

6: Use of adverse facts available if Preliminary rescission of review for Axes/Adzes is reversed
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DEPARTMENT OF COMMERCE

International Trade Administration

[A-821-819]

Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On May 7, 2007, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of the administrative review of the antidumping duty order on magnesium metal from the Russian Federation. See *Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 25740 (May 7, 2007) (*Preliminary Results*). The review covers two respondents, PSC VSMPO—AVISMA Corporation and its affiliated U.S. reseller VSMPO—Tirus, U.S. Inc. (collectively AVISMA), and Solikamsk Magnesium Works (SMW). The period of review (POR) is October 4, 2004, through March 31, 2006. We invited interested parties to submit comments on our *Preliminary Results*. Based on our analysis of the comments received, we have made changes to our calculations with regard to AVISMA. The final dumping margins for this review are listed in the “Final Results of Review” section below.

EFFECTIVE DATE: September 11, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley (AVISMA and SMW), Gene Calvert (AVISMA), Jack Zhao (SMW); AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone numbers (202) 482-3148, (202) 482-3586, and (202) 482-1396, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 2007, the Department published the preliminary results of this review in the **Federal Register**. See *Preliminary Results*. Since the *Preliminary Results*, the following events have occurred. On June 6, 2007,

U.S. Magnesium LLC (U.S. Magnesium), one of the petitioners in the original investigation, submitted a case brief regarding the cost calculation of certain by-products internally consumed by SMW. On June 6, 2007, AVISMA submitted a case brief commenting on the calculation of AVISMA’s General and Administrative (G&A) expenses and a small number of sales of cylinders in the home market. On June 15, 2007, SMW filed a rebuttal brief regarding U.S. Magnesium’s case brief and U.S. Magnesium submitted a rebuttal brief regarding AVISMA’s case brief. All case and rebuttal briefs were timely filed.

Period of Review

This review covers the period October 4, 2004 through March 31, 2006.

Scope of the Order

The merchandise covered by this order is magnesium metal (also referred to as magnesium), which includes 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 order 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 than 99.8 percent, by weight, whether or not conforming to an “ASTM Specification for Magnesium Alloy”.

The scope of this order 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, nepheline syenite, feldspar, alumina (Al₂O₃), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemantite.¹

The merchandise subject to this order is currently 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 item numbers are provided for convenience and customs purposes, the written description of the merchandise covered by this order is dispositive.

On November 9, 2006, in response to U.S. Magnesium’s request for scope rulings, the Department issued a final scope ruling in which we determined that the processing of pure magnesium ingots, imported from Russia by Timminco, a Canadian company, into pure magnesium extrusion billets constitutes substantial transformation. Therefore, such alloy magnesium extrusion billets produced and exported by Timminco are a product of Canada, and thus not included within the scope of the order. See November 9, 2006 Memorandum for Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Barbara E. Tillman, Director, Office 6, and Wendy Frankel, Director, Office 8, China/NME Group, AD/CVD Operations: *Pure Magnesium from the People’s Republic of China (A-570-832), Magnesium Metal from the People’s Republic of China (A-570-896), and Magnesium Metal from Russia (A-821-819): Final Ruling in the Scope Inquiry on Russian and Chinese Magnesium Processed in Canada*.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding are listed in the Appendix to

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 Notice of 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); Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel, 66 FR 49349 (September 27, 2001); Notice of 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.

this notice and addressed in the Memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, *Issues and Decision Memorandum for the Administrative Review of the Antidumping Duty Order on Magnesium Metal from the Russian Federation (Decision Memorandum)*, dated concurrently with this notice, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this review in this public memorandum which is on file in the Central Records Unit (CRU), room B-099 of the Department of Commerce building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at: <http://www.trade.gov/ia>. The paper copy and the electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the interested parties, we have made changes to the margin calculations used in the *Preliminary Results*. These adjustments are discussed in detail in the *Decision Memorandum*. For AVISMA, we adjusted AVISMA's general and administrative ("G&A") expense rate. For SMW, we made no change in response to petitioner's argument for rejecting SMW's claim for an offset to the magnesium products' cost for the chlorine gas generated by the magnesium production unit. The specifics of respondent's and petitioner's arguments and the Department's response to them require the reference to business proprietary information. Therefore, the parties' arguments and our position are fully discussed in a separate business proprietary memorandum. See Memorandum from Christopher Zimpo to Neal Halper, *Cost of Production and Constructed Value Calculation Adjustments for the Final Results—Solikamsk Magnesium Works*, dated concurrently with this notice.

Final Results of Review

We determine that the following weighted-average antidumping margins exist for the period October 4, 2004 through March 31, 2006:

Manufacturer/exporter	Weighted-Average Margin (percent)
PSC VSMPO—AVISMA Corporation	0.41 (de minimis)
Solikamsk Magnesium Works	3.77

Duty Assessment

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will issue importer-specific assessment instructions for entries of subject merchandise during the POR. The Department intends to issue assessment instructions directly to CBP 15 days after the date of publication of these final results of review.

The Department clarified its "automatic assessment" regulation in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, if there is no rate for the intermediate company(ies) involved in the transaction, we will instruct CBP to liquidate unreviewed entries at the all others rate of 21.01 percent established in the less than fair value (LTFV) investigation. See *Notice of Antidumping Duty Order: Magnesium Metal From the Russian Federation*, 70 FR 19930 (April 15, 2005) (*Antidumping Duty Order*). See also Section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, consistent with section 751(a)(2)(C) of the Act: (1) for the companies covered by this review, the cash deposit rate will be zero for AVISMA and 3.77 percent for SMW; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original LTFV investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department,

the cash deposit rate will continue to be 21.01 percent, the "All Others" rate established in the LTFV investigation. See *Antidumping Duty Order*. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

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

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 04, 2007.

David M. Spooner,
Assistant Secretary for Import Administration.

Appendix

List of Issues Covered in the Decision Memorandum

Part I AVISMA

- Comment 1: Fiscal Year Versus POR G&A Expenses*
- Comment 2: Error in Reported G&A Expenses*
- Comment 3: Auxiliary Services in G&A Expenses*
- Comment 4: Impact of AVISMA's Merger with VSMPO on G&A Expense Rate*
- Comment 5: Financial Expense Ratio*
- Comment 6: Certain Sales of Cylinders in the Home Market*

Part II SMW

- Comment 7: Chlorine Gas Offset*