

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.

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(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 questionnaire¹ to respondent exporters

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").

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

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) of 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 POI in both proceedings is October 1, 1993, through March 31, 1994.

Fair Value Comparisons

A. Participating Respondents

To determine whether sales of pure magnesium to the United States by AIOC, Gerald Metals, Greenwich Metals, Hochschild Partners, HDM, Interlink, MG Metals, and Razno, and sales to the United States of alloy magnesium by Amalgamet, Gerald Metals, and SMW, were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Verification revealed that, for its POI sales to U.S. companies, there were no instances where Greenwich Metals' role in the sales process was that of being the first company to sell Russia-produced alloy magnesium to a U.S. customer. That is, all subject merchandise purchased by Greenwich was done so on terms that made Greenwich the U.S. customer of its supplier. Accordingly, Greenwich will be subject to the "Russia-wide" deposit rate for alloy magnesium.

Amalgamet Canada is closely related to W&O Bergmann in that a large percentage of each company's shares are owned by a common owner (Preussag). Bergmann was sent an antidumping questionnaire in August, but, despite its close relationship to Amalgamet, never apprised us of Amalgamet's POI U.S. sales of subject merchandise.²

²Until just prior to our preliminary determinations, the record showed that Bergmann by itself was a mandatory respondent; this changed

The questionnaire sent to Bergmann clearly instructed Bergmann to report "the names and addresses of all related companies in all countries dealing" with the subject merchandise. Had Bergmann properly participated in these investigations, Amalgamet would have been identified in a timely fashion, and would have been instructed to respond to the questionnaire. Amalgamet and Bergmann should have known that Amalgamet's participation in these proceedings was mandatory based on Bergmann's receipt of the questionnaire. Accordingly, Amalgamet and Bergmann will be assigned a deposit rate based on the best information available ("BIA") based on their failure to participate despite early notice of the investigations.

B. All Other Companies

In both proceedings, there is nothing on the record to indicate that any exporters within Russia failed to report U.S. sales of subject merchandise during the POI. The only Russian exporter to have sold either product to the United States during the POI is SMW. Because SMW's calculated margin in both proceedings is zero, we have based the "Russia-wide" deposit rate on a simple average of the rates applicable to all companies considered mandatory respondents, excluding calculated rates that are zero or *de minimis*. In these proceedings, because all such companies' margins are based on BIA, the "Russia-wide" rate is also based entirely on BIA.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to respondents that cooperated in an investigation and margins based on more adverse assumptions for those respondents, like the non-participating respondents in this investigation, which did not cooperate in an investigation. As outlined in Coumarin,³ where, as here, a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (1) the highest calculated rate of any respondent in the investigation, (2) the

(albeit temporarily given Amalgamet's post-preliminary-determination revelation that it had made U.S. sales) when Bergmann stated in an October 1994 fax that earlier-disclosed sales of subject merchandise, although to a U.S. company, were sold "fob Rotterdam, Antwerp or Zeebrugge" without knowledge of destination on Bergmann's part.

³Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China (59 FR 66895, December 28, 1994).

highest margin alleged in the petition, or (3) the margin from the preliminary determination for that firm. Accordingly, we have set the Russia-wide deposit rate at 100.25 percent and 153.65 percent, *ad valorem*, in the pure magnesium and alloy magnesium, respectively. These margins represent the highest margin in the petition, as recalculated by the Department for purposes of initiating this proceeding and as further adjusted to account for factors of production listed in the petition that were not valued at the time of initiation, but for which information

is on the record upon which to base a surrogate value.

United States Price

As detailed below, we based USP on purchase price, in accordance with section 772(b) of the Act, when the subject merchandise was sold directly by the exporters to unrelated parties in the United States prior to importation into the United States and because exporter's sales price ("ESP") methodology was not indicated by other circumstances.

We based USP on ESP, in accordance with section 772(c) of the Act, when the subject merchandise was sold to the first

unrelated purchaser after importation into the United States.

Both purchase price and ESP were based on packed prices to unrelated purchasers in the United States, according to the applicable delivery terms, with appropriate price adjustments. The following is a summary of U.S. price calculations for each exporter, with an asterisk ("**") designating price adjustments applicable to some but not all sales (see Final Calculation Memorandum, on file in room B-099 of the Main Commerce Department Building, for details of these adjustments).

Exporter	Terms of sale	Price adjustments
Pure Magnesium		
AIOC (PP, ESP)	CIF, FOB, Delivered	Foreign inland freight, storage charges, inspection charges*, sample costs charges*, document charges*, other foreign inland freight, dunnage, ocean freight, seaway tolls, U.S. duty, stevedoring, wharfage*, unloading charges*, warehousing*, U.S. inland freight.
Interlink (PP)	Delivered, In-Warehouse	Foreign insurance, ocean freight, marine insurance, procedure fees, harbor maintenance fees, U.S. inland freight, U.S. inland insurance*, U.S. brokerage.
Gerald (PP)	In-Warehouse, Delivered, FOT Warehouse.	Foreign brokerage, foreign inland freight*, ocean freight, U.S. inland freight*, U.S. brokerage, oxidation credits.*
Greenwich (PP, ESP)	Delivered, FOT, In-warehouse.	Discounts*, foreign brokerage, ocean freight, marine insurance, U.S. duty, U.S. inland freight*, U.S. inland insurance, U.S. brokerage, third party payments.*
Hochschild (PP)	Delivered	Foreign brokerage, ocean freight, marine insurance, U.S. duty*, U.S. inland freight*, U.S. brokerage*, third party payments.*
HDM (ESP)	Delivered	Ocean freight, U.S. duty*, U.S. inland freight, U.S. brokerage*, repacking*, U.S. containerization*, other containerization.
MG (PP, ESP)	Delivered	Foreign brokerage*, foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. inland insurance, U.S. brokerage, repacking.*
Razno (PP)	CIF, FOB	Foreign brokerage, foreign inland freight, oxidation credits.*
SMW (PP)	FOB	Foreign brokerage, foreign inland freight.
Alloy Magnesium		
SMW (PP)	FOB	Foreign brokerage*, foreign inland freight*, ocean freight, U.S. duty*, U.S. inland freight, U.S. brokerage, third party payments.
Gerald (PP)	In-Warehouse, Delivered FOT Warehouse.	

From each exporter's U.S. price, we also deducted foreign inland freight between the factory and the reported intermediate destination (e.g., Rotterdam) as follows: For SMW and Razno, we used reported distances and transport modes to calculate an appropriate surrogate factory-to-border freight amount on the basis of surrogate freight rates in Brazil; for all other exporters, we deducted the per-ton foreign inland freight amount reported in the petition as best information available because those exporters did not in their questionnaire responses information with respect to such charges. We made no deduction from USP to account for exporter-incurred selling expenses, nor did we deduct export taxes paid by Russian companies to the Russian government because the actual amounts paid are an internal expense within an NME country. We adjusted reported marine insurance and ocean freight charges for Razno as

follows: a reported figure that was an extended value (i.e., an amount applicable to the entire transaction) was adjusted to reflect a per-unit amount.

The following adjustments were made to the reported U.S. sales of these exporters pursuant to our findings at verification (see Final Calculation Memorandum, for details of these adjustments):

AIOC (Pure Magnesium): AIOC's final U.S. sales listing was adjusted to exclude certain sales that verification revealed had been improperly included. Based on verification findings, minor corrections to reported figures for inspection fees, sample costs, dunnage, ocean freight, seaway tolls, U.S. duties, unloading. Additionally, we deducted an amount for marine insurance based on verification.

Gerald Metals (Pure Magnesium and Alloy Magnesium): Minor corrections to reported figures for foreign brokerage, foreign inland freight, ocean freight,

U.S. brokerage, third party payments, and oxidation credits were made based on verification findings.

Hochschild Partners (Pure Magnesium): Hochschild's final U.S. sales listing was adjusted to exclude certain sales that verification revealed had been improperly included. An additional unreported U.S. sale was discovered at verification and included in its final sales listing. For purposes of calculating a unit margin for this sale, we applied the highest reported charges for ocean freight, foreign brokerage and marine insurance, as well as the highest reported U.S. movement charges applicable to the delivery terms of this sale. Minor adjustments to reported figures for foreign brokerage, ocean freight, and marine insurance were also made based on verification findings. Finally, third party payment figures relating to certain sales were disclosed at verification.

Hunter Douglas (Pure Magnesium): Minor corrections to reported figures for ocean freight, U.S. duty, U.S. brokerage, and U.S. containerization charges were made based on verification findings.

Interlink (Pure Magnesium): Interlink's final U.S. sales listing was adjusted (a) to exclude certain sales that had been improperly included and (b) to include certain sales that had been improperly excluded. Additionally, minor corrections to reported figures for ocean freight and U.S. brokerage were made based on verification findings.

Razno Alloys (Pure Magnesium): Razno's final U.S. sales listing was adjusted (a) to exclude certain sales that had been improperly included and (b) to include certain sales that verification revealed had been improperly excluded. Additionally, although we considered Razno a Russian company for our preliminary determination because its sales office is in Moscow, we have determined that Razno would more properly be characterized as a Swiss company. It is registered in Switzerland, its accounts are kept in Switzerland, and its ownership is majority non-Russian. Finally, minor corrections were made to reported figures for foreign brokerage based on verification.

Foreign Market Value

For sales of magnesium produced by Avisma and SMW, we calculated FMV based on factors of production cited in the preliminary determination, making adjustments based on verification findings (see Final Calculation Memorandum). To calculate FMV, the verified factor amounts were multiplied by the appropriate surrogate values for the different inputs. We have used the same surrogate values used in the preliminary determination with the exception of certain corrections made based on verification or interested party comments.

Based on verification, we adjusted certain factors' value to reflect the actual purity used in the production of subject merchandise.

We recalculated certain inland freight distances between factory and input supplier based on verified distances.

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for the above-mentioned exporters. The factors used to produce pure and alloy magnesium include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of surrogate values, see our Final Calculation Memorandum.) A factory overhead

figure was also included in the FMV calculation based on a percentage of materials, labor and energy. We also granted certain by-product offsets against the cost of manufacturing (*i.e.*, the sum of materials, labor, energy and factory overhead). We then added the statutory minimum amounts for general expenses and profit, the cost of containers and coverings, and other expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

We used the same methodology as in the preliminary determination to value factors of production, with the following exceptions: (1) We used a publicly available, published Brazilian rate for unskilled labor; (2) we used a publicly available, published Brazilian unit price for natural gas; and (3) we applied a publicly available, published Brazilian industrial rate for electricity used by electricity-intensive industries with comparable levels of electricity consumption and capacity as magnesium producers.

A. Market Reforms in the Russian Federation

In accordance with section 773(c) of the Act, the Department normally uses a factor valuation methodology to calculate foreign market value when the country involved is an NME country and the Department determines that it cannot determine foreign market value based on the respondent's prices or costs. Alternatively, an NME-country respondent may argue that market-driven prices characterize its particular industry and, therefore, despite NME status, that foreign market value should be calculated by using actual home market prices or costs (a market-oriented industry or "MOI" claim).

In these investigations, the Russian manufacturers, Avisma and SMW, claim that economic conditions now prevalent throughout Russia warrant revocation of Russia's NME-country status, effective January 1, 1994. Alternatively, the two companies claim MOI for the magnesium industry in Russia.

Regarding the revocation of NME status, the Department's analysis centers around a government's role in economic activity. See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Poland (58 FR 37205, July 9, 1993). Consistent with the factors described in section 771(18), the Department considers the extent to which resources are allocated by the market or government, taking into account government involvement in currency and labor markets, pricing, and production and investment decisions.

Where resources are not allocated by the market, it would be difficult to conclude that home market prices or costs should be used to calculate fair value.

Evidence provided in these proceedings indicates that Russia is in the process of implementing extensive reforms to achieve its goal of becoming a market economy. The freeing of most prices in December 1991 and the privatization of most enterprises formerly within the state-planning system are important steps in moving Russia towards a market economy.

We cannot conclude, however, based on the information in this record that Russia should be treated as a market economy for purposes of the antidumping duty law. The Russian economy, having emerged from a centrally-planned system, is in a state of transition. Many of the state controls have been abandoned, but that does not mean that functioning markets have replaced controls. Because the evidence does not demonstrate that prices and costs in Russia adequately reflect market considerations, we cannot at this time alter Russia's designation as a nonmarket economy.

Regarding the MOI claim, information on the record suggests that the government continues to be involved in the Russian magnesium sector. For example, the Russian Federal Committee on Metallurgy, a successor to the Ministry of Industry (Metallurgy Department), indicated in an official statement that it controls activity in the magnesium industry in Russia, noting particularly that it coordinates production, exports, and prices. Also, although the two producers under investigation have been privatized, this same statement indicates that the Committee may be using the remaining government interest in these companies to carry out its intentions with respect to pricing and production. For these reasons, as stated in the preliminary determination, we determine that the prices or costs of producing magnesium in Russia should not be used to calculate fair value. No new information has been presented since then to alter this conclusion.

B. Separate Rates

In each of these proceedings, SMW requested that the Department calculate a dumping margin and assign a deposit rate separate from other potential Russian exporters. For our preliminary determination, we decided that we did not need to address the issue because (1) SMW was the only Russian exporter of alloy magnesium; and (2) we decided that SMW's pure magnesium exports were too small to consider in margin

calculations. However, we have now reconsidered our position that SMW's status as the only Russian company to sell to the United States obviates the need for a separate rates analysis when a separate rates claim has been put forward. SMW has claimed that government ownership and control are absent and, therefore, as a POI exporter, it is entitled to consideration of its claim.⁴

Further, we no longer consider SMW's pure magnesium sales insignificant because we have determined, as discussed above, that Razno Alloys, preliminarily found to be a Russian company, is actually a Swiss company. Razno's redefined status as a Swiss company renders SMW's pure magnesium exports significant in that SMW was the only company in Russia to have exported any pure magnesium directly to the United States. Thus, SMW is the only Russian company that exported either pure or alloy magnesium to the United States.

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department employs the criteria developed in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991) (Sparklers) and amplified in Silicon Carbide. Under this analysis, the Department assigns a separate rate only when an exporter can demonstrate the absence of both *de jure*⁵ and *de facto*⁶ governmental control over export activities.

Ownership

SMW is a joint-stock company ("JSC") that was state-owned until 1992, when

⁴ Although Avisma also made a separate rates claim, it did not make any POI direct U.S. sales. It is, for good reason, unprecedented for the Department to entertain separate rates claims from companies that have not made direct sales to the United States: Analyzing and verifying separate rates claims from such companies would be a great burden, and government involvement in export sales operations could be hard to fully evaluate absent sales to the United States.

⁵ Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies.

⁶ The factors considered include: (1) whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (see *Silicon Carbide*).

a transition to private and employee ownership was begun. At the end of the POI, the Perm Regional Fund of State Property ("Perm Fund") owned 20 percent of SMW's shares, with the rest of shares owned by a workers collective—51 percent—or private companies (e.g., investment funds). Verification supported SMW's account of its ownership status.

Control

Government control over SMW's export operations (both *de jure* and *de facto*) is absent. Specifically:

The July 1, 1992, Decree of the President of the Russian Federation: Measures for the Organization and Reconstruction of State Enterprises, and the Transferring of State Enterprises into Joint Stock Companies ("Decree 721"), establishes that JSCs are "out of the control of Ministries, State and Local administrative organs and authorities."

The July 3, 1991, law, "On Privatization of State-Owned and Municipal Enterprises," is divided into three sections dealing with general principles, procedures and means, and concluding principles. It is also divided into 31 articles. Significant articles include:

Article 6, which establishes Russian Federal Property Fund to act as temporary "possessor of RSFSR [Russian Federation] deeds to enterprises" and to sell shares and deeds to enterprises. Limits Fund's voting rights to a maximum of 20 percent of shares. States that Fund may not "interfere in the operations of enterprises except in cases stipulated by enterprises' founding documents and the legislation of the RSFSR * * *"; and

Article 9, which forbids buying of enterprises undergoing privatization by state entities or certain state-held companies/funds.

With respect to *de facto* aspects of government control over export activities, SMW sets its own prices⁷ and "has free access to" the proceeds and profits of its export sales, would finance its own losses if they occurred, and could purchase foreign currency with rubles or otherwise dispose of assets (but has never actually had done so). Verification of sales transactions revealed no evidence of government involvement in the disposition of

⁷ Although an export license was required in order to make export sales, and the nominal purpose was to allow the licensing authority to approve the export price, SMW characterized this procedure as *pro forma*. Verification revealed no indication that such control had ever been exercised: export licenses that had been issued, examined in the context of reviewing SMW's sales, appeared to reflect without exception prices negotiated between SMW and its customers. The price negotiation process did not appear to involve any government authorities.

SMW's proceeds from export sales aside from the already-reported requirement that SMW convert half of foreign exchange earnings to rubles.

As a shareholder, the Perm Fund was able to appoint one of SMW's 15 Board members and votes in the appointment of the general director. The other 14 Board members are employees. In fact, minutes of SMW's 1993 Board meeting, examined at verification, did not appear to indicate participation by a representative associated with the Perm Fund or with any other government entity.

Although the Board of shareholders did not appoint SMW's general director, it did, based on the minutes of its 1993 meeting, reaffirm the basic terms of SMW's contract with the general director, who had been appointed before SMW became a JSC. This reaffirmation indicates that the Board controlled decisions regarding the appointment of management even though it did not choose to make a management change upon becoming a JSC.

In summary, the evidence favors a finding that government control is absent and, accordingly, we find that SMW should be considered a separate company for purposes of assigning a deposit rate.

C. Surrogate Country Selection

We selected Brazil as the appropriate surrogate country for the reasons set forth in our preliminary determinations. Since we find no compelling reason to change this selection, we have continued to base FMV on the values of the appropriate factors of production as valued in Brazil.

D. Factors of Production

For sales of magnesium produced by Avisma and SMW, we calculated FMV based on factors of production cited in the preliminary determination, making adjustments based on verification findings (see Final Calculation Memorandum). To calculate FMV, the verified factor amounts were multiplied by the appropriate surrogate values for the different inputs. We have used the same surrogate values used in the preliminary determination with the exception of certain corrections made based on verification or interested party comments.

Based on verification, we adjusted certain factors' value to reflect the actual purity used in the production of subject merchandise.

We have adjusted the surrogate inland freight charge for transporting factor inputs from supplier to factory to reflect the surrogate value for the actual quantity being transported. We

recalculated inland freight distances between factory and input supplier based on verified distances.

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for the above-mentioned exporters. The factors used to produce pure and alloy magnesium include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of surrogate values, see our final calculation memorandum.) We then added amounts for general expenses and profit, the cost of containers and coverings, and other expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

We used the same methodology as in the preliminary determination to value the raw materials, except where corrections were possible or necessary.

Verification

As provided in section 776(b) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Critical Circumstances

In accordance with section 735(a)(3) of the Act, we determine that critical circumstances exist with respect to imports of alloy magnesium from the Russian Federation. No new information has been placed on the record since our preliminary determination. Therefore, we continue to find that critical circumstances exist with respect to all imports of alloy magnesium except those of Gerald Metals and SMW.

Interested Party Comments

Comment 1: Russian Manufacturers' Knowledge of Destination

Petitioners contend that Avisma and SMW should be assigned BIA margins because they knew at the time of sale to third-country resellers that the merchandise was destined for the United States. Petitioners note that the producers completed GSP forms, sold to customers that had U.S. addresses, and were explicitly told by some customers of merchandise's destination. Because of this knowledge on Avisma's and SMW's part, petitioners argue, resellers claiming to be the first to sell to a U.S. customer in the sales process should be assigned the "Russia-wide" rate.

Avisma and SMW argue that they did not know at the time of sale that

merchandise was destined for the United States. The companies assert that the GSP forms were filled out by the producers after the sales were made, indicating that at the time of sale the producers did not know the destination. Avisma and SMW argue that the customer's address is irrelevant because magnesium is a commodity product that can be sold anywhere in the world. Finally, the companies point out that verification confirmed that there was no indication that either Avisma or SMW failed to report any U.S. sales.

DOC Position

We agree with Avisma and SMW. Based on our examination of sales and export documents at verification, we found nothing to indicate any unreported instances of merchandise being sold with the knowledge at the time of sale that the ultimate destination was the United States. We verified that simply because a purchaser's address is in the United States does not mean that the merchandise is destined for the United States. In fact, magnesium sold to purchasers with U.S. addresses was frequently shipped to non-U.S. destinations. Although SMW did, as some exporters stated, eventually learn of some of its merchandise's sale to U.S. customers, this knowledge always came after SMW had sold the merchandise.

Comment 2: Completeness and Accuracy of Various Resellers' Reporting of U.S. Sales

Petitioners contend that total or partial BIA is warranted for AIOC, Razno, Interlink, Hochschild and Greenwich Metals because these companies made various errors in reporting U.S. sales that were not revealed until just prior to, or during, verification. Petitioners also advocate total BIA for each exporter for which any verification revealed that the exporter failed to report sales of the subject merchandise, as well as for all companies that refused verification.

The companies argue that BIA is not warranted because the errors made were not serious and were corrected.

DOC Position

We agree with petitioners in part. We determined that the errors cited by petitioners for AIOC, Razno, and Interlink were inadvertent and were, in the end, verified. There is nothing to indicate that the omission of these sales would have had any impact on these companies' margins. Further, we are satisfied that the record is now complete and accurate as to these companies' POI sales of subject merchandise. Accordingly, the reported information,

as corrected based on verification, is the appropriate basis for our respective LTFV determinations for AIOC, Razno, and Interlink.

We disagree that BIA is warranted for Hochschild's failure to report a pre-POI contract discovered at verification; instead, we have included in Hochschild's sales listing information gathered at verification regarding this sale.

We agree with petitioners that Hochschild and Greenwich Metals incorrectly reported certain sales as U.S. sales. Verification demonstrated that the contracts setting terms of sale by these companies' suppliers included an identification of the shipment destination. This fact outweighs the contention that the companies had the option of transshipping the merchandise to another country. Accordingly, we determine that Greenwich did not make any U.S. sales of alloy magnesium during the POI and we have not calculated a company-specific alloy magnesium margin for Greenwich. Instead, Greenwich will be subject to the "Russia-wide" rate. We have also eliminated these improperly included sales from Hochschild's sales listing and have assigned the appropriate margin to Hochschild's European supplier.

Finally, with the exception of those participating exporters that have remedied reporting deficiencies, any exporter that improperly did not report POI sales is subject to suspension of liquidation at the "Russia-wide" rate (which is based entirely on BIA), as are all companies that reported having made no sales.

Comment 3: Scope

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.

Greenwich argues that the proposed revised scopes are flawed because they appear to include secondary magnesium (*i.e.*, magnesium that has been remelted and recast) as subject merchandise.

DOC Position

We agree with petitioners 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 records in the concurrent antidumping investigations of pure and alloy magnesium from the People's Republic of China 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 note that our consultations with the Bureau of Mines established that the industry standards for alloy magnesium are ASTM standards. (See Final Calculation Memorandum.) 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 4: Surrogate Value for Electricity

Avisma and SMW contend that published, public information indicates that large industrial users of electricity in Brazil receive a lower electricity rate (compared to other types of users). Respondents assert that information on the record indicates that Avisma and SMW are "large industrial users" of electricity and, as such, would receive a lower electricity rate if they bought electricity in Brazil. Therefore, respondents argue the appropriate value for electricity is \$0.0235/Kwh.

Petitioners contend that the Department should continue to use the \$0.055/Kwh rate for electricity value because the record does not show that the rate advocated by Avisma and SMW is the rate actually paid by the magnesium industry in Brazil. Petitioners charge that the record shows that the Brazil "large industrial user" rates are (1) below cost because they are

subsidized, and (2) generally not applicable because they are established pursuant to individual negotiations. Even if the Department were to accept Brazil electricity rate schedules submitted by Avisma and SMW, petitioners contend, there would be no way to determine which rate would be appropriate for Avisma and SMW.

DOC Position

We agree with Avisma and SMW that the Brazil "large industry user" rate is the rate they would have received had they been electricity consumers in Brazil during the POI. For each company, the record contains verified figures on both POI magnesium production and the number of kilowatt hours needed to produce one metric ton. Dividing the total number of kilowatt hours used in POI magnesium production by the number of hours in the POI clearly shows that, at least during the POI, the kilowatt capacity of each user was significantly higher than the minimum necessary to receive the "large industrial user" rate in effect in Brazil during the POI. Although subsidization would not necessarily render a surrogate value inappropriate, petitioners have not in this instance presented evidence of subsidization (providing only a vague reference to possible subsidies in the Amazon region).

Comment 5: By-Product Offset Methodology

Petitioners contend that the Department's decision to permit an offset to material surrogate values to account for by-products of the magnesium production process was erroneous for the following reasons: (1) The producers were unable to demonstrate for the record that any economic benefit accrued to the firm and that the benefit was linked to the production of the subject merchandise; (2) the surrogate value used was incorrect in that it did not correspond to the actual purity level of the by-product produced and was not calculated net of transportation and processing costs; and (3) any adjustment determined to be appropriate should have been made to the cost of manufacture rather than cost of materials so as not to understate factory overhead, general expenses, and profit.

Avisma and SMW argue that there is nothing on the record indicating that they should not qualify for by-product offsets. With respect to valuation, the companies do not dispute that an appropriate purity level adjustment should be made, but contend that there are no processing costs associated with

the by-products which are not captured in costs associated with primary product production. Finally, Avisma and SMW argue that an adjustment to cost of materials is the appropriate adjustment because the Department is using the factors-of-production methodology to calculate FMV.

DOC Position

We agree with petitioners in part and with Avisma and SMW in part. First, because the by-products result from the production process and are either used by the magnesium producer or sold for use by some other company in the NME country, we agree with Avisma and SMW that they are a factor whose value must be taken into account in our calculation of the fair value against which to test U.S. prices. Second, we have adjusted surrogate CIF import value of the by-products to reflect concentration differences. However, no adjustment to value for transportation costs is appropriate. For by-products, as for material factors of production consumed in the production process, we consider the import values used to be surrogates for ex-factory, freight-exclusive prices from suppliers to consumers. Third, we agree with petitioners that the proper adjustment is a reduction in the cost of manufacture. This adjustment increases the surrogate overhead amount commensurately with the value of the by-product, thereby eliminating the need for valuing any additional processing-related elements. Additionally, an adjustment to cost of manufacture is consistent with Department practice in other NME investigations (see, e.g., *Coumarin*⁸).

Comment 6: Surrogate Factory Overhead

Petitioners contend that the Department must account for costs associated with the rebuilding of electrolytic cells by adjusting upward the surrogate overhead percentage used in the preliminary determinations. Petitioners suggest using their own experience as to the cost of cell rebuilds expressed as a percentage of the sum of material, labor, and energy costs. Petitioners also suggest that the Department should, in calculating FMV, use an overhead ratio that includes energy in the numerator since verified energy amounts for the producers represent only energy directly related to production.

Avisma, SMW, Interlink, Razno, and AIOC argue that an adjustment to

⁸ Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China (59 FR 66895, December 28, 1994)

overhead based upon petitioners' cell rebuild experience would be inconsistent with both the Act and Department practice and is, therefore, unwarranted. With respect to energy, these respondents argue that (1) inclusion in the denominator of the overhead ratio should be limited to indirect energy costs, and (2) only direct energy should be included in the base to which the overhead percentage is applied in calculating surrogate overhead.

DOC Position

We agree with respondents that the adjustment proposed by petitioners is not appropriate in this instance. Although we may take into account petitioners' experience in extraordinary circumstances, we generally do not consider petitioners' costs as an appropriate benchmark by which to test the accuracy of surrogate country values. Further, the fact that one element (*i.e.*, cell rebuild) of factory overhead has significant cost associated with it does not invalidate the overhead percentage used. Factory overhead is a combination of elements, some of which may be more or less expensive depending on the product or even the company. The Department has rejected item-by-item evaluation of overhead components in the past (see the final determination of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Socialist Republic of Romania, (52 FR 17433, 17436, May 8, 1987)), and we see no reason to alter this practice in this case.

Further, there is no contrary evidence which indicates that the overhead percentage used for the preliminary determinations is an inappropriate surrogate figure. In the absence of an actual overhead for Brazil's magnesium industry, the Department will continue to rely on the surrogate overhead percentage used in the preliminary determination.

Comment 7: Surrogate General Expenses and Profit

Petitioners argue that the percentage used to account for producers' general expenses in calculating FMV should be changed from the statutory minimum to 26.92 percent, which is the ratio of SG&A expenses to cost of goods sold based on figures reported in the 1992 financial statement of an aluminum manufacturer in Brazil. Petitioners also argue that an additional amount should be included in FMV calculations in order to reflect general expenses incurred and profit realized by each reseller involved in the sales process. Petitioners argue that, because the

responding resellers failed to provide their selling expenses (despite a Departmental request to do so in the questionnaire), the Department should add an amount based on financial statements submitted by resellers.

With respect to surrogate SG&A for manufacturers, Avisma, SMW, Interlink, Razno and AIOC argue that the figures put forward by petitioner are bogus because they involve application to an inflation-adjusted base of a percentage that is based on figures that have not been adjusted for inflation. These respondents argue that their own submitted surrogate information is superior to petitioners' information because it is inflation-adjusted. With respect to the question of whether to include in FMV an amount for reseller general expenses, the five aforementioned respondents, along with Greenwich, Hochschild, and Gerald Metals, assert that petitioners have provided no convincing rebuttal to the Department's recent rejection of such a request in Coumarin.

DOC Response

With respect to the question of the appropriate surrogate for manufacturer general expenses, we agree with Avisma, SMW, Interlink, Razno and AIOC that use of inflation-adjusted figures is the most appropriate basis for calculating the SG&A ratio. Accordingly, we have used either an appropriate figure from the record or the statutory minimum (10%), whichever is greater.

We also agree with respondents that addition to FMV of actual reseller general expenses would be inappropriate. Given that Russia is an NME and the Russian magnesium industry has not been found to be market oriented, section 773(c) of the Act requires that the Department measure U.S. prices against the factors of production (materials, labor, energy, and overhead) used in producing the merchandise, valued in an appropriate surrogate country, plus general expenses, profit and containers. The Act's only specific guidance as to the valuation of general expenses, profit and containers is to establish minima for the first two. Our regulations, meanwhile, instruct us to "include in this calculation of constructed value an amount for general expenses and profit, as required by section 773(e)(1)(B) of the Act. (19 CFR 353.52(c)) The Department has not interpreted the Act and the regulations as requiring use of actual expenses and profit for these FMV components when FMV is based on factors of production; the Department has also explicitly rejected such

adjustments in prior NME proceedings (see, *e.g.*, Coumarin and Sparklers⁹). Moreover, to do so simply does not make sense because it amounts to a comparison of apples and oranges. In NME proceedings, the FMV is normally based completely on factors valued in a surrogate country (without regard to, for example, actual selling expenses) on the premise that the actual experience cannot be meaningfully considered. Were the question simply one of "traditional" dumping by trading companies, the market-economy price-to-price or price-to-CV methodology would appropriately be employed; actual selling expenses would have been accounted for on both U.S. prices and foreign market prices (or, if appropriate, constructed value, in which case other general expenses and profit would also have been taken into account). Accordingly, we have continued to value general expenses and profit by simply applying to the surrogate-based cost of manufacture the greater of either appropriate surrogate percentages or the statutory minima.

Comment 8: Market Orientation (Russia and Magnesium Industry)

Avisma and SMW contend that, although they "do not expect the magnesium investigation[s] to result in the revocation of Russia's NME status," consideration of whether to revoke Russia's NME status should hinge upon whether there are concrete indicators of market-driven activity rather than on the degree to which the market has moved toward "an orderly Western-style brand of capitalism." The companies also state for the record that they demonstrated that the Russian magnesium industry is market oriented, but opted not to pursue this tack because they anticipated favorable outcomes using factors of production valued in a surrogate country.

Petitioners state that the records in these investigations offer no basis for determining that Russia is no longer an NME for purposes of these investigations, nor do the records support a finding that the magnesium industry is market oriented.

DOC Position

As discussed in the "Foreign Market Value" section, above, we have determined that it would be inappropriate to alter Russia's designation as an NME, and that the Russian magnesium sector is not a market-oriented industry. Should these

⁹ Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991)

issues arise in future antidumping proceedings involving merchandise from the Russian Federation, the status of market reforms and market orientation of specific industries will be carefully evaluated if raised by parties in those proceedings.

Comment 9: Separate Rates

Petitioners argue that Avisma and SMW are subject to *de jure* and *de facto* government control and thus do not warrant separate rates.

SMW and Avisma counter that they are fully entitled to separate rates.

DOC Position

We agree with respondents in part. As is detailed above, we find that SMW has demonstrated the absence of *de jure* and *de facto* government control and thus is entitled to a separate rate in both proceedings. However, because Avisma did not make any POI U.S. sales of subject merchandise in either proceeding, it is not necessary to address the question of whether Avisma should be assigned a separate rate since such an action would result in no difference in the deposit rate that would apply to any future direct U.S. sales by Avisma.

Comment 10: Export Taxes

Petitioners argue that a tax imposed by the Russian government on magnesium exports must be accounted for in making LTFV comparisons because (1) section 772(d)(2)(B) requires deduction from U.S. price of export taxes, and (2) the tax imposition had the effect of reducing net receipts to the Russian producers selling their magnesium.

DOC Position

We disagree, and have not accounted for the export tax in our LTFV calculations. With respect to the reduction of net receipts to Russian producers, the premise in determining values in NME proceedings is that pecuniary aspects of internal transactions are considered meaningless and thus ignored. The export tax paid to an NME government is an intra-NME transfer of funds between a Russian producer and the Russian government. As such, it is inappropriate to account for such transfers in our LTFV analysis just as it is NME prices and costs.

The Department has interpreted section 772(e)(2), another paragraph dealing with the general question of reductions to U.S. price, as not requiring the deduction of selling expenses from ESP when FMV is based on factors of production. The issue of the export tax is analogous. Similarly, we interpret

772(d)(2)(B) as not requiring the deduction of an intra-NME transfer of funds, even if it is in the form of an export tax. Finally, we note that, in these proceedings, even if a reduction to USP to account for the export tax had been deemed appropriate, it would not have resulted in positive margins for any company receiving a calculated rate.

Comment 11: Surrogate Country Selection

Avisma and SMW contend that Poland, not Brazil, is the more appropriate surrogate country because Poland is the market economy country that most resembles the Russian Federation in economic terms and because Poland produces comparable merchandise. The companies assert that, in selecting a surrogate country, economic similarity should outweigh production of the investigated product.

Petitioners argue that Brazil is the appropriate surrogate country citing, among other factors weighing against selection of Poland, the fact that Poland produces an insignificant quantity of aluminum and no magnesium.

DOC Response

We agree with petitioners. Selection of a proper surrogate country must be made on case-by-case basis, in consideration of the Department's judgment of how to weigh facts on the record within the parameters prescribed by statute and regulations, as well as case precedent. Based on our experience in this case and previous proceedings involving magnesium, we judged electricity use to be a very important factor and thus gave it great weight under the rubric of product comparability. Given the economic comparability of Brazil to the Russian Federation, and since Brazil is a significant producer of electricity-intensive products such as magnesium and aluminum, we continue to find that Brazil is the most appropriate surrogate country in this case.

Comment 12: Quantity and Surrogate Value of Natural Gas, Liquid Petroleum Gas, and Heavy Oil

Petitioners contend that the Department should correct for a mathematical error made in converting a surrogate value for natural gas from a price per cubic meter to a price per metric ton. Petitioners also suggest a value of \$290/MT to be the appropriate surrogate value for liquid petroleum gas. Petitioners claim that, for both Avisma and SMW, reported usage of heavy oil and natural gas appears to represent theoretical amounts that do not account

for thermal losses (which petitioners suggest should be at least 30 percent).

Avisma, SMW, AIOC, Interlink and Razno argue that a value of \$142.86/MT is correct because of an error in the source of petitioners' figure.

DOC Position

We agree with Avisma et al. as to the proper conversion of natural gas quantities. We do not need to address the question about the appropriate value for LPG because we are basing the value for this factor on natural gas. With respect to actual use of heavy oil and natural gas, we did not discover the error claimed by petitioners at verification and thus have not changed the reported quantities.

Comment 13: Quantity and Surrogate Value for Timber

Petitioners contend that the Department, in calculating FMV, should use the information on the record to value the timber used by Avisma and SMW and convert from cubic meters to kilograms.

Avisma, SMW, AIOC, Interlink and Razno advocate conversion of reported figures to board feet rather than kilograms, and use of the POI value of lumber per board foot in the United States.

DOC Position

We agree with petitioners and have valued timber based on their suggested methodology. With respect to the contention of Avisma et al., use of U.S. values for production factors is not appropriate in NME proceedings, particularly when surrogate-country values are available.

Comment 14: Surrogate Values of Carnallite Concentrate and Dehydrated Carnallite

Petitioners argue that the price of dolomite is not an appropriate surrogate for carnallite concentrate and dehydrated carnallite (which, unlike dolomite, are processed materials). Petitioners advocate increasing the dolomite value used in the preliminary determinations to account for processing associated with the manufacture from raw carnallite of either concentrated carnallite or dehydrated carnallite.

Avisma and SMW argue that the price of dolomite is a reasonable surrogate for the price of carnallite concentrate because the two materials have similar magnesium contents and the processing necessary to transform raw carnallite into carnallite concentrate is minimal. The companies contend that the value for calcinated dolomite is not a suitable

surrogate for carnallite concentrate because the two materials have completely different chemistries (chiefly, the absence of magnesium chloride in calcinated dolomite) and are used in substantially different magnesium production processes. The two companies advocate calculation of a value for dehydrated carnallite used by SMW based on Avisma's factors of production for that commodity.

DOC Position

We agree with Avisma and SMW. We used the price of dolomite in Brazil, as provided in the petition, as the surrogate for carnallite concentrate. Dolomite, with a comparable magnesium chloride content, is the most appropriate substitute available in the absence of an actual price in Brazil for carnallite concentrate. We have also calculated a value for dehydrated carnallite based on Avisma's factors of production.

Comment 15: Quantity and Surrogate Value of Labor

Petitioners advocate corrections to reported labor figures based on verification findings. Petitioners also argue that the Department should use as a surrogate 1993 wage rates in Brazil to value unskilled labor.

DOC Position

We agree with petitioners and have both corrected the reported labor figures and adopted the alternative value for unskilled labor.

Comment 16: Inflation Adjustments for Brazil Values

Petitioners contend that 1992 Brazil values used as surrogate values should be adjusted for inflation.

Avisma, SMW, AIOC, Interlink and Razno argue that no adjustment is appropriate since dollar-denominated prices of commodity chemicals cannot be assumed to have risen between 1992 and the POI.

DOC Position

We disagree with petitioners. Since we do not know the dates or exchange rates used to convert these values into dollars, an appropriate adjustment (if any) for dollar inflation cannot be determined. Further, the magnitude of any adjustment would likely be small since the data are nearly contemporaneous with the POI.

Comment 17: Concentration/Purity Levels of Material Inputs

Petitioners contend that appropriate adjustments should be made for differences in concentration or purity between surrogate values on the one hand and materials used in production on the other hand. However, petitioners also argue that the Department should not assume that surrogate values represent 100 percent concentration and therefore should make no adjustment where the concentration applicable to a surrogate value cannot be determined.

DOC Position

Where we have been able to determine the purity or concentration applicable to a surrogate value, we have adjusted for differences, if any, between the surrogate and the actual material. Otherwise, we have attempted no adjustment for purity or concentration.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we are directing

the Customs Service to continue to suspend liquidation of all entries of pure magnesium from the Russian Federation that are entered, or withdrawn from warehouse, for consumption on or after November 7, 1994, which is the date of publication of our notice of preliminary determination in the **Federal Register**. The following companies will be excepted from these instructions because their sales of pure magnesium were found not to have been sold below fair value: AIOC, Amalgamet, Gerald Metals, Greenwich Metals, Hochschild Partners, Hunter Douglas, Interlink, MG Metals, Razno Alloys, or SMW. These companies will be excluded from an antidumping duty order should one be issued.

We are also directing the Customs Service to suspend liquidation of all entries of alloy magnesium from the Russian Federation entered, or withdrawn from warehouse, for consumption on or after August 9, 1994 (*i.e.*, the date that is 90 days prior to the date of publication of this notice in the **Federal Register**). Gerald Metals and SMW will be excepted from these instructions because their sales of alloy magnesium were found not to have been sold below fair value. The Customs Service shall, in each proceeding, require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

A. PURE MAGNESIUM

Exporter/manufacturer/producer	Weighted-average margin percentages
AIOC*	0.00
AIOC/Other	100.25
Gerald Metals*	0.00
Gerald Metals/Other	100.25
Greenwich Metals*	0.00
Greenwich Metals/Other	100.25
Hochschild Partners*	0.00
Hochschild Partners/Other	100.25
Hunter Douglas*	0.00
Hunter Douglas/Other	100.25
Interlink*	0.00
Interlink/Other	100.25
MG Metals/Avisma	0.00
MG Metals/SMW	0.00
MG Metals/Other	100.25
Razno Alloys/SMW	0.00
Razno Alloys/Other	100.25
SMW/SMW	0.00

A. PURE MAGNESIUM—Continued

Exporter/manufacturer/producer	Weighted-average margin percentages
SMW/Other	100.25
Russia-wide	100.25

* This company has not disclosed for the public record the identity of its supplier or suppliers in Russia. Upon public disclosure of this information to the Department, we will notify the Customs Service that sales through certain supply channels have an LTFV margin of zero and thus an exclusion from any order resulting from this investigation. Until and unless such disclosure is made, all entries will be subject to the "Russia-wide" deposit rate.

B. ALLOY MAGNESIUM

Manufacturer/producer/exporter	Weighted average margin percentages	Critical circumst.
Gerald Metals*	0.00	No.
Gerald Metals/Other	153.65	Yes.
SMW/SMW	0.00	No.
SMW/Other	153.65	Yes.
Russia-wide	153.65	Yes.

* This company has not disclosed for the public record the identity of its supplier or suppliers in Russia. Upon public disclosure of this information to the Department, we will notify the Customs Service that sales through certain supply channels have an LTFV margin of zero and thus an exclusion from any order resulting from this investigation. Until and unless such disclosure is made, all entries will be subject to the "Russia-wide" deposit rate.

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).

Susan G. Esserman,
Assistant Secretary for Import Administration.

APPENDIX I

Company	Rus. pure	CASE rus. alloy	Supp. QR filing date	Verif. start date	Verif. end date	Location
Hunter Douglas	X	.....	.....	12/8	12/8	Chicago.
MG Metals	X	.....	.....	12/6	12/7	Chicago.
Gerald Metals	X	X	11/1, 30	12/13	1/25	Lausanne and Stamford CT.
Interlink	X	.....	11/8	12/15	1/10	Fribourg and NYC.
SMW	X	X	.....	1/18	1/19	Solikamsk, Russia.
AVISMA	X	.....	.....	1/16	1/17	Berezniki, Russia.
Razno	X	.....	.....	1/23	1/24	Zurich.
Hochschild Partners	X	.....	.....	1/26	1/27	NYC.
Greenwich Metals	X	X	1/30	1/31	Greenwich, CT.
Amalgamet	X	X	1/4	2/1	2/2	Toronto.
AIOC	X	11/21	12/15	2/9	NYC.

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BILLING CODE 3510-DS-P

U.S. DEPARTMENT OF COMMERCE

Minority Business Development Agency

Native American Business Development Center Applications: Minnesota

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications to organizations to operate its Minnesota Native American Business Development Center. The solicitation was originally published in the **Federal**