

71 FR 61019, October 17, 2006

A-570-832
POR: 05/01/04-04/30/05
Public Document
IA/NME/VIII: HL

October 10, 2006

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Administrative Review of the Antidumping Duty Order on Pure
Magnesium from the People's Republic of China

SUMMARY

We have analyzed the comments of the interested parties in the antidumping duty administrative review on pure magnesium from the People's Republic of China ("PRC"). As a result of our analysis of these comments, we made changes to our margin calculations. We recommend that you approve the positions we developed in the "Discussion of the Issues" section of this memorandum. Respondent, Tianjin Magnesium International, Ltd. ("TMI"), and petitioner, US Magnesium LLC ("Petitioner"), commented on the preliminary results of review. Below is the complete list of the issues that were raised in these briefs:

Comment 1: Surrogate Value for Dolomite
Comment 2: Surrogate Value for Ferrosilicon
Comment 3: Surrogate Value for Flux No. 2
Comment 4: Surrogate Value for Coal
Comment 5: Surrogate Value for Electricity
Comment 6: Ocean Freight

BACKGROUND

On April 10, 2006, the Department of Commerce ("Department") published its preliminary results of review. See Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 18067 (April 10, 2006) ("Preliminary Results"). On April 28, 2006, TMI provided comments on surrogate values. On May 8, 2006, TMI requested a hearing. TMI submitted a case brief on May 10, 2006 and Petitioner submitted rebuttal brief on May 17, 2006. No other parties provided comments. On July 19, 2006, the Department held a public hearing in this proceeding. On July 31, 2006, the Department published a notice extending the time limit for the final results of review until

September 7, 2006. See Notice of Extension of Final Results of the 2004-2005 Administrative Review of Pure Magnesium from the People's Republic of China, 71 FR 43110 (July 31, 2006). On September 12, 2006, the Department published a notice extending the time limit for the final results of review until September 29, 2006. See Notice of Extension of Final Results of the 2004-2005 Administrative Review of Pure Magnesium from the People's Republic of China, 71 FR 53662 (September 12, 2006). On October 6, 2006, the Department published a notice extending the time limit for the final results of review until October 10, 2006. See Pure Magnesium from the People's Republic of China: Notice of Extension of Final Results of the 2004-2005 Administrative Review, 71 FR 59078 (October 6, 2006).

DISCUSSION OF THE ISSUES

Comment 1: Surrogate Value for Dolomite

TMI argues that the Indian import statistics the Department used as a surrogate value for dolomite in the preliminary results are aberrational and unreliable. TMI states that dolomite is a high bulk, low value product which is not normally shipped long distances commercially. TMI further states that India is a self-sufficient producer of dolomite that may import small quantities of special use dolomite for specific end uses which would be further processed and thus be unlike the “crude uncalcined dolomite block as it comes from the rock quarry before any processing” that is used in the production of magnesium in China.

TMI argues that the surrogate value used by the Department in the preliminary results is aberrational compared to prices in India for domestically produced dolomite. TMI provides 12 Indian domestic prices for dolomite from four different sources (i.e., seven from the Minerals Yearbook 2004, one from the State of Maharashtra, one from the India Bureau of Mines, and three financial statements). From the Minerals Yearbook 2004, TMI presented seven different dolomite prices (three based on grade, two based on sector (private and public), and two based on Indian States. For the price of dolomite based on grades, TMI provided the following dolomite prices: (1) Rs 80 (\$1.84) per metric ton for a mix grade dolomite; (2) Rs 108 (\$2.49) per metric ton for a sorted grade dolomite; and (3) Rs 112 (\$2.57) per metric ton for a of Hi-silica grade dolomite. For the prices based on sectors, TMI provided the following dolomite prices: (4) Rs 132 (\$3.04) per metric ton for private (non-captive) mines; and (5) Rs 273 (\$6.28) per metric ton for public (captive) mines. For the price of dolomite based on States, TMI provided the following prices: (6) Rs 175 (\$4.04) per metric ton for the period April 2004 to March 2005 which does not include captive mine production for three Indian States and (7) an aggregate price of Rs 217 (\$4.99) per metric ton. From the State of Maharashtra, TMI presented a dolomite price of Rs 120 (\$2.77) which does not include any captive mines. From the Indian Bureau of Mines, TMI presented a dolomite price of Rs 218 (\$5.03) per metric ton. And, from the financial statements, TMI provided the following dolomite prices; (1) Rs 525 (\$12.08) per metric ton from Steel Authority of India, Ltd (“SAIL”) for 2004 to 2005; (2) Rs 547 (\$12.59) per metric ton from Indian Iron & Steel Company, Ltd (“Iron & Steel”) for 2004 to 2005; and (3) Rs 593 (\$13.66) per metric ton for Tata Sponge Iron Ltd. (“Tata”) for 2004 to 2005.

TMI contends that the surrogate value used by the Department, \$224.49 per metric ton, is aberrational compared to the prices listed above. TMI argues that the surrogate value used by the Department is flawed and unreliable because the data lists imports of only 53 metric tons from Spain, Sri Lanka and Turkey, which is derived from statistics of the World Trade Atlas (“WTA”). However, according to TMI, the Global Trade Atlas, which is published by the same source, using the same underlying database as the WTA, records no dolomite exports to India from these three countries. TMI also contends that the surrogate value used by the Department is aberrational compared to prices in the United States. TMI states that U.S. import statistics taken from the Global Trade Atlas show a value for dolomite of \$6.63 per ton during the POR and the Department’s Bureau of the Census show U.S. import values for dolomite to be \$6.58 per metric ton in 2004 and \$7.40 per metric ton in 2005. TMI further states that export statistics of the Bureau of the Census show a U.S. export price for dolomite to be \$17.29 per metric ton in 2004 and \$23.13 per metric ton in 2005. TMI notes that the Department’s calculated surrogate value was 10 to 35 times higher than both the U.S. import and export prices.

Further, TMI asserts that the volume of dolomite imports the Department used is minuscule compared to Indian domestic production. According to TMI, the volume of dolomite imports - 53 metric tons - was 0.00123% of Indian domestic production, which is less than a normal month’s commercial shipment of dolomite and is less than required for one commercial shipment of magnesium.

Furthermore, TMI states that the Department has a preference for domestic values over import values. TMI cites Yantai Oriental Juice Co., et al. v. United States and Coloma Frozen Foods, Inc., et al., 26 CIT 605 (2002), stating that domestic prices should be used for surrogate value purposes unless: 1) there is evidence that the domestic price is distorted such that the use of import data is preferred; and 2) the use of imported surrogate values would better approximate the cost incurred by the Indian producers. TMI argues that there is no evidence the domestic dolomite price is distorted and that the WTA data is flawed and unreliable and does not approximate the costs incurred by Indian producers.

Additionally, TMI asserts that the surrogate values it offered are reliable and the best record information because they are derived from domestic production and with domestic price data the Department used in another case. See Notice of 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), and accompanying Issues and Decision Memorandum at Comment 6 (“Granular Pure Magnesium”). Moreover, TMI states that the surrogate value it submitted contains some captive production, and skews the price higher, which is to the detriment of TMI. TMI asserts that based on a report of the Comptroller and Auditor General of India, the SAIL mines operated at less than capacity and at a high cost; consequently, SAIL’s dolomite cost is artificially high due to the inclusion of the high priced captive production. Finally, TMI argues that if the Department does not use the data it offered, the Department must not use Indian import statistics. Instead, the Department should use a domestically produced Indian dolomite value.

Petitioner argues that the Department should continue to use Indian import statistics to value dolomite because the Department has a clear and consistent practice of using Indian import statistics to determine an appropriate surrogate value. Petitioner contends that the Department has expressed a clear and consistent preference for relying on the official import statistics for raw material surrogate values. See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People’s Republic of China, 69 FR 20594 (April 16, 2004) (“Color TV Receivers”); Notice of Final Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the Peoples’s Republic of China, 69 FR 35296 (June 24, 2004).

Petitioner avers that TMI has not established that Indian import statistics are aberrational. Petitioner argues that the relatively small volume of imports does not make the Indian import statistics unreliable. Petitioner states that the Department rejected similar arguments criticizing the appropriateness of using Indian import statistics to value dolomite in Magnesium Metal arguing that the volume of imports from a single country during the POI presented the best available surrogate value because the value is publicly available, product-specific, tax-exclusive, contemporaneous and representative of dolomite. 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) (“Magnesium Metal”).

Petitioner contends that being a largely self-sufficient producer of a mineral product does not preclude a country from importing the product. Petitioner cites the Indian Minerals Yearbook 2004 (“Minerals Yearbook”) which states that some Indian dolomite needs are not being met domestically. Petitioner states the Minerals Yearbook itself reports imports of dolomite for the 2001-2002 and 2002-2003 periods and there is no indication that these are not legitimate imports of dolomite. Petitioner further states that the Minerals Yearbook reports a ten-fold increase of exports of dolomite from India from 2001-2002 to 2002-2003, which contradicts TMI’s claim that little international trade takes place with respect to dolomite. Additionally, Petitioner argues that if imports occur to make up for shortages in domestic production, it is not surprising that the import volumes are relatively low; however, it does not mean that the Indian import statistics are unreliable.

Petitioner asserts that TMI’s attempt to compare the value of its usage of the dolomite input with “world market prices” for magnesium in 2003 and 2004 is irrelevant to the Department’s selection of a surrogate value. Petitioner contends that it is not the Department’s practice to consider calculations showing the relative portion of cost of production when selecting its surrogate values. Nevertheless, Petitioner states that TMI did not include U.S. market prices among the world market prices used for its calculation, arguing that this resulted in TMI significantly understating the average world price for magnesium. Petitioner asserts it would have been more appropriate for TMI to use its own selling price during the POR as a benchmark.

Petitioner urges the Department to reject TMI’s alternative dolomite prices. Petitioner states the Department has previously rejected values from the Indian Bureau of Mines - Monthly Statistics

of Mineral Production in the Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate From the People's Republic of China, 68 FR 46577 (August 6, 2003) (“Barium Carbonate”), in part because the introduction to the publication notes that “values are provided by mine owners and may be based on cost of production which suggests that they do not necessarily reflect actual commercial transactions.” In addition, Petitioner states the Department rejected the same data sources and arguments regarding dolomite in Magnesium Metal.

Further, Petitioner argues that TMI's Minerals Yearbook data is not useable because the data is not contemporaneous with the POR, is clearly marked as provisional, and there is no definition of the data other than “ex-mine.” Petitioner also states the Minerals Yearbook data is flawed because the data from the public sector reflects mines with some level of government ownership.

Furthermore, Petitioner urges the Department to disregard the data supplied by TMI from the Economic Survey of Maharashtra 2005-06 (“Maharashtra data”). Petitioner states the Maharashtra data may still contain data on captive consumption of dolomite and does not match the data reported in Minerals Yearbook marked “provisional.” Petitioner also states the Department should not use the three Indian companies' annual reports, SAIL, Iron & Steel and Tata, because in past cases the Department has expressed concerns about using company financial data to value material inputs. See Granular Pure Magnesium at Comment 6. Additionally, Petitioner states that the Department has clearly articulated its reservations with respect to the use of company financial statements to value material inputs because financial statements do not provide enough information for the Department to ascertain their appropriateness. For example, the Department can not determine any specific details about whether the inputs were bought domestically or imported, from which countries the inputs may have been imported, whether the reported costs are inclusive or exclusive of taxes, or any specifications about the inputs in question. See Granular Pure Magnesium.

Moreover, Petitioner argues the precedent set in Granular Pure Magnesium is five years old; therefore, the Department should rely on the more recent (2005) Magnesium Metal, where the Department used Indian import statistics to value dolomite. Finally, Petitioner contends that although the export and import statistics all came from the WTA, they reflect the official import and export statistics of each country and do not constitute the same source. Therefore, Petitioner asserts that TMI's unreliability argument regarding the Indian import statistics is baseless.

Department's Position: On April 28, 2006, TMI submitted additional dolomite surrogate values for the Department to consider using in the final results instead of the WTA. In considering all the proposed surrogate value information for dolomite on the record, we have determined to use the 2004-2005 financial statements from Iron & Steel and Tata to calculate the surrogate value for dolomite. In determining the most appropriate surrogate values, the Department's practice is “to use investigation or review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the

period of investigation or review, and publicly available data.”¹ The Department undertakes this analysis on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. In this case, we found that the dolomite values from Iron & Steel and Tata’s respective annual reports represent the best available surrogate value data because they are publicly available, product-specific and contemporaneous with the POR. First, the values taken from these two financial statements are for dolomite and, therefore, clearly specific to the product in question. Second, the consumption quantities of dolomite by these two Indian companies appear to be in line with other record evidence of sales quantities for dolomite. Third, we examined the financial statements for Iron & Steel and Tata and found neither Iron & Steel nor Tata have captive mines. Captive mines are mines whose production is consumed by its owner. In such cases, we are not able to determine whether the material the company consumes is at prices that reflect true commercial market prices in that country or whether the values are skewed or a result of the relationship between the mine and the consumer. Since Iron & Steel and Tata have no captive mines, this is not an issue here. Fourth, these values cover the period 2004-2005, which is contemporaneous with the POR. Fifth, the annual reports of Iron & Steel and Tata are fully audited and publicly available.

In reviewing the record data, we agree with TMI that WTA data represent a very small quantity in comparison to all the other values on the record of this proceeding. For example, WTA data shows 53 metric tons of dolomite imported into India during the POR, while Iron & Steel and Tata cumulatively purchased 183,437 metric tons of dolomite during a one year period that overlaps the POR by 11 months, SAIL represented 2,376,464 metric tons of dolomite consumption, and the Minerals Yearbook reported 3,820,083 metric tons of dolomite production in India during 2004 and 2005. Further, in our research on dolomite, we examined the following documents, British Geological Survey (2004) and Review of the Dolomite and Limestone Industry in South Africa, and we found that dolomite is a low-value commodity, which does not normally lend itself to long transport. Because dolomite is generally considered a high-bulk, low value commodity, little trade is done internationally, except in the high-end value-added product range. See TMI’s surrogate value submission at Exhibit SV-2 and Exhibit SV-5 (December 19, 2005). Thus, it is reasonable to conclude that WTA data represent prices of imported dolomite in the high-end value-added product range while the dolomite used to produce subject merchandise is the high-bulk, low value commodity.

With respect to other potential sources of surrogate values submitted by TMI, we find that none of these sources is better than the data from Iron & Steel and Tata. First, we are not able to determine whether the prices from the Minerals Yearbook were based on actual prices paid or prices offered as the yearbook clearly delineates the recorded prices as provisional. Additionally, as in a previous case, we are not able to determine whether the prices were based on a sufficiently representative sample of sales and we are not able to determine if the Mineral Yearbook includes imports from non-market economy (“NME”) countries. See Barium Carbonate. In addition, the data do not distinguish between captive mine prices from non-captive mine prices, and thus we are unable to determine a true market value using this data. While TMI submitted dolomite

¹ See Policy Bulletin 04.1.

prices which were broken down into “public” and “private” sector prices from the Mineral Yearbook and stated that the “public price” represented a “captive mines price” and the “private price” represented a “non-captive mines price,” TMI did not provide any record evidence to support its assertion.

Second, we have determined not to use the dolomite value from SAIL’s 2004-2005 annual report. Record evidence indicates that SAIL has captive mines of dolomite; therefore, as discussed above, we are not able to determine whether SAIL’s costs to purchase dolomite reflect a true market value for these purchases.

Third, we have rejected the Maharashtra State prices for dolomite. Within its April 28, 2006 submission, TMI stated that the Maharashtra State had no captive mines and provided evidence showing the location of captive mines owned by SAIL and Tata Steel. However, from this submission we are not able to determine whether TMI identified all captive dolomite mine producers in the Maharashtra State. Moreover, we have determined by examining and comparing the Maharashtra State data to the Minerals Yearbook data for the Maharashtra region submitted by TMI, that the two sets of data differ, thus we cannot determine the reliability of either source.

Fourth, we have determined it is not appropriate to use prices from the Indian Bureau of Mines statistics as the surrogate value for dolomite for same reasons we stated in the preliminary results. See Preliminary Results. While the Department generally prefers not to use data from an individual company’s financial reports, in this limited instance we have determined the data from the Iron & Steel and Tata financial statements to be the best available information on the record. Therefore, for the final results, we have determined to average the dolomite values from Iron & Steel and Tata to calculate the surrogate value for dolomite. See Pure Magnesium from the People’s Republic of China: Factor Valuation Memorandum for the Final Results, dated on October 10, 2006 (“Final FOP Memo”).

Comment 2: Surrogate Value for Ferrosilicon

TMI claims that the surrogate value for ferrosilicon that the Department used in its preliminary results was taken from the WTA for all ferrosilicon imports, failing to recognize the specific descriptions for different ferrosilicon types. TMI claims that, prior to the preliminary results, it provided a value for ferrosilicon taken from Minerals & Metals Weekly data which it claims represent the same basic import data as the WTA and eliminated certain products that are dissimilar from the type of ferrosilicon it uses in its production. TMI urges the Department to use the information from Minerals & Metals Weekly, arguing it is a more accurate and specific representation of ferrosilicon prices during the period. TMI further states that if the Department does not use data from Minerals & Metals Weekly, it should use domestic price data from SAIL’s annual report to value ferrosilicon.

Petitioner asserts that TMI fails to establish that the data from Minerals & Metals Weekly are comparable to the data provided in the WTA, citing the Department’s preliminary determination

that these data represent only a fraction of the WTA import data. In addition, Petitioner contends that TMI failed to provide its calculations for certain adjustments and did not indicate which products were eliminated from its calculations for being dissimilar.

Additionally, Petitioner argues that the Department should reject the pricing data from SAIL's annual report because the Department has stated a preference for not using raw material consumption data from annual reports. Furthermore, Petitioner asserts that while TMI claims that SAIL's dolomite price represents a domestic price, TMI did not provide evidence to support this claim and argues that SAIL's cost reflects a value very similar to the WTA import values of ferrosilicon from the PRC. Therefore, Petitioner contends the Department should continue using WTA data to value ferrosilicon for the final results.

Department's Position: We agree with Petitioner that we should continue to value ferrosilicon with WTA data. We have determined not to value ferrosilicon using Minerals & Metals Review Weekly because we are not able to determine whether the data from Minerals & Metals Review Weekly represent all relevant imports into India. Further, we are unable to determine from record evidence whether the prices from Minerals & Metals Weekly are more specific to the ferrosilicon used by respondent than the WTA data because TMI did not provide evidence showing which dissimilar products were eliminated from Minerals & Metals Weekly. Specifically, because TMI did not provide the full Minerals & Metals Weekly data, we are unable to determine whether TMI's calculated value represents an accurate value for the type of ferrosilicon used by TMI. In addition, because TMI did not disclose the full calculation, we are unable to clearly identify the source from which it retrieved the data in its calculation. Thus, we do not agree with TMI that the information from Minerals & Metals Weekly is a more accurate and specific representation of ferrosilicon prices for the type of ferrosilicon used in its production. We have also determined not to use SAIL's data to value ferrosilicon because the SAIL data represent the experience of only one company while WTA data represent multiple exports to India. The Department generally prefers to use a range of prices for the input being valued rather than a single price. The WTA data are publicly available, product-specific, tax-exclusive, contemporaneous with the POR and representative of ferrosilicon prices. Furthermore, the WTA data are a compilation of exports to India from multiple sources and no party has provided any evidence that calls into question the appropriateness of the WTA data for the factor. Accordingly, for the final results, we have determined to continue to use WTA data because WTA data represent the best available information on the record of this review to value ferrosilicon inputs.

Comment 3: Surrogate Value for Flux No. 2

TMI argues that the Department erroneously valued flux No. 2 using a single compound, magnesium chloride ("MgCl"), ignoring the fact that flux No. 2 is made up of three compounds. TMI contends that the other two compounds, sodium chloride ("NaCl"), and potassium chloride ("KCl"), are necessary to the production of flux. Thus, the value of NaCl and KCl should also be used to value flux No. 2. TMI provides NaCl data from the antidumping investigation on chlorinated isocyanurates from the PRC which TMI states can be used along with the MgCl on a

50/50 basis to calculate the value for flux No. 2. TMI states that this methodology would yield a more specific outcome than using only MgCl to value flux.

Petitioner states that it is not the Department's practice to assign surrogate values to upstream products unless the respondent produces the upstream product. Further, Petitioner contends that TMI presumably uses flux No. 2 which is already mixed, or TMI would have reported the compounds separately. Additionally, Petitioner claims that TMI did not supply the Department with the correct HTS category for flux No. 2. Therefore, Petitioner contends that the Department should continue to value flux No. 2 using the WTA data for MgCl from the preliminary results.

Department's Position: Although it is the Department's normal practice to value a factor by using a single surrogate value for that input, in this instance, no surrogate value for flux No. 2 has been submitted by any party, and we were not able to find a surrogate value for flux No. 2. Thus, for the final results, under these very limited circumstances (*i.e.*, where no surrogate value can be identified for the factor in question), we have determined to value flux No. 2 based on its three constituent compounds according to their respective proportions. We based the respective proportions (*i.e.*, 42 percent MgCl, 31 percent NaCl, and 24.5 percent KCl) on data provided by TMI. For two compounds, MgCl and NaCl, we valued these compounds using WTA data because WTA data is publicly available, product-specific, tax-exclusive, contemporaneous and provides the best available information on the record of this review regarding the value of these compounds. However, for the third compound, KCl, we valued this compound using data submitted by TMI from the Canadian Minerals Yearbook 2003. See TMI's surrogate value submission dated September 28, 2005.

While the Department generally prefers to value all factors from the single surrogate country chosen, in this instance, we find the value for KCl from the Canadian Minerals Yearbook 2003 is the only information on the record to value this particular compound. It is the Department's practice to only resort to data from countries not on the surrogate country list, such as the United States or the European Union, in cases where we cannot identify surrogate value data from any country on the surrogate country list that is a significant producer of comparable merchandise. See Certain Cut-to-Length Carbon Steel Plate From Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 11. In this instance, Canadian Minerals Yearbook 2003 was the best available information on the record, and is publicly available and product-specific. Therefore, for these final results, we will value flux No. 2 based on the three constituent materials according to their respective proportions using WTA and Canadian Minerals Yearbook 2003. See Final FOP Memo.

Comment 4: Surrogate Value for Coal

TMI argues that the Department should use the domestic coal data it submitted because the domestic coal data represents a larger sample for all of India than the Tata Energy Research Institute's Energy Data Directory & Yearbook ("TERI Data"), which is limited. However, TMI contends that if the Department uses the TERI Data to value coal, the Department should value

coal using grade C, instead of grade A as it did in the preliminary results. TMI states the coal used in the PRC is equivalent to non-coking grade C coal used in India. Moreover, TMI states the Department used the non-coking grade C coal in a recent administrative review of heavy forged hand tools from the PRC. See Memorandum through Alex Villanueva, from Matthew Renkey: 14th Administrative Review of Heavy Forged Hand Tools from the People's Republic of China: Selection of Surrogate Values for the Preliminary Results, dated February 28, 2006.

Petitioner argues that the data submitted by TMI, which the Government of India published in its Ministry of Mines Annual Report for 2004-2005, are preliminary figures and collapse all grades of coal except lignite into one category. Also, Petitioner claims the data from the Ministry of Mines Annual Report are pit-head values from captive mines and are reported based on the cost of production, not sales value. Thus, Petitioner urges the Department to use the import statistics it supplied. However, Petitioner asserts that if the Department decides to use grade C coal instead of grade A coal, the Department should apply an inflator to grade C since the values are not contemporaneous with the POR.

Department's Position: In the preliminary results, we used information from the 2003/2004 TERI data to value the coal used by TMI in the production of pure magnesium. The TERI data provide complete and comprehensive information, covering sales of all types of coal made by Coal India Limited and its subsidiaries throughout India. See Pure Magnesium from the People's Republic of China: Factor Valuation Memorandum for the Preliminary Results, dated April 3, 2006, at page 6 ("Preliminary Factor Valuation Memorandum"). However, at the time of issuance of the preliminary results, we could not determine the grade of TMI's coal used in the production of pure magnesium, as TMI did not provide any information regarding the type or grade of coal that it uses. Therefore, for the preliminary results we used the price for the highest-grade bituminous coal identified in the TERI data. See Preliminary Factor Valuation Memorandum at Exhibit 5.

For the final results, we have determined to continue to use TERI Data to value coal for the reasons discussed above. However, we have decided to value coal using grade C coal instead of grade A coal. In TMI's December 19, 2005, surrogate value submission at Exhibit SV-COAL 14, TMI stated the coal it used in the PRC is sub-bituminous B (non-coking) coal with a thermal heat value of 5500 kcal/kg. TMI also stated that its sub-bituminous B coal is equivalent to Indian grade C non-coking coal and provided the web site for grades of coal in India. See TMI's December 19, 2005 surrogate value submission. In order to certify the accuracy of TMI's statement that its sub-bituminous B coal is equivalent to Indian grade C coal, we examined the following web site www.coal.nic.in for Coal Grades reported by the Indian Ministry of Coal. In our examination, we found the sub-bituminous B coal with a thermal value of 5500 kcal/kg is equivalent to non-coking grade C coal in India. Therefore, for the final results, we have determined to value coal using grade C coal prices from the TERI data. See Final FOP Memo and Tianjin Magnesium International, Ltd. Program Analysis for the Final Results of Review (September 29, 2006) ("Final Analysis Memo").

Comment 5: Surrogate Value for Electricity

TMI argues the data from the International Energy Agency (“IEA”) for 2000, which the Department used to value electricity, is flawed and unreliable. Specifically, TMI contends that the IEA data are more than five years old and aberrationally high. Further, according to TMI, the IEA data reflect a single point in time and do not reflect the structural change that has taken place in the Indian market since 2000. TMI cites an IEA report issued in 2002 which stated that the problem with the Indian power market was its high degree of cross-subsidization, where industrial users paid higher rates in order to subsidize lower rates for individual users. Also, TMI contends that the data contained in the SAIL annual report demonstrates that the IEA data are aberrational by showing that the SAIL consumption power value is well below the uninflated value reported by the IEA, thus placing the IEA value in question.

Further, TMI claims that the IEA data are a combination of the commercial, industrial and railway rates and are thus less specific than the data specific to each category. TMI asserts that India is not a member of the IEA and the overall price data collected by the IEA appear to be secondary to the primary purpose of the study which was to analyze the entire Indian electricity industry and to examine the methods of pricing and cross-subsidization. Finally, TMI states the Department should use the Uttar Pradesh Power Corporation Ltd. (“UPPC”) data it provided to value electricity because the UPPC data are contemporaneous with the POR and UPPC sets pricing for specific categories.

Petitioner contends that TMI’s argument focuses on the higher rates paid by commercial, industrial customers and railways based on the IEA study. However, Petitioner asserts that the IEA data are appropriate for use in the final results because TMI does not provide a viable alternative to the IEA data. Moreover, Petitioner contends that SAIL’s electricity expenditures are more complicated than TMI acknowledges and are inappropriate for use as a surrogate to value TMI’s electricity consumption. For example, Petitioner states that SAIL’s annual report notes that it generates a small portion of its own electric power, and its subsidiary company states that it enjoys waivers on electricity duties. Also, Petitioner argues that the UPPC data are not an appropriate source because TMI does not identify the rate schedule, TMI under-reports the rate, and the rates only cover a small part of India. Therefore, Petitioner urges the Department to continue to use the IEA data for the final results.

Department’s Position: We agree with Petitioner that it is appropriate to continue to use the IEA data in the final results. TMI has made several assertions regarding the IEA data and provided several excerpts from reports claiming that they demonstrate that the Indian market has changed. However, for each of the exhibits TMI only provided one page of each report; thus, the Department is not able to determine what discussion is missing and whether the reports substantiate TMI’s claims of structural changes in the Indian electricity market. Also, we have determined that TMI’s claim that SAIL’s annual report demonstrates that IEA data are aberrational is not correct. We examined SAIL’s annual report and found SAIL’s annual report value does not represent an actual market value because the company generates some of its own electricity. See TMI’s April 28, 2006, submission, at page 15 of Exhibit PPSV-4. Additionally,

the UPPC data that TMI provided does not show that the electricity rates cover all of the electricity districts in India. After examining the UPPC data TMI submitted, we found that this information showed UPPC is a regional electricity provider and UPPC's electricity rates apply only in the "Uttar Pradesh" region. Therefore, for the final results, we will continue to use IEA statistics to value electricity.

Comment 6: Ocean Freight

TMI argues that the Department should not have rejected its reported international ocean freight rate simply because it was paid to a Chinese agent and not an international ocean carrier. TMI asserts it did not pay an "agent," but rather paid Ocean Transportation Intermediary ("OTI"), a company licensed and regulated by the U.S. Federal Maritime Commission. TMI states its international ocean freight rate is a free market rate and that OTI is an ocean freight forwarder and a non-vessel operating common carrier ("NVOCC").

Additionally, TMI asserts it is not appropriate for the Department to use the Maersk Sealand rate to value international ocean freight because Maersk Sealand is not a member of the Transpacific Stabilization Agreement ("TSA"). TMI cites the Federal Maritime Commission's annual report which states TSA consists of 13 carrier members, and these 13 members comprise approximately 70 percent of the ocean freight market. TMI asserts that because Maersk Sealand is not a member of TSA, which covers 70 percent of the world market, its ocean freight rate is not representative of the market rate.

Petitioner claims that based on the evidence cited by TMI, Maersk Sealand withdrew from the TSA in August 2005 but was a member of TSA during the POR. Petitioner argues that the Department should continue using the Maersk Sealand surrogate value in the final results because TMI has failed to establish why Maersk Sealand's withdrawal from an agreement with a "voluntary pricing body" (i.e., TSA), would cease to make its rate representative of the 70 percent of the market covered by the TSA.

Department's Position: For the final results, we have determined to continue to apply the Maersk Sealand surrogate value from the preliminary results to value ocean freight. On November 18, 2005, in a supplemental questionnaire, we requested TMI to provide a translated copy of the freight forwarding invoice at issue and explain who issued the invoice. On page 3 of its December 9, 2005, supplemental response, TMI provided the invoice and stated that a Chinese agent of the carrier issued the invoice. However, in its case brief, TMI stated it did not pay an "agent," but rather paid OTI, which was licensed and regulated by the U.S. Federal Maritime Commission. After examining the freight forwarder's invoice, we found that the invoice was issued in the PRC by a Chinese freight forwarding agent. See Exhibit 3 of TMI's December 9, 2005 response. Although the invoice was paid in U.S. dollars, in past cases, the Department has stated it will not use a price paid for an input in a market economy currency if the input was sourced through a NME provider. See Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China, 69 FR 34125 (June 18, 2004), and accompanying Issues and Decision Memorandum at Comment 4. In the

instant case, TMI used an NME supplier (i.e., the Chinese agent) for its ocean freight. Thus, pursuant to 19 CFR 351.408(d)(1), we did not use the actual price paid by TMI for its international ocean freight expense because it was sourced through an NME supplier. See Saccharin from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 7515 (February 13, 2006).

Regarding Maersk Sealand's withdrawal from the TSA in August 2005 (i.e., after the POR), we note that Maersk Sealand was a member of TSA during the POR; thus, TMI's argument that Maersk Sealand was not a member of TSA is not persuasive. Moreover, whether or not Maersk Sealand is a member of TSA is wholly irrelevant to the question of whether the Maersk Sealand values represent market-based prices. Based on the record evidence of this review, we continue to find the Maersk Sealand rates to be the best available information on the record. The generally publicly available price quote from Maersk Sealand is contemporaneous with the POR and covers the delivery of goods from the PRC port to the U.S. inland destination. See Preliminary Results. Therefore, consistent with Department practice, in the final results, we calculated the surrogate value for international freight by using a generally publicly available price quote from Maersk Sealand obtained from <http://www.maersksealand.com/HomePage/appmanager/>.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review and the final weighted-average dumping margin for the reviewed firm in the Federal Register.

Agree _____

Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)