

Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), the Department will continue to order the suspension of liquidation of the subject merchandise until there is a "conclusive" decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct the U.S. Customs Service to revise the cash deposit rate and liquidate all relevant entries covering the subject merchandise for Viraj.

**EFFECTIVE DATE:** April 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ryan Langan or Cole Kyle, AD/CVD Enforcement Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2613 or (202) 482-1503, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

Following publication of the *Final Results*, Carpenter Technology Corp. ("*Carpenter*"), the petitioner in this case, and Viraj, a respondent in this case, filed lawsuits with the CIT challenging the Department's *Final Results*.

In the *Final Results*, in accordance with section 773(a)(1)(C) of the Tariff Act of 1930, as amended effective January 1, 1995 ("the Act") by the Uruguay Round Agreements Act ("URAA"), the Department calculated Viraj's antidumping duty margin using third country sales data for normal value because Viraj's home market sales information was incomplete. In using the third country database, the Department was unable to make adjustments for differences in merchandise because, although Viraj cooperated to the best of its ability, it did not report variable cost of manufacture ("VCOM") data in its third country and U.S. sales databases. See section 773(a)(6)(C) of the Act. Therefore, the Department relied on facts otherwise available to account for these differences. In doing so, the Department matched U.S. sales to third country sales according to size ranges ("banding") for price comparison purposes. Where banding did not result in an identical match, the Department applied the "all others" rate of 12.45 percent calculated in *Stainless Steel Bar from India; Notice of Final Determination of Sales at Less Than Fair Value*, 59 FR 66915 (December 28, 1994) ("*LTFV investigation*"). The "all

others" rate was calculated in accordance with the Tariff Act of 1930, as amended, pre-URAA.

The Court remanded the use of banding to the Department for further explanation. The Court did not find the Department's matching methodology unreasonable or inconsistent with law and recognized the Department's broad authority to determine and apply a model-matching methodology to determine a relevant "foreign like product" under sections 773 and 771(16) of the Act. However, the Court noted the apparent disparate treatment between Viraj and another respondent, Panchmahal Steel, Ltd. The Court found that this "disparity" and the Department's language in its *Issues and Decision Memorandum* necessitated a further explanation from the Department of its rationale for banding Viraj's sales.

Additionally, the Court questioned the Department's use of the "all others" rate applied to Viraj's unmatched U.S. sales. The Court found that the Department's use of a pre-URAA weighted-average "all others" rate that contained one margin based entirely on adverse facts available did not constitute non-adverse facts available. As such, the Court concluded that the Department could not apply this "all others" rate to Viraj, a cooperative respondent. See section 776(b) of the Act.

The *Draft Redetermination Pursuant to Court Remand* ("*Draft Results*") was released to the parties on September 5, 2002. In its *Draft Results*, the Department clarified to the court its use of banding and the dissimilar treatment of Viraj and Panchmahal Steel, Ltd. We also reconsidered our use of the "all others" rate from the *LTFV investigation* as neutral facts otherwise available where Viraj's U.S. sales did not have an identical match under the banding methodology. We modified our application of neutral facts otherwise available in the margin calculations by substituting for the "all others" rate the weighted-average dumping margin from Viraj's matched banded sales in order to conform with the Court's conclusion that the "all others" rate included adverse inferences.

Comments on the *Draft Results* were received from Carpenter on September 13, 2002, and Viraj submitted rebuttal comments on September 18, 2002. On September 30, 2002, the Department responded to the Court's Order of Remand by filing its Final Results of Redetermination pursuant to the Court remand ("*Final Results of Redetermination*"). The Department's

*Final Results of Redetermination* was identical to the *Draft Results*.

The CIT affirmed the Department's *Final Results of Redetermination* on March 18, 2003. See *Carpenter Technology Corp. v. United States*, Consol. Court No. 00-09-00447, Slip. Op. 03-28 (CIT 2003).

**Suspension of Liquidation**

The U.S. Court of Appeals for the Federal Circuit ("Federal Circuit"), in *Timken*, held that the Department must publish notice of a decision of the CIT or the Federal Circuit which is not "in harmony" with the Department's *Final Results*. Publication of this notice fulfills that obligation. The Federal Circuit also held that the Department must suspend liquidation of the subject merchandise until there is a "conclusive" decision in the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation pending the expiration of the period to appeal the CIT's May 17, 2003, decision or, if that decision is appealed, pending a final decision by the Federal Circuit. The Department will instruct the Customs Service to revise cash deposit rates and liquidate relevant entries covering the subject merchandise effective April 28, 2003, in the event that the CIT's ruling is not appealed, or if appealed and upheld by the Court of Appeals for the Federal Circuit.

Dated: April 21, 2003.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[C-122-815]

**Alloy Magnesium from Canada: Final Results of Countervailing Duty New Shipper Review**

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

**ACTION:** Notice of Final Results of Countervailing Duty New Shipper Review.

**SUMMARY:** On January 28, 2003, the Department published the preliminary results of this new shipper review of the countervailing duty order on alloy magnesium from Canada. This new shipper review covers imports of subject merchandise from Magnola Metallurgy, Inc.

The period for which we are measuring subsidies, or the period of review, is from January 1 through December 21, 2001.

We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we have made no changes to our calculations. Therefore, the final results do not differ from the preliminary results. The final net subsidy rate for Magnola is listed in the section entitled "Final Results of the Review."

**EFFECTIVE DATE:** April 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown, Office 1, Group 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482-4987.

**SUPPLEMENTARY INFORMATION:**

**Background**

Since the publication of the preliminary results of new shipper review on January 28, 2003, (see *Alloy Magnesium from Canada: Preliminary Results of Countervailing Duty New Shipper Review*, 68 FR 4175 (January 28, 2003) ("Preliminary Results")), the following events have occurred. On February 27, 2003, we received case briefs from the Government of Quebec ("GOQ") and Magnola Metallurgy, Inc. ("Magnola"), (collectively, "the respondents"), and U.S. Magnesium, LLC., the petitioner. The respondents and the petitioner submitted rebuttal briefs on March 4, 2003.

**Scope of the Review**

The products covered by this review are shipments of alloy magnesium from Canada. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. The alloy magnesium subject to review is currently classifiable under item 8104.19.0000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Secondary and granular magnesium are not included in the scope of this order. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the "Issues and Decision Memorandum" from Susan H. Kuhbach, Acting Deputy Assistant Secretary, Import Administration to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated April 21, 2003 ("*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 ("CRU") in Room B-099 of the main Commerce 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 "Canada." The paper copy and electronic version of the *Decision Memorandum* are identical in content.

**Changes Since the Preliminary Results**

We have made no changes to our preliminary findings as a result of either our analysis of the comments received or of any new information or evidence of changed circumstances. Therefore, the final results do not differ from the preliminary results of this review.

**Final Results of Review**

In accordance with 19 CFR 351.221(b)(5)(i), we calculated a subsidy rate for Magnola, the sole producer/exporter subject to this new shipper review. For the period January 1, 2001, through December 31, 2001, we determine the net subsidy rate for Magnola as stated below.

NET SUBSIDY RATE

Manufacturer/Exporter	Percent
Magnola Metallurgy, Inc. ....	7.00 percent

We will disclose our calculations to the interested parties in accordance with section 351.224(b) of the regulations.

**Assessment Rates**

The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results. For the period January 1, 2001, through December 31, 2001, the assessment rates applicable to all non-reviewed companies are the cash

deposit rates in effect at the time of entry.

**Cash Deposit Requirements**

The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties at the rate of 7.00 percent on the f.o.b. value of all shipments of the subject merchandise from Magnola entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results.

The cash deposit rate that will be applied to non-reviewed companies covered by these orders is that established in *Pure and Alloy Magnesium From Canada; Final Results of the Second (1993) Countervailing Duty Administrative Reviews*, 62 FR 48607 (September 16, 1997) or the company-specific rate published in the most recent final results of an administrative review in which a company participated.

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this administrative review and notice in accordance sections 751(a)(2)(B) and 777(i) of the Act.

Dated: April 21, 2003.

**Joseph A. Spetrini,**  
Acting Assistant Secretary for Import Administration.

**APPENDIX I**

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

*Comment 1:* Emploi-Québec Manpower Training Program is an export subsidy

*Comment 2:* The Manpower Training Program is not countervailable

*Comment 3:* Magnola Metallurgy's company specific Average Useful Life ("AUL")

*Comment 4:* Magnola Metallurgy's discount rate

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