based on the specific facts of this case, for purposes of this final determination, it will not make an adjustment to the Respondents' reported electricity costs. Our analyses and specific arguments presented by the parties with respect to this issue are set forth below.

First, we agree with Petitioners that section 773(f) of the statute gives the Department the legal authority to adjust prices recorded in a respondent's books and records under certain circumstances. The statute specifies a standard: ''normally'' the Department will use the costs as recorded in the respondent's books and records in calculating the cost of production if two criteria are met: (1) Those records are kept in accordance with the respondent's home country's Generally Accepted Accounting Principles (GAAP), and (2) those recorded costs reasonably reflect the costs associated with the production and sale of the subject merchandise. However, the statute's explicit use of the word ''normally'' indicates that there may be circumstances where the Department could reasonably determine that the use of the respondent's recorded costs is inappropriate. In such cases, the Department has the discretion to calculate the costs of production by some other reasonable means.

In its June 6, 2002, memorandum graduating Russia from non-market economy (''NME'') status, the Department specifically stated that it retained its statutory authority to evaluate the underlying usefulness of particular costs involved in normal value calculations:

> Accordingly, the Department will examine prices and costs within Russia, utilizing them for the determination of normal value when appropriate or disregarding them when they are not. In this regard, the Department retains its authority to disregard particular prices when the prices are not in the ordinary course of trade, the costs are not in accordance with generally accepted accounting principles, the costs do not reasonably reflect the costs associated with the production or sale of the merchandise, or in other situations provided for in the Act or in the Department's regulations.[8]

The Department further highlighted its concern regarding prices in the Russian energy sector in particular:

> The State no longer controls resource allocations or prices, with the notable exception of energy prices, which remain a significant distortion in the economy, as they encourage the wasteful use (misallocation) of Russia's energy resources and slow the adoption of more efficient production methods. * * * While some market distortions and resource misallocations characterize most market economies, energy is of such significance to the Russian economy that continuation of the Russian government's current energy price regulatory policies may warrant careful consideration of energy price data in future trade remedy cases.[9]

Subsequent to Russia's graduation to market-economy status, the Department renegotiated a suspension agreement concerning cut-to-length carbon steel plate from Russia. In the renegotiated suspension agreement, the Department reiterated its concern over the reliability of costs related to Russia's energy sector, stating that ''(e)xamples of possible areas in which adjustments may be necessary include, but are not limited to, costs related to energy * * *'' [10]

At the time the *NME Memorandum* and the *Suspension Agreement* were issued, the most current information on the Russian energy sector was from 2002. During the course of this investigation, parties have submitted information that has allowed the Department to examine the state of the Russian energy sector, particularly the electricity sector, in 2003. After examining the data on the record of this case at the macroeconomic level, the Department finds substantial evidence of continuing distortions. While electricity prices have been increasing as of late, and while small trading exchanges have been allowed to develop, significant aspects of the electricity sector remain distorted and are not subject to market forces. The World Bank argued in 2003 that ''the government needs to develop a medium-term tariff policy * * * that is designed to bring utility tariffs up to full economic levels.'' [11] Elsewhere, the World Bank defines ''full economic levels'' as long-run marginal cost. In addition, in their latest report, the Organization for Economic Cooperation and Development (''OECD'') states that the Russian electricity sector is dominated by a state-controlled monopoly, and that ''there is neither competition in the wholesale market (which in any case is not really a market) nor choice of supplier for consumers.'' [12]

Information on the record shows that, at the macroeconomic level, the Russian energy sector has yet to be significantly restructured, and that state ownership is still pervasive, in some cases even increasing. Prices are still generally set by the government and overall remain at uneconomic levels that often do not cover the long-run cost of production.[13] Near-monopoly conditions still prevail in production, while production

[8] *See* Memorandum to Faryar Shirzad from Albert Hsu et al, Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping Law (June 6, 2002) (hereafter, the ''*NME Memorandum*'').

[9] *Id.*

[10] *See Suspension of Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel Plate from the Russian Federation,* 68 FR 3859 (January 27, 2003) (hereafter, the ''*Suspension Agreement*'').

[11] World Bank, *Russia: Development Policy Review,* Report No. 26000–RU, June 9, 2003, p. 13.

[12] Organization for Economic Cooperation and Development, *OECD Economic Survey: Russian Federation,* 2004, p. 162–163.

[13] Organization for Economic Cooperation and Development, *OECD Economic Survey: Russian Federation,* 2004, p. 165. Here the OECD states that ''what {electricity tariffs} do not allow for is the recovery of capital cost, and estimates of the sector's capital investment needs vary widely * * *.''

quantities are still being allocated by the government.[14] Additionally, the transparency of energy sector accounts and records is still very poor. Overall, the evidence on the record indicates that the Russian electricity sector is still, as a whole, in the early stages of reform, and is a sector where prices are based neither on market principles nor on long-term cost recovery.

In addition to examining the studies and other information documenting the state of the Russian energy sector as a whole in 2003, the Department also probed the specific experiences of each Respondent in their purchases of electricity during the POI through questionnaire responses and at verification. We found that: (1) The Respondents engage in regular purchases of electricity; (2) the invoices they were issued matched the regional utility's rate schedule; and (3) they pay these invoices on time and in full. *See SMW Cost Verification Report* and *Avisma Cost Verification Report* (December 30, 2004). While these company-specific facts do not alter our conclusions about the meaningful distortions in price at the macroeconomic level, we find that the information on the record of this proceeding with respect to the macroeconomic distortions in the Russian energy sector does not allow the Department to discern and measure the effects of such distortions on Respondents' reported electricity costs. Furthermore, the record evidence does not demonstrate to what extent local and regional conditions do or do not reflect country-wide distortions in the Russian electricity sector.

In summary, because the record evidence of this investigation does not enable us to ascertain the manner and the extent to which the macroeconomic price distortions in the Russian electricity sector affect Respondents' reported electricity costs, the Department has determined not to adjust or disregard such costs for purposes of this final determination. The Department reserves its discretion to do so in future proceedings when evidence of continuing significant distortions at the macroeconomic level is accompanied by sufficient evidence or analysis with respect to the impact of such distortions on energy prices paid by respondent firms.

Application of Facts Available

During verification, the Department discovered numerous errors in Avisma's payment dates as reported in Avisma's questionnaire responses. These errors, ranging up to over a year difference between the actual payment date and the date reported to the Department, call into question the accuracy and reliability of Avisma's payment dates as reported. We therefore determine that the payment dates reported could not be verified. Pursuant to section 776(a) of the Act, the Department may resort to facts otherwise available when the ''necessary information is not available on the record,'' or an interested party provides information ''but that information cannot be verified. * * *'' Accordingly, we find it appropriate to rely on partial facts available to determine payment date.

Section 776(b) of the Act provides that the Department may apply an adverse inference in selecting from the facts otherwise available when ''an interested party has failed to cooperate by not acting to the best of its ability. * * *'' Avisma did discover one incorrect payment in the course of preparing for verification, a rather large error, which it reported as a minor correction prior to the start of verification. During verification, however, the Department found numerous other errors, some also significant in size, in reviewing the documentation that was solely in Avisma's control. We determine that Avisma had the ability to conduct a more thorough evaluation of its own records prior to verification, and could have discovered these errors on its own. Had Avisma done so, it would have been alerted to the fact that there was a problem with the method it used to collect and report payment dates. Moreover, Avisma could have reported these problems to the Department before the commencement of verification. Having failed to do so, the Department finds that Avisma failed to cooperate to the best of its ability and the application of an adverse inference is warranted.

As a result, the Department has determined to replace the payment dates reported by applying the longest verified period between payment date and shipment date for prepayment sales (regardless of whether the payment was received in one or multiple installments), and the shortest verified period between payment date and shipment date for all other sales.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding are listed in the Appendix to this notice and addressed in the Memorandum from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the Antidumping Duty Investigation of Magnesium Metal from the Russian Federation (January 1, 2003–December 31, 2003),'' (''*Decision Memorandum*''), dated concurrently with this notice, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation in this public memorandum which is on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at: *http://ia.ita.doc.gov/frn/index.html.* The paper copy and the electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification and on our analysis of the comments received, we have made certain adjustments to the margin calculations used in the *Preliminary Determination.* These adjustments are discussed in detail in the *Decision Memorandum* and are listed below:

AVISMA

1. We included ''barter sales'' in the home-market database.
2. We recalculated the credit period based on verification findings.
3. We adjusted Avisma's interest rate to accurately reflect the underlying loan documents, examined at verification.
4. We recalculated U.S. repacking expenses based on verification findings.
5. We recalculated inventory carrying costs to reflect the revised interest rate and an error discovered at verification regarding the average number of days in inventory.
6. We recalculated Avisma's chlorine gas by-product offset for a restatement of disposal quantities.
7. We adjusted Avisma's reported depreciation expenses to account for the revaluation of fixed assets to reflect inflation.
8. We adjusted Avisma's general and administrative (''G&A'') expense ratio to include certain other operating and non-operating income and expenses.

SMW

1. We included ''barter sales'' in the home-market database.
2. We disregarded SMW's billing adjustments for exchange rate gains and losses on stockpile sales.
3. We adjusted SMW's ''zeroed out'' credit expenses for prepaid sales to reflect negative credit expenses.
4. We removed two observations from the SMW home-market dataset erroneously reported as sales.

[14] *Id.,* p. 163.

5. We deducted certain commissions paid on sales to one U.S. customer.

6. We adjusted domestic inventory carrying costs to include both days at sea and days in inventory at the factory.

7. We adjusted the reported home-market interest rate to reflect only loans denominated in rubles.

8. We recalculated inventory carrying costs to reflect the revised interest rates.

9. We used home-market indirect selling expenses as reported in the cost database, not those figures reported in the sales database.

10. We recalculated U.S. indirect selling expenses using the latest total U.S. sales figure.

11. We adjusted the reported value of carnallite purchased from an affiliated supplier in accordance with the major input rule of section 773(f)(3) of the Act.

12. We adjusted the reported G&A expense rate to include certain income and expense items related to the general operations of the company.

13. We removed selling expenses which were incorrectly reported in the cost of production (''COP'') file.

14. We adjusted the reported factory overhead costs to reflect the amount of factory overhead recorded in the financial statements.

15. SMW provided multiple costs for the same control number. We calculated a single weighted-average cost for that control number.

16. We adjusted the reported financial expense rate to include net foreign currency exchange gains and losses and short-term interest income recorded as non-operating items on SMW's financial statements.

17. We adjusted Solikamsk Desulphurizer Works' (''SZD'') reported G&A expense rate to include certain non-operating income and expense items related to the general operations of the company.

18. We removed selling expenses for SZD which were incorrectly reported in the COP file.

Final Determination Margins

We determine that the following weighted-average dumping margins exist for the period January 1, 2003, through December 31, 2003:

Manufacturer/exporter	Weighted-average margin (percent)
JSC AVISMA Titanium-Magnesium Works	22.28
Solikamsk Magnesium Works	18.65
All Others	21.45

Continuation of Suspension of Liquidation

Pursuant to 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 magnesium from Russia that are entered, or withdrawn from warehouse, for consumption on or after October 4, 2004, the date of publication of the Preliminary Determination in the **Federal Register**. We will instruct CBP to continue to require, for each entry, a cash deposit or the posting of a bond equal to the weighted-average dumping margins indicated above. These instructions suspending liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the U.S. International Trade Commission (''ITC'') of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are materially injuring, or threatening material injury to, an industry in the United States. If the ITC determines that material injury, or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(I)(1) of the Act.

Dated: February 16, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—List of Issues Covered in the Decision Memorandum

Part I—General Issues

Comment 1: Scope of the Order—One or Two Classes or Kinds of Merchandise.
Comment 2: Electricity Costs—Whether to Disregard or Adjust Reported Electricity Costs to Account for Distortions in the Russian Electricity Sector.
Comment 3: Barter Sales.

Part II—Avisma

Comment 4: Sales Through Bonded Warehouse.
Comment 5: Model Matching of Certain Avisma Products.
Comment 6: Constructed Export Price (''CEP'') Offset.
Comment 7: Payment Dates for Certain Home-Market Sales.
Comment 8: By-Product Credit.
Comment 9: Depreciation Expense.
Comment 10: Non-Operating Income and Expenses.
Comment 11: Interest on Affiliated Party Loan.
Comment 12: Foreign Exchange Gains and Losses.

Part III—SMW

Comment 13: Model Matching of Certain SMW Products.
Comment 14: Date of Sale.
Comment 15: Sales to the Russian Government Stockpile.
Comment 16: Certain Selling Expenses on Sales to the Stockpile.
Comment 17: Domestic Inventory Carrying Costs.
Comment 18: Selling Expenses Reported in the Cost File.
Comment 19: General and Administrative (''G&A'') Expenses.
Comment 20: Factory Overhead.
Comment 21: By-Product Offset.
Comment 22: Major Input.
Comment 23: Weighted Average Per-Unit Cost.
Comment 24: General and Administrative Expenses—Solikamsk Desulphurizer Works (''SZD'').

[FR Doc. E5–765 Filed 2–23–05; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan

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

f. Sanitation and Refuse

1. You must not dispose of any cans, bottles or other refuse except in designated places or receptacles.

2. You must not dump household, commercial, or industrial refuse onto public lands.

3. You must not possess glass containers where prohibited as established through a final land use planning decision, **Federal Register** notification, or other planning process.

4. You must not litter.

g. Other Acts

1. You must not violate state laws relating to the use, possession, or consumption of alcohol or controlled substances.

Penalities

On public lands in grazing districts (see 43 U.S.C. 315a) and on public lands leased for grazing under 43 U.S.C. 315m, any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $500.00. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

On public lands subject to a conservation and rehabilitation program implemented by the Secretary under 16 U.S.C. 670g *et seq.* (Sikes Act), any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $500.00 or imprisoned for no more than six months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

On public lands under section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733 (a) and 43 CFR 8360–7, any person who violates any of these supplementary rules on public lands within the boundaries established in the rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Elaine M. Brong,

Oregon State Director, Bureau of Land Management.

[FR Doc. 05–3421 Filed 2–24–05; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1071–1072 (Final)]

In the Matter of: Magnesium From China and Russia; Notice of Commission Determination To Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing.

SUMMARY: Upon request of respondents Alcoa Inc. and Northwest Alloys, the Commission has determined to conduct a portion of its hearing in the above-captioned investigation scheduled for February 23, 2005, *in camera*. *See* Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. *See* Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Peter Sultan, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3094. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–3105.

SUPPLEMENTARY INFORMATION: The Commission believes that Alcoa and Northwest have justified the need for a closed session. Alcoa and Northwest seek a closed session to allow for a discussion of business proprietary financial information. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by the petitioners and by respondents, with questions from the Commission. In addition, the hearing will include a 10-minute *in camera* session for a confidential presentation by Alcoa and Northwest, followed by a 10-minute *in camera* rebuttal presentation by petitioners. Questions from the Commission relating to the BPI will follow each of the *in camera* presentations. During the *in camera* session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. *See* 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in his opinion, a portion of the Commission's hearing in *Magnesium from China and Russia*, Inv. Nos. 731–TA–1071–1072 (Final), may be closed to the public to prevent the disclosure of BPI.

By order of the Commission.

Issued: February 18, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–3641 Filed 2–24–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: ARCOS Transaction Reporting—DEA Form 333.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 244 page 76479 on December 21, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 28, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)

APPENDIX B

HEARING WITNESSES

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject: Magnesium from China and Russia

Inv. Nos.: 731-TA-1071 and 1072 (Final)

Date and Time: February 23, 2004 - 9:30 a.m.

Sessions were held in connection with these investigations in the Main Hearing Room (room 101), 500 E Street, SW, Washington, DC.

OPENING REMARKS:

Petitioner (**Joseph W. Dorn**, King & Spalding LLP)
Respondents (**John M. Gurley**, Coudert Brothers LLP)

In Support of the Imposition of Antidumping Duties:

SESSION 1: Petitioners' Public Presentation (Open to the Public):

King & Spalding LLP
Washington, DC
on behalf of

US Magnesium LLC
United Steelworkers of America, Local 8319
Glass, Molders, Pottery, Plastics & Allied Workers International, Local 374

Michael Legge, President & CEO, US Magnesium LLC

Cameron F. Tissington, Vice President, Sales and Marketing, US Magnesium LLC

Cody Brown, President, United Steelworkers of America, Local 8319

In Support of the Imposition of
Antidumping Duties (continued):

Kenneth R. Button, Economic Consultant, Economic Consulting Services LLC

Jennifer Lutz, Economic Consultant, Economic Consulting Services LLC

Joseph W. Dorn)
) – OF COUNSEL
Stephen J. Narkin)

SESSION 2: Respondents' Public Presentation (Open to the Public):

In Opposition to the Imposition of
Antidumping Duties:

Vorys, Sater, Seymour and Pease LLP
Washington, DC
on behalf of

Solikamsk Magnesium Works ("SMW")
Solimin Magnesium Corporation ("Solimin")

Edward C. Roels, Chief Financial Officer, Lunt Manufacturing Co., Inc.

David G. Norrell, Counsel for Lunt Manufacturing Co., Inc., Kirkland & Ellis LLP

Kris R. Pfaehler, Vice President, Business Development & Marketing, Meridian Technologies Inc.

Paul Arh, Director, Strategic Planning, Meridian Technologies Inc.

Kevin Ferguson, Corporate Cost Reduction Manager, Gibbs Die Casting Corporation

In Opposition to the Imposition of
Antidumping Duties (continued):

Michael Sparks, Executive Vice President,
Spartan Light Metal Products, Inc.

John Hunkins, Director, Material,
Spartan Light Metal Products, Inc.

Patrick B. Fazzone, Counsel for Spartan Light Metal Products, Inc.; Meridian Technologies, Inc.; and Gibbs Die Casting, Tighe Patton Armstrong Teasdale PLLC

Frederick P. Waite)
) – OF COUNSEL
Kimberly R. Young)

Hogan & Hartson L.L.P
Washington, DC
on behalf of

Alcoa Inc.
Northwest Alloys

Robert McHale, Vice President, Metal Purchases East, Alcoa Inc.

Elizabeth Fessenden, President, Alcoa Flexible Packing L.L.C. (previously in charge of Northwest Alloys)

Paula Stern, Chairwoman, The Stern Group, Inc.

Andrew Szamosszegi, Economic Consultant, LECG, LLC

Lewis E. Leibowitz)
) – OF COUNSEL
Lynn G. Kamarck)

In Opposition to the Imposition of
Antidumping Duties (continued):

Coudert Brothers LLP
Washington, DC
on behalf of

JSC AVISMA Titanium-Magnesium Works ("AVISMA")
VSMPO-Tirus, U.S., Inc. ("VSMPO-Tirus")

John G. Reilly, Economist, Nathan Associates, Inc.

John M. Gurley) – OF COUNSEL

Barnes, Richardson & Colburn
Washington, DC
on behalf of

Alcan Corporation
Novelis, Inc.

Alain Dery, Manager, Alloy Procurement, Alcan, Inc.

Sung Huh, Manager, Corporate Procurement Strategy,
Novelis, Inc.

Robert A. Shapiro) – OF COUNSEL

SESSION 3: Respondents' In Camera Presentation (Closed to the Public)

SESSION 4: Petitioners' In Camera Presentation (Closed to the Public)

REBUTTAL/CLOSING REMARKS

Petitioners (**Joseph W. Dorn**, King & Spalding L.L.P.)
Respondents (**Lewis E. Leibowitz**, Hogan & Hartson L.L.P.)

APPENDIX C

SUMMARY DATA

Table C-1
Pure magnesium: Summary data concerning the U.S. market, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

Table C-2
Alloy magnesium: Summary data concerning the U.S. market, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

Table C-3
All magnesium: Summary data concerning the U.S. market, 2001-03, January-September 2003, and January-September 2004

* * * * * * *

Table C-4
Pure magnesium: Summary data concerning the U.S. market, 2000-03

* * * * * * *

Table C-5
Alloy magnesium: Summary data concerning the U.S. market, 2000-03

* * * * * * *

Table C-6
All magnesium: Summary data concerning the U.S. market, 2000-03

* * * * * * *

APPENDIX D

PRICE DATA FOR BOTH SUBJECT COUNTRIES TOGETHER

Table D-1
Magnesium: Weighted-average f.o.b. selling prices and quantities of products 2 and 4 as reported by U.S. importers, and margins of underselling/(overselling) with U.S. products 1 and 4 respectively, by quarters, January 2000-September 2004

* * * * * * *

APPENDIX E

ALLEGED EFFECTS OF IMPORTS ON U.S. PRODUCERS' EXISTING DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, AND SCALE OF CAPITAL INVESTMENTS AND ALLEGED OTHER CAUSES OF INJURY

The Commission requested U.S. producers to describe any actual or anticipated negative effects of imports since January 1, 2001, on their return on investment or growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of capital investments as a result of imports of pure and alloy magnesium from Russia or alloy magnesium from China. Their responses are as follows:

Actual Negative Effects–Imports of Pure Magnesium from Russia

Garfield

***

Halaco

***[1]

Northwest Alloys

***

MagReTech

***

US Magnesium

***[2]

Actual Negative Effects–Imports of Alloy Magnesium from China and/or Russia

Garfield[3]

***

Halaco[4]

***

MagReTech

***

[1] The firm did ***.

[2] Attachment A to US Magnesium's questionnaire response is not reproduced in this report.

[3] ***.

[4] Halaco has been the object of numerous environmental lawsuits, including criminal charges, as detailed in the local press in California.

Northwest

***

US Magnesium

***

Anticipated Negative Effects of Imports of Pure and/or Alloy Magnesium from Russia and/or Alloy Magnesium from China

Garfield

***

Halaco

***

MagReTech

***

Northwest

***

US Magnesium

***

Alleged Other Causes of Injury to US Magnesium

The financial dealings of the Renco Group, of which US Magnesium is an affiliate, were the subject of some controversy and discussion in the investigations on magnesium from China, Russia, and Israel, and the issue was raised again in the current investigations.[5] Respondents alleged that Magcorp was mismanaged, that its corporate parent looted the firm of its available cash, leaving it heavily in debt and financially vulnerable, and that these two factors combined to drive Magcorp into bankruptcy.[6]

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[5] Alcoa's postconference brief, pp. 20-26; Alcoa's prehearing brief, pp. 37-43; and Alcoa's posthearing brief, pp. 26-34.

[6] To summarize briefly events leading to Magcorp's bankruptcy: Magcorp, the predecessor firm to US Magnesium, was an affiliate of Ira Leon Rennert, Chairman and Chief Executive Officer of Renco Metals, which is a wholly owned subsidiary of The Renco Group, owned by Mr. Rennert and family trusts. Magcorp had been a subsidiary of Renco Metals from 1993; Renco Metals sold $150 million of "senior notes" (general unsecured obligations) in 1996 and due in 2003, but the amount was guaranteed jointly and severally by Magcorp and its affiliated company Sobel (a steel distributor). As described in the selling prospectus, the offering's net proceeds of $143.5 million were to be combined with available cash of $34.8 million and used to retire existing 12-percent notes ($88.8 million), remit a dividend to the Renco Group ($75.7 million), redeem 10-percent preferred stock from Group

(continued...)

Respondents in these investigations stated that the "Renco financial decisions caught up with Magcorp," referring to the high interest expense associated with the 1996 note offering (guaranteed by Magcorp) and the dividend paid to the Renco Group (mostly from the net proceeds of the note offering as well as from Magcorp's cash).[7] They further stated that reliance on funding from operating cash flows for critically needed capital investments to improve production efficiency, reduce energy costs, and reduce chlorine emissions was a fundamentally flawed strategy in light of the industry's cyclical nature. Respondents further state that lawsuits filed by the U.S. EPA[8] and the bankruptcy trustee[9] give rise to large potential financial liabilities, and give rise to concerns that cause potential purchasers of magnesium not to rely solely on US Magnesium as a source of supply.

In the 2001 investigations involving imports from China, Russia, and Israel, petitioners discussed extensively the ownership structure of Magcorp, the 1996 note issue of $150 million, and the large dividend paid to Mr. Ira Rennert (who owned Magcorp through Renco Metals and the Renco Group) at that time. In the 2001 investigations as in the current investigations, petitioners stated that "notwithstanding the 1996 dividend, Magcorp continued to operate profitably during its fiscal years

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[6] (...continued)
($8.5 million), and fund "contractual compensation payments to Magcorp executives" ($5.3 million). According to this same prospectus, the effect was to nearly eliminate the account, "cash and cash equivalents," increase total long term debt from $75.5 million to $152.5 million, and in shareholders' equity, eliminate preferred stock and reduce retained earnings from $3.0 million to a deficit of $81.3 million. Renco Metals Inc., *Prospectus and Registration of $150 million 11-1/2 percent senior notes due 2003*, found at *http://www.sec.gov/archives/edgar/data/912553/0000950123-96-003354.txt*, retrieved on February 27, 2004, pp. 11and 12 (as filed). Also referred to in the prospectus was a "capital improvement program totaling approximately $46 million which encompassed the installation of new electrolytic cell technology, as well as the installation of a magnesium caster." Renco Metals defaulted on the notes at the beginning of 2001 and filed for bankruptcy protection on August 2, 2001, together with its subsidiary, Magcorp. Magcorp operated as debtor-in-possession until June 24, 2002; although Magcorp's reorganization plan was never approved by the court, Magcorp obtained authority to sell substantially all of its assets to US Magnesium. At the time when Magcorp was sold to US Magnesium, a new firm formed by the Renco Group, Renco Metals, disappeared.

[7] For example, respondents stated at the staff conference that the causes of Magcorp's bankruptcy and subsequent creation of US Magnesium are relevant to these investigations, that those events contradict a characterization of the debt issue and dividend as "reasonable" because the transaction left Magcorp unable to handle its debt burden (Leibowitz, Hogan & Hartson, counsel for Alcoa and Northwest Alloys, conference transcript, p. 105; also, Mr. McHale, Vice President of Purchasing East, Alcoa, conference transcript, p. 107). Conference transcript, p. 105 (Mr. Leibowitz) and pp. 111-113 (Ms. Stern). Also, *see* respondents' postconference brief on behalf of Alcoa and Northwest Alloys, pp. 20-26.

[8] Prior to the bankruptcy filing, in January 2001 the U.S. Department of Justice and the U.S. Environmental Protection Agency filed a suit against Magcorp, the Renco Group, the Rennert trusts, Rennert, and (amended to add) US Magnesium seeking injunctive relief to prohibit the company from continuing to illegally generate, store, and dispose of at least five hazardous wastes under the Resource Conservation and Recovery Act (RCRA), to direct the company to comply with federal and state environmental laws, and to impose penalties on the company. At issue is whether certain hazardous wastes are properly excluded from RCRA because they arise from certain covered processes involving minerals (the Bevill Amendment). *See*, USEPA, press release, "DOJ/EPA file lawsuit against mining company," January 17, 2001, found at Internet site, *http://www.epa.gov*, retrieved on March 11, 2004. The US EPA requested civil penalties of up to $25,000 per day for each day of violation prior to January 30, 1997, and up to $27,500 per day for each day of violation after January 30, 1997. *See* also, Alcoa's posthearing brief, exh. 19.

[9] On July 31, 2003, the bankruptcy trustee commenced an adversary proceeding against the same defendants, basing its claims on corporate waste and mismanagement, unjust enrichment, declaration and receipt of unlawful dividends, and other things. *See*, "Final report and account of Chapter 11 Trustee," October 23, 2003, U.S. Bankruptcy Court for the Southern District of New York, Chapter 7 Case No. 01-14312 (REG). *See* also, Alcoa's posthearing brief, exh. 19.

ending in 1997 and 1998. Magcorp's inability to generate a profit thereafter was attributable to decreasing U.S. market prices for magnesium caused in large part by lower priced imports from China and Russia." Petitioners also referred to the testimony of Mr. Martini, president of an investment firm, Plymouth Partners, who had purchased some $13 million of the notes.[10] Finally, petitioners stated that the capital modernization program was hindered by technical factors that caused it to fall dramatically behind schedule (with consequent adverse effects on production efficiency and costs) and not as a result of the firm's lack of liquidity and its financial distress.

Staff requested US Magnesium to address issues raised by respondents and noted in the Commission's opinion in the preliminary phase of these investigations. US Magnesium's response is as follows:

* * * * * * *

[10] Petitioners' postconference brief, app. A, pp. 7-8 and att. 10 (hearing transcript).

APPENDIX F

FINANCIAL DATA TABLES

This appendix primarily presents the results of operations on non-toll alloy magnesium and supplements data presented in part VI of the staff report. Non-toll operations are those of trade sales, as noted earlier. The following tables are provided:

Table F-1 presents the results of operations on non-toll alloy magnesium; this corresponds to table VI-3 of the prehearing staff report.

Table F-2 presents data on a firm-by-firm basis for their operations on non-toll alloy magnesium; this corresponds to table VI-8 of the prehearing staff report.

Table F-3 presents the aggregated results of operations on pure and non-toll alloy magnesium; this corresponds to table VI-1 of the prehearing staff report.

Table F-4 presents the results of operations on tolled alloy magnesium; this corresponds to table VI-9 of the prehearing staff report.

Table F-5 presents the variance analysis for operations on pure magnesium; this corresponds to table VI-11 of the prehearing staff report.

Table F-6 presents the variance analysis for operations on non-toll alloy magnesium; this corresponds to table VI-12 of the prehearing staff report.

Table F-1
Alloy magnesium: Results of non-toll operations of U.S. firms, fiscal years 2001-03, January-September 2003, and January-September 2004

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Table F-2
Alloy magnesium: Results of non-toll operations of U.S. firms, by firm, fiscal years 2001-03, January-September 2003, and January-September 2004

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Table F-3
Pure and non-toll alloy magnesium: Aggregated results of operations of U.S. firms, fiscal years 2001-03, January-September 2003, and January-September 2004

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Table F-4
Alloy magnesium: Results of tolling operations of U.S. firms, fiscal years 2001-03, January-September 2003, and January-September 2004

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Variance Analysis

A variance analysis for the reporting U.S. firms on their commercial operations is presented in tables F-5 and F-6, which are for pure magnesium and non-toll alloy magnesium, respectively. The information for these variance analyses is derived from tables VI-2 and F-1, respectively. The variance analysis provides an assessment of changes in profitability as related to changes in pricing, cost, and

volume. The increases in *** for pure magnesium and non-toll alloy magnesium between 2002 and 2003 were attributable to a combination of unfavorable variances of price (prices decreased) and volume (it cost more to sell the additional volume) on pure magnesium. Price and net cost/expense variances were unfavorable with respect to alloy magnesium and conteracted a favorable volume variance between 2002 and 2003.

Excluding US Magnesium's *** affects the operating income variance for 2001-03 and 2001-02, making that variance unfavorable between the periods. Because it reduces the favorable net cost/expense and volume variances by a combined $***, but does not affect the unfavorable price variance (prices decline) between 2001 and any subsequent year, the effect of an unfavorable price variance becomes greater.

The variances in tables F-5 and F-6 also are affected by Northwest Alloy's shutdown and the reduction of total sales by *** percent. Excluding Northwest from the variance analysis results in a decline in combined firms' *** by $*** in 2001 for operations on pure magnesium and is split approximately $*** between 2001 and 2003 as a reduction in the unfavorable price variance, a *** increase in the net cost/expense variance, and a *** decrease in the net volume. In any event, little weight should be given to changes between 2001 and other years.

Table F-5
Pure magnesium: Variance analysis on results of operations of U.S. firms, fiscal years 2001-03, and January-September 2003-04

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Table F-6
Non-toll alloy magnesium: Variance analysis on results of operations of U.S. firms, fiscal years 2001-03, and January-September 2003-04

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