

changes described in the Cost of Production Analysis section, above.

**Fair Value Comparisons**

To determine whether sales of pure magnesium from Israel to the United States were made at less than fair value, we compared the export price ("EP") or constructed export price ("CEP") to the NV.

**Date of Sale**

At the *Preliminary Determination*, we used DSM's invoice date as the date of sale, and stated that we would examine this issue further for the final determination. Based on our review of DSM's May 2, 2001, submission and the information examined at verification, it is clear that the material terms of sale of DSM's various long-term agreements can, and frequently do, change prior to the date of invoice, but are fixed at the time of the invoice. See, e.g., public version of June 29, 2001, "Sales Verification Report" at 5. Accordingly, we are continuing to use DSM's invoice date as the date of sale for the final determination.

**Export Price and Constructed Export Price**

For certain sales to the United States, we used EP as defined in section 772(a) of the Act. For the remaining sales to the United States, we used CEP as defined in section 772(b) of the Act. We calculated EP and CEP based on the same methodologies described in the *Preliminary Determination*. At the commencement of verification DSM notified the Department that it had discovered a data sorting error which misclassified certain CEP sales as EP sales and vice versa. We have corrected this misclassification for the final determination. Additionally, based on our verification findings, we revised DSM's reported values for inventory carrying costs for all sales and, for selected sales, we revised DSM's reported values for its sale terms, contract dates, contract type, payment dates, imputed credit, U.S. warehousing, inland freight, and international freight. See June 26, 2001, Verification Report and September 12, 2001, Calculation Memorandum.

**Currency Conversions**

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Determination*.

**Verification**

As provided in section 782(i)(1) of the Act, we verified the information submitted by DSM for our final

determination. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondent.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the September 14, 2001, Issues and Decision Memorandum, which is hereby adopted and incorporated by reference into this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Issues and Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in B-099. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at: <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

**Continuation of Suspension of Liquidation**

In accordance with section 735(c)(1)(A) of the Act, we are directing the U.S. Customs Service ("Customs") to continue to suspend liquidation of all imports of pure magnesium from Israel that are entered, or withdrawn from warehouse, for consumption on or after April 30, 2001, the date of publication of the *Preliminary Determination* in the **Federal Register**. Customs shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Dead Sea Magnesium .....	28.14
All Others .....	28.14

In accordance with section 735(c)(5)(A), we have based the "all others" rate on the dumping margin found for the sole producer/exporter investigated in this proceeding, DSM.

**ITC Notification**

In accordance with section 735(d) of the Act, we have notified the

International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 14, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

**Appendix**

*List of Comments and Issues in the Decision Memorandum*

- I. Issues Related to DSM's Sales
  - Comment 1: Sales of "Off Specification" Magnesium
- II. Issues Related to DSM's Cost of Production/Constructed Value
  - Comment 2: Treatment of Chlorine and Sylvanite as Byproducts
  - Comment 3: Identification of "Split-off" Point in the Production of Joint Products
  - Comment 4: Cost Allocation Methodology
  - Comment 5: Allocation of Production Costs to Pure and Alloy Magnesium
  - Comment 6: Calculation of Byproduct Offset
  - Comment 7: Adjustment of Electricity Costs for Affiliated Party Transactions
  - Comment 8: Calculation of Profit for Constructed Value
- III. Issues Related to Petitioners' Standing and Scope
  - Comment 9: Reconsideration of Industry Standing
  - Comment 10: Scope

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**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[C-508-810]**

**Final Affirmative Countervailing Duty Determination: Pure Magnesium From Israel**

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

**ACTION:** Notice of final affirmative determination in a countervailing duty investigation.

**SUMMARY:** The Department of Commerce (the Department) has made a final

determination that countervailable subsidies are being provided to producers and exporters of pure magnesium from Israel. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section of this notice.

**EFFECTIVE DATE:** September 27, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Annika O'Hara or Melanie Brown, Office of AD/CVD Enforcement 1, Import Administration, U.S. Department of Commerce, Room 3096, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3798 or 482-4987, respectively.

**SUPPLEMENTARY INFORMATION:**

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (April 2000).

**Petitioners**

The petitioners in this investigation are the Magnesium Corporation of America (Magcorp), the United Steel Workers of America (USWA), USWA Local 8319, and Concerned Employees of Northwest Alloys, Inc. (collectively, petitioners).

**Case History**

Since the publication of the preliminary determination in the **Federal Register** (see *Preliminary Affirmative Countervailing Duty Determination: Pure Magnesium from Israel*, 66 FR 11144 (February 22, 2001) (*Preliminary Determination*)), the following events have occurred:

On March 13, 2001, we aligned the countervailing duty investigation of pure magnesium from Israel with the companion antidumping duty investigation at the request of the petitioners, in accordance with section 705(a)(1) of the Act. See *Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Pure Magnesium From Israel, the Russian Federation, and the People's Republic of China and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Pure Magnesium From Israel*, 66 FR 14546 (March 13, 2001).

We conducted verification of the questionnaire responses submitted by the only responding company in this

investigation, Dead Sea Magnesium Ltd. (DSM) from May 6-8, 2001.

On May 14, 2001, based on a request from DSM (which is also the respondent in the companion antidumping duty investigation), we postponed the final antidumping determination until September 12, 2001. Because of the alignment of the countervailing duty investigation with the antidumping duty investigation, the final determination in the countervailing duty investigation was also postponed until September 12, 2001. See *Notice of Postponement of Final Antidumping Determination and Extension of Provisional Measures and Postponement of Final Countervailing Duty Determination: Pure Magnesium From Israel; and Notice of Postponement of Final Antidumping Determination: Pure Magnesium From the Russian Federation*, 66 FR 24324 (May 14, 2001).

On June 21 and 22, 2001, we received case briefs from DSM, the petitioners, and Rossborough Manufacturing Co. L.P. (Rossborough), an interested party in this investigation. Rebuttal briefs were filed by DSM and the petitioners on June 28 and 29, 2001. No hearing was held because the parties withdrew their earlier requests for a hearing.

Although the deadline for this determination was originally September 12, 2001, in light of the events of September 11, 2001 and the subsequent closure of the Federal Government for reasons of security, the timeframe for issuing this determination has been extended by two days.

**Scope of Investigation**

The scope of this investigation includes imports of pure magnesium products, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as "pure" magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an "ASTM Specification for Magnesium Alloy"<sup>1</sup> (generally referred to as "off-specification pure"

<sup>1</sup>The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys*.

magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight. Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials which the Department is aware are used to make such excluded reagents are: lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nepheline syenite, feldspar, aluminum, alumina (Al<sub>2</sub>O<sub>3</sub>), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of countervailing duties.

The merchandise subject to this investigation is classifiable under items 8104.11.00, 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

For a full discussion of scope comments and determinations, see the accompanying September 14, 2001 memorandum from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, entitled "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of *Pure Magnesium from Israel* ("Decision Memorandum"), Comments 9 and 10.

**Injury Test**

Because Israel is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry. On December 13, 2000, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from Israel of the subject merchandise (see *Pure Magnesium from China, Israel,*

and Russia; Determinations, 65 FR 77910).

#### Period of Investigation

The period for which we are measuring subsidies (the POI) is calendar year 1999.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the *Decision Memorandum*, which is hereby adopted by this notice. Attached to this notice as Appendix I is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at <http://ia.ita.doc.gov/frn/> under the heading "Israel." The paper copy and electronic version of the *Decision Memorandum* are identical in content.

#### Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual rate for DSM. Because DSM is the only respondent in this case, its rate serves as the all-others rate. We determine that the total estimated net subsidy rate is 16.52 percent *ad valorem* for DSM and for all other producers and exporters of the subject merchandise.

In accordance with our *Preliminary Determination*, we instructed the Customs Service to suspend liquidation of all entries of pure magnesium from Israel, which were entered or withdrawn from warehouse, for consumption on or after February 14, 2001, the date of the publication of our *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed Customs to discontinue the suspension of liquidation for merchandise entered on or after June 22, 2001, but to continue the suspension of liquidation of entries made between February 14, 2001 and June 21, 2001.

We will issue a countervailing duty order and reinstate the suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or

threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

#### ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order (APO), without the written consent of the Assistant Secretary for Import Administration.

#### Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: September 14, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

#### Appendix

##### *List of Comments and Issues in the Decision Memorandum*

- Comment 1: The Department failed to take into account the effects of the privatization of ICL.
- Comment 2: The Department should change the AUL used to allocate non-recurring subsidies over time.
- Comment 3: The infrastructure grant is not countervailable.
- Comment 4: The Department should treat DSM's ECIL grant as multiple grants.
- Comment 5: The Department should use uncreditworthy discount rates to allocate benefits.
- Comment 6: Use of variable discount rates.
- Comment 7: The Department should correct DSW's 1993 interest rate
- Comment 8: The Department should change its calculation of the benefits conveyed by the EIRD grants
- Comment 9: Reconsideration of industry standing
- Comment 10: Scope

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 091801B]

#### Endangered Species; Permits

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of request to modify research permit 1245 and 1324.

**SUMMARY:** Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has received a request to modify permit (1245) from Mr. J. David Whitaker, of South Carolina Department of Natural Resources (SCDNR) and a request to modify permit (1324) from Dr. Nancy Thompson, of the NMFS-Southeast Fisheries Science Center.

**DATES:** Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on October 29, 2001.

**ADDRESSES:** Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment:

Endangered Species Division, F/PR3, 1315 East West Highway, Silver Spring, MD 20910 (phone:301-713-1401, fax: 301-713-0376).

**FOR FURTHER INFORMATION CONTACT:** Terri Jordan, Silver Spring, MD (phone: 301-713-1401, fax: 301-713-0376, e-mail: Terri.Jordan@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and