

merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) at subheading 3912.31.00.¹ This tariff classification is provided for convenience and Customs purposes; however, the written description of the scope of the order is dispositive.

Final Results of Review

We have made no changes to our *Preliminary Results*, 75 FR 60084. We continue to find that revocation of the antidumping duty order with respect to CMC from Mexico would likely lead to a continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/producer/exporter	Weighted-average margin percentage
Quimica Amtex	12.61
All Others	12.61

In accordance with section 752(c)(3) of the Act, we will notify the International Trade Commission of the final results of this full sunset review.

This notice also serves as the only reminder to parties subject to administrative protective orders (“APO”) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department’s regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: January 20, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011-1797 Filed 1-26-11; 8:45 am]

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¹ Although HTSUS number 3912.31.00.10 may be more specific to subject merchandise, it was not created until 2005. As such, we are relying on HTSUS number 3912.31.00 for purposes of this sunset review because in determining whether revocation of an order would likely lead to continuation or recurrence of dumping, the Department considers the margins established in the investigation and/or reviews conducted during the sunset review period as well as the volume of imports for the periods before and after the issuance of the order. See section 752(c)(1) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Methodology for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings; Request for Comment

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

SUMMARY: The Department of Commerce (the “Department”) seeks public comment on its proposed methodological change to reduce the export price or constructed export price in certain non-market economy (“NME”) antidumping proceedings by the amount of an export tax, duty, or other charge, pursuant to section 772(c)(2)(B) of the Tariff Act of 1930, as amended.

DATES: To be assured of consideration, comments must be received no later than February 28, 2011.

FOR FURTHER INFORMATION CONTACT: Albert Hsu, Senior Economist, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-4491.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 772(c)(2)(B) of the Tariff Act of 1930, as amended (the “Act”), the Department is instructed to reduce the export price or constructed export price used in the dumping margin calculation by “the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 771(6)(C) {of the Act}.” However, the Department’s administrative practice has been that it cannot apply section 772(c)(2)(B) in NME antidumping proceedings because pervasive government intervention in NMEs precluded proper valuation of taxes paid by NME respondents to NME governments. This practice originated in the less-than-fair-value investigations of pure magnesium and magnesium alloy from the Russian Federation, which the Department then considered to be an NME. See *Pure Magnesium and Alloy Magnesium from the Russian Federation*, 60 FR 16440 (Mar. 30, 1995) (final determination of sales at less than fair value) (“*Russian Magnesium*”) (Comment 10). In those investigations, the Department determined not to

reduce the NME respondents’ U.S. prices based upon an export tax paid to the NME government, the Russian Federation. *Id.*

The *Russian Magnesium* petitioners subsequently challenged this determination before the Court of International Trade (“CIT”), and the CIT granted the Department’s request for a voluntary remand to further explain its reasoning. See *Magnesium Corp. of America v. United States*, 20 CIT 1092, 1113-14 (1996) (“*Mag. Corp. I*”). In its remand results, the Department explained its “uniform approach” to transfers between NME governments and NME companies. The Department stated, in relevant part:

The {NME} is governed by a presumption of widespread intervention and influence in the economic activities of enterprises. An export tax charged for one purpose may be offset by government transfers provided for another purpose. * * *

To make a deduction for export taxes imposed by a NME government would unreasonably isolate one part of the web of transactions between government and producer. The Department’s uniform approach to intra-NME transfers can be seen in its policy regarding transfers (or “subsidies”) paid by a NME government to a NME producer. The Department—with the approval of the Court of Appeals—has declined to find such transfers to be subsidies given the nature of a {NME}. Such an economy is riddled with distortions, with the government influencing prices and cost structures, regulating investment, wages and private ownership, and allocating credit. Attempts to isolate individual government interventions in this setting—whether they be transfers from the government or from exporters to the government—make no sense.

See Remand Redetermination: *Magnesium Corp. of America, et al. v. United States*, at 6-8, dated Oct. 28, 1996 (“Remand Redetermination”) (available at: <http://ia.ita.doc.gov/tlei/index.html>).

The CIT upheld the Department’s remand results. See *Magnesium Corp. of America v. United States*, 20 CIT 1464, 1466 (1996) (“*Mag. Corp. II*”). The U.S. Court of Appeals for the Federal Circuit then affirmed the CIT’s decision, stating that it agreed with the reasoning put forward in the Department’s Remand Redetermination. See *Magnesium Corp. of America*, 166 F.3d 1364, 1370-71 (Fed. Cir. 1999) (“*Mag. Corp. III*”).

However, since *Mag. Corp. III*, the Department has changed its practice with respect to application of the countervailing duty (“CVD”) law to subsidized merchandise from China and Vietnam, which the Department continues to designate as NMEs. As explained in the countervailing duty investigations of Coated Free Sheet

Paper from China and Polyethylene Retail Carrier Bags from Vietnam, the present-day Chinese and Vietnamese economies are sufficiently dissimilar from Soviet-style economies that the Department can determine whether the Chinese or Vietnamese government have bestowed an identifiable and measurable benefit upon a producer, and whether the benefit is specific, including certain measures related to taxation. See "Whether the Analytical Elements of the *Georgetown Steel* Opinion are Applicable to China's Present-Day Economy," dated Mar. 29, 2007 (available at: <http://ia.ita.doc.gov/download/prc-cfsp/CFS%20China.Georgetown%20applicability.pdf>); *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam*, 74 FR 45811, 45813–14 (Sept. 4, 2009) (prelim. affirmative CVD determination), unchanged in final determination, 75 FR 16428 (Apr. 1, 2010) (final affirmative CVD determination), and accompanying Issues and Decision Memo. at III (Applicability of the CVD Law to Vietnam).

Pursuant to its determination that subsidies from certain NME governments to NME companies can be identified and measured, upon further reflection, the Department has reconsidered its administrative practice that taxes paid by NME companies to these NME governments cannot be identified and measured. Specifically, the Department proposes to change the administrative practice set forth in *Russian Magnesium*, as upheld in the *Mag. Corp.* cases, with respect to China and Vietnam. Accordingly, pursuant to section 772(c)(2)(B), the Department proposes to reduce the export price and constructed export price used in NME dumping margin calculations based upon export taxes and similar charges, including value added taxes ("VAT") applied to export sales, imposed by the Chinese and Vietnamese governments in future less-than-fair-value investigations and administrative reviews of antidumping duty orders. This methodology may later be applied to other NMEs, pursuant to a determination that the NME at issue is dissimilar from Soviet-style economies.

Therefore, as detailed below, the Department is proposing the following methodology to implement section 772(c)(2)(B) in future antidumping duty investigations and administrative reviews involving merchandise from China and Vietnam.

Proposed Methodology

The Department would determine whether, as a matter of law, regulation, or other official action, the NME

government has imposed "an export tax, duty, or other charge" upon the subject merchandise during the period of investigation or the period of review (e.g., export tax or VAT that is not fully refunded upon exportation). The Department anticipates that parties would place upon the record copies of laws, regulations, other official documents, or similar publicly available information that is demonstrative of government action in this regard. The Department would also consider evidence as to whether the particular respondent(s) was, in some manner, exempted from the requirement to pay the export tax, duty, or other charge. The Department anticipates that such evidence would include official documentation of the respondent's exemption.

Provided that the NME government imposed an export tax, duty, or other charge on subject merchandise as contemplated by section 772(c)(2)(B), and the respondent was not exempted from it, the Department would reduce the respondents' export price and constructed export price accordingly. The Department anticipates that, in most instances, the export tax, VAT, duty, or other charge will be assessed as a percentage of the price. In such cases, the Department would adjust the export price or constructed export price downward by the same percentage. In instances where the tax or charge is a flat fee or similar charge denominated in NME currency, the Department would determine the ratio of the flat fee to the respondent's export price or constructed export price as denominated in its domestic currency, and would then adjust the export price or constructed export price downward by the same ratio.

Submission of Comments: As specified above, to be assured of consideration, comments must be received no later than February 28, 2011. All comments must be submitted through the Federal eRulemaking Portal at <http://www.regulations.gov>, Docket No. ITA-2010-0008, unless the commenter does not have access to the Internet. Commenters that do not have access to the Internet may submit the original and two copies of each set of comments by mail or hand delivery/courier. All comments should be addressed to the Secretary of Commerce, *Attn:* Albert Hsu, Senior Economist, Office of Policy, Room 1870, Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

The Department will consider all comments received before the close of the comment period. The Department

will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this notice will be a matter of public record and will be available for inspection at Import Administration's Central Records Unit (Room 7046 of the Herbert C. Hoover Building) and on the Department's Web site at <http://www.trade.gov/ia/>.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482-0866, e-mail address: webmaster-support@ita.doc.gov.

Dated: January 21, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA172

Marine Mammals; File No. 15453

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Waikiki Aquarium, 2777 Kalakaua Avenue, Honolulu, HI 96815 (Dr. Andrew Rossiter, Responsible Party), has applied in due form for a permit to conduct research on and enhancement of captive Hawaiian monk seals.

DATES: Written, telefaxed, or e-mailed comments must be received on or before February 28, 2011.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 15453 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713-2289; fax (301) 713-0376; and