Indian Aluminium Company; Limited, Bharat Aluminium Company Limited; the Madras Aluminium Company Limited; and HINDALCO Industries Limited. *See Factor-Valuation Memorandum* for a full discussion of the calculation of these ratios from these financial statements.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(I)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Preliminary Determination

The weighted-average dumping margins are as follows:

MAGNESIUM METAL FROM THE PRC

Manufacturer/exporter	Weighted-average margin (percent)
Tianjin	177.62
RSM	128.11
Jiangsu Metals	117.41
Guangling	140.09
China-Wide Rate	177.62

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. Because we have postponed the deadline for our final determination to 135 days from the date of publication of this preliminary determination, section 735(b)(2) of the Act requires the ITC to make its final determination as to whether domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of wooden bedroom furniture, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date of the final verification report is issued in this proceeding and rebuttal briefs limited to issues raised in case briefs no later than five days after the deadline date for case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: September 24, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2478 Filed 10–1–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–819]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Magnesium Metal From the Russian Federation

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

SUMMARY: In response to a petition filed by U.S. Magnesium LLC (U.S. Magnesium), United Steelworkers of America, Local 8319, Glass, Molders, Pottery, Plastics and Allied Workers International, Local 374 (collectively, the Petitioners), the U.S. Department of Commerce (the Department) initiated and is conducting an investigation of sales of magnesium metal from the Russian Federation for the period January 1, 2003, through December 31, 2003. *See Notice of Initiation of Antidumping Duty Investigations: Magnesium Metal From the People's Republic of China and the Russian Federation,* 69 FR 15293 (March 25, 2004) (*Initiation Notice*). The Department preliminarily determines that magnesium metal from the Russian Federation is being or is 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 of sales at LTFV are listed in the ''Suspension of Liquidation'' section of this notice. Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: October 4, 2004.

FOR FURTHER INFORMATION CONTACT: Joshua Reitze or Sebastian Wright at (202) 482–0666 or (202) 482–5254, respectively; Office of AD/CVD Operations VI, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Case History

This investigation was initiated on March 18, 2004. *See Initiation Notice.* Since the initiation of the investigation, the following events have occurred.

On March 26, 2004, the Department issued a letter providing interested parties an opportunity to comment on a proposed set of model-match criteria. We received comments in response to this letter from the Petitioners and JSC Avisma Magnesium-Titanium Works and VSMPO-Tirus, U.S. (Avisma) on April 1, 2004. Based on these submissions, we determined the appropriate model-match characteristics and included them in the antidumping questionnaire issued to Avisma and Solikamsk Magnesium Works (SMW), Respondents in this investigation, on April 24, 2004.

On March 31, 2004, the Department set aside a period for all interested parties to raise issues regarding the scope of this investigation. On April 16, 2004, the following companies submitted timely comments: Reade Manufacturing Company, Magnesium Elektron North America, Inc., and Hart Metals, Inc. (collectively, Reade) and Avisma. On April 26, 2004, the Department received rebuttal comments from the Petitioners, and additional comments from Northwest Alloys, Inc. (Northwest) and Alcoa, Inc. (Alcoa). On June 25, June 28, and July 9, 2004, we received additional comments on the scope of this investigation from Petitioners, Alcoa, Reade, and Avisma, in response to questions that we issued to all interested parties on June 9, 2004.

On May 17, 2004, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation are materially injuring an industry in the United States producing the domestic like products. *See Magnesium From China and Russia,* 69 FR 29329 (May 21, 2004) (*ITC Preliminary Determination*).

On June 28, 2004, the Petitioners requested that the Department extend the preliminary determination in this investigation from August 5, 2004, to September 24, 2004. *See Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations of Magnesium Metal From the People's Republic of China and the Russian Federation,* 69 FR 43561 (July 21, 2004) (*Postponement of Preliminary Determinations*). Because there were no compelling reasons to deny the request, we postponed the preliminary determination to September 24, 2004, under section 733(c)(1) of the Act.

In their petition, the Petitioners alleged that Russian energy costs were distorted by excessive involvement by the Russian government in the energy sector, and requested that the Department make adjustments to energy costs to account for the effects of this involvement. In the *Initiation Notice,* the Department stated its intent to investigate the Russian government's involvement in the energy sector, and to consider whether an adjustment was appropriate. On July 30, 2004, the Petitioners submitted additional information to support their claim that Russian government involvement resulted in gas and electricity prices that do not reflect ''economic reality,'' stating their argument that the Department has the legal authority to disregard or adjust the energy costs reported by Respondents to account for this distortion, and suggesting options for correcting the effects of this distortion. On September 1 and 3, 2004, Avisma submitted arguments to rebut the Petitioners' claims. On September 15, 2004, SMW submitted comments which endorsed the legal analysis of Avisma's September 1 and 3, 2004, comments.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. On September 14 and September 21, 2004, we received requests to postpone the final determination from SMW and Avisma, respectively. Both requests consented to the extension of provisional measures from four months to no longer than six months. Since this preliminary determination is affirmative, the requests for postponement are made by exporters that account for a significant proportion of exports of the subject merchandise, and since there is no compelling reason to deny the Respondents' requests, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to no longer than six months.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid, based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. In the petition, the Petitioners identified two potential producers and exporters of magnesium metal in the Russian Federation: Avisma and SMW. This was confirmed by the Department's analysis of data collected by U.S. Customs and Border Protection (CBP), which was placed on the record on June 17, 2004.

On May 21, 2004, the Department received an e-mail message from another Russian producer of magnesium. In a subsequent e-mail message, the producer informed the Department that it had sold a small amount of subject merchandise to the United States during the period of investigation (POI). It also informed the Department that it is unrelated to the other Respondents. The sales amount reported by this producer is extremely small in comparison to the import statistics on the ITC Web site. As discussed in the memorandum for selection of Respondents, the Department found that it was not practical to examine all known exporters and producers of the subject merchandise. *See Antidumping Duty Investigation of Magnesium Metal From the Russian Federation; Selection of Mandatory Respondents,* June 29, 2004 (*Respondent Selection Memo*). Furthermore, the Department found that the two Respondents named in the initiation account for almost all exports of subject merchandise to the United States. Id. Accordingly, because Avisma and SMW account for the largest volume of the subject merchandise that can be reasonably examined, the Department has calculated individual dumping margins for those two companies. *See* section 777A(c)(2)(B) of the Act.

Period of Investigation

The period of investigation (POI) is January 1, 2003, through December 31, 2003. This period corresponds to the four most recent fiscal quarters prior to the month of filing of the petition (*i.e.*, March 2004) involving imports from a market economy, and is in accordance with the Department's regulations. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

For the purpose of this investigation, the product covered is magnesium metal (also referred to as magnesium). The products covered by this investigation are primary and secondary pure and alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by this investigation includes blends of primary and secondary magnesium.

The subject merchandise includes the following pure and alloy magnesium metal products made from primary and/or secondary magnesium, including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: (1) Products that contain at least 99.95 percent 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 magnesium, by weight (generally referred to as ''pure'' magnesium); and (3) chemical combinations of magnesium and other material(s) in which the magnesium content is 50 percent or greater, but less that 99.8 percent, by weight, whether or not conforming to an ''ASTM Specification for Magnesium Alloy.''

The scope of this investigation excludes: (1) Magnesium that is in liquid or molten form; and (2) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[1]

The merchandise subject to this investigation is classifiable under items 8104.11.00, 8104.19.00, 8104.30.00, and 8104.90.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Issues

On March 31, 2004, the Department set aside a period for all interested parties to raise issues regarding the scope of this investigation. As discussed above, we received comments from Reade, Northwest, Alcoa, and Avisma, as well as rebuttal comments from Petitioners. These comments are summarized in the Department's September 24, 2004 memorandum *Product Coverage in Magnesium Metal From the Russian Federation* (*Product Coverage Memorandum*). In their comments, parties raised two issues: (1) Whether alloy and pure magnesium should be treated as two separate like products; and (2) whether ultra high purity (UHP) magnesium should be excluded from the scope of this investigation. Based on our analysis of the evidence on the record, we preliminarily determine that UHP magnesium is within the scope of the investigation. We also preliminarily determine that pure magnesium and alloy magnesium constitute a single like product. For a detailed discussion of our decision, *see Product Coverage Memorandum.*

Fair Value Comparisons

To determine whether sales of magnesium metal were made in the United States at LTFV, we compared the constructed export price (CEP) to the normal value (NV), as described in the ''Constructed Export Price'' and ''Normal Value'' sections below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs. We then compared these to weighted-average home market prices in Russia.

Date of Sale

Avisma reported invoice date as the date of sale for both the home and U.S. markets. Avisma issues invoices at the time of shipment, which, in the home market, may come after payment. For contract sales, the invoice establishes the price and quantity of the sale, as well as the parameters by which price and quantity may change under the contract. Invoices also set the price and quantity for spot sales. Because the material terms of sale are established when the invoice is issued, and because of our presumption that invoice date is the date of sale, as stated in section 351.401(i) of our regulations, we are using invoice date as the date of sale for all Avisma transactions in both markets.

For both the home and U.S. markets, SMW reported contract date as the date of sale. The contract date is the date when the material terms of sale (*i.e.*, price and quantity) are first established with the customer, but, as with Avisma's contracts, these values are allowed to change under the terms of the contract. In such cases where the price or quantity of a contract were amended, SMW reported the date of the amendment as the date of sale. SMW reported all sales with contracts that were initiated or amended during or prior to the POI and with invoices issued during the POI.

Because the material terms of SMW's contracts are susceptible to amendment, and in fact are amended, we are using invoice date as the date of sale for this preliminary determination for both the home and U.S. markets. As noted above, the Department's regulations presume that invoice date is the date of sale. *See* 19 CFR 351.401(i) (''In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice''). Therefore, we preliminarily determine that invoice date is the proper date of sale for both markets.

Constructed Export Price

For U.S. price, we used CEP, as defined in section 772(b) of the Act. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the

[1] This second exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from China, Israel, and Russia. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China,* 66 FR 49345 (September 27, 2001); *Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel,* 66 FR 49349 (September 27, 2001); *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys, because they are not chemically combined in liquid form and cast into the same ingot.

producer or exporter, as adjusted under subsections 772(c) and (d) of the Act.

In its questionnaire responses, Avisma identified all of its sales to the United States as CEP sales. All of Avisma's sales are properly classified as CEP sales because they were made for the account of Avisma, by Avisma's U.S. affiliate, VSMPO-Tirus, U.S., Inc. (Tirus US), to unaffiliated purchasers in the United States. U.S. sales to the first unaffiliated party were made in the United States, by the U.S. affiliate, thus satisfying the Department's requirements for treating sales as CEP sales. Avisma and Tirus US are affiliated through common ownership. *See* Section 771(33)(F) of the Act.

In accordance with Section 772(c)(2) of the Act, for Avisma's CEP sales we made deductions from price for movement expenses and discounts, and additions for billing adjustments, where appropriate. More specifically, after reviewing the terms of delivery for Avisma's CEP sales to the United States, we deducted early payment discounts, added billing adjustments, and deducted foreign inland freight from plant to port, international freight and insurance, U.S. customs duties, U.S. brokerage and handling, and U.S. inland freight. *See Analysis Memorandum for Magnesium Metal from the Russian Federation: JSC AVISMA Titanium-Magnesium Works and VSMPO-Tirus, U.S., Inc.* (*Avisma Analysis Memorandum*).

Section 772(d)(1) of the Act provides for additional adjustments to calculate CEP. Accordingly, we deducted direct selling expenses and indirect selling expenses related to commercial activity in the United States. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit.

SMW also identified all of its U.S. sales as CEP sales in its questionnaire responses. During the POI, all sales of SMW's subject merchandise to the United States were made through its U.S. affiliates, Solimin and Cometals. We find that Cometals is affiliated with SMW by virtue of an agency agreement, in which Cometals acts as a North American distributor of pure and alloy magnesium products. *See* Section 771(33) of the Act; *See also Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan,* 62 FR 24394, 24403 (May 5, 1997). For a complete discussion of the basis for finding SMW and Cometals affiliated, *see Analysis Memorandum for Magnesium Metal from the Russian Federation: Solikamsk Magnesium Works* (*SMW Analysis Memorandum*). We also find that Solimin is affiliated with SMW under section 771(33)(G) of the Act because it is wholly owned by SMW. All of SMW's sales are properly classified as CEP sales because they were made for the account of SMW, by SMW's U.S. affiliates, Solimin and Cometals, to unaffiliated purchasers in the United States. U.S. sales to the first unaffiliated party were made in the United States, by the U.S. affiliates, thus satisfying the Department's requirements for characterizing sales as CEP sales.

In accordance with section 772(c)(2) of the Act, for SMW's CEP sales, we made deductions from price for movement expenses and billing adjustments, where appropriate. More specifically, after reviewing the terms of delivery for SMW's CEP sales, we deducted foreign inland freight from plant to port; foreign brokerage, handling, and port charges; international freight and insurance; U.S. brokerage, handling, and port charges; U.S. warehousing; U.S. and foreign customs duties; and U.S. inland freight. *See SMW Analysis Memorandum.*

In accordance with section 772(d)(1) of the Act, we deducted direct selling expenses and indirect selling expenses related to commercial activity in the United States. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs the Department to calculate NV based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate), and that there is no particular market situation that prevents a proper comparison with the EP or CEP. Under the statute, the Department will normally consider quantity (or value) insufficient if it is less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. *See* Section 773(a)(1)(C) of the Act. We found that both Avisma and SMW had a viable home market for magnesium metal. As such, Avisma and SMW submitted home market sales data for the calculation of NV. In deriving NV, we made adjustments as detailed in the section below on ''Calculation of Normal Value Based on Home Market Prices'' section.

B. Affiliated Party Transactions and Arm's-Length Test

We used sales to affiliated customers in the home market only where we determined such sales were made at arm's-length prices (*i.e.*, at prices comparable to the prices at which the Respondent sold identical merchandise to unaffiliated customers). To test whether the sales to affiliates were made at arm's-length prices, we compared the unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. In accordance with the Department's practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we consider the sales to be at arm's-length prices. *See* 19 CFR 351.403(c). For the sole affiliated reseller that failed the arm's-length test, we based NV on its sales to unaffiliated parties (*i.e.*, downstream sales). The remaining affiliated parties that did not pass the arm's-length test were consumers, and, therefore, there were no downstream sales on which to base NV. Sales to these affiliated consumers were excluded from our NV calculations. *See 19 CFR 351.403(d); see also Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186 (November 15, 2002).

C. Cost of Production Analysis

On June 29, 2004, Petitioners alleged that Avisma and SMW made sales in the home market at less than the COP. On July 15, 2004, Petitioners amended this allegation and revised their methodology. Based on these allegations, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that magnesium sales were made in Russia at prices below the cost of production (COP). *See Initiation of Sales Below Cost Investigation: Avisma* (July 22, 2004) (*Avisma Cost Initiation Memorandum*) and *Initiation of Sales Below Cost Investigation: Solikamsk Magnesium Works* (July 30, 2004) (*SMW Cost Initiation Memorandum*). As a result, the Department is conducting an investigation to determine whether Avisma and SMW made home market sales of magnesium at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market selling, general, and administrative (SG&A) expenses, including interest expenses and packing expenses. We relied on the COP data submitted by Avisma and SMW in their cost questionnaire responses, with the following changes.

We adjusted Avisma's financial expense ratio to include the total net foreign exchange gains and losses from Avisma's 2003 audited financial statements. *See Memorandum to Neal M. Halper, Director, Office of Accounting, from Robert B. Greger, Senior Accountant, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination for Magnesium Metal from the Russian Federation,* (September 24, 2004). For SMW, we revised the reported general and administrative (G&A) expense ratio to include certain administrative costs recorded as part of the cost of goods sold in the company's financial statements. We then excluded these costs from the cost of goods sold denominator that we used to calculate the G&A expense ratio. We also revised SMW's reported financial expense ratio to exclude certain administrative costs from the cost of goods sold denominator that we used to calculate the end ratio. *See Memorandum to Neal M. Halper, Director, Office of Accounting, from Ernest Z. Gzyrian, Senior Accountant, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination for Magnesium Metal from the Russian Federation—Solikamsk Magnesium Works,* (September 24, 2004).

As noted above under ''Case History,'' Petitioners have alleged that Russian energy costs are distorted by excessive government involvement, and have requested that the Department make adjustments to Respondents' reported energy costs to account for the effects of this involvement. In their various submissions (identified in the ''Case History'' section above). Petitioners argue such adjustments are allowed under section 773(f) of the Act, which states:

> Costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.

Petitioners argue the use of the word ''normally'' in section 773(f) of the Act gives the Department the discretion to disregard reported costs in certain circumstances. According to Petitioners, energy is a cost ''associated with'' the production and sale of magnesium. Petitioners argue that non-market forces pervade the Russian energy sector, and that Russian energy prices do not reflect the true cost of energy production. In support of their position, Petitioners submitted documents from various organizations examining the Russian energy sector, and based on their analysis of these documents, they proposed options for the requested adjustment. Petitioners also noted that the Department's 2002 memorandum granting Russia market economy status, and the suspension agreement signed in 2002 in the antidumping investigation of cut-to-length carbon steel plate from Russia, alluded to the fact that prices in the Russian energy sector would merit particular scrutiny in future antidumping proceedings. In Petitioners' view, therefore, there is a sufficient legal and factual basis to reject Respondents' reported energy costs.

Respondents, on the other hand, argue that the Department has no authority to disregard their reported energy costs. Respondents note that, in a case involving a market economy, the Department is required to use the companies' reported energy costs unless one of the exceptions specified in the statute exists. Respondents argue that the statute focuses on the costs to the respondent, not the costs of an unaffiliated energy supplier, and there is no statutory authority to disregard a company's costs due to alleged government action. Rather, Respondents argue, there is a long line of precedent from both the Department and the courts holding that a company's reported costs may not be adjusted due to the receipt of government subsidies.

We believe that the legal arguments raised by both Petitioners and Respondents have merit, but we do not reach this legal issue in this preliminary determination. For the reasons discussed below, we have preliminarily concluded that the factual record of this investigation, to date, does not lead us to conclude that the Department should disregard Respondents' reported energy costs at this time.

We have carefully reviewed Petitioners' allegations regarding energy prices in Russia, as well as all relevant facts and information on the record, particularly since the Department has, in other contexts, expressed concerns about Russian energy pricing and pricing policies. Because, in the production of magnesium, gas costs are less important than electricity costs, our discussion focuses on electricity costs.[2] While the evidence that Petitioners have placed on the record indicates that Russian energy reforms remain incomplete, particularly on the structural side, the evidence and arguments advanced to date do not sufficiently support Petitioners' allegation that Russian electricity prices are highly distorted from a full cost-recovery standpoint.

The analysis submitted by Petitioners to support their allegation that there is a significant price distortion compares retail-level cost (of sales off the low-voltage grid) to electricity prices Respondents paid, which, as reported by Respondents in their questionnaire responses, reflect sales off the high-voltage grid, *i.e.*, at the wholesale level. Therefore, this does not appear to be an apples-to-apples comparison. Petitioners also argue that any measure of cost recovery must take into account the costs of replacing the electricity transmission and distribution grid. While the Department continues to evaluate these arguments, we have several concerns. For example, it is unclear how the higher distribution costs that are associated with sales off a low-voltage grid should or could be evaluated in a wholesale price-cost analysis. Furthermore, the matter of estimating capital costs is problematic, in part, because of assumptions about future conditions that can underlie some estimates.

Finally, Petitioners argue that a meaningful measure of cost recovery for the electricity sector must include a price for gas used to make electricity that itself reflects full cost recovery. With respect to this argument, we have identified a number of issues that require further consideration. For example, one would need to assess the role of other non-gas based electricity supply sources in determining whether a significant distortion exists and the extent to which it is appropriate to employ estimates of future prices in calculating any adjustment to electricity prices. In addition, assuming, *arguendo*, that the Department were to reach the issue of whether it has the legal authority to disregard reported costs of production of the subject merchandise, this still leaves open the question of the

[2] For a comparison of the relative importance of each input in overall magnesium production costs, *see SMW Analysis Memorandum* and *Avisma Analysis Memorandum.*

boundaries of any such authority to examine the cost of inputs into the inputs used in producing the subject merchandise.

Given these questions and reservations, the Department considers that it is appropriate to use Respondents' reported energy costs for purposes of the preliminary determination. We will, however, continue examining this issue in preparation for our final determination. We encourage the parties to submit additional information and arguments on this issue, inviting them in particular to comment on the concerns that we have outlined above. We also will be verifying Respondents' questionnaire responses including the information about their energy purchases that we have relied upon in this preliminary analysis. In order to allow proper review by the Department and all interested parties, we request that any additional arguments and factual information concerning this issue be filed as early as possible during the remainder of the proceeding. With respect to factual information, the following deadlines will apply. Any new, revised or updated factual information concerning Respondents' actual energy costs and all aspects of their energy usage and their relationships (if any) with energy suppliers must be submitted no later than the deadlines specified in any future questionnaires issued by the Department and in accordance with 19 CFR 351.301(c)(2)(ii), since such information is part of the questionnaire responses which must be verified. Any new factual information and arguments pertaining to the broader issue of whether electricity prices in Russia are or are not significantly distorted and whether an adjustment to such prices is or is not warranted must be submitted no later than November 8, 2004, and rebuttals of any such factual information and rebuttal comments no later than November 18, 2004, in accordance with 19 CFR 351.301(c)(1) and (c)(2)(ii). If the Department finds that an adjustment may be warranted after further review, we will issue for comment a memorandum outlining our preliminary analysis of why such an adjustment is warranted and the type of adjustment we are proposing, in order to ensure that all aspects of such an adjustment are carefully considered in time for the final determination.

2. Test of Home Market Sales Prices

We compared the weighted-average COP for Avisma and SMW to their home market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model-specific basis, we compared the COP to the home market prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

3. Results of the COP Test

We disregarded below-cost sales where (1) 20 percent or more of either Respondent's sales of a given product during the POI were made at prices below the COP, and thus such sales were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of price to weighted-average COPs for the POI, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We found that both Avisma and SMW made sales below cost and we disregarded such sales where appropriate.

D. Calculation of Normal Value Based on Home Market Prices

Where appropriate, we determined NV for Avisma and SMW based on home market prices. However, both Respondents reported a significant number of ''barter'' sales in the home market. As this is the first investigation of Russian exporters conducted since the Department determined Russia to be a market economy,[3] within the context of the Act, the Department has not previously been presented with the issue of examining barter sales in the Russian market.

We have examined barter sales in the Argentinian and Japanese markets in two cases decided prior to the effective date of the amendments made by the Uruguay Round Agreements Act (URAA). In *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina*, 58 FR 7066 (Feb. 4, 1993), we disregarded barter sales as being outside the ordinary course of trade. In *Final Determination of Sales at Less Than Fair Value: Certain All-Terrain Vehicles From Japan*, 54 FR 4864, 4865 (Jan. 31, 1989), we found barter trade to be small and insignificant, and disregarded it.

In *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 68 FR 54203 (Sept. 16, 2003) (*Cement From Mexico*), a case subsequent to the passage of the URAA, the Department encountered an exchange of cement between a Mexican producer and an unaffiliated U.S. customer. The Respondent in that case argued that this ''swap'' of cement should not be considered a U.S. sale. Relying on information confirmed at verification, the Department concluded that this ''swap'' of cement with an unaffiliated customer constituted a U.S. sale. We stated that ''{w}e verified the appropriateness of {the reported price} and found no discrepancies. At verification, CEMEX explained that this amount reflects a price established between CEMEX and its unaffiliated customer for actual sales made between the parties in the past.'' *See Cement From Mexico* and accompanying Issues and Decision Memorandum, at comment 9. Thus, we noted the importance of verification, especially concerning the ''appropriateness'' of the reported price.

Therefore, the Department will need to examine this issue in greater detail. Questions we will need to examine further concerning these sales include, but are not limited to: the alignment of barter prices with non-barter prices charged for similar goods sold; the linkage of the price charged with the goods received, including any internal and external procedures for ensuring reasonable compensation is received in exchange for magnesium; and how these sales are recorded in Respondents' books and records. Of particular concern in this case, is the apparent discrepancy between prices charged on average for products sold on a barter basis compared to prices charged for the identical or most similar products when sold on a cash basis. While the Department has issued questionnaires concerning these sales in general, given the novelty of this issue for the Russian market, noted above, we do not currently have enough information concerning these sales on the record, and therefore have concluded that we should disregard the barter sales in our calculations for this preliminary determination.

For all remaining sales, we deducted home market movement expenses, pursuant to section 773(a)(6)(A) of the Act. We made circumstances of sale (COS) adjustments for Avisma's and SMW's transactions by deducting direct selling expenses incurred for home

[3] *See Memorandum for Faryar Shirzad from Albert Hsu, Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping Law,* dated June 6, 2002, effective April 1, 2002.

market sales (credit expense). We also made adjustments for any differences in packing, pursuant to section 773(a)(6)(B)(ii) of the Act. *See Avisma Analysis Memorandum* and *SMW Analysis Memorandum*.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on constructed value (CV). Accordingly, for sales of magnesium for which we could not determine the NV based on comparison-market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on CV.

Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the ''Cost of Production Analysis'' section, above. We based SG&A and profit on the actual amounts incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to CEP, we made COS adjustments by deducting from CV direct selling expenses incurred on home-market sales.

F. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as U.S. sales. *See* 19 CFR 351.412. The NV LOT is the level of the starting-price sale in the comparison market or, when NV is based on CV, the level of the sales from which we derive SG&A and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer in the home market. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731 (November 19, 1997). For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. See *Micron Technology Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

In the current investigation, SMW claimed that sales in the home market and the United States market were made at different LOTs, but did not claim a LOT adjustment. Based on the selling functions performed, we preliminarily determine that SMW did not sell at different LOTs in the home and U.S. markets. After examining the selling functions for the one LOT reported in the United States, and the two claimed LOTs reported in the home market, we determine that these sale are, in fact, all made at one LOT. While SMW claimed that there were some differences between these various distribution channels, which it claimed to constitute separate LOTs, we have preliminarily determined that some of these differences do not constitute differences in selling functions. Differences between other functions, *e.g.*, provisions of warranty or types of packing, are already accounted for through other aspects of the Department's calculations, such as the deduction of direct selling expenses from CEP and NV. Moreover, the Department finds that the differences in selling functions are not significant differences. Since much of our analysis involves business proprietary information, a full discussion of the bases for our preliminary determination is set forth in the *SMW Analysis Memorandum*.

In conducting this analysis, we examined the U.S. LOT after excluding the selling functions performed by SMW's U.S. affiliates (*i.e.*, after excluding those selling functions associated with the expenses deducted under 772(d)(1)). Because we have determined that the U.S. LOT is the same LOT as that in the home market, we have preliminarily determined that the NV LOT is not more remote from the factory than the CEP LOT, and that, therefore, a CEP offset is not warranted under section 773(a)(7)(B) of the Act.

Avisma reported one LOT in the home market and one LOT in the United States. It did not claim a LOT adjustment. After examining the selling functions performed in the home market and the United States (excluding those functions performed by the U.S. affiliate) we have preliminarily determined that the LOT for home market and U.S. sales is the same. *See Avisma Analysis Memorandum*. We have concluded that there are no significant differences between the selling functions performed in these two markets by Avisma. We note that, as with SMW, some of the reported differences do not appear to relate to selling functions, but to other functions. Also as with SMW, because U.S. and home market sales are at the same LOT, a CEP offset is not appropriate.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

In accordance with section 782(i) of the Act, we will verify the questionnaire responses of Avisma and SMW before making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing CBP to suspend liquidation of all entries of magnesium from Russia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margins as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/exporter	Weighted-average margin (percentage)
Avisma	10.62
SMW	21.49
All Others	12.36

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose to interested parties the calculations performed in this preliminary determination within five days of the date of public announcement.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs on the later of 50 days after the date of publication of this notice or ten days after the issuance of the verification reports. *See* 19 CFR 351.309(c)(1)(I). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). The Department will make its final determination no later than 135 days after the date of the Department's preliminary determination. *See* 19 CFR 351.210(b)(1).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the final determination in this proceeding is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of magnesium metal from the Russian Federation are materially injuring, or threatening material injury to, the U.S. industry.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: September 24, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2479 Filed 10–1–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–841]

Initiation of Anti Dumping Duty Investigation: Polyvinyl Alcohol From Taiwan

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

EFFECTIVE DATE: October 4, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Lehman or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0180 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 7, 2004, the Department of Commerce (the Department) received a petition on imports of polyvinyl alcohol (PVA) from Taiwan filed in proper form by Celanese Chemicals Ltd. (the petitioner). On September 9, 2004, and September 15, 2004, the Department issued supplemental questionnaires requesting additional information and clarification of certain areas of the petition. The Department also requested additional information in September 17, 2004, and September 24, 2004, conference telephone calls with the petitioner. *See* Memorandum from Catherine Cartsos through Mark Ross to the File dated September 20, 2004, and Memorandum from Susan Lehman through Mark Ross to the File dated September 27, 2004. The petitioner filed supplements to the petition on September 13, 2004, September 21, 2004, and September 27, 2004.

On September 23, 2004, E.I. DuPont de Nemours & Co. (DuPont), a domestic producer of PVA, upon the request of the Department, filed a statement detailing DuPont's total production of PVA for the calendar year 2003. On September 24, 2004, DuPont submitted two challenges to the petition. On September 27, 2004, Solutia Inc. (Solutia), a domestic producer of PVA, submitted a document informing the Department that it ''neither supports nor opposes the antidumping duty petition'' on PVA from Taiwan.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of PVA from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring and threaten to injure an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(c) of the Act and the petitioner has demonstrated sufficient industry support with respect to the investigation that the petitioner is requesting the Department to initiate (*see* ''Determination of Industry Support for the Petition'' below).

Scope of Investigation

The merchandise covered by this investigation is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid. PVA in fiber form is not included in the scope of this investigation. The merchandise under investigation is currently classifiable under subheading 3905.30.00 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 under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties, Countervailing Duties, Final Rule,* 62 FR 27296, 27323)(May 19, 1997), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of