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Dated: June 2, 2011.

Glenna Mickelson,

Management Analyst, Office of Chief Information Officer.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-832]

Pure Magnesium From the People's Republic of China: Preliminary Results of the 2009-2010 Antidumping Duty Administrative Review

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

SUMMARY: In response to requests from interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on pure magnesium from the People's Republic of China ("PRC"), covering the period May 1, 2009, through April 30, 2010.

We have preliminarily determined that Tianjin Magnesium International Co., Ltd. ("TMI"), the sole respondent in this administrative review, has not made sales in the United States at prices below normal value during the period of review ("POR"). If these preliminary results are adopted in the final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the period of review ("POR") for which the importer-specific assessment rates are above *de minimis*.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a summary of the argument. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

DATES: *Effective Date:* June 8, 2011.

FOR FURTHER INFORMATION CONTACT: Eve Wang or Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230;

telephone: (202) 482-6231 and (202) 482-0414, respectively.

Background

On May 12, 1995, the Department published in the **Federal Register** an antidumping duty order on pure magnesium from the PRC.¹ On May 3, 2010, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on pure magnesium from the PRC for the period May 1, 2009, through April 30, 2010.² On May 26, 2010, in accordance with 19 CFR 351.213(b)(2), TMI, a foreign exporter of the subject merchandise, requested the Department to review its sales of subject merchandise. On June 1, 2010, US Magnesium LLC ("Petitioner") also requested that the Department conduct an administrative review of the exports of subject merchandise of TMI. On June 30, 2010, the Department initiated an administrative review of the order on pure magnesium from the PRC for the POR with respect to TMI.³

On June 30, 2010, the Department issued an antidumping duty questionnaire to TMI. TMI submitted its section A questionnaire response ("TMI's AQR") on July 30, 2010, sections C and D questionnaire response ("TMI's CQR" and "TMI's DQR") August 27, 2010.⁴ Petitioner submitted comments concerning TMI's AQR on September 24, 2010, and TMI's CQR and TMI's DQR on November 12, 2010. The Department issued supplemental questionnaires to TMI concerning TMI's AQR, CQR and DQR between January 6, 2011, and May 5, 2011. TMI responded to each of the supplemental questionnaires between February 3, 2011, and May 10, 2011. Petitioner submitted comments on TMI's submissions between April 22, 2011, and May 4, 2011.

On October 12, 2010, Petitioner requested that the Department conduct verification of TMI in accordance with 19 CFR 351.307(b)(1)(iv).

On October 22, 2010, the Department issued a letter to interested parties

¹ See *Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation*, 60 FR 25691 (May 12, 1995).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 75 FR 23236 (May 3, 2010).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 75 FR 37759 (June 30, 2010).

⁴ On July 30, 2010, TMI requested an extension of time to file its response to sections C and D of the questionnaire, which the Department granted.

seeking comments on surrogate country selection and surrogate values ("SVs") to value factors of production ("FOP"). On November 2, 2010, Petitioner filed a request for an extension of time to submit comments on surrogate country selection. On November 15, and November 19, 2010, Petitioner submitted potential surrogate producer financial statements and comments on surrogate country selection, respectively. TMI submitted comments concerning surrogate country selection on November 19, 2010, and SV information on December 7, 2010. Petitioner submitted initial SV comments on December 12, 2010, and rebuttal SV comments on December 17, 2010. On December 17, 2010, TMI submitted rebuttal SV comments. On May 3, 2011, Petitioner submitted comments concerning the SV for freight rates.

On January 4, 2011, the Department extended the time period for completion of the preliminary results of this review by 120 days until May 31, 2011.⁵

Period of Review

The POR is May 1, 2009, through April 30, 2010.

Scope of Order

Merchandise covered by the order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra pure" magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as "off-specification pure" magnesium).

⁵ See *Pure Magnesium from the People's Republic of China: Extension of Time for the Preliminary Results of the Antidumping Duty Administrative Review*, 76 FR 1403 (January 10, 2011).

“Off-specification pure” magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of the order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (*i.e.*, length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by the order are currently classifiable under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Non-Market Economy Country Status

The Department has treated the PRC as a non-market economy (“NME”) country in all past antidumping duty investigations and administrative reviews and continues to do so in this case.⁶ The Department has previously examined the PRC’s market-economy status and determined that NME status should continue for the PRC.⁷ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.⁸ No interested

party to this proceeding has contested such treatment. Accordingly, we calculated normal value (“NV”) using an FOP methodology in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV on the NME producer’s FOPs. The Act further instructs that valuation of the FOPs shall be based on the best available information from a surrogate market-economy country or countries considered to be appropriate by the Department.⁹ When valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.¹⁰ Further, the Department normally values all FOPs in a single surrogate country.¹¹ The sources of SVs are discussed under the “Normal Value” section below and in the Factor Valuation Memorandum, which is on file in the Central Records Unit, Room 1117 of the main Department building.¹²

In examining which country to select as its primary surrogate country for this proceeding, the Department first determined that India, Indonesia, Peru, the Philippines, Thailand, and Ukraine are countries comparable to the PRC in terms of economic development.¹³ The Department has also determined India to be a significant producer of primary aluminum, a product that the Department has found to be comparable to pure magnesium. Both Petitioner and TMI agreed that India is the most appropriate surrogate country for this administrative review. Both Petitioner and TMI submitted Indian-sourced data to value FOPs.

After evaluating interested parties’ comments, the Department has determined that India is the appropriate surrogate country to use in this review in accordance with section 773(c)(4) of

the Act. The Department based its decision on the following facts: (1) India is at a level of economic development comparable to that of the PRC; (2) India is a significant producer of comparable merchandise, *i.e.*, primary aluminum; and (3) India provides the best opportunity to use quality, publicly available data to value the FOPs. All the data submitted by both Petitioner and TMI for our consideration as potential SVs and surrogate financial ratios are sourced from India. Finally, on the record of this review, we have usable SV data (including financial data) from India, but no such surrogate data from other potential surrogate country.

Therefore, because India best represents the experience of producers of comparable merchandise operating in a surrogate country, we have selected India as the surrogate country and, accordingly, have calculated NV using Indian prices to value TMI’s FOPs, when available and appropriate. We have obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly available information to value the FOPs within 20 days after the date of publication of the preliminary results of review.¹⁴

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries, available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>. It is the Department’s policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is

⁶ See 771(18)(C) of the Act; *see, e.g., Pure Magnesium from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 76336 (December 16, 2008) (“*Pure Magnesium 06-07*”); and *Frontseating Service Valves from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009).

⁷ See Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, The People’s Republic of China (PRC) Status as a Non-Market Economy (NME), dated May 15, 2006. This document is available online at <http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf>.

⁸ See section 771(18)(C)(i) of the Act.

⁹ See section 773(c)(1) of the Act.

¹⁰ See section 773(c)(4) of the Act.

¹¹ See 19 CFR 351.408(c)(2).

¹² See Memorandum to the File, “2009–2010 Administrative Review of the Antidumping Duty Order on Pure Magnesium from the People’s Republic of China: Factor Valuation Memorandum for the Preliminary Results,” dated May 31, 2011 (“Factor Valuation Memorandum”).

¹³ See Memorandum from Carole Showers, Director, Office of Policy, “Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Pure Magnesium (“Magnesium”) from the People’s Republic of China (“PRC”),” dated July 20, 2010.

¹⁴ In accordance with 19 CFR 351.301(c)(1), for the final determination of this review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative SV information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum (“IDM”) at Comment 2.

sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) (“*Sparklers*”), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) (“*Silicon Carbide*”). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.

Separate Rate Recipients

TMI is the only respondent in this administrative review. TMI reported that it is a wholly Chinese-owned company. Therefore, the Department must analyze whether it can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.¹⁵

The evidence provided by TMI supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with its business and export licenses; (2) applicable legislative enactments decentralizing control of companies; and (3) formal measures by the government decentralizing control of companies.¹⁶

b. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto*

government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.¹⁷ The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control, which would preclude the Department from assigning separate rates.

The evidence provided by TMI supports a preliminary finding of *de facto* absence of government control based on the following: (1) The absence of evidence that the export prices are set by or are subject to the approval of a government agency;¹⁸ (2) the respondent has authority to negotiate and sign contracts and other agreements;¹⁹ (3) the respondent has autonomy from the government in making decisions regarding the selection of management;²⁰ and (4) the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.²¹

Therefore, the evidence placed on the record of this review by TMI demonstrates an absence of *de jure* and *de facto* government control with respect to TMI's exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, we have determined that TMI has demonstrated its eligibility for a separate rate.

Fair Value Comparisons

To determine whether sales of pure magnesium to the United States by TMI were made at NV, we compared export price (“EP”) to NV, as described in the “Export Price” and “Normal Value” sections of this notice.

¹⁷ See *Silicon Carbide*, 59 FR at 22587; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

¹⁸ See TMI's AQR, at 2–3, 6; see also the contract and the purchase order between TMI and a U.S. Customer contained in TMI's AQR at Exhibit A–6. See also TMI's 1st ASQR Exhibit SA–8.

¹⁹ See TMI's AQR at 7; see also TMI's 1st SQR at SA–10a.

²⁰ See TMI's AQR at 8.

²¹ See TMI's AQR at 9–10.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we have used EP for TMI's U.S. sales because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because constructed export price was not otherwise warranted.

We have based the EP on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we have made deductions from the starting price for movement expenses, including expenses for foreign inland freight from the plant to the port of exportation, domestic brokerage and handling, international freight, marine insurance, brokerage and handling expenses incurred in the United States, U.S. customs duty, freight from the U.S. port to the customer, rebanding, inventory and warehouse handling expenses. TMI neither reported nor claimed other adjustments to EP.²²

Normal Value

Section 773(c)(1) of the Act provides that, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the Department finds that the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department's questionnaire requires that TMI provide information regarding the weighted-average FOPs across all of the company's plants that produce the subject merchandise, not just the FOPs from a single plant. This methodology

¹⁵ See *Sparklers*.

¹⁶ See Foreign Trade Law of the People's Republic of China, contained in TMI's AQR, at Exhibit A–2; see also Regulations of the People's Republic of China on Administration of Registration of Companies contained in TMI's AQR at Exhibit A–5.

²² See Memorandum to the File “Analysis Memorandum for the Preliminary Results of the 2009–2010 Administrative Review of Pure Magnesium from the People's Republic of China: Tianjin Magnesium International Co., Ltd. (“TMI”)” (“TMI's Analysis Memorandum”), dated May 31, 2011.

ensures that the Department's calculations are as accurate as possible.²³

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a market economy and pays for it in market economy ("ME") currency, the Department may value the factor using the actual price paid for the input.²⁴ TMI reported that it did not purchase inputs from ME suppliers for the production of the subject merchandise.²⁵

We calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used FOPs reported by TMI for materials, energy, labor, by-products, and packing.

TMI stated that its producer generated three by-products during the production process: magnesium waste, cement clinker, and coal tar.²⁶ TMI requested by-product offsets to NV for all three products. TMI provided record evidence establishing that all three by-products generated during the course of production have commercial value.²⁷ Therefore, for these preliminary results, we have granted TMI three by-product offsets to its NV.²⁸

Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on FOPs reported by TMI for the POR. To calculate NV, the Department multiplied the reported per-unit factor consumption quantities by publicly available Indian SVs. In selecting the SVs, the Department considered the quality, specificity, and contemporaneity of the data. The Department adjusted input prices by including freight costs to make them

delivered prices, as appropriate. Specifically, the Department added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory of production. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit ("CAFC") in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all SVs used to value TMI's reported FOPs may be found in the Factor Valuation Memorandum.

The Department calculated SVs for the majority of reported FOPs purchased from NME sources using the contemporaneous, weighted-average unit import value derived from the *Monthly Statistics of the Foreign Trade of India*, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India in the Global Trade Atlas ("GTA"), available at <http://www.gtis.com/wta.htm> ("GTA Indian Import Statistics").²⁹ GTA Indian Import Statistics were reported in India Rupees and are contemporaneous with the POR. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.³⁰

In those instances where the Department could not obtain publicly available information contemporaneous with the POR with which to value FOPs, the Department adjusted the publicly available SVs using the Indian Wholesale Price Index, as published in the *International Financial Statistics* of the International Monetary Fund.³¹

Furthermore, with regard to Indian import-based SVs, we have disregarded prices that we have reason to believe or suspect may be subsidized, such as those from Indonesia, South Korea, and Thailand. We have found in other proceedings that these countries maintain broadly available, non-

industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.³² We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized.³³ Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. In accordance with the foregoing, we have not used prices from these countries in calculating the Indian import-based SVs.

The Department used GTA Indian Import Statistics to calculate SVs for raw materials (*i.e.*, ferrosilicon, fluorite powder, sulphur powder, and sulfuric acid), packing materials (*i.e.*, plastic bags, steel bands, and plastic bands), and by-products (*i.e.*, magnesium waste, cement clinker, and coal tar).

For dolomite, we continue to find, as we did in the previous segments of this proceeding, that it is reasonable to conclude that GTA data represent prices of imported dolomite in the high-end, value-added product range while the dolomite used to produce subject merchandise is more of a high-bulk, low-value commodity.³⁴ Therefore, as in the 2008–2009 administrative review, we have preliminarily determined to use the audited financial statements of Indian producers submitted on the record of this review for the SV for dolomite.³⁵ TMI placed the audited financial statements of two companies on the record covering the period April 1, 2009 through March 31, 2010: Bisra Stone Lime Company Ltd. ("Bisra") and Anjani Portland Cement Limited

³² See *Final Results Of Redetermination Pursuant To Court Remand*, dated February 25, 2010, *Jinan Yipin Corp., Ltd. v. United States*, 637 F. Supp. 2d 1183 (CIT 2009). See also *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 54007, 54011 (September 13, 2005), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review*, 71 FR 14170 (March 21, 2006); and *China Nat'l Mach. Import & Export Corp. v. United States*, 293 F. Supp. 2d 1334 (CIT 2003), affirmed 104 Fed. Appx. 183 (Fed. Cir. 2004).

³³ See H.R. Rep. No. 100–576 at 590 (1988).

³⁴ See *Pure Magnesium 06–07*, and accompanying IDM at Comment 1. In addition, see TMI's SV Comments at Exhibits SV–2C and SV–2D, which respectively contain, *British Geological Survey (2006): Dolomite and A Review of the Dolomite and Limestone Industry in South Africa Report R43/2003*.

³⁵ See *Pure Magnesium From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010).

²³ See, e.g., *Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 FR 61395 (October 28, 2003), and accompanying Issue and Decision Memorandum at Comment 19.

²⁴ See 19 CFR 351.408(c)(1); see also *Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc. v. United States*, 268 F.3d 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

²⁵ See TMI's DQR at D–16.

²⁶ *Id.* at D–24 through D–26.

²⁷ *Id.* at Exhibits D–8 through D–12; see also TMI's 2nd SQR at 3 and Exhibit 2S–5.

²⁸ See TMI's Analysis Memorandum at 4.

²⁹ See Factor Valuation Memorandum.

³⁰ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

³¹ See Factor Valuation Memorandum.

(“Anjani”).³⁶ Petitioner placed on the record the audited financial statements for two Indian metal companies covering the same period: Tata Sponge Iron Ltd (“Tata”) and Bhushan Steel Limited (“Bhushan”). In examining these financial statements, we have determined that the prices reflected in the financial statements of the four companies represent the best available information on the record with which to value dolomite. All of these financial statements are fully legible and generally contemporaneous with the POR. The companies were profitable and did not receive subsidies that the Department has found to be countervailable and would otherwise taint the prices of materials that it sold or consumed. Therefore, we have preliminarily determined the SV of dolomite based on the simple average of domestic prices for dolomite provided in the audited financial statements of these four companies.

We valued flux No.2, which consists of magnesium chloride, potassium chloride, and sodium chloride, using data from *Chemical Weekly*. We consider both *Chemical Weekly* and GTA Indian Import Statistics to be reliable sources and, as such, the Department has used them in past cases to value chemical component inputs. In the instant case, however, we have determined, as we have been in the three immediately preceding segments of this proceeding, that *Chemical Weekly* is the best available information for valuing flux because the data are publicly available prices, are contemporaneous with the POR, are specific to TMI’s input, and are representative of prices in India.³⁷

As a consequence of the decision of the CAFC in *Dorbest Ltd. v. United States*, 604 F. 3d 1363 (Fed. Cir. 2010), the Department no longer relies on the regression-based wage rate described in 19 CFR 351.408(c)(3). The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For these preliminary results, we have calculated an hourly wage rate to use in valuing the reported labor input by averaging earnings and/or wages in countries that are economically-comparable to the PRC and that are significant producers of comparable merchandise. To calculate the hourly wage data, we used wage rate data reported by the International Labor Organization (“ILO”).³⁸ Because an

industry-specific dataset relevant to this proceeding exists within the Department’s preferred ILO source, we used industry-specific data to calculate a surrogate wage rate for this review, in accordance with section 773(c)(1) of the Act.

For this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 27 (“Manufacture of basic metal”) of the ISIC–Revision 3 by countries determined to be both economically-comparable and significant producers to the PRC. The Department finds the two-digit description under Sub-Classification 27 is the best available wage rate surrogate value on the record because it is specific to, and derived from, industries that produce merchandise comparable to the subject merchandise. Consequently, we average the ILO industry-specific wage rate data or earnings data available from the following countries found to be economically comparable to the PRC and to be significant producers of comparable merchandise: Egypt, Indonesia, Philippines, Ukraine, Jordan, Thailand, Ecuador, and Peru.³⁹ On this basis, the Department calculated a simple average, industry specific wage rate of \$1.96 for these preliminary results.⁴⁰

We valued electricity using the updated electricity price data for small, medium, and large industries, as published by the Central Electricity Authority, an administrative body of the Government of India, in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated March 2008.⁴¹ These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to small, medium, and

Classification of all Economic Activities (“ISIC”) code, which is maintained by the United Nations Statistical Division and is periodically updated. These updates are referred to as “Revisions.” The ILO, an organization under the auspices of the United Nation, utilizes this classification for reporting purposes. Currently, wage and earnings data are available from the ILO under the following revisions: ISIC–Rev.2, ISIC–Rev.3, and most recently, ISIC–Rev.4. The ISIC code establishes a two-digit breakout for each manufacturing category, and also often provides a three- or four-digit subcategory for each two-digit category. Depending on the country, data may be reported at either the two-, three- or four-digit subcategory.

³⁹ Although India is used as the primary surrogate country for the other FOPs, India is not included in the list of countries used to calculate the industry-specific wage rate because there were no earnings or wage data available from the ILO for the applicable period.

⁴⁰ See the Factor Value Memorandum at 9 and Exhibit 10.

⁴¹ See Factor Valuation Memorandum at 6.

large industries in India. We did not inflate this value because utility rates represent current rates, as indicated by the effective dates listed for each of the rates provided.

To value steam coal, we used steam coal prices from the December 12, 2007, *CIL’s Coal Pricing Circular*. See CIL: S&M: GM(F): Pricing 1124, dated 12 December 2007.⁴² Since TMI reports using non-coking coal with a useful heat value of 5500 kcal/kg,⁴³ we calculated the SV for steam coal by averaging the prices of long-flame grade C non-coking coal and non-long-flame grade C non-coking steam coal, both of which have UHV exceeding 4940 kcal/kg, but not exceeding 5600 kcal/kg, from the December 12, 2007, *CIL’s Coal Pricing Circular*.⁴⁴ We did not inflate this value to the current POR because the steam coal rates represent the rates that were in effect until October 16, 2009,⁴⁵ and are, therefore, contemporaneous with the POR. Finally, we have applied an additional fixed surcharge of 165 rupees (“Rs.”)/metric ton to our calculation of the average of the prices of long-flame grade C non-coking coal and non-long-flame grade C non-coking coal from CIL.⁴⁶

We valued truck freight expenses using an Indian per-unit average rate calculated from data on the following Web site: <http://www.infobanc.com/logistics/logtruck.htm>⁴⁷ The logistics section of this Web site contains inland freight truck rates between many large Indian cities. We did not inflate this rate since it is contemporaneous with the POR.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2010: India*, published by the World Bank.⁴⁸

We valued marine insurance using a price quote retrieved from RJG Consultants, online at <http://www.rjgconsultants.com/163.html>, an

⁴² See Factor Valuation Memorandum at 6.

⁴³ See TMI’s DQR at D–12. See also Annexure X of *CIL’s Coal Pricing Circular* in the Factor Valuation Memorandum (identifying the range of kcal/kg in each grade of coal).

⁴⁴ See Factor Valuation Memorandum.

⁴⁵ See TMI’s December 7, 2010 SV submission, Exhibit SV–6.

⁴⁶ See <http://www.coalindia.nic.in/pricing.htm>, General Remarks Note 2 (“Additional Rs. 165 shall be charged on pithead price of Run of Mine Coal for the supply of steam coal.”).

⁴⁷ See Factor Valuation Memorandum at 10.

⁴⁸ *Id.*

³⁶ See TMI’s SV Comments at Exhibits SV–2F and SV–2G.

³⁷ See Factor Valuation Memorandum at 6–7

³⁸ The ILO industry-specific data is reported according to the International Standard Industrial

ME provider of marine insurance.⁴⁹ We did not inflate this rate since it is contemporaneous with the POR

According to 19 CFR 351.408(c)(4), the Department is directed to value overhead, general, and administrative expenses (“SG&A”), and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. In this administrative review, Petitioner and TMI, collectively, placed on the record financial statements for ten Indian metal producers. Specifically, Petitioner submitted the 2009–2010 financial statements for two producers of primary aluminum—National Aluminium Company Limited (“NALCO”) and Bharat Aluminum Co., Ltd; one producer of zinc products—Hindustan Zinc Limited (“Hindustan Zinc”); and a producer of copper—Hindustan Copper Limited.⁵⁰ In addition, Petitioner included the 2008–2009 financial statements for one Indian producer of alloy steel, titanium, and molybdenum—Midhani Dhatu Nigam Limited for the Department’s consideration (“Midhani”).⁵¹ TMI submitted the 2009–2010 financial statements for one producer of primary aluminum—Hindalco Industries Limited (“HINDALCO”), and four producers of aluminum products—Sudal Industries Ltd. (“Sudal”), Century Extrusions Ltd. (“Century”), Bhoruka Aluminum (“Bhoruka”) and Gujarat Foils Limited.⁵²

For the following reasons, we have determined not to rely on the 2009–2010 audited financial statements of Sudal, Century, Bhoruka, Gujarat, HINDALCO, NALCO, Hindustan Zinc, and Hindustan Copper, and the 2008–2009 audited financial statements of Midhani, as surrogate financial statements under 19 CFR 351.408(c)(4). The Department, as in the three immediately preceding segments of this proceeding,⁵³ continues to prefer

⁴⁹ *Id.*

⁵⁰ In its May 4, 2011 submission of Petitioner’s Comments Concerning The Preliminary Results, Petitioner argued that financial statements for Madras Aluminum Company (“MALCO”) 2006/2007 is the second best information for purposes of selecting financial statements, notwithstanding the financial statements are not on the record. The Department disagrees with Petitioner and rejects the use of financial statements because they are not contemporaneous. Herein, the financial statements for MALCO 2006/2007 are now officially on the record for this review.

⁵¹ See Petitioner’s SV Submission at Exhibits 5 and 6.

⁵² See TMI’s SV Submission at Exhibits SV–13A through SV–13E.

⁵³ See *Pure Magnesium from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 76336

selecting financial statements from a producer of primary aluminum, which the Department has determined to be comparable to pure magnesium for purposes of selecting financial statements.⁵⁴ Accordingly, we decline to rely on audited financial statements for Sudal, Century, Bhoruka, and Gujarat because these are not producers of preliminary aluminum; rather, they produced downstream products of aluminum (*e.g.*, aluminum extruders and foils).

Second, the Department declines to use financial statements for Hindustan Zinc and NALCO because the Department has a well-established practice of disregarding financial statements where there is evidence that the company received subsidies that the Department has previously found to be countervailable, and where there are other sufficient reliable and representative data on the record for purposes of calculating the surrogate financial ratios.⁵⁵ Hindustan Zinc received benefits from the Export Promotion Capital Goods Scheme (“EPCG”),⁵⁶ a subsidy that the Department has determined to be countervailable.⁵⁷ Similarly, NALCO received, during the POR, EPCG subsidy notwithstanding it produced primary aluminum.⁵⁸ Third, we find that the financial statements for HINDALCO are not the best information available for

(December 16, 2008) and accompanying IDM (“2006–2007 Pure Magnesium Review”) (MALCO’s financial statements were used); *Pure Magnesium from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 66089 (December 14, 2009) and accompanying IDM (“2007–2008 Pure Magnesium Review”) (MALCO’s financial statements were used); *Pure Magnesium from the People’s Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010) and accompanying IDM (“2008–2009 Pure Magnesium Review”) (MALCO’s financial statements were used).

⁵⁴ See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Pure Magnesium and Alloy Magnesium from the People’s Republic of China*, 59 FR 55424 (November 7, 1994).

⁵⁵ See *Certain Steel Nails from the People’s Republic of China: Final Results of the First New Shipper Review*, 75 FR 34424 (June 17, 2010) and accompanying IDM at Comment 4; *Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying IDM at Comment 17.A.

⁵⁶ Petitioner’s Initial Comments on Valuation of Factor of Production, dated Dec. 7, 2010, Exhibit 10, at 86.

⁵⁷ See *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 43488 (July 26, 2010) and accompanying IDM at Comment 2.

⁵⁸ See Petitioner’s Initial Comments on Valuation of Factor of Production, dated Dec. 7, 2010, Exhibit 8, at 70.

purposes of selecting financial statements because only one tenth of HINDALCO’s production was related to primary aluminum during the POR.⁵⁹ In contrast, more than half of its production was related to copper, a product that the Department has determined not to be comparable to pure magnesium.⁶⁰ Likewise, the Department rejects the use of financial statements for Hindustan Copper because it produced copper. Fourth, the Department rejects the use of financial statements for Midhani because the Department has not determined that any of the three principal products made by the company, alloy steel, titanium, and molybdenum, are comparable to pure magnesium. Because the Department has available to it a financial statement from a primary aluminum producer and the period covered in Midhani’s financial statements is not the most contemporaneous to the POR, we do not need to make a finding regarding the comparability of Midhani’s merchandise to pure magnesium.

Finally, the Department finds that the financial statements for Bharat are the best information available for purposes of selecting financial statements. Bharat produced primary aluminum, which the Department has determined to be comparable to pure magnesium. There is no evidence in the financial statements that Bharat received any benefits that the Department has determined to be countervailable. Bharat was profitable during the POR. Further, its audited financial statements are complete and are sufficiently detailed to disaggregate materials, labor, overhead, and SG&A expenses. As a result, we have preliminarily determined to use the 2009–2010 audited financial statements of Bharat as the basis of the financial ratios in this review.

For a complete listing of all the inputs and a detailed discussion about our SV selections, see the Factor Valuation Memorandum.

Currency Conversion

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

⁵⁹ See TMI’s Surrogate Value Information, dated Dec. 7, 2011, Exhibit SV–13E, at 82.

⁶⁰ See *Pure Magnesium From the People’s Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010), and accompanying IDM at Comment 2.

Duty Absorption

Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. *See also*, 19 CFR 351.213(j). On July 10, 2010, Petitioner requested that the Department determine whether TMI had absorbed antidumping duties for U.S. sales of pure magnesium made during the POR. Since the instant review was initiated more than five years after publication of the pure magnesium order, this request is untimely and, as such, we have not conducted a duty absorption analysis.

Weighted-Average Dumping Margin

The preliminary weighted-average dumping margin is as follows:

PURE MAGNESIUM FROM THE PRC

Exporter	Weighted-average margin (percentage)
Tianjin Magnesium International Co. Ltd	0

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties 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 publication of these preliminary results.⁶¹ If a hearing is requested, the Department will announce the hearing schedule at a later date. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of the preliminary results of review.⁶² Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs.⁶³ Further, we request that parties submitting written comments provide the Department with an additional electronic copy of those comments on a CD-ROM. The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in all comments, and at a

hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.⁶⁴ For assessment purposes, we calculated importer- or customer-specific assessment rates for merchandise subject to this review. We calculated an *ad valorem* rate for each importer or customer by dividing the total dumping margins for reviewed sales to that party by the total entered value associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer or customer by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer- or customer-specific assessment rate is *de minimis* (*i.e.*, less than 0.50 percent) in accordance with the requirement of 19 CFR 351.106(c)(2), the Department will instruct CBP to assess that importer's or customer's entries of subject merchandise without regard to antidumping duties. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate we determine in the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For TMI, which has a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, zero cash deposit will be required); (2) for

previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 111.73 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These 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.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: May 31, 2011.

Ronald K. Lorentzen,
Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-489-815]

Light-Walled Rectangular Pipe and Tube from Turkey; Notice of Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to a request from Noksel Celik Boru Sanayi A.S., (Noksel), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on light-walled rectangular pipe and tube from Turkey. Atlas Tube, Inc. and Searing Industries, Inc. are petitioners in this case. The review covers exports of the subject

⁶¹ See 19 CFR 351.310(c).

⁶² See 19 CFR 351.309(c)(ii).

⁶³ See 19 CFR 351.309(d).

⁶⁴ See 19 CFR 351.212(b).