

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-201-802]

**Gray Portland Cement and Clinker From Mexico: Final Results of Changed-Circumstances Review, Revocation of Antidumping Duty Order, and Termination of Five-Year (Sunset) Review of Antidumping Duty Order**

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

**SUMMARY:** On February 17, 2009, the Department of Commerce (the Department) published a notice of initiation of changed-circumstances review, preliminary results of review, intent to revoke the antidumping duty order, and intent to terminate the five-year (sunset) review of the antidumping duty order on gray portland cement and clinker from Mexico.

We received comments from various interested parties supporting our preliminary results of review, revocation of the order, and termination of the sunset review. After consideration of those comments we are revoking the order and terminating the sunset review of the order.

**DATES:** *Effective Date:* April 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Hermes Pinilla or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, *telephone:* (202) 482-3477 and (202) 482-1690, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On March 6, 2006, the Office of the United States Trade Representative, Secretaria de Economia of the United Mexican States, and the Department entered into an Agreement on Trade in Cement. *See Gray Portland Cement and Clinker From Mexico: Agreement Between the Office of the United States Trade Representative, The United States Department of Commerce and Secretaria de Economia of Mexico on Trade in Cement*, 71 FR 13082 (March 14, 2006) (Agreement). Pursuant to the Agreement, the domestic industry, represented by the Southern Tier Cement Committee and its members, Capitol Aggregates, Ltd., and Holcim (U.S.) Inc., submitted letters stating that they have "no interest" in maintaining the order after the expiration of the Agreement.

On February 17, 2009, the Department of Commerce published the notice of initiation of changed-circumstances review, preliminary results of review, intent to revoke the antidumping duty order, and intent to terminate the five-year (sunset) review of antidumping duty order. *See Gray Portland Cement and Clinker From Mexico: Initiation of Changed-Circumstances Review, Preliminary Results of Review, Intent to Revoke Antidumping Duty Order, and Intent to Terminate Five-year (Sunset) Review of Antidumping Duty Order*, 74 FR 7393 (February 17, 2009) (*Intent to Revoke*).

We received comments from various interested parties supporting our preliminary results of review, revocation of the order, and termination of the sunset review.

**Final Results of Review**

We determine that all of the terms of the Agreement (*see Intent to Revoke*) have been satisfied.

**Revocation of Order**

Because we determine that the terms of the Agreement and, therefore, the terms of the "no interest" letters from producers accounting for substantially all of the production of the domestic like product have been met, we hereby revoke the antidumping duty order on gray portland cement and clinker from Mexico in its entirety, effective April 1, 2009.

**Termination of Sunset Review**

Because we determine that all the terms of the Agreement have been fulfilled and in accordance with letters filed by interested parties that are attached in Appendix 12 of the Agreement requesting the termination of the sunset review on March 31, 2009, we hereby terminate the suspended sunset review.

**Suspension of Liquidation**

We will instruct U.S. Customs and Border Protection (CBP) to discontinue the suspension of liquidation and to cease the collection of cash deposits on entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 1, 2009. In addition, we will instruct CBP to liquidate all entries made on or after April 1, 2009, without regard to antidumping duties.

This notice is published in accordance with sections 751(d)(1) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.221(b)(5).

Dated: March 31, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

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**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-821-819]

**Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind in Part**

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

**SUMMARY:** In response to timely requests, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on magnesium metal from the Russian Federation for the period of review (POR) April 1, 2007, through March 31, 2008. One respondent reported it had no shipments to the United States. As a result, the Department intends to rescind the review in part.

The Department preliminarily determines that the remaining respondent made sales to the United States at less than normal value. If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of the respondent's merchandise during the POR. The preliminary results are listed below in the section titled "Preliminary Results of Review."

**DATES:** *Effective Date:* April 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Hermes Pinilla or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-0665 or (202) 482-1690, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

The Department published the antidumping duty order on magnesium metal from the Russian Federation on April 15, 2005. *See Notice of Antidumping Duty Order: Magnesium Metal From the Russian Federation*, 70 FR 19930 (April 15, 2005) (*Antidumping Duty Order*). On April 1, 2008, the Department published in the **Federal**

**Register** a notice of opportunity to request an administrative review of the antidumping duty order on magnesium metal from the Russian Federation. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 17317 (April 1, 2008). On April 30, 2008, PSC VSMPO–AVISMA Corporation (AVISMA), a Russian Federation producer of the subject merchandise, requested that the Department conduct an administrative review. On April 30, 2008, U.S. Magnesium Corporation LLC, the petitioner in this proceeding, also requested that the Department conduct an administrative review with respect to AVISMA and Solikamsk Magnesium Works (SMW), another Russian Federation producer of the subject merchandise. On June 4, 2008, the Department published a notice of initiation of an administrative review of the antidumping duty order on magnesium metal from the Russian Federation for the period April 1, 2007, through March 31, 2008. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 31813 (June 4, 2008).

On December 29, 2008, the Department extended the deadline for the preliminary results of this antidumping duty administrative review from December 31, 2008, to March 31, 2009. See *Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Magnesium Metal From the Russian Federation*, 73 FR 79442 (December 29, 2008).

#### Scope of the Order

The merchandise covered by the 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 the 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 the 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 (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, dolomite lime, and colemanite.<sup>1</sup>

The merchandise subject to the 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 the order is dispositive.

#### Intent To Rescind Review in Part

On June 20, 2008, SMW submitted a letter indicating that it made no sales to the United States during the POR. We have not received comments on SMW’s submission. We confirmed SMW’s claim of no shipments by reviewing customs documentation. See Memorandum from International Trade Compliance Analyst

<sup>1</sup>This second exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 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.

to the File dated March 24, 2009. Because we preliminarily find that SMW had no shipments of subject merchandise during the POR, we intend to rescind the administrative review with respect to SMW. If we continue to find at the time of our final results that SMW had no shipments of subject merchandise from the Russian Federation, we will rescind the administrative review with respect to SMW pursuant to 19 CFR 351.213(d)(3).

#### Use of Facts Otherwise Available

For the reasons discussed below, we preliminarily determine that the use of adverse facts available (AFA) is appropriate with respect to AVISMA.

##### A. Use of Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended (the Act), provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; (5) the information can be used without undue difficulties.

On January 21, 2009, AVISMA notified the Department that it would not continue to participate in this administrative review and it requested the removal of all of its business-proprietary information (BPI) from the administrative record. We granted AVISMA’s request and have removed all of its BPI from the administrative

record. We also have instructed counsel for the petitioner to destroy all copies of AVISMA's BPI data. See Memorandum from Program Manager to Office Director dated March 30, 2009; see also letters from the Department to the petitioner and AVISMA dated March 30, 2009.

Because AVISMA has ended its participation in the instant administrative review and requested the removal of its BPI from the administrative record, AVISMA's actions constitute a refusal to provide information necessary to conduct the Department's antidumping analysis pursuant to sections 776(a)(2)(A) and (B) of the Act. Moreover, AVISMA's withdrawal significantly impedes conduct of the administrative review. See section 776(a)(2)(C) of the Act. Therefore, we find that we must base the margin for AVISMA on facts otherwise available pursuant to sections 776(a)(2)(A), (B), and (C) of the Act. Further, absent any response on the record from AVISMA, sections 782(d) and (e) of the Act do not apply.

#### *B. Application of Adverse Inferences for Facts Available*

In applying the facts otherwise available, section 776(b) of the Act provides that, if the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, in reaching the applicable determination under this title the administering authority may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.

Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (1994) at 870 (SAA). Further, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

AVISMA's request to return or destroy the company's BPI constitutes a refusal to participate in the administrative review and demonstrates that AVISMA failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. Therefore, pursuant to section 776(b) of the Act, the Department has preliminarily determined that, in

selecting from among the facts otherwise available, an adverse inference is warranted. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985, 42986 (July 12, 2000) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

#### *C. Selection and Corroboration of Information Used as Facts Available*

Section 776(b) of the Act provides that the Department may use as AFA information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. When selecting an AFA rate from among the possible sources of information, the Department's practice has been to ensure that the margin is sufficiently adverse to induce respondents to provide the Department with complete and accurate information in a timely manner. See, e.g., *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006).

As total AFA, we have assigned to exports of subject merchandise produced and/or exported by AVISMA the rate of 43.58 percent which is the highest transaction-specific rate we calculated in the 2006/07 administrative review of the order with respect to AVISMA. See Memorandum to File from International Trade Compliance Analyst entitled "Transfer of Information from Record of 2006/07 Review," dated March 31, 2009. We find that this rate is sufficiently adverse to serve the purposes of facts available and is appropriate, considering that this AFA rate is the highest calculated transaction-specific rate determined for AVISMA in this proceeding. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior transaction-specific margin "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less." See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990).

Section 776(c) of the Act provides that, to the extent practicable, the

Department shall corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information from a prior segment of the proceeding constitutes secondary information. See SAA at 870 and *Antifriction Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part*, 69 FR 55574, 55577 (September 15, 2004). The word "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.*; see also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996). To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.

In selecting the AFA rate for AVISMA, we assigned the rate of 43.58 percent, which is based on information AVISMA submitted in a previous segment of the proceeding. Thus, we find that the AFA rate of 43.58 percent is reliable. Because the AFA rate of 43.58 percent is based on AVISMA's questionnaire responses and accompanying data from the immediately preceding administrative review, we find that the rate is relevant for use in this administrative review and, therefore, it has probative value for use as AFA. As such, the Department finds this rate to be corroborated to the extent practicable consistent with section 776(c) of Act.

Therefore, as facts available with an adverse inference, we have selected the rate of 43.58 percent for AVISMA, the highest calculated transaction-specific margin we calculated for AVISMA in the immediately preceding administrative review. We consider the 43.58 percent rate to be sufficiently high so as to encourage participation in future segments of this proceeding.

#### **Preliminary Results of Review**

As a result of our review, we preliminarily determine that the dumping margin for AVISMA is 43.58 percent for the period April 1, 2007, through March 31, 2008.

### Disclosure and Public Comment

We will disclose pertinent memoranda concerning these preliminary results to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. See 19 CFR 351.310. If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**. See 19 CFR 351.309(c). Interested parties may file rebuttal briefs, limited to issues raised in the case briefs. See 19 CFR 351.309(d). The Department will consider rebuttal briefs filed not later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities cited. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**.

### Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Because we are relying on total AFA to establish AVISMA's dumping margin, we will instruct CBP to apply a dumping margin of 43.58 percent to all entries of subject merchandise during the POR that was produced and/or exported by AVISMA.

The Department intends to issue instructions to CBP 15 days after the publication of the final results of review.

### Cash-Deposit Requirements

If these preliminary results are adopted in the final results of review, the following deposit requirements will be effective upon completion 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 of the final results

of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash-deposit rate for AVISMA will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, 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 less-than-fair-value (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 subject merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous segment of the proceeding, the cash-deposit rate will continue to be the all-others rate established in the LTFV investigation which is 21.01 percent. See *Antidumping Duty Order*. These cash-deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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 the subsequent assessment of double antidumping duties.

The preliminary results of administrative review and this notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 31, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9-7690 Filed 4-3-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-351-840]

#### Certain Orange Juice From Brazil: Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** In response to a request by the petitioners and two producers/exporters of the subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain orange juice (OJ) from Brazil with respect to two producers/exporters of the subject merchandise to the United States. This is the second period of review (POR), covering March 1, 2007, through February 29, 2008.

We have preliminarily determined that sales to the United States have not been made below normal value (NV). If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

**DATES:** *Effective Date:* April 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Eastwood or Miriam Eqab, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-3874 or (202) 482-3693, respectively.

### SUPPLEMENTARY INFORMATION:

#### Background

In March 2006, the Department published in the **Federal Register** an antidumping duty order on certain orange juice from Brazil. See *Antidumping Duty Order: Certain Orange Juice from Brazil*, 71 FR 12183 (Mar. 9, 2006) (*OJ Order*). Subsequently, on March 3, 2008, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain orange juice from Brazil for the period March 1, 2007, through February 29, 2008. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 11389 (Mar. 3, 2008).

In accordance with 19 CFR 351.213(b)(2), in March 2008, the Department received requests to conduct an administrative review of the antidumping duty order on OJ from Brazil from two producers/exporters of the subject merchandise, Fischer S.A. Comercio, Industria, and Agricultura (Fischer) and Sucocitrico Cutrale, S.A. (Cutrale). In accordance with 19 CFR 351.213(b)(1), also in March 2008, the petitioners (Florida Citrus Mutual, A. Duda & Sons, Citrus World Inc., and Southern Gardens Citrus Processing Corporation), requested that the