the investigation 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 Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on all after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: March 22, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–7775 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–832 and A–570–833]

Notice of Final Determinations of sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the People's Republic of China

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

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–1769, respectively.

Final Determinations

The Department of Commerce (the Department) determines that pure magnesium and alloy magnesium from the People's Republic of China (PRC) are being, or are 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 are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the Department announced its preliminary determinations on October 27, 1994, (59 FR 55424, November 7, 1994) the following events have occurred:

On October 19, 1994, Min He Magnesium (Min He), a producer and exporter of the subject merchandise, and Xiamen Xing Xia Co. Ltd (Xing Xia), an exporter of the subject merchandise, requested that we postpone our final determinations by 60 days pursuant to 19 CFR 353.20(b)(1). On November 7, 1994, we published a notice postponing the final determinations (59 FR 55424).

In January, 1995, we conducted verification of the questionnaire responses at Min He and Xing Xia. On February 10, 1995, petitioner filed a case brief. On February 17, 1995, respondents filed a rebuttal brief and petitioner withdrew its request for a public hearing.

Scopes of Investigations

The scopes of these investigations have been modified since the preliminary determination in order to clarify the distinctions between pure magnesium and alloy magnesium. See Comment 1 in the ''Interested Party Comments'' section of this notice, below.

A. Pure Magnesium

The product covered by this investigation is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra-pure'' magnesium);

(2) Products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) Products (generally referred to as ''off-specification pure'' magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

''Off-specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this investigation are alloy primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1 mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.11.00, 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

B. Alloy Magnesium

The product covered by this investigation is alloy primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.

Alloy magnesium products are produced by adding alloying elements to pure magnesium in order to alter the mechanical and physical properties of the magnesium to make it suitable for use as a structural material. Alloy magnesium is used primarily for casting or in wrought form. It is harder and

stronger than pure magnesium and may possess a higher corrosion resistance.

This investigation covers alloy primary magnesium which contains 50% or greater, but less than 99.8%, primary magnesium, by weight, and one or more of the following: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths in amounts which, individually or in combination, constitute not less than 1.5% of the material, by weight. Products that meet the aforementioned description but do not conform to ASTM specifications for alloy magnesium are not included in the scope of this investigation. In addition to primary magnesium, alloy magnesium may contain magnesium scrap, secondary magnesium, or oxidized magnesium in amounts less than the primary magnesium itself.

Alloy primary magnesium is cast and sold in various physical forms and sizes, including ingots, slabs, rounds, billets and other shapes.

Excluded from the scope of this investigation are pure primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope include products having a maximum physical dimension (*i.e.*, length or diameter) or 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Periods of Investigation

The period of investigation (POI) for pure magnesium is April 1, 1993 through March 31, 1994. The POI for alloy magnesium is September 1, 1992 through March 31, 1994.

Best Information Available (BIA)

The Department's antidumping questionnaire was sent to seven companies located in the PRC, in addition to the copy sent to the Ministry of Foreign Trade and Economic Cooperation. Of these seven companies, responses were received from only one, Min He. Two companies, Luoyang Copper Working Plant and Northeast Light Alloy Fabrication Plant, replied that they did not export the subject merchandise. Two companies, Harbin Non-Ferrous Metal Smelter and Fushun Aluminum Smelter, did not respond to the questionnaires at all and the questionnaires sent to the other two companies, Yingkou Magnesium Works and Tongling Copper Smelter, were returned as undeliverable. Another company, Xing Xia, was accepted by the Department as a voluntary respondent.

In investigations involving imports from non-market economy countries, unless respondents request and qualify for separate rates, we apply the same rate to all exports from that country and treat responses from individual companies as single consolidated response. Since none of the respondents requested a separate rate in either the pure magnesium or alloy magnesium investigation, all respondents are treated as one entity for the purposes of assigning an antidumping margin in each investigation.

At the time of the preliminary determination, it was unclear whether there were nonresponding potential exporters during the POI. Since the preliminary determination, we have identified nonresponding potential exporters. The required consolidated response in this case is incomplete because these companies failed to respond to the Department's questionnaire. Moreover, the portion of the response that was submitted, (*i.e.* Min He and Xing Xia) failed to verify. (*see* verification reports dated February 3, 1995)

Although the participating respondents, Min He and Xing Xia, did attempt to cooperate with the Department's requests for documentation during their respective verifications, they were not able to do so and the Department was unable to verify the accuracy and completeness of the information reported in their questionnaire responses. Therefore, the Department must assign an antidumping margin on the basis of BIA pursuant to section 776 (b) and (c) of the Act.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns less adverse margins to those respondents that cooperated in an investigation and more adverse margins to those respondents that did not cooperate in an investigation. The Department's two-tiered methodology for assigning BIA has been upheld by the U.S. Court of Appeals for the Federal Circuit. (*See* Allied Signal v. United States, 996 F.2d 1185 (Fed. Cir. 1993) (June 22, 1993)). In this case, the Department has determined that the respondent, a single entity as explained above, is uncooperative because known exporters did not respond to the Department's questionnaire. This fact impeded significantly the Department's investigation.

When a respondent is uncooperative, the Department normally uses as BIA the higher of 1) the highest margin in the petition; 2) the highest margin calculated for any other respondent within the same country for the same class or kind of merchandise; or 3) the estimated margin found for the affected firm in the preliminary determination. (*See* Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 1892, 19033 (1989)). In this investigation, the preliminary determination margins are higher than the petition margins, as revised in the initiation notice. (*See* Initiation of Antidumping Duty Investigations: Pure and Alloy Magnesium From the People's Republic of China, the Russian Federation, and Ukraine (59 FR 21748, April 26, 1994). Therefore, as BIA, we are assigning to all exporters of PRC pure magnesium and ally magnesium the rates calculated in the preliminary determinations. (see Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plated From Belgium (58 FR 37083, July 9, 1993). (For further discussion of BIA, see Comment 2)

Verification

As provided in section 776(b) of the Act, we attempted to verify all information submitted by respondents for use in our final determinations. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents. However, as noted above, we were not able to verify the accuracy and completeness of the respondents' submissions.

Interested Party Comments

Comment 1

Petitioners contend that the Department should clarify the scopes in these proceedings. Petitioners argue that ''off-specification'' pure magnesium (*i.e.*, magnesium that is less than 99.8% pure magnesium but that otherwise can be and is considered pure magnesium by consumers) should be considered within the scope of the pure magnesium proceeding instead of within the scope of the alloy magnesium proceeding. Petitioners propose revised scopes to achieve this end.

Respondents argued that petitioners' request for ''clarification'' of scope was untimely. They further argued that petitioners concerns about circumvention are merely speculative because no order yet exists as a result of this investigation. Furthermore, respondents stated that petitioners should have their concerns addressed in a request for scope review or an anticircumvention investigation.

DOC Position

We agree with petitioners that some magnesium, despite not meeting the normal definition (based on magnesium content) of pure magnesium, nevertheless may be used in applications that normally require pure magnesium. In fact, the record in this case show sales of such magnesium were supplied to fulfill orders for pure magnesium.

We therefore have revised the scopes of these investigations to include this off-specification pure magnesium within the definition of pure magnesium, described as any product (1) that is 50 percent or more primary magnesium, and (2) that does not meet any ASTM definition of alloy magnesium (based on specific percentages of one or more alloying agents).

We not that our consultations with the Bureau of Mines established that the industry standards for alloy magnesium are ASTM standards. (*See* Final Calculation Memorandum of the concurrent investigations of pure magnesium and alloy magnesium from the Russian Federation and ally magnesium from the Ukraine). Consequently, we have not adopted petitioner's proposed scope language that would describe off-specification pure magnesium as any product, *inter alia*, that does not meet ASTM standards or other industry standards.

Although ASTM standards define pure magnesium as not less than 99.8 percent magnesium, metal with a primary magnesium content below that level should be captured in the scope of the pure magnesium investigations if it cannot legitimately be defined as a specific ASTM alloy magnesium.

The fact that both scopes capture only merchandise with primary magnesium content of 50 percent or greater means that merchandise composed of 50 percent or more secondary magnesium would not fall within either scope.

Comment 2

Petitioners state that the Department should base the dumping margins for all producers and exporters of magnesium from the PRC on BIA, and argue that the BIA rate should be calculated using the factors data found at verification and the lowest United States price in the petition. At verification we found discrepancies in the factor usage data, the additional unreported factors, as well as, mis-reported data on labor and electricity. However, if the suggested methodology is not used, petitioners argue that the Department should not use as BIA a rate lower than the highest rate alleged in the petition.

Min He and Xing Xia argue that, although that they were unable to provide all of the information requested by the Department, they were cooperative and provided timely responses. In view of this cooperation, they argue the Department should not resort to the punitive first tier BIA. Instead, the Department should base its BIA rate on the margins alleged in the petition. They also argue that since the Department was unable to verify the information reported, it must revert to BIA from the petition and publicly available sources, and thus not use facts found at verification to calculate the foreign market value.

DOC Position

The Department does not agree that respondents should be granted cooperative BIA rates. As stated above, because no exporter is being granted a separate dumping margin, we are assigning one country-wide margin in each of the investigations. Given that certain exporters failed to respond to our questionnaire, we are assigning an uncooperative BIA rate, pursuant to our long-standing practice.

Petitioners have asked the Department to depart from its standard practice and adjust this BIA rate based on information discovered at verification. Petitioners are essentially asking the Department to adjust the BIA rate to make it more accurate. However, it is a generally accepted principle that BIA ''is not necessarily accurate information, * * * [but rather is] * * * information which becomes usable because respondent has failed to provide accurate information.'' (See *Association Columbiana de Exportadoras de Flores* v. *United States*, 704 F. Supp. 1114, 1126 (Ct. Int'l Trade 1989), *rev'd in part on remand*, 717 F. Supp. 834 (Ct. Int'l Trade 1989), *aff'd on other grounds*, 901 F.2d 1089 (Fed Cir. 1990) *cert. denied*, 111 S. Ct. 136 (1990)). The Department's practice is to apply, as BIA, the highest margin already calculated and not to engage in the exercise of attempting to calculate the highest possible margin. The purpose of resorting to BIA is not to be punitive but to encourage respondents to properly respond to the Department's requests for information. The Department believes that the 108.26% rate for pure magnesium and 79.38% rate for alloy magnesium accomplish this purpose.

Continuation of Suspension of Liquidation

In accordance with sections 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pure magnesium and alloy magnesium from the PRC that are entered, or withdrawn from warehouse, from consumption on or after November 7, 1994, which is the date of publication of our notice of preliminary determination in the **Federal Register.** The Customs Service shall in each proceeding, require a cash deposit or posting of a bond equal to 108.26 percent *ad valorem* on all entries of certain pure magnesium from the PRC and 79.38 percent *ad valorem* on all entries of certain alloy magnesium from the PRC. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations. As our final determinations are affirmative, the ITC will within 45 days determine whether imports of either product are materially injuring, or threaten material injury to, the U.S. industry. In each proceeding, if the ITC determines that material injury, or threat of material injury does not

exist, that proceeding will be terminated and all securities posted will be refunded or cancelled. If, in either proceeding, the ITC determines that such injury does exist, the Department will issue an antidumping duty order for the appropriate proceeding directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

These determinations are published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: March 22, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–7776 Filed 3–29–95; 8:45 am]

BILLING CODE 3510–DS–P

(A–821–805, A–821–806)

Notice of Final Determinations of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the Russian Federation

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

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch, Dorothy Tomaszewski or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3773, (202) 482–0631 or (202) 482–0922, respectively.

Final Determination

We determine that imports of pure magnesium and alloy magnesium from the Russian Federation are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination on October 27, 1994 (59 FR 55420, November 7, 1994), the following events have occurred:

In December 1994, we issued sections A and C of our antidumping questionnaire [1] to respondent exporters Amalgamet Canada, Greenwich Metals, and Hochschild Partners. These companies provided responses to these questionnaires in December 1994 and January 1995.

All participating respondents' (in each proceeding) supplemental questionnaire responses were received and verifications were conducted as detailed in Appendix I.

On January 31, 1995, we amended our preliminary determinations to correct for certain ministerial errors (60 FR 7519, February 8, 1995).

Certain respondents (Amalgamet Canada, AVISMA, SMW, Gerald Metals, Greenwich Metals and Hochschild Partners) and petitioners filed case briefs. Rebuttal briefs were submitted by petitioners and the following respondents: Amalgamet Canada, AVISMA, SMW, Razno, Interlink, & AIOC, Gerald Metals, Greenwich Metals, and Hochschild Partners. A public hearing was held on February 28, 1995.

Scopes of Investigations

The scopes of these investigations have been modified since the preliminary determination in order to clarify the distinctions between pure magnesium and alloy magnesium. See Comment 9 in the ''Interested Party Comments'' section of this notice, below.

A. Pure Magnesium

The product covered by this investigation is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses:

(1) products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra-pure'' magnesium);

(2) products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) products (generally referred to as ''off-specification pure'' magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

''Off-specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this investigation are alloy primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.11.00, 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

B. Alloy Magnesium

The product covered by this investigation is alloy primary magnesium regardless of chemistry, form or size, unless expressly excluded

[1] Section A requested general information on each company; and section C requested information on, and a listing of, U.S. sales made during the period of investigation (''POI'').