

June 29, 2010

TO: Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Issues and Decision Memorandum for the Final Results in the Expedited
Sunset Reviews of the Antidumping Duty Orders on Magnesium Metal from
the People's Republic of China and the Russian Federation

SUMMARY

We have analyzed the substantive response of the domestic interested party in the sunset reviews of the antidumping duty orders on magnesium metal from the People's Republic of China ("PRC") and the Russian Federation ("Russia").¹ We did not receive a substantive response from any respondent party in either review. We recommend that you approve the positions we describe in this memorandum. Below is a complete list of issues in these sunset reviews for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping; and
2. Magnitude of the dumping margin likely to prevail.

HISTORY OF THE ORDERS

PRC

On February 24, 2005, the Department of Commerce ("Department") published its affirmative determination of sales at less than fair value ("LTFV") with respect to magnesium metal from the PRC. *See 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 (February 24, 2005). On March 29, 2005, the Department published its amended affirmative determination of sales at LTFV with respect to magnesium metal from the PRC. *See Notice*

¹ The domestic interested party in these sunset reviews is US Magnesium LLC ("US Magnesium"), a petitioner in the antidumping duty investigations concerning imports of magnesium metal from the PRC and Russia. *See 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).

of Amended Final Determination of Sales at Less Than Fair Value: Magnesium Metal from the People's Republic of China, 70 FR 15838 (March 29, 2005), and accompanying Issues and Decision Memorandum. On April 15, 2005, the United States International Trade Commission (“ITC”) issued its affirmative injury determination in the investigation. See *Magnesium From China and Russia*, 70 FR 19969 (April 15, 2005) (“*ITC Final Determination*”).

Also, on April 15, 2005, the Department published an antidumping duty order in this case. See *Notice of Antidumping Duty Order: Magnesium Metal From the People's Republic of China*, 70 FR 19928 (April 15, 2005) (“*PRC Order*”). The Department established a weighted-average margin of 49.66 percent for both Tianjin Magnesium International Co., Ltd. (“TMI”) and Beijing Guangling Jinghua Science & Technology Co., Ltd. (“Guangling”), and 141.49 percent for the PRC-wide entity.

Since issuance of the *PRC Order*, the Department has completed one administrative review in this proceeding.² In the administrative review covering April 1, 2006 to March 30, 2007, the Department published one company-specific weighted-average dumping margin of zero percent for TMI. The Department rescinded the subsequent administrative review, covering April 1, 2007 to March 31, 2008, because the only party to request a review timely withdrew its request.³ The *PRC Order* remains in effect for all exporters and exporters/producers of subject merchandise from the PRC. To date, the Department has not issued any duty absorption findings in this case.

Russia

On February 24, 2005, the Department published its affirmative determination of sales at LTFV with respect to magnesium metal from Russia. *Magnesium Metal from the Russian Federation: Notice of Final Determination of Sales at Less Than Fair Value*, 70 FR 9041 (February 24, 2005). On March 29, 2005, the Department published its amended affirmative determination of sales at LTFV with respect to magnesium metal from Russia. See *Magnesium Metal From the Russian Federation: Notice of Amended Final Determination of Sales at Less Than Fair Value*, 70 FR 15837 (March 29, 2005). On April 15, 2005, the ITC issued its affirmative injury determination in the investigation. See *ITC Final Determination*.

Thereafter, the Department published an antidumping duty order on April 15, 2005. See *Notice of Antidumping Duty Order: Magnesium Metal From the Russian Federation*, 70 FR 19930 (April 15, 2005) (“*Russia Order*”). The Department established a weighted-average margin of 21.71 percent for JSC AVISMA Titanium-Magnesium Works (“AVISMA”), 18.65 percent for Solikamsk Magnesium Works (“Solikamsk”), and 21.01 percent for all other companies in Russia.

² See *Magnesium Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 40293 (July 14, 2008)

³ *Magnesium Metal from the People's Republic of China: Notice of Rescission of the 2007–2008 Administrative Review of the Antidumping Duty Order*, 73 FR 72448 (November 28, 2008).

Since issuance of the *Russia Order*, the Department has completed three administrative reviews in this proceeding.⁴ In the administrative review covering October 4, 2004 to March 31, 2006, the Department published company-specific, weighted-average dumping margins of 0.41 percent for PSC VSMPO-AVISMA Corporation (“PSC-AVISMA”), and 3.77 percent for Solikamsk. In the administrative review covering April 1, 2006 to March 31, 2007, the Department published company-specific, weighted-average dumping margins of 15.77 percent for PSC-AVISMA and 21.71 percent for Solikamsk. In the administrative review covering April 1, 2007 to March 31, 2008, the Department published a company-specific, weighted-average dumping margin of 43.58 percent for PSC-AVISMA and we rescinded the review with respect to Solikamsk because we confirmed Solikamsk’s claim of no shipments during the period of review. The *Russia Order* remains in effect for all exporters and exporters/producers of subject merchandise from Russia. To date, the Department has not issued any duty absorption findings in this case.

BACKGROUND

On March 1, 2010, the Department initiated sunset reviews of the *Russia Order* and *PRC Order* pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See *Initiation of Five-Year (“Sunset”) Review*, 75 FR 9160 (March 1, 2010). On March 16, 2010, the Department received a timely notice of intent to participate in the sunset reviews from US Magnesium (“Petitioner”), pursuant to 19 C.F.R. 351.218(d)(1)(i). In accordance with 19 C.F.R. 351.218(d)(1)(ii)(A), Petitioner claimed interested party status under section 771(9)(C) of the Act as a producer of domestic like product.

On March 31, 2010, Petitioner filed substantive responses in these sunset reviews within the 30-day deadline, as specified in 19 C.F.R. 351.218(d)(3)(i).⁵ The Department did not receive a substantive response from any respondent interested party in these sunset reviews. Based on the lack of an adequate response in these sunset reviews from any respondent party, the Department is conducting expedited (120-day) sunset reviews consistent with section 751(c)(3)(B) of the Act and 19 C.F.R. 351.218(e)(1)(ii)(C)(2). See also *Procedures for Conducting Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516, 13519 (March 20, 1998) (the Department normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response). Our analysis of US Magnesium’s comments submitted in their substantive response is set forth in the “Discussion of the Issues” section, *infra*.

⁴ See *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 72 FR 51791 (September 11, 2007); *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 73 FR 52642 (September 10, 2008); *Magnesium Metal From the Russian Federation: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 39919 (August 10, 2009).

⁵ See Petitioner’s PRC substantive response regarding, “Five-Year (“Sunset”) Review of The Antidumping Duty Order on Magnesium Metal from the People’s Republic of China: U.S. Magnesium’s Substantive Response to The Notice of Initiation,” dated March 31, 2010 (“PRC Response”); see Petitioner’s Russia substantive response regarding, “Five-Year (“Sunset”) Review of The Antidumping Duty Order on Magnesium Metal from the Russian Federation: U.S. Magnesium’s Substantive Response to The Notice of Initiation,” dated March 31, 2010 (“Russia Response”).

DISCUSSION OF THE ISSUES

In accordance with section 751(c)(1) of the Act, the Department conducted sunset reviews to determine whether revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments made by the domestic interested parties in this proceeding.

Legal Framework

In accordance with section 751(c)(1) of the Act, the Department conducted these sunset reviews to determine whether revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Sections 751(c)(1)(A) and (B) of the Act provide that, in making each of these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews as well as the volume of imports of the subject merchandise for the period before and after the issuance of this antidumping order. As explained in the Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act, the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.⁶ Alternatively, “the Department normally will determine that revocation of an antidumping duty order...is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order...and import volumes remained steady or increased.”⁷ It is the Department’s practice to use as a base period of import volume comparison the one-year period immediately preceding the initiation of the investigation rather than the level of pre-order import volumes as the initiation of an investigation may dampen import volumes and thus skew comparison.⁸

In addition, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the margin(s) from the final determination in the original

⁶ See SAA, H.R. Rep. No. 103-316, Vol. 1, at 889-90; See also, *Folding Gift Boxes from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

⁷ See *Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (“*Sunset Policy Bulletin*”).

⁸ See *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1 (“*Stainless Bar from Germany Final*”).

investigation as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.⁹ However, the Department may use a rate from a more recent review where the dumping margin increased as this rate may be a better representative of a company's behavior in the absence of an order (*e.g.*, where a company increases dumping to maintain or increase market share with an order in place).¹⁰ Additionally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of “zero or *de minimis* shall not by itself require” that the Department determine that revocation of an antidumping duty order would not be likely to lead to a continuation of recurrence of sales at less than fair value.

1. Likelihood of continuation or recurrence of dumping

Interested Party Comments

Petitioner argues that the Department should determine that revocation of the *PRC Order* and the *Russia Order* is likely to lead to continuation or recurrence of dumping of magnesium metal from the PRC and Russia, respectively. Petitioner states that the Department “normally will determine” that dumping will continue or resume when any of the following circumstances apply: (i) dumping continued at any level above *de minimis* after the issuance of the order; or (ii) import volumes for the subject merchandise declined significantly. *See* Petitioner's PRC Response at section VI and Russia Response at section VI.

Petitioner also argues that, notwithstanding one finding of a zero margin for a Chinese exporter, imports of subject merchandise from the PRC and Russia have not increased to pre-order volumes. Further, Petitioner contends that the relationship between the significant decline in Chinese and Russian imports and the consistent findings of high dumping margins since the *PRC Order* and the *Russia Order* clearly indicates that Chinese and Russian exporters of magnesium metal cannot export to the United States without dumping. In support of its assertions, Petitioner provided U.S. import data from the ITC's DataWeb system. *See id.*

Department Position

As explained in the Legal Framework section above, the Department's determination concerning whether revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping is based, in part, upon guidance provided in the SAA. One consideration is whether the Department has continued to find dumping above *de minimis* levels in administrative reviews subsequent to imposition of the antidumping duty order. In this proceeding, the Department indeed found dumping at above *de minimis* levels in each of these proceedings. In the administrative reviews of magnesium metal from Russia the

⁹ *See, e.g., Persulfates From the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2 (“*Persulfates Final*”).

¹⁰ *See, e.g., Stainless Steel Bar from Germany; Preliminary Results of the Sunset Review of Antidumping Duty Order*, 72 FR 29970 (May 30, 2007), and accompanying Issues and Decision Memorandum at Comment 2, as corrected in 72 FR 31660 (June 7, 2007) (unchanged in *Stainless Bar from Germany Final*).

Department found dumping above *de minimis*; in the first administrative review the calculated margins were 0.41 percent for PSC-AVISMA and 3.77 percent for Solikamsk, in the second administrative review the margins were 15.77 percent for PSC-AVISMA and 21.71 percent for Solikamsk, and in the third administrative review the margin was 43.58 percent for PSC-AVISMA. In the administrative review of magnesium metal from the PRC, the Department applied the PRC-wide rate of 141.19 to the PRC entity in the sole administrative review that took place and in each segment of the proceeding where no review took place.

As discussed above, sections 752(c)(1)(A) and (B) of the Act instruct the Department to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order when determining whether revocation of the order would be likely to lead to continuation or recurrence of dumping. In the original investigation of magnesium metal from the PRC, the Department calculated weighted-average dumping margins of 49.66 percent for both TMI and Guangling, and 141.49 percent for the PRC-wide entity. In the original investigation of magnesium metal from Russia, the Department calculated weighted-average dumping margins of 21.71 percent for AVISMA, 18.65 percent for Solikamsk, and 21.01 percent for all other companies in Russia.

Thus, dumping margins and cash deposits rates at or above *de minimis* levels remain in effect for the PRC and Russian companies. *See infra*, at Final Results of Review section. These margins provide the best evidence of dumping behavior of these companies and there is no evidence that indicates dumping has ceased. Accordingly, revocation of these antidumping duty orders is likely to lead to continuation or recurrence of dumping.

Separately, pursuant to 752(c)(1)(B) of the Act, the Department considered the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty orders. Import statistics on the subject merchandise cited by Petitioner and those examined by the Department demonstrate that the level of PRC and Russian imports for subject merchandise declined significantly from pre-order levels after the issuance of the orders.¹¹

2. Magnitude of the Margins Likely to Prevail

Interested Party Comments

With respect to the PRC, Petitioner argues that, consistent with the Department's normal practice, the Department should find that the magnitude of the margin of dumping that is likely to prevail is the margin determined to exist in the original investigation. *See* Petitioner's PRC Response at section VII. Petitioner asserts that the calculated margins set forth in the *PRC Order* were 49.66 percent for TMI and Guangling; and a PRC-wide rate of 141.49 percent. *See id.* at section VI.A. Further, Petitioner notes that since issuance of the *PRC Order* there has been one completed review and one scope ruling. *See id.* at section IX.

¹¹ *See* Petitioner's PRC Response at section VI.B and Russia Response at section VI.B; *see also* Global Trade Atlas statistics at Attachment I of this memorandum.

With respect to Russia, Petitioner argues that the Department should find that the magnitude of the margin of dumping that is likely to prevail is the most recently calculated margin (from the third administrative review), because that margin is most indicative of the respondents' behavior without the discipline of an order. Petitioner asserts that the highest calculated margin in this proceeding, set forth in the third administrative review, was 43.58 percent for PSC-AVISMO. *See* Petitioner's Russia Response at section VII. Petitioner argues that, in the alternative, the Department should find that the magnitude of the margin of dumping that is likely to prevail is the margin determined to exist in the original investigation. *See id.* Petitioner also notes that the calculated margins set forth in the *Russia Order* were 21.71 percent for AVISMA, 18.65 percent for Solikamsk; and an All Others rate of 21.01 percent. Further, Petitioner states that since issuance of the *Russia Order* there have been three administrative reviews and two scope rulings. *See* Petitioner's Russia Response at sections VI.A and IX.

Department Position

Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Normally, the Department will select a margin from the final determination in the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.¹² Furthermore, pursuant to section 752(c)(4)(A), a dumping margin of "zero or *de minimis* shall not by itself require" that the Department determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at less than fair value. The Department continues to find that the margin calculated in the original investigation is the best indication of the margins likely to prevail if the order were revoked, because it is the only calculated rate without the discipline of an order in place.

The Department does not agree with Petitioner that this is an instance where it would be proper to resort to a more recently calculated rate as the rate at which dumping is likely to prevail. The SAA provides that "{i}n certain instances, a more recently calculated rate may be more appropriate." *See* SAA at 890-91. For example, the Department may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review "if dumping margins have declined over the life of an order and imports have remained steady or increased." *Id.* The Department's *Sunset Policy Bulletin* elaborates on this scenario, stating that "{i}n analyzing whether import volumes remained steady or increased, the Department normally will consider the company's relative market share. Such information should be provided to the Department by the parties." *See Sunset Policy Bulletin* at 18873. In addition, because "a company may choose to increase dumping in order to maintain or increase market share," the Department may also use a more recently calculated margin where the dumping margins increased after the issuance of the order. *Id.* In the present case, there is no indication in the record that the relative market shares of the Russian respondents receiving rates have remained steady or increased, and no parties have provided the Department with

¹² *See, e.g., Persulfates Final*, and accompanying Issues and Decision Memorandum at Comment 2.

information suggesting such.

Therefore, consistent with section 752(c)(3) and section 752(c)(4)(A) of the Act, the Department will report to the ITC the corresponding individual company rates and the PRC-wide rate from the original Chinese investigation (as noted in the “Final Results of Review” section, below), and the corresponding individual company rates and the All Others rate from the original Russian investigation (also as noted in the “Final Results of Review” section, below).

Final Results of Review

The Department determines that revocation of the antidumping duty orders on magnesium metal from the PRC and Russia would be likely to lead to continuation or recurrence of dumping in those countries, respectively. The Department also determines that the dumping margins likely to prevail if the order was revoked are as follows:

| Manufacturers/Exporters/Producers | Weighted-Average Margin |
|--|-------------------------|
| The People’s Republic of China | |
| Tianjin Magnesium International Co., Ltd. | 49.66 % |
| Beijing Guangling Jinghua Science & Technology Co., Ltd. | 49.66 % |
| PRC-Wide Entity | 141.49 % |
| | |
| The Russian Federation | |
| PSC VSMPO-AVISMO Corporation | 21.71 % |
| Solikamsk Magnesium Works | 18.65 % |
| All-Others Rate | 21.01 % |

Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of these sunset reviews in the *Federal Register*.

Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

Date

Attachment I