

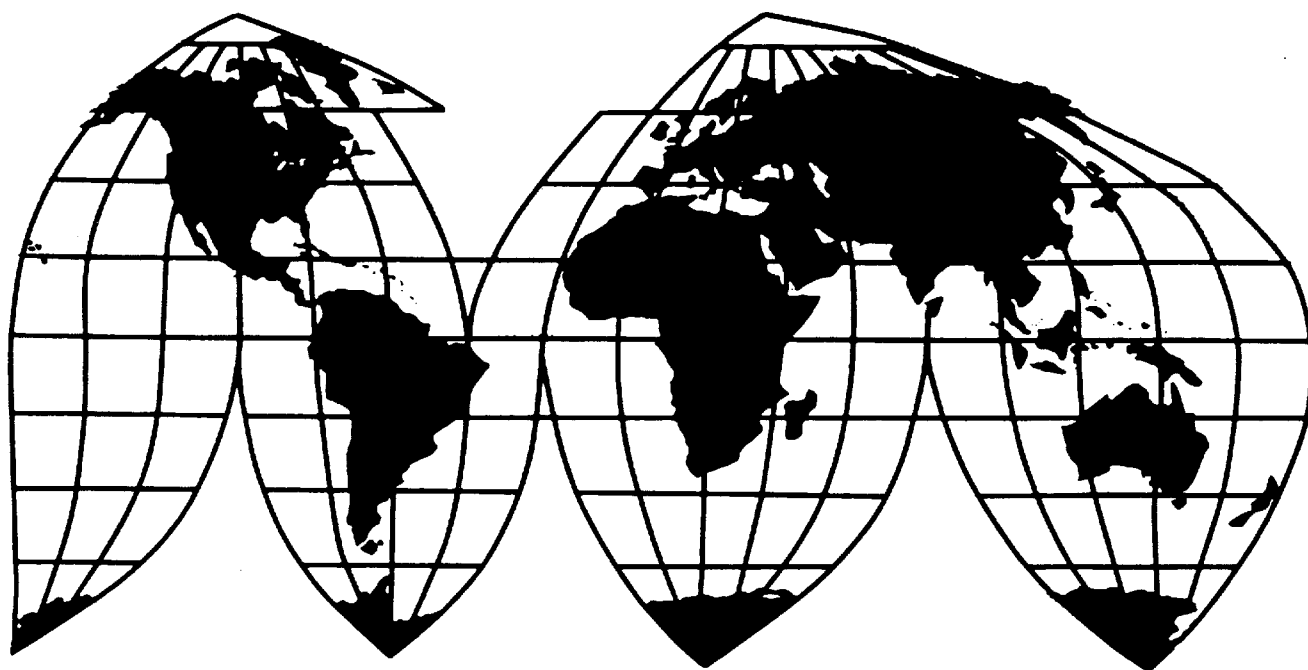
Pure Magnesium From China

Investigation No. 731-TA-895 (Review)

Publication 3908

March 2007

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-895 (Review)

PURE MAGNESIUM FROM CHINA

DETERMINATION

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on certain pure magnesium from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

BACKGROUND

The Commission instituted this review on October 2, 2006 (71 F.R. 58001) and determined on January 5, 2007 that it would conduct an expedited review (72 F.R. 3876, January 26, 2007).

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² Commissioners Jennifer A. Hillman and Irving A. Williamson not participating. Commissioner Dean A. Pinkert was not a member of the Commission at the time of the vote.

VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order on pure magnesium in granular form from the People’s Republic of China (“China”) would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹

I. BACKGROUND

On October 17, 2000, Magnesium Corp. of America (“Magcorp”) filed an antidumping duty petition with the U.S. Department of Commerce (“Commerce”) and the U.S. International Trade Commission (“Commission”),² alleging that an industry in the United States was materially injured and threatened with material injury by reason of imports of pure magnesium from Israel and Russia, and imports of pure magnesium in granular form from China that were alleged to be sold in the United States at less than fair value, and by reason of imports of pure magnesium from Israel that were alleged to be subsidized by the Government of Israel.³ Commerce subsequently made a final negative determination regarding subject imports from Russia,⁴ and the Commission accordingly terminated its corresponding investigation of that subject merchandise.⁵

Because the Commission determined that a domestic industry was neither materially injured nor threatened with material injury by reason of subject imports from Israel that Commerce had found were subsidized and sold in the United States at less than fair value,⁶ subject imports from Israel were not eligible for cumulation with subject imports from China.⁷ In contrast to its negative final determination concerning subject imports from Israel,⁸ the Commission determined that an industry in the United States was materially injured by reason of imports of pure magnesium in granular form from China that Commerce found had been sold in the United States at less than fair value.⁹ On November 19, 2001,

¹ Commissioner Jennifer A. Hillman and Commissioner Irving A. Williamson did not participate in this determination. Commissioner Dean A. Pinkert was not a member of the Commission at the time of the vote.

² On October 26, 2000, Magcorp amended the petition to include the United Steel Workers of America, Local 8319, as a co-petitioner, and on April 20, 2001, they amended the petition to add “concerned employees of Northwest Alloys, Inc.” as co-petitioners. See, e.g., Confidential Staff Report, Mem. INV-EE-009 (Feb. 1, 2007) (“CR”) at I-5 n.11; Public Report (“PR”) at I-4 n.11.

³ See, e.g., CR at I-5; PR at I-4 to I-5.

⁴ See 66 Fed. Reg. 49347 (Sept. 27, 2001).

⁵ See 66 Fed. Reg. 50680 (Oct. 4, 2001).

⁶ See Pure Magnesium from China and Israel, Invs. Nos. 701-TA-403 and 731-TA-895 to 896 (Final), USITC Pub. 3467 at 14-15, 22-27 (Nov. 2001). Where antidumping or countervailing duty investigations involve both Israel and another country, the Commission must first determine whether there is material injury, or the threat thereof, to a domestic industry by reason of subject imports from Israel. See 19 U.S.C. § 1677(7)(G)(ii)(IV).

⁷ See 19 U.S.C. § 1677(7)(G)(ii)(IV). Subject imports from Russia also were not eligible for cumulation because of Commerce’s negative final antidumping duty determination concerning those imports. See 19 U.S.C. § 1677(7)(G)(ii)(II).

⁸ See USITC Pub. 3467 at 14-15, 22-27.

⁹ See USITC Pub. 3467 at 15-22. Commissioner Hillman and Commissioner Marcia E. Miller defined two domestic like products and corresponding industries, and their views were amplified in a separate dissenting opinion. See USITC Pub. 3467 at 31-54.

Commerce issued an antidumping duty order on pure magnesium in granular form from China.¹⁰ The Commission's original determination was not litigated.

On October 2, 2006, the Commission gave notice of its institution of this review to determine whether revocation of the antidumping duty order on pure granular magnesium from China would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.¹¹ The Commission received only one substantive response to the notice of institution. The sole domestic interested party response was filed by US Magnesium, a domestic producer of pure and alloy magnesium and the successor firm to Magcorp.¹² The Commission did not receive a response from any other firm producing magnesium in the United States, and it did not receive any responses from producers or exporters of pure granular magnesium from China or any U.S. importers of the subject merchandise.¹³

On January 5, 2007, the Commission determined that the domestic interested party response to its notice of institution was adequate and the respondent interested party response was inadequate.¹⁴ The Commission did not find any circumstances that would warrant conducting a full review.¹⁵ The Commission determined that it would conduct an expedited review pursuant to 19 U.S.C. § 1675(c)(3)(B).¹⁶ Because the Commission's review of the antidumping duty order has been expedited, much of the information relied upon in this review was collected during the original investigation, from US Magnesium's submissions in this proceeding, as well as from publicly available information from recent Commission proceedings involving other magnesium products.¹⁷

¹⁰ See 66 Fed. Reg. 57936 (Nov. 19, 2001).

¹¹ See 71 Fed. Reg. 58001 (Oct. 2, 2006).

¹² See, e.g., CR at I-3 n.4; PR at I-3 n.4.

¹³ See, e.g., CR at I-3 to I-4; PR at I-3 to I-4.

¹⁴ See, e.g., CR at I-3 to I-4; PR at I-3 to I-4. Commissioner Hillman found both the domestic interested party group response and the respondent interested party group response to be inadequate and voted for an expedited review. See, e.g., CR at I-4 n.6; PR at I-4 n.6. In the original investigation, she and Commissioner Miller had defined two domestic like products: pure granular magnesium and pure magnesium ingot. They defined corresponding domestic industries of (1) producers of pure granular magnesium that also included companies that grind pure magnesium in ingot form into granular magnesium; and (2) producers of pure magnesium ingot. See USITC Pub. 3467 at 31-40. Only one producer of pure granular magnesium (US Magnesium) responded to the Commission's notice of institution, and no respondent interested party responded. See, e.g., CR at I-3 to I-4; PR at I-3 to I-4.

¹⁵ Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun dissented. They voted to conduct a full review in order to reconsider the definition of the domestic like product.

¹⁶ See 72 Fed. Reg. 3876 (Jan. 26, 2007).

¹⁷ Section 751(c)(3)(B) of the Act indicates that the Commission in an expedited five-year review may issue a final determination based on the facts available. See 19 U.S.C. § 1675(c)(3)(B). Accordingly, we have relied upon the facts otherwise available in these reviews, including information from the earlier reviews and original investigation. See 19 U.S.C. § 1677e(a).

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the “domestic like product” and the “industry.”¹⁸ The Act defines the “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”¹⁹ The Commission’s practice in five-year reviews is to look to the like product definition from the original determination and any previous reviews and consider whether the record indicates any reason to revisit that definition.²⁰

1. Background

Magnesium, the eighth most abundant element in the earth’s crust and the third most plentiful element dissolved in seawater, is a silver-white metallic element.²¹ It is the lightest of all structural metals with a density approximately 63 percent of that of aluminum, the principal metal with which it competes in the U.S. market.²² Magnesium’s light weight and high vibrational-dampening properties have encouraged research to develop magnesium-based alloys with improved physical and mechanical properties for use as a structural metal in applications where minimizing weight is an important design consideration.²³ There are two principal forms of magnesium: pure magnesium and alloy magnesium.²⁴ Magnesium may also be classified as primary magnesium (which is magnesium produced by directly decomposing raw materials into magnesium metal) or as secondary magnesium.²⁵ Secondary magnesium is magnesium produced by recycling magnesium-based scrap, containing less than 50 percent of primary magnesium.²⁶ Pure magnesium in unwrought form contains at least 99.8 percent magnesium by weight whereas alloy magnesium (or magnesium alloy) consists of magnesium and other metals, typically aluminum and zinc, containing less than 99.8 percent magnesium by weight but more than 50 percent magnesium by weight, with magnesium the largest metallic element in the alloy by weight.²⁷ “Off-

¹⁸ 19 U.S.C. § 1677(4)(A).

¹⁹ 19 U.S.C. § 1677(10); see also Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991); S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

²⁰ See Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan and the United Kingdom, Invs. Nos. 701-TA-380 to 382 and 731-TA-797 to 804 (Review), USITC Pub. 3788 at 6 (Jul. 2005); Crawfish Tail Meat from China, Inv. No. 731-TA-752 (Review), USITC Pub. 3614 at 4 (July 2003); Steel Concrete Reinforcing Bar from Turkey, Inv. No. 731-TA-745 (Review), USITC Pub. 3577 at 4 (Feb. 2003).

²¹ See, e.g., CR at I-11; PR at I-10.

²² See, e.g., CR at I-11; PR at I-10.

²³ See, e.g., CR at I-11; PR at I-10.

²⁴ See, e.g., CR at I-11; PR at I-10.

²⁵ See, e.g., CR at I-11 to I-12; PR at I-10.

²⁶ See, e.g., CR at I-12; PR at I-10.

²⁷ See, e.g., CR at I-12; PR at I-10.

specification pure” magnesium is magnesium that contains 50 percent or greater, but less than 99.8 percent magnesium by weight, that does not conform to an ASTM specification for alloy magnesium.²⁸

Pure magnesium is typically used in the production of aluminum alloys for use in beverage cans and some automotive parts, in iron and steel desulfurization, and as a reducing agent for various nonferrous metals (e.g., titanium, zirconium, hafnium, uranium, beryllium).²⁹ Alloy magnesium is principally used in structural applications, primarily in castings (die, permanent mold, and sand) and extrusions for the automotive industry.³⁰ Magnesium may come in different forms, including a cast or ingot form or in a granular or powder form.³¹ Granular magnesium is typically used in the production of magnesium-based desulfurizing reagent mixtures that are used in steelmaking to reduce the sulfur content of steel. Lesser amounts of granular magnesium are used in defense applications, such as military ordnance and flares.³²

2. The Scope of This Review, The Definition of the Domestic Like Product in the Original Investigation, and The History of Different Scopes and Different Like Products in Other Magnesium Investigations and Reviews

In its expedited five-year review determination, Commerce pointed out that there has been an antidumping duty order on pure magnesium in ingot form from China since 1995,³³ and it explained that the scope of this review excludes pure magnesium that is already covered by that order.³⁴ The scope of this review includes “imports of pure magnesium products, regardless of chemistry, including, without limitation, raspings, granules, turnings, chips, powder, and briquettes, except as noted above.”³⁵ This

²⁸ See, e.g., CR at I-12; PR at I-10.

²⁹ See, e.g., CR at I-12 to CR at I-13; PR at I-11.

³⁰ See, e.g., CR at I-13; PR at I-11.

³¹ See, e.g., CR at I-13; PR at I-11. Although alloy magnesium can be in granular form, most granular magnesium is classified as pure or “off-specification pure” magnesium (alloy magnesium not meeting ASTM specifications for alloy magnesium). “Off-specification pure” magnesium falls within the scope of the antidumping duty order on magnesium from China in granular form that is subject to this review. See, e.g., CR at I-13 n.38; PR at I-11 n.38. No U.S. producers reported producing “off-specification pure” magnesium during the Commission’s full review in 2006 on pure and alloy magnesium. See, e.g., CR at I-16; PR at I-13.

³² See, e.g., CR at I-13 to I-14; PR at I-11 to I-12.

³³ See, e.g., 60 Fed. Reg. 25691 (May 12, 1995); USITC Pub. 2885 (May 1995).

³⁴ See 72 Fed. Reg. 5417, 5418 (Feb. 6, 2007).

³⁵ See 72 Fed. Reg. 5417, 5418 (Feb. 6, 2007). Commerce explained that pure magnesium includes:

- (1) Products that contain at least 99.95 percent primary 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 primary magnesium, by weight (generally referred to as “pure” magnesium);
- (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an “ASTM Specification for Magnesium Alloy” (generally referred to as “off-specification pure” magnesium); and
- (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight.

72 Fed. Reg. at 5418. Commerce excluded from the order

mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-

(continued...)

scope definition is unchanged from Commerce's original scope definition.³⁶ Subsequent to the imposition of the antidumping duty order on Chinese pure magnesium in granular form, after Commerce and the Commission made affirmative final determinations in a separate investigation, in April 2005, Commerce issued a third antidumping duty order on magnesium from China, this time regarding alloy magnesium from China.³⁷

Although the scope of subject merchandise from China in the original investigation is identical to the scope of the Chinese order under review here (pure granular magnesium), at the time of the Commission's original investigation, subject imports of pure magnesium in both ingot and granular form from Israel were also part of the scope of that companion investigation. In the original investigation, the Commission defined a single domestic like product: pure magnesium that included both granular pure magnesium and pure magnesium ingot.³⁸ In other words, as the Commission explicitly recognized, the domestic like product in the original investigation was defined more broadly than the scope of the Chinese investigation.³⁹

Both before and since the time of the original investigation, there have been several other investigations and reviews involving various types of magnesium products. The scopes of the investigations and reviews and the domestic like products defined by the Commission (or Commission majority) have varied over the years. The scope of the first magnesium investigation covered "primary magnesium" (i.e., both pure and alloy magnesium) from Canada, and in its final determination, the Commission majority defined a single domestic like product and domestic industry corresponding to that

³⁵ (...continued)

magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials of which the Department is aware used to make such excluded reagents are: Lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nepheline syenite, feldspar, aluminum, alumina (Al₂O₃), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of antidumping duties.

According to Commerce, the subject merchandise is currently classifiable under item 8104.30.00 of the HTSUS. It cautions, however, that "the HTSUS subheading is provided for convenience and customs purposes, {but} the written description of the scope of this order is dispositive." 72 Fed. Reg. at 5418.

³⁶ See, e.g., 66 Fed. Reg. 57936 (Nov. 19, 2001).

³⁷ See, e.g., 70 Fed. Reg. 19928 (Apr. 15, 2005); Magnesium from China and Russia, Invs. Nos. 731-TA-1071 and 1072 (Final), USITC Pub. 3763 (Apr. 2005).

³⁸ See, e.g., USITC Pub. 3467 at 3-9. The Commission's opinion reflected the views of Commissioner Lynn M. Bragg, Commissioner Dennis M. Devaney, Commissioner Stephen Koplan, and Commissioner Okun. In a separate and dissenting opinion, Commissioner Hillman and Commissioner Miller found two domestic like products corresponding to granular pure magnesium and pure magnesium ingot. See, e.g., USITC Pub. 3467 at 3 n.1.

³⁹ See, e.g., USITC Pub. 347 at 8 n.34 ("We find that the lack of a clear dividing line between granular magnesium and magnesium ingot warrants broadening the domestic like product beyond the scope of the Chinese investigation, which is limited to granular magnesium, to include magnesium ingot. In light of the scope language of the existing antidumping duty order on magnesium ingot from China and Commerce's explicit exclusion of Chinese magnesium ingot from the scope of the Chinese investigation, our broadening of the definition of the domestic like product does not affect our treatment of magnesium ingot from China to the United States during the period of investigation as non-subject imports.")

scope.⁴⁰ The Commission majority's finding was rejected by a binational panel, so on remand, the Commission defined two domestic like products and two corresponding domestic industries, one for pure magnesium and the other for alloy magnesium.⁴¹ The next investigations involved pure and alloy magnesium from China, Russia, and the Ukraine, and the Commission defined two corresponding domestic like products: (1) pure including "off-spec" magnesium and (2) alloy magnesium.⁴² The Commission continued its practice of defining separate domestic like products for pure and alloy magnesium in the first reviews of both sets of those orders.⁴³

In two of the most recent reviews and investigations, the Commission defined a single domestic like product that was broader than in previous reviews and investigations. In an original investigation of primary and secondary alloy magnesium from China as well as primary and secondary and pure and alloy magnesium in both granular and ingot form from Russia, the Commission defined a single domestic like product that included pure and alloy, primary and secondary, and ingot and granular magnesium (notwithstanding that the scope of the Chinese investigation did not include pure magnesium).⁴⁴ In the second reviews of certain magnesium imports from Canada and China that were conducted simultaneously for convenience, the scope of the Canadian review included pure and alloy magnesium whereas the scope of the Chinese order included pure magnesium in ingot form. The Commission defined a single domestic like product for each order that included pure and alloy, primary and secondary magnesium whether in ingot or granular form; this domestic like product was broader than the scope of each of the reviews.⁴⁵

⁴⁰ See, e.g., Magnesium from Canada, Invs. Nos. 701-TA-309 and 731-TA-528 (Final), USITC Pub. 2550 at 5-11 (Aug. 1992).

⁴¹ See, e.g., Magnesium from Canada, Invs. Nos. 701-TA-309 and 731-TA-528 (Final) (Remand), USITC Pub. 2696 at 1-4 (Nov. 1993).

⁴² See, e.g., Magnesium from China, Russia, and Ukraine, Invs. Nos. 731-TA-696 to 698 (Final), USITC Pub. 2885 at 5-10 (May 1995).

⁴³ See, e.g., Magnesium from Canada, Invs. Nos. 701-TA-309A, 701-TA-309B, and 731-TA-528 (Review), USITC Pub. 3324 at 5-6 (July 2000) (first review of Canadian orders) (finding two domestic like products, pure magnesium and alloy magnesium); Pure Magnesium from China, Inv. No. 731-TA-696 (Review), USITC Pub. 3346 at 4-5 (Aug. 2000) (first review of Chinese order on pure magnesium ingot) (defining one domestic like product consisting of pure including off-spec magnesium in a review of an order on pure ingot from China). The Commission's domestic like product findings in the first review of the Canadian orders were not the reason why a binational panel issued two remands. See, e.g., Magnesium from Canada, Invs. Nos. 701-TA-309A, 701-TA-309B, and 731-TA-528 (Review) (first remand determination), USITC Pub. 3542 (Oct. 2002); Magnesium from Canada, Invs. Nos. 701-TA-309A, 701-TA-309B, and 731-TA-528 (Review) (second remand determination) USITC Pub. 3882 (Apr. 2006).

⁴⁴ See, e.g., USITC Pub. 3763 at 3-11. Commissioner Hillman and Commissioner Miller defined two domestic like products: (1) pure and alloy primary and secondary magnesium except for magnesium in granular form, and (2) granular magnesium. See USITC Pub. 3763 at 3 n.1.

⁴⁵ See, e.g., Pure and Alloy Magnesium from Canada and Pure Magnesium from China, Invs. Nos. 701-TA-309A, 701-TA-309B and 731-TA-696 (Second Reviews), USITC Pub. 3859 at 6-13 (July 2006). Vice Chairman Shara L. Aranoff and Commissioner Hillman found two domestic like products: (1) pure magnesium ingot and (2) alloy magnesium ingot (including secondary products). See, e.g., USITC Pub. 3859 at 34-43. Commissioner Koplan agreed with their domestic like product finding although he also included pure magnesium in granular form in his definition of the relevant domestic like product. See, e.g., USITC Pub. 3859 at 36 n.236.

3. Issues in This Review

In this review, US Magnesium urges the Commission to define the domestic like product to include “all types, shapes, and sizes of magnesium.” In other words, it seeks to define the domestic like product as all pure and alloy magnesium, including magnesium in ingot and granular form as well as primary and secondary magnesium. In light of the failure of any respondent interested parties to participate in this review, US Magnesium insists that the Commission should rely on undisputed facts available from its recent reviews and investigations to conclude that alloy magnesium is also part of the same domestic like product as well as primary and secondary magnesium.⁴⁶

The scope of this review, as noted above, consists of pure magnesium in granular form from China. Pure magnesium in granular form is also produced in the United States, as it was during the time of the original investigation.⁴⁷

a. Whether to Expand the Definition of the Domestic Like Product to Include Pure Magnesium in Ingot Form

The first question is whether to expand the domestic like product beyond the scope to include pure magnesium in ingot form. In the original investigation, although there was some support for finding two domestic like products, on balance, the Commission majority found a single domestic like product that included pure magnesium in ingot and granular form.⁴⁸ It explained that pure magnesium in granular form and pure magnesium ingot were produced in a continuum of forms and sizes, without any clear dividing line; they shared the same chemical properties; and they were sold through similar channels of distribution. They were interchangeable at least for significant end uses, particularly in the desulfurization segment.⁴⁹ Although the grinding operations generally took place in separate facilities using separate workers, the same production facilities, processes, and workers were used to produce pure magnesium ingot and pure granular magnesium up to the grinding stage.⁵⁰ On that basis, the Commission

⁴⁶ See, e.g., US Magnesium’s Feb. 6, 2007, Final Comments at 7-11; US Magnesium’s Dec. 11, 2006, Comments on Adequacy at 4-5, 7-8; US Magnesium’s Nov. 21, 2006, Response to the Notice of Institution at 17-18, 21.

⁴⁷ See, e.g., CR/PR at Table I-9 n.1 and Table I-10.

⁴⁸ See, e.g., USITC Pub. 3467 at 3-9. The Commission majority noted Congress’ admonition that the domestic like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.” See, e.g., USITC Pub. 3467 at 8 n.33 (citing S. Rep. No. 96-249, at 90-91 (1979)).

⁴⁹ See, e.g., USITC Pub. 3467 at 3-8. The Commission majority found it significant that grinders essentially replaced magnesium ingot purchases with granular magnesium imports during the time period at issue in the original investigation, consisting of full-year data for 1998, 1999, and 2000 as well as half-year data for 2000 and 2001 (“POI”). See, e.g., USITC Pub. 3467 at 9 n.35. While there was almost complete interchangeability in the desulfurization segment, it acknowledged that there was no evidence at the time of interchangeability in the *** segment, which was a large consumer of pure magnesium. See, e.g., USITC Pub. 3467 at 9 n.35.

⁵⁰ See, e.g., USITC Pub. 3467 at 8. In addition, the Commission noted that the record in the original investigation showed that Magcorp and Dow produced limited quantities of granular magnesium during the POI in magnesium ingot facilities. See, e.g., USITC Pub. 3467 at 9 n.36.

majority defined one domestic like product in the original investigation – pure magnesium that included both granular magnesium and magnesium ingot.⁵¹

US Magnesium has asked the Commission to expand the domestic like product to include pure magnesium in ingot form, and there is no information on this record that would call into question our decision to do so in the original investigation. Based on the record in this expedited review, and absent any party arguments or other information to the contrary, we expand the domestic like product to include pure magnesium in ingot form.

b. Whether to Expand the Definition of the Domestic Like Product to Include Alloy Magnesium⁵²

The next question is whether to expand the definition of the domestic like product to include alloy magnesium. In the preliminary phase of the original investigation, the Commission rejected a request to expand the domestic like product to include alloy magnesium.⁵³ In its final determination in the original investigation, the Commission reiterated this finding.⁵⁴ In the Commission's April 2005 final determinations concerning magnesium from China and Russia, however, a majority of Commissioners defined a single domestic like product that included both pure and alloy magnesium.⁵⁵ These investigations involved a different record and a different, broader scope that included both pure and alloy magnesium. In the recent (July 2006) second reviews of magnesium from Canada and China, three Commissioners (Chairman Pearson, Commissioner Charlotte R. Lane, and Commissioner Okun) found a single domestic like product that included pure and alloy magnesium even though the scopes of the

⁵¹ See, e.g., USITC Pub. 3467 at 3-9 (Commissioner Hillman and Commissioner Miller dissenting).

⁵² Vice Chairman Aranoff does not join the remainder of this domestic like product discussion except for footnote 56. She finds that pure magnesium and alloy magnesium (including secondary magnesium) are separate like products. Because the record in this review does not include current information sufficient to make a full analysis of like product issues addressed by her colleagues in recent investigations and reviews, she does not find a like product different from that defined in the original investigation. Accordingly, for purposes of this expedited review, she does not expand the domestic like product to include alloy magnesium (including secondary magnesium) and instead adopts the domestic like product from the original investigation.

⁵³ See, e.g., *Pure Magnesium from China, Israel, and Russia*, Invs. Nos. 701-TA-403, 731-TA-895 to 897 (Prelim.), USITC Pub. 3376 at 7 (Dec. 2000). The Commission noted that in recent cases, it had found that alloy magnesium and pure magnesium were separate like products. It further reasoned that the principal arguments by the Israeli respondents for finding them to be one like product – that pure magnesium and magnesium alloy have similar physical characteristics, chemistries, production processes, and channels of distribution, and that companies that produce both products often use the same machinery, equipment, and employees – were considered by the Commission in its prior findings that pure magnesium and magnesium alloy constitute separate like products and these arguments were not viewed as sufficient to warrant a single like product definition. Given that alloy magnesium was not included in the scope, and the absence of new information in the record on this issue, the Commission decided not to broaden the like product beyond the scope to include alloy magnesium in the same like product as pure magnesium. See, e.g., USITC Pub. 3376 at 7.

⁵⁴ See, e.g., USITC Pub. 3467 at 9 n.37. The Commission noted that Israeli producer DSM abandoned its argument that the domestic like product should include alloy and pure magnesium, and found no additional data or arguments in the final phase of the investigations that warranted reconsideration of the Commission's finding in the preliminary determination that the domestic like product did not include alloy magnesium. See, e.g., USITC Pub. 3467 at 9 n.37.

⁵⁵ See, e.g., USITC Pub. 3763 at 3-11. Commissioner Hillman and Commissioner Miller found two domestic like products: (1) pure and alloy primary and secondary magnesium and (2) magnesium in granular form. See, e.g., USITC Pub. 3763 at 3 n.1.

underlying orders were narrower.⁵⁶ The Chinese order at issue in the 2006 reviews included pure magnesium in ingot form but not alloy magnesium.⁵⁷ Thus the domestic like product was defined more broadly than the Chinese scope.

In the 2006 second reviews concerning magnesium from Canada and China, we concluded that circumstances had changed sufficiently so as to blur the dividing line between pure and alloy magnesium, and to warrant treating pure and alloy magnesium as a single domestic like product. We relied on the shared essential physical characteristics;⁵⁸ the overlap in the uses of pure and alloy magnesium in aluminum production (the single largest use for magnesium);⁵⁹ the recognition by some industry participants of increased competition between pure and alloy magnesium;⁶⁰ the general similarities in channels of distribution for pure and alloy magnesium (to end users, including to several common end

⁵⁶ See, e.g., USITC Pub. 3859 at 6-11. Vice Chairman Aranoff and Commissioner Hillman found two domestic like products: (1) pure magnesium ingot and (2) alloy magnesium ingot (including secondary products). Commissioner Koplan agreed with their domestic like product finding although he also included pure magnesium in granular form in his definition of the relevant domestic like product. See, e.g., USITC Pub. 3859 at 36 n.226. They reasoned that although pure and alloy magnesium share essential physical characteristics as a light-weight, low-density metal with a high strength-to-weight ratio, this commonality of physical characteristics was limited in that the alloying additives give the alloy product certain additional properties that improve its strength, ductility, workability, corrosion resistance, density, and castability. As a result of these different properties, they found that pure and alloy magnesium generally have different principal uses. Pure magnesium was typically sold to end users (mostly aluminum alloyers) who combined it with other elements (typically aluminum) for use in a final product. Alloy magnesium, on the other hand was used principally in structural applications (mostly in castings and extrusions for the automotive industry). They recognized that at least some types of alloy magnesium could be used in aluminum production, and that alloy magnesium was occasionally used by granule and reagent producers, but pure magnesium could not be used for diecasting. They found that the limited one-way substitutability of alloy magnesium for pure magnesium was anomalous and waning and appeared to have been heavily driven by the presence of very low-priced alloy magnesium from China in the U.S. market before imposition of antidumping duties on such imports in 2005. They found the evidence as to manufacturing facilities and employees was mixed. They found that the average unit value and pricing data showed significant price differences and showed some differences in changes in price levels. See, e.g., USITC Pub. 3859 at 34-40.

⁵⁷ See, e.g., USITC Pub. 3859 at 36-37.

⁵⁸ See, e.g., USITC Pub. 3859 at 9-10. We found that pure and alloy magnesium shared the basic physical characteristics of being lightweight and strong and having low density. Both products consisted mostly of magnesium: pure magnesium contains at least 99.8 percent magnesium by weight, and alloy magnesium usually contains at least 90 percent. The two products differed from each other in that alloy magnesium had certain properties that improved its strength, ductility, workability, corrosion resistance, density, and castability, as compared with pure magnesium. See, e.g., USITC Pub. 3859 at 9-10.

⁵⁹ See, e.g., USITC Pub. 3859 at 9-10. Although we acknowledged that aluminum producers might have a preference for using pure magnesium in aluminum production, we found record evidence that aluminum producers were using significant quantities of alloy magnesium when it was available at relatively attractive prices. See, e.g., USITC Pub. 3859 at 9-10.

⁶⁰ See, e.g., USITC Pub. 3859 at 10-11. We found that conventional users of pure magnesium, particularly aluminum manufacturers, who had developed new technology that permitted the use of alloy magnesium in aluminum production, were turning to the alloy market. We acknowledged that the increase in the use of alloy magnesium by aluminum manufacturers may have been at least in part fueled by the existence of lower-priced imported alloy magnesium from China in the market, but we noted that the presence or absence of low-priced imports did not detract from the fact that the two types of magnesium were indeed interchangeable. See, e.g., USITC Pub. 3859 at 10-11.

users);⁶¹ and the convergence in prices for the two types of magnesium.⁶² We also found that primary production of pure and alloy magnesium generally occurred in the same facilities and by the same employees, except that additional equipment and labor was involved for the additional step of adding alloying elements.⁶³ The amount of value added to the magnesium in the alloying phase was not substantial.⁶⁴ Where alloy magnesium was made in secondary production (*i.e.*, by recyclers), we found that the manufacturing facilities and employees involved were different from those involved in the production of pure magnesium (which was made only in primary production).⁶⁵

US Magnesium has asked the Commission to expand the domestic like product to include alloy magnesium,⁶⁶ and there is no information on this record that would call into question our decision to do so in two recent proceedings. Based on the record in this expedited review, and absent any party arguments or other information to the contrary, we expand the domestic like product to include alloy magnesium for the same reasons we did so in the recent proceedings.

c. Whether to Expand the Definition of the Domestic Like Product to Include Secondary Magnesium

The final issue is whether to expand the definition of the domestic like product beyond the scope to include secondary magnesium. This issue did not arise and was not addressed in the original investigation. The 2005 China/Russia investigations were the first Title VII cases to include secondary magnesium in their scope. The Commission included secondary magnesium in the domestic like product in those investigations. As it explained in the preliminary determinations:

If secondary magnesium is compared with primary alloy magnesium, it is clear that the products are similar in terms of physical characteristics and uses, interchangeability, customer and producer perceptions, channels of distribution, and price, for the reasons that petitioners give. The products are not like each other in terms of manufacturing facilities and employees, because primary magnesium is made by US Magnesium through the primary production process (*i.e.*, by decomposing raw materials into magnesium metal) whereas secondary magnesium is made, largely by firms other than US Magnesium, through a recycling process. If secondary magnesium is compared with all primary magnesium (*i.e.*, pure and alloy primary magnesium) the similarities between the primary and secondary products become more attenuated because of the differences between pure and alloy magnesium, which are described above. Based on the limited data in the record, we find that primary and secondary magnesium are part of the same domestic like product. For purposes of these preliminary investigations, we note that the secondary magnesium is part of the domestic like product consisting of alloy magnesium.⁶⁷

⁶¹ See, e.g., USITC Pub. 3859 at 11.

⁶² See, e.g., USITC Pub. 3859 at 11.

⁶³ See, e.g., USITC Pub. 3859 at 9.

⁶⁴ See, e.g., USITC Pub. 3859 at 9.

⁶⁵ See, e.g., USITC Pub. 3859 at 9.

⁶⁶ See, e.g., US Magnesium's Final Comments at 7-11; US Magnesium's Comments on Adequacy at 4-5, 7-8; US Magnesium's Response to the Notice of Institution at 17-18, 21.

⁶⁷ Magnesium from China and Russia, Invs. Nos. 731-TA-1071 and 1072 (Prelim.), USITC Pub. 3685 at 10 (Apr. 2004).

The Commission did not explore this issue any further in its final determinations, in which it found pure and alloy magnesium to constitute a single like product.⁶⁸ In the 2006 second five-year reviews, the Commission adopted the same logic absent any indication that the underlying rationale or facts had changed.⁶⁹

US Magnesium has asked the Commission to expand the domestic like product to include secondary magnesium,⁷⁰ and there is no information on this record that would call into question our decision to do so in two recent proceedings. Based on the record in this expedited review, and absent any party arguments or other information to the contrary, we expand the domestic like product to include secondary magnesium for reasons stated in those recent proceedings.

4. Conclusion

For the foregoing reasons, we define the domestic like product as primary and secondary pure and alloy magnesium whether in ingot or granular form.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant domestic industry as the “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁷¹

US Magnesium argues that the Commission should define the domestic industry as all producers of magnesium, whether pure or alloy, primary or secondary, and in any form, including ingot and granular form; US Magnesium agrees with the Commission’s previous decisions to include grinders in the domestic industry. To its knowledge, US Magnesium is the only producer of primary pure and alloy magnesium, and the existing grinders are ESM Group Inc., Hart Metals Inc., Reade Manufacturing Company, and Rossborough Manufacturing Company.⁷²

1. Original Investigation

At the time of the original investigation, there were two producers of pure magnesium ingot that represented 100 percent of U.S. production of that product in 2000: Magcorp (US Magnesium’s

⁶⁸ See, e.g., USITC Pub. 3763 at 6.

⁶⁹ See USITC Pub. 3859 at 11-12, 13. Vice Chairman Aranoff, Commissioner Hillman, and Commissioner Koplan expanded the alloy magnesium like product to include secondary magnesium. See, e.g., USITC Pub. 3859 at 40-41, 43.

⁷⁰ See, e.g., US Magnesium’s Final Comments at 7-11; US Magnesium’s Comments on Adequacy at 4-5, 7-8; US Magnesium’s Response to the Notice of Institution at 17-18, 21.

⁷¹ 19 U.S.C. § 1677(4)(A). In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States. See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

⁷² See, e.g., US Magnesium’s Final Comments at 4-5, 6-7; US Magnesium’s Comments on Adequacy at 2-3, 5; US Magnesium’s Response to the Notice of Institution at 17-18, 21.

predecessor) and Northwest Alloys.⁷³ The Commission also identified four producers of pure granular magnesium that represented nearly all U.S. production in 2000: Magcorp (which ***) as well as grinders ESM Manufacturing; Reade Manufacturing Co; and Rossborough Manufacturing Co.⁷⁴ Based on its definition of a single domestic like product that included pure magnesium in ingot and granular form, the Commission defined a corresponding domestic industry that included all producers of pure magnesium. It noted that the evidence was mixed but, on balance, it found that grinding operations constituted sufficient production-related activity to qualify firms that ground pure magnesium in ingot form into pure granular magnesium (“grinders”) as domestic producers.⁷⁵ The capital investment for grinding operations was not insignificant, nor were the capital expenditures during the original investigation POI. Grinding was not a particularly complex process, but ***, and there was some degree of technical expertise involved in handling granular magnesium.⁷⁶ Moreover, the Commission noted its findings in previous investigations involving other products that grinding could be sufficient production-related activity.⁷⁷ It acknowledged that the value-added data were of limited use, since they also included reagent activities and that, while low, employment levels were not insignificant.⁷⁸

In its original determination, the Commission also decided that appropriate circumstances existed to exclude grinder ESM from the domestic industry as a related party.⁷⁹ Based on ***, the Commission found that appropriate circumstances existed to exclude ESM from the domestic industry.⁸⁰

2. The Current Review

In accordance with our domestic like product determination, we determine that there is one domestic industry composed of the domestic producers of pure and alloy magnesium, including primary and secondary magnesium, and magnesium in ingot and granular form.

As in the original investigation, we also include grinders in the domestic industry producing magnesium.^{81 82} The limited information in this expedited review relating to the production-related

⁷³ See, e.g., CR/PR at Table I-5. The record in the original investigation also indicated that ***. See, e.g., CR/PR at Table I-5 n.1.

⁷⁴ See, e.g., CR/PR at Table I-5. The Commission determined that ***. See, e.g., CR at I-23 n.74; PR at I-19 n.74.

⁷⁵ See, e.g., USITC Pub. 3467 at 9-11.

⁷⁶ See, e.g., USITC Pub. 3467 at 9-11; Confidential Version of Commission’s Views at 12-15.

⁷⁷ See, e.g., USITC Pub. 3467 at 11 & n.49; Confidential Version of Commission’s Views at 14-15 & n.49.

⁷⁸ USITC Pub. 3467 at 11. Commissioner Okun did not include grinders in the domestic industry based on her finding that such firms did not engage in sufficient production-related activities. See, e.g., USITC Pub. 3467 at 29-30. Commissioner Hillman and Commissioner Miller found that grinders did engage in sufficient production-related activities and included them in their definition of the domestic industry producing granular pure magnesium. See, e.g., USITC Pub. 3467 at 37-39.

⁷⁹ See, e.g., USITC Pub. 3467 at 12-13. The Commission considered whether other domestic producers that purchased imported subject merchandise were related parties, but concluded that none of them were. See, e.g., USITC Pub. 3467 at 12.

⁸⁰ See, e.g., USITC Pub. 3467 at 12-13; Confidential Version of Commission’s Views at 16-18. Commissioner Hillman and Commissioner Miller also excluded ESM from the domestic grinding industry defined by those Commissioners. See, e.g., USITC Pub. 3467 at 40.

⁸¹ In deciding whether a firm qualifies as a domestic producer, the Commission generally analyzes the overall nature of a firm’s production-related activities in the United States, although production-related activity at minimum levels could be insufficient to constitute domestic production. The Commission generally considers six factors:

(continued...)

activities of grinders does not indicate that the industry has changed since the original investigation. US Magnesium asks us to include grinders in the domestic industry,⁸³ and no other parties participated in this expedited proceeding.⁸⁴ Domestic production of granular pure magnesium in 2005 was estimated by adding the quantity of pure magnesium ingot produced by US Magnesium⁸⁵ and shipped to U.S. grinders plus the estimated tonnage of imported pure ingot magnesium ***.⁸⁶

With respect to related party issues, there is only limited additional information about ESM beyond that discussed in the Commission's original determination and no data concerning whether it ***.⁸⁷ There is also only limited information available regarding other possible related parties.⁸⁸ Since

⁸¹ (...continued)

- (1) source and extent of the firm's capital investment;
- (2) technical expertise involved in U.S. production activities;
- (3) value added to the product in the United States;
- (4) employment levels;
- (5) quantity and type of parts sourced in the United States; and
- (6) any other costs and activities in the United States directly leading to production of the domestic like product.

No single factor is determinative, and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation. See, e.g., Citric Acid and Sodium Citrate from China, Inv. No. 731-TA-863 (Prelim.), USITC Pub. 3277 at 8 (Feb. 2000); Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea, Invs. Nos. 701-TA-387 to 391, 731-TA-816 to 821 (Final), USITC Pub. 3273 at 9 (Jan. 2000); see also Large Newspaper Printing Presses from Germany and Japan, Invs. Nos. 731-TA-736 to 737 (Final), USITC Pub. 2988 at 8-9 (Aug. 1996).

⁸² Consistent with her views in the original investigation and the fact that there is no new information on this record concerning grinders, Commissioner Okun does not include grinders in the domestic industry. See Dissenting Views of Commissioner Okun, Pure Magnesium from China and Israel, Invs. Nos. 701-TA-403 and 731-TA-895 to 896 (Final), USITC Pub. 3467 at 29-39 (Nov. 2001); Confidential Version of Commissioner Okun's Views at 41-44. She does not join the remainder of the domestic industry discussion.

⁸³ See, e.g., US Magnesium's Final Comments at 5, 9; US Magnesium's Comments on Adequacy at 2-3, 5; US Magnesium's Response to the Notice of Institution at 18, 21.

⁸⁴ None of the grinders provided data in response to the Commission's notice of institution in the current expedited proceeding. In addition to the limitations in the record data concerning grinders, there is also limited information about recent domestic industry shipments of alloy magnesium, see, e.g., CR at I-36; PR at I-28, and limited information on this record regarding production by the secondary magnesium producers that the Commission included in the domestic industry in the 2005 and 2006 investigations and reviews. See, e.g., CR at I-37; PR at I-29. There are no data from the original investigation corresponding to the broader domestic like product and related industry that would include pure and alloy, and primary and secondary magnesium. See, e.g., CR at I-36; PR at I-28.

⁸⁵ At the time of the original investigation, US Magnesium reported shipping ***. See, e.g., CR at I-25; PR at I-20.

⁸⁶ See, e.g., CR/PR at Table I-6 n.2.

⁸⁷ The current record indicates that ESM continues to operate within the SKW Americas, Inc. corporate family and is a subsidiary of Degussa (Germany). It manufactures magnesium-based steel desulfurization reagents (along with injection equipment and slag conditioners) at three U.S. plants (two in Pennsylvania and one in Indiana) and at a plant in Canada and one in Tianjin, China. See, e.g., CR at I-26; PR at I-21.

⁸⁸ According to the U.S. Geological Survey ("USGS"), Rossborough imports a mixture of magnesium and limestone from China for subsequent blending at its Walkerton, IN plant. See, e.g., CR at I-27; PR at I-21.

we lack current data with respect to these firms, we are unable to resolve whether any domestic producers are related parties, let alone whether appropriate circumstances exist to exclude any from the domestic industry.

For these reasons, we define the domestic industry as domestic producers of pure and alloy magnesium, including primary and secondary magnesium, and magnesium in ingot and granular form.⁸⁹

III. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING DUTY ORDERS ARE REVOKED

A. Legal Standard in a Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of the antidumping duty order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁹⁰

The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”⁹¹ Thus, the likelihood standard is prospective in nature.⁹² The U.S.

⁸⁹ Vice Chairman Aranoff determines that there is one domestic industry composed of the domestic producers of pure magnesium whether in ingot or granular form, including grinders.

⁹⁰ 19 U.S.C. § 1675a(a).

⁹¹ SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “{t}he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed.” SAA at 883.

⁹² While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued {sic} prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

Court of International Trade has found that “likely,” as used in the five-year review provisions of the Act, means “probable,” and the Commission applies that standard in five-year reviews.^{93 94 95}

The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”⁹⁶ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ timeframe applicable in a threat of injury analysis in original investigations.”⁹⁷

Although the standard in a five-year review is not the same as the standard applied in an original antidumping duty investigation, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the orders are revoked or the suspended investigation is terminated.”⁹⁸ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the orders are revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).⁹⁹

⁹³ See, e.g., NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (Ct. Int’l Trade 2003) (“‘likely’ means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)”), aff’d mem., 05-1019 (Fed. Cir. August 3, 2005); Nippon Steel Corp. v. United States, Slip Op. 02-153 at 7-8 (Ct. Int’l Trade Dec. 24, 2002) (same); Usinor Industeel, S.A. v. United States, Slip Op. 02-152 at 4 n.3 & 5-6 n.6 (Ct. Int’l Trade Dec. 20, 2002) (“‘more likely than not’ standard is ‘consistent with the court’s opinion’; ‘the court has not interpreted ‘likely’ to imply any particular degree of ‘certainty’”); Indorama Chemicals (Thailand) Ltd. v. United States, Slip Op. 02-105 at 20 (Ct. Int’l Trade Sept. 4, 2002) (“standard is based on a likelihood of continuation or recurrence of injury, not a certainty”); Usinor v. United States, Slip Op. 02-70 at 43-44 (Ct. Int’l Trade July 19, 2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

⁹⁴ For a complete statement of Commissioner Okun’s interpretation of the likely standard, see Additional Views of Vice Chairman Deanna Tanner Okun Concerning the “Likely” Standard in Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Argentina, Brazil, Germany, and Italy, Invs. Nos. 701-TA-362 and 731-TA-707 to 710 (Review) (Remand), USITC Pub. 3754 (Feb. 2005).

⁹⁵ Commissioner Lane notes that, consistent with her views in Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004) at 15-17, she does not concur with the U.S. Court of International Trade’s interpretation of “likely” but she will apply the Court’s standard in this review and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses the issue.

⁹⁶ 19 U.S.C. § 1675a(a)(5).

⁹⁷ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” Id.

⁹⁸ 19 U.S.C. § 1675a(a)(1).

⁹⁹ 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. See SAA at 886.

B. Conditions of Competition and the Business Cycle

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹⁰⁰

Data issues: In the original investigation, even though the Commission defined a single domestic like product that included pure magnesium in granular and ingot form, it concluded that it was not possible to calculate internal shipments as a percentage of total domestic production of granular magnesium and magnesium ingot combined. Because of the potential for double-counting magnesium ingot, production data for the two were not combined.¹⁰¹

Supply: During the original investigation POI, two production methods were used to produce magnesium ingots: the electrolytic process¹⁰² and the silicothermic process.¹⁰³ During this time, there were three firms that produced magnesium ingot in the United States, Magcorp, Northwest, and Dow.¹⁰⁴ In the United States, most granular magnesium was produced from smaller ingots or magnesium chips, and was ground into powder using a particle reduction process, although one grinder atomized molten pure magnesium to produce granular magnesium.¹⁰⁵ Today, the U.S. market continues to be supplied by domestic producers as well as subject and non-subject imports. In addition to US Magnesium, which produces pure and alloy magnesium, the record suggests that ESM, Hart, Read, and Rossborough engage in grinding operations in the United States.¹⁰⁶ There are at least three known producers of secondary magnesium in the United States: Amacor, MagPro LLC, and MagReTech.¹⁰⁷ In addition to the subject imports from China, non-subject imports also supply the U.S. market. The primary sources of non-

¹⁰⁰ 19 U.S.C. § 1675a(a)(4).

¹⁰¹ See, e.g., USITC Pub. 3467 at 15. For example, in its analysis of whether the statutory captive production provision applied, the Commission separately examined captive production of magnesium ingot and magnesium in granular form. The Commission did not find that the statutory captive production provision applied with respect to internal transfers of magnesium ingot, and with respect to granular pure magnesium, the Commission found that the third statutory criterion was not satisfied because the granular magnesium production sold in the merchant market was generally used in the production of the downstream article, reagents for the desulfurization segment. Although it found that the statutory captive production provision did not apply, the Commission nevertheless considered captive production as a relevant condition of competition. See, e.g., USITC Pub. 3467 at 16-17.

¹⁰² See, e.g., USITC Pub. 3467 at 16. Magcorp produced magnesium ingot using an electrolytic process in which brine from the surface waters of the Great Salt Lake in Utah was evaporated and treated to produce a concentrated solution of magnesium chloride, which was further concentrated and dried to yield magnesium chloride powder. The powder was then melted, further purified, and fed into electrolytic cells operating at 700° Celsius. Direct electrical current was sent through the cells to break down the magnesium chloride into chlorine gas and molten magnesium metal. The metal rose to the surface where it was guided into storage wells and cast into ingots. Some Chinese producers used the electrolytic process. See, e.g., USITC Pub. 3467 at 16 n.84.

¹⁰³ See, e.g., USITC Pub. 3467 at 16. Northwest produced magnesium ingot using a silicothermic process in which magnesium-bearing dolomite mined from an open pit was the primary feed material. Calcined dolomite, ferrosilicon, and alumina were ground, heated, and briquetted. The briquets were subsequently reduced in a heated vacuum, producing magnesium vapor. The vapor was crystallized in a condensing chamber, melted, and ladled into casting forms. See, e.g., USITC Pub. 3467 at 16 n.85. The silicothermic process (also known as the Pidgeon process) is used by a majority of the largest producers in China. See, e.g., CR at I-14 to I-15; PR at I-12 to I-13.

¹⁰⁴ See, e.g., USITC Pub. 3467 at 16-17. Dow ceased magnesium ingot production in November 1998, and Northwest ceased production in September 2001. See, e.g., USITC Pub. 3467 at n.86.

¹⁰⁵ See, e.g., USITC Pub. 3467 at 17.

¹⁰⁶ See, e.g., CR at I-23 to I-27; PR at I-20 to I-22.

¹⁰⁷ See, e.g., CR at I-27 to I-28; PR at I-22.

subject magnesium ingot during the original investigation were Russia, Canada, and non-subject imports from China, whereas the primary source of non-subject granular magnesium during the original investigation was Canada.¹⁰⁸ Canada was the primary source of non-subject granular magnesium in 2005.¹⁰⁹

Demand: In its original determination, the Commission found that demand for magnesium ingot largely depended on the demand for aluminum, particularly aluminum sheet used in the production of beverage cans and other packaging.¹¹⁰ Magnesium ingot also was used in other applications, including grinding into granular magnesium.¹¹¹ Twenty purchasers reported that cost shares for pure magnesium ranged from less than one percent (for various aluminum products and for ***) to more than 90 percent (for production of desulfurization and alloying products).¹¹² Only alloy magnesium or scrap magnesium and calcium carbide were cited as potential substitutes for pure magnesium but mainly only for desulfurization applications, and the Commission found that, even in this context, factors limited their substitutability for pure magnesium.¹¹³ The record in the original investigation contained conflicting views on whether overall demand was increasing, decreasing, or stable.¹¹⁴ The data gathered in the original investigation indicated that demand as measured by total apparent domestic consumption for magnesium ingot and granular magnesium declined during the POI.¹¹⁵ Whereas open-market granular magnesium consumption increased, open-market magnesium ingot consumption decreased.¹¹⁶ The record in this review continues to indicate that demand for pure magnesium is largely derived from the demand for its end uses: aluminum alloying, steel desulfurization, and chemical and pharmaceutical manufacturing.¹¹⁷ Because it is tied to the business cycles of the magnesium-consuming industries, US Magnesium asserts that the magnesium industry is unlikely to increase demand for its products with lower prices.¹¹⁸ There is only limited information on this record concerning current demand conditions in the United States.¹¹⁹

¹⁰⁸ See, e.g., USITC Pub. 3467 at 17-18.

¹⁰⁹ See, e.g., CR at I-43; PR at I-30.

¹¹⁰ See, e.g., USITC Pub. 3467 at 17.

¹¹¹ See, e.g., USITC Pub. 3467 at 17.

¹¹² See, e.g., USITC Pub. 3467 at 17; Confidential Version of the Commission's Views at 24.

¹¹³ See, e.g., USITC Pub. 3467 at 17.

¹¹⁴ See, e.g., USITC Pub. 3467 at 17. *** reported that global demand for pure magnesium increased slightly or remained unchanged after January 1, 1998. It reported that overall North American demand declined as a result of falling demand in aluminum alloying, steel desulfurization, and other areas. *** reported that U.S. demand was either flat or growing several percent per year. Three domestic producers reported demand was cyclical or unchanged, and one reported demand was decreasing. Four of seven responding importers stated that demand was unchanged, while the remaining three importers reported demand increasing. Twelve of twenty-five purchasers reported that demand for the product they produced using magnesium had not changed, eight reported declining demand, three reported increasing demand, one reported demand fluctuating with ***, and one did not report how demand had changed. See, e.g., USITC Pub. 3467 at 17; Confidential Version of the Commission's Views at 24-25 n.92.

¹¹⁵ See, e.g., USITC Pub. 3467 at 17.

¹¹⁶ See, e.g., USITC Pub. 3467 at 17.

¹¹⁷ See, e.g., CR at I-43; PR at I-34.

¹¹⁸ See, e.g., US Magnesium's Final Comments at 18-19; US Magnesium's Response to the Notice of Institution at 6, 21.

¹¹⁹ See, e.g., CR at I-43 to I-44; PR at I-34; CR/PR at Table I-9.

Substitutability: US Magnesium argues that Chinese subject imports are still highly substitutable for the domestic like product,¹²⁰ and the record in this expedited review does not indicate otherwise.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the antidumping duty order were revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.¹²¹ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.¹²²

In its determination in the original investigation, the Commission found the volume of subject imports of granular magnesium from China and the increase in that volume were significant in all respects.¹²³ The volume of Chinese subject imports increased from 9,972 metric tons in 1998 to 13,185 metric tons in 1999 and to 15,262 metric tons in 2000.¹²⁴ The Commission attributed the lower volume of Chinese subject imports in interim 2001 (2,281 metric tons) as compared to interim 2000 (6,277 metric tons) to the pendency of the investigation.¹²⁵ As a share of total apparent domestic granular magnesium consumption by quantity, Chinese subject imports increased from *** percent in 1998 to *** percent in 1999, to *** percent in 2000, and were lower in interim 2001 (*** percent) compared to interim 2000 (*** percent).¹²⁶ Apparent domestic consumption of pure granular magnesium decreased between 1998 and 1999 but increased between 1999 and 2000, and was lower in interim 2001 than in interim 2000.¹²⁷ During this time, the domestic producers’ share of total apparent domestic granular magnesium consumption declined between 1998 and 1999, increased between 1999 and 2000, and was higher in interim 2001 than in interim 2000.¹²⁸ Non-subject imports accounted for *** percent of total apparent

¹²⁰ See, e.g., US Magnesium’s Final Comments at 19; US Magnesium’s Response to the Notice of Institution at 7.

¹²¹ See 19 U.S.C. § 1675a(a)(2).

¹²² See 19 U.S.C. §§ 1675a(a)(2)(A) to 1675a(a)(2)(D).

¹²³ See, e.g., USITC Pub. 3467 at 18-19. Due to concerns about double-counting, the Commission compared the volume of Chinese subject imports with apparent domestic consumption of granular magnesium. The parties to that proceeding estimated that a metric ton of magnesium ingot was roughly equivalent to a metric ton of granular magnesium. Using this estimate, the Commission also found the volume of Chinese subject imports was significant. See, e.g., USITC Pub. 3467 at 18 n.97.

¹²⁴ See, e.g., USITC Pub. 3467 at 18.

¹²⁵ See, e.g., USITC Pub. 3467 at 18.

¹²⁶ See, e.g., USITC Pub. 3467 at 18; Confidential Version of Commission’s Views at 26.

¹²⁷ See, e.g., USITC Pub. 3467 at 18.

¹²⁸ See, e.g., USITC Pub. 3467 at 18.

domestic consumption of granular magnesium by quantity in 1998, *** percent in 1999, *** percent in 2000, *** percent in interim 2000, and *** percent in interim 2001.¹²⁹

Due to the lack of response from subject foreign producers, there is limited information in this record concerning current levels of production capacity in China.¹³⁰ The Chinese magnesium metal-producing industry at the time of the original investigation was characterized by a large number of production facilities manufacturing magnesium ingot.¹³¹ The total number of magnesium metal-producing plants in China was estimated at eighty-four, with production dominated by nearly sixty export-oriented plants.¹³² According to the China Magnesium Association, only twenty-two Chinese manufacturers had plants with an annual capacity of over 3,000 metric tons.¹³³ The number of Chinese facilities producing magnesium was also reported during the original investigation to depend largely on the price level of magnesium ingot.¹³⁴ In 1997, when magnesium ingot prices were relatively higher, there were an estimated 400 magnesium plants in China.¹³⁵ The USGS estimated China's capacity for primary magnesium at 528,000 metric tons in 2005.¹³⁶

US Magnesium argues that the Chinese industry has grown from one producer in 1987 to 84 in 2001 (of which nearly sixty were export-oriented), and the industry is now the largest in the world with "vast unused capacity" and further expansion plans underway.¹³⁷ According to US Magnesium, Chinese capacity has grown from 188,000 metric tons in 2000 to between 469,000 and 527,600 metric tons in 2005.¹³⁸ US Magnesium argues that the Chinese industry's production capacity far exceeds consumption in China and is likely to be sent to the world's largest consumer of magnesium – the United States.¹³⁹ US Magnesium also refers to reports that some 105,000 metric tons of production capacity would be added in

¹²⁹ See, e.g., USITC Pub. 3467 at 18; Confidential Version of Commission's Views at 26-27. As a share of apparent open-market granular magnesium consumption by quantity, Chinese subject imports were *** percent in 1998, *** percent in 1999, *** percent in 2000, and were *** percent in interim 2001 compared to *** percent in interim 2000. During this time, the domestic producers' share of apparent open-market granular magnesium consumption by quantity was *** percent in 1998, *** percent in 1999, *** percent in 2000, *** percent in interim 2000, and *** percent in interim 2001. Non-subject imports accounted for *** percent of apparent open-market consumption of granular magnesium by quantity in 1998, *** percent in 1999, *** percent in 2000, *** percent in interim 2000, and *** percent in interim 2001. See, e.g., USITC Pub. 3467 at 18-19 n.101; Confidential Version of Commission's Views at 27 n.101.

¹³⁰ Likewise, there is no information on this record concerning existing inventories of the subject merchandise, or likely increases in inventories of subject merchandise from China.

¹³¹ See, e.g., CR at I-50; PR at I-40.

¹³² See, e.g., CR at I-50; PR at I-40.

¹³³ See, e.g., CR at I-50; PR at I-40.

¹³⁴ See, e.g., CR at I-50; PR at I-40.

¹³⁵ See, e.g., CR at I-50; PR at I-40.

¹³⁶ See, e.g., CR at I-52; PR at I-41.

¹³⁷ See, e.g., US Magnesium's Final Comments at 25; US Magnesium's Response to the Notice of Institution at 12.

¹³⁸ See, e.g., US Magnesium's Final Comments at 25; US Magnesium's Response to the Notice of Institution at 12-13.

¹³⁹ See, e.g., US Magnesium's Final Comments at 26-27; US Magnesium's Response to the Notice of Institution at 13.

China in 2005 and 2006.¹⁴⁰ No evidence is in the record to contradict that provided by US Magnesium. Available evidence from USGS is consistent with that submitted by US Magnesium. According to USGS data, estimated Chinese production has also grown significantly over the years, from 70,500 metric tons in 1998 to 470,000 metric tons in 2005.¹⁴¹

Although only granular pure magnesium is subject to the antidumping duty order currently under review, US Magnesium argues that product shifting is likely in the magnesium industry, stating that “virtually all magnesium can be converted into granular form.”¹⁴² The history of orders on magnesium from China provides some evidence of product shifting to the extent that the original order pertained to pure magnesium in ingot form from China, this order applied to pure magnesium in granular form from China, and a few years later, another order was put in place regarding alloy magnesium from China, as discussed above.

US Magnesium argues that the Chinese magnesium industry continues to be export-oriented.¹⁴³ It also points out that Chinese magnesium benefits from an export tax rebate (albeit reduced from 13 percent in 2005 to 5 percent in 2006).¹⁴⁴ The record supports these assertions. Export data from the Chinese Customs Service indicate that total exports of magnesium in granular form from China have grown significantly from 11,228 metric tons in 1998 to 45,245 metric tons in 2005.¹⁴⁵ Exports to the United States dropped off significantly after the filing of the petition and imposition of the antidumping duty order, although there was an unexplained but temporary increase in exports of granular pure magnesium to the United States in 2004 according to that source.¹⁴⁶ In addition to the U.S. orders on other magnesium products from China, antidumping duty orders are also currently in place in Brazil for imports of pure magnesium (in both pure and ingot form) and alloy magnesium from China.¹⁴⁷ According to US Magnesium, Chinese producers also faced tariff barriers in India and the European Union, at least until producers in those markets ceased production in the face of low-priced magnesium imports from China.¹⁴⁸

In conclusion, the numerous subject producers in China collectively have substantial production capacity that has continued to increase in recent years, they produce large quantities of granular pure magnesium at volumes that have continued to increase, they have shown their ability to shift production from one form of magnesium to another, and they export substantial and growing quantities of subject merchandise and continue to rely on the U.S. market even under the discipline of the order. The record

¹⁴⁰ See, e.g., US Magnesium’s Final Comments at 26; US Magnesium’s Response to the Notice of Institution at 13.

¹⁴¹ See, e.g., CR at I-51; PR at I-40 to I-41.

¹⁴² See, e.g., US Magnesium’s Final Comments at 28-29; US Magnesium’s Response to the Notice of Institution at 15, Exh. 1.

¹⁴³ See, e.g., US Magnesium’s Final Comments at 26-28; US Magnesium’s Response to the Notice of Institution at 13-15.

¹⁴⁴ See, e.g., US Magnesium’s Final Comments at 30; US Magnesium’s Response to the Notice of Institution at 16.

¹⁴⁵ See, e.g., CR at I-52; PR at I-41.

¹⁴⁶ See, e.g., CR at I-52; PR at I-41. Similar trends are reflected in data concerning imports of subject merchandise from China. See, e.g., CR at I-39; PR at I-30; CR/PR at Figure I-1, Table I-8.

¹⁴⁷ See, e.g., CR at I-53; PR at I-42.

¹⁴⁸ See, e.g., US Magnesium’s Final Comments at 27; US Magnesium’s Response to the Notice of Institution at 15.

also provides some evidence that Chinese producers benefit from export tax rebates and face tariff barriers in third-country markets.¹⁴⁹ In light of these facts as well as our findings in the original investigation that the volume of subject imports from China was significant in all respects, we conclude that the likely volume of the subject merchandise from China, both in absolute terms and relative to consumption and production in the United States, would be significant, absent the restraining effect of the order.

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the order under review were revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to the domestic like product and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.¹⁵⁰

In its original determination, the Commission found subject imports from China were highly substitutable for domestically-produced pure magnesium, particularly in the production of reagent mixtures for the desulfurization segment of the U.S. market, and that price was an important consideration in choosing a pure magnesium supplier and pure magnesium products.¹⁵¹ Pricing was generally determined in transaction-by-transaction negotiations and in contracts and depended on such factors as the prevailing competitive environment and potential purchase volumes.¹⁵² Magnesium prices were usually quoted on a delivered basis, and typical sales terms were net 30 days; price lists were not generally used.¹⁵³ Average unit values as well as the direct pricing data collected in the original investigation showed declining prices of Chinese subject imports, declining domestic prices, as well as considerable underselling by Chinese subject imports at significant margins over the original investigation POI.¹⁵⁴ Chinese subject imports undersold the domestic like product in all possible price comparisons at average margins that increased from 49.1 percent in 1998 to 72.7 percent in 1999, and to 79.5 percent in 2000.¹⁵⁵ Although most of the shipments of Chinese subject imports were to the

¹⁴⁹ See, e.g., US Magnesium's Final Comments at 30; US Magnesium's Response to the Notice of Institution at 16.

¹⁵⁰ See 19 U.S.C. § 1675a(a)(3). The SAA states that "{c}onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

¹⁵¹ See, e.g., USITC Pub. 3467 at 19. Nine of twenty-six purchasers reported quality as the most important factor for choosing a pure magnesium supplier, and eight reported price. Two purchasers reported availability, qualified supplier, or purity as the most important factor. Sixteen of twenty-six purchasers listed quality or price as the second most important factor for choosing a pure magnesium supplier. Twenty-three of twenty-four responding purchasers of pure magnesium products reported that availability, product consistency, and reliability of supply were very important purchasing factors, whereas twenty-two reported that product quality was very important and nineteen reported that delivery time was very important. Twelve reported that lowest price was very important, and twelve responded that lowest price was somewhat important. See, e.g., USITC Pub. 3467 at 19 n.104.

¹⁵² See, e.g., CR at I-17; PR at I-14.

¹⁵³ See, e.g., CR at I-17; PR at I-14.

¹⁵⁴ See, e.g., USITC Pub. 3467 at 19.

¹⁵⁵ See, e.g., USITC Pub. 3467 at 19.

desulfurization segment of the U.S. market ***;¹⁵⁶ the Commission found that Chinese subject imports had adverse effects throughout the market.¹⁵⁷ For example, it found the low-priced Chinese subject imports drove domestic producers and Israeli producer DSM largely out of the desulfurization segment of the U.S. market, leading to intensified price competition in the aluminum alloying segment of the market between the domestic like product, magnesium ingot imports from Israel, and non-subject magnesium ingot imports, such as imports from Russia.¹⁵⁸ Moreover, it found that the prices of Chinese subject imports in the desulfurization segment of the market were so low that they were even lower than magnesium ingot prices to that and other segments of the market.¹⁵⁹ For these reasons, the Commission found significant price underselling by subject imports from China as compared with the price of domestic like product, and that imports of such merchandise otherwise depressed prices to a significant degree.¹⁶⁰

There were no current pricing data in these expedited reviews. According to US Magnesium, China remains the low-price supplier to the world market.¹⁶¹ Even though Chinese producers have allegedly pushed other world producers into closure, US Magnesium insists that prices are still weak as world demand has not caught up with supply.¹⁶² It asserts that recent price increases in Chinese magnesium products still leave prices of those products at levels that are much lower than U.S. market prices.¹⁶³ US Magnesium anticipates that revocation of the order would lead to large volumes of very low-priced imports from China that would cause renewed price suppression and depression.¹⁶⁴

USGS data support these allegations. With the exception of a slight increase at the beginning of the year, U.S. magnesium prices fell throughout 2005 and by the end of the year were 30 to 40 cents per pound lower than at the end of 2004.¹⁶⁵ USGS also reported that contract prices among the magnesium producers and large consuming companies for 2006 were reported to be between \$1.25 and \$1.32 per pound, which was less than the 2005 contract level of about \$1.40 to \$1.50 per pound.¹⁶⁶

Based on this record, we find it likely that, absent the antidumping duty order, competitive conditions would return to those prevailing prior to the imposition of the order. In conjunction with our

¹⁵⁶ As a share of total shipments of Chinese subject imports to the U.S. market, those shipped to the desulfurization segment were *** percent in 1988, *** percent in 1999, *** percent in 2000, *** percent in interim 2000, and *** percent in interim 2001. Although the Commission's report in the original investigation suggested that *** percent in 1999, *** percent in 2000, and *** percent in interim 2000 of Chinese subject imports were shipped to the *** segment, the Commission explained that further inquiries revealed that those shipments were destined for use in ***. See, e.g., USITC Pub. 3467 at 20 n.107; Confidential Version of the Commission's Views at 28 n.107.

¹⁵⁷ See, e.g., USITC Pub. 3467 at 19-20; Confidential Version of the Commission's Views at 28.

¹⁵⁸ See, e.g., USITC Pub. 3467 at 20.

¹⁵⁹ See, e.g., USITC Pub. 3467 at 20.

¹⁶⁰ See, e.g., USITC Pub. 3467 at 20.

¹⁶¹ See, e.g., US Magnesium's Final Comments at 29; US Magnesium's Response to the Notice of Institution at 16.

¹⁶² See, e.g., US Magnesium's Final Comments at 29-30; US Magnesium's Response to the Notice of Institution at 16, 19-21.

¹⁶³ See, e.g., US Magnesium's Final Comments at 30; US Magnesium's Response to the Notice of Institution at 16-17.

¹⁶⁴ See, e.g., US Magnesium's Final Comments at 30; US Magnesium's Response to the Notice of Institution at 17.

¹⁶⁵ See, e.g., CR at I-50; PR at I-40.

¹⁶⁶ See, e.g., CR at I-50; PR at I-40.

finding of a likely significant volume of imports from China in the event of revocation as well as the importance of price in the market, the substitutability of domestic and subject product, the significant underselling and other significant price effects by subject imports during the original investigation, and subject imports' continuing presence in the U.S. market notwithstanding the existence of the order, we find that subject imports will likely have adverse effects on domestic prices in a market that already appears to face low and declining prices. We determine that, if the order were revoked, a significant volume of subject imports from China would be likely to significantly undersell the domestic like product and would be likely to have significant depressing or suppressing effects on the prices of the domestic like product within a reasonably foreseeable time.

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the antidumping duty orders were revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.¹⁶⁷ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.¹⁶⁸ As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.¹⁶⁹

Consistent with its findings in the original investigation that the volume of Chinese subject imports during the POI and the increase in that volume compared to apparent domestic consumption was significant, and that there was significant price underselling and significant price depression over that same period by reason of subject imports from China,¹⁷⁰ the Commission found that Chinese subject

¹⁶⁷ See 19 U.S.C. § 1675a(a)(4).

¹⁶⁸ See 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv); see also SAA at 887. Commerce expedited its five-year review of granular pure magnesium from China and found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following margins: 24.67 percent for Minmetals and 305.56 percent for the PRC-wide rate. See 72 Fed. Reg. 5417 (Feb. 6, 2007). These were the same margins that Commerce found in the original determination. See, e.g., CR/PR at Table I-2. There have been no duty absorption findings by Commerce with respect to the order under review because there have been no administrative reviews of the antidumping duty order. See, e.g., CR at I-8; PR at I-7.

¹⁶⁹ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

¹⁷⁰ The domestic industry at issue in the original investigation was narrower than that at issue here, due to differences in the Commission’s definition of the domestic like product and corresponding domestic industry.

imports were having a significant adverse impact on the domestic industry.¹⁷¹ Specifically, the Commission found that significant volumes of Chinese subject imports at low prices displaced the domestic like product in the desulfurization segment of the market and intensified competition throughout the U.S. market, including in the aluminum alloying segment where the domestic like product also competed with subject imports from Israel and non-subject imports from countries like Russia.¹⁷² Domestic producer Magcorp declared bankruptcy at the end of the POI, Northwest announced the closure of its production facilities in June 2001, and the condition of the magnesium ingot producers declined during the POI.¹⁷³ Although the Commission considered that the data concerning grinders were less meaningful to the extent they included some reagent production, it found that the grinders also experienced declining performance throughout the POI.¹⁷⁴ *** Rossborough testified about the injurious effects of Chinese subject imports on its operations, and the data showed the deteriorating condition of the grinders.¹⁷⁵

US Magnesium argues that the antidumping duty order on granular pure magnesium has enabled the domestic industry to improve, *** that it had previously lost to imports of granular magnesium from China.¹⁷⁶ US Magnesium *** after a 2002 scope ruling by Commerce establishing that Chinese pure magnesium ingot imported into Canada, ground into powder, and exported to the United States was covered under the scope of the order.¹⁷⁷ Nevertheless, US Magnesium insists that the domestic industry is still vulnerable, due in part to the conditions of competition distinctive to this industry that generally increase the ease with which low-priced imported material from China can take customers away from domestic producers and suppress and depress prices.¹⁷⁸

There is little information on the record of this expedited review pertaining to many of the financial and trade indicators, such as output, sales, market share, profits, productivity, return on investment, capacity utilization, cash flow, inventories, employment, wages, growth, ability to raise capital, investment, and development and production efforts of the industry, that we generally consider in

¹⁷¹ See, e.g., USITC Pub. 3467 at 20-22.

¹⁷² See, e.g., USITC Pub. 3467 at 21.

¹⁷³ See, e.g., USITC Pub. 3467 at 21. The Commission found that domestic magnesium ingot production capacity was ***. Several magnesium ingot domestic industry performance indicators declined over the POI, including production, capacity utilization, commercial shipments, internal consumption, total domestic shipments, and the unit value of shipments. Transfers to related firms improved somewhat over the POI, but end-of-period inventories increased. Although there was some fluctuation during the POI, most magnesium ingot employment indicators worsened. The domestic magnesium ingot producers lost market share throughout the POI, as measured by their open-market shipments as a share of total apparent domestic magnesium ingot consumption and open-market shipments as a share of total open-market apparent domestic magnesium ingot consumption, although the domestic magnesium ingot producers' captive shipments as a share of total apparent domestic magnesium ingot consumption increased during the POI. The domestic magnesium ingot producers had an ***; their cash flow and their capital expenditures and research and development expenses declined throughout the POI; and petitioners argued that domestic magnesium ingot producers had difficulty raising capital and reduced returns on investment. See, e.g., USITC Pub. 3467 at 21 n.117; Confidential Version of the Commission's Views at 30 n.117.

¹⁷⁴ See, e.g., USITC Pub. 3467 at 21.

¹⁷⁵ See, e.g., USITC Pub. 3467 at 21; Confidential Version of the Commission's Views at 30.

¹⁷⁶ See, e.g., US Magnesium's Final Comments at 16-17; US Magnesium's Response to the Notice of Institution at 10-11.

¹⁷⁷ See, e.g., US Magnesium's Final Comments at 16-17; US Magnesium's Response to the Notice of Institution at 10-11.

¹⁷⁸ See, e.g., US Magnesium's Final Comments at 18, 23-24; US Magnesium's Response to the Notice of Institution at 11.

assessing whether the domestic industry is in a weakened condition as contemplated by the statute. Therefore, given the absence of industry performance data, we are unable to determine whether the industry is currently vulnerable.

We find that if the order were revoked, the likely volume of subject imports would be significant, at the expense of the domestic industry. As discussed above, revocation of the antidumping duty order likely would lead to significant increases in the volume of subject imports at prices that would likely undersell the domestic like product and significantly depress U.S. prices. In addition, the likely volume and price effects of the subject imports likely would cause the domestic industry to lose market share, with a significant adverse impact on the domestic industry's production, capacity utilization,¹⁷⁹ shipments, sales, and revenue levels. This reduction in the industry's production, shipments, sales, and revenue levels would have a direct adverse impact on the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments.

Accordingly, based on the limited record in this expedited review, we conclude that, if the antidumping duty order were revoked, subject imports from China would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on pure magnesium in granular form from China would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

¹⁷⁹ US Magnesium asserts that the electrolytic cells used in the production of magnesium will deteriorate and need to be rebuilt at high costs if they are not kept running constantly. See, e.g., US Magnesium's Final Comments at 19.

INFORMATION OBTAINED IN THE REVIEW

INTRODUCTION

Background

On October 2, 2006, in accordance with section 751(c) of the Tariff Act of 1930, as amended,¹ the U.S. International Trade Commission (“Commission”) gave notice that it had instituted a review to determine whether revocation of the antidumping duty order on pure magnesium (in granular form) from China² would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.³ On January 5, 2007, the Commission determined that the domestic interested party response to its notice of institution was adequate;⁴ the Commission also determined that the respondent

¹ 19 U.S.C. 1675(c).

² There are three antidumping orders in place covering imports from China of the following magnesium products: pure ingot, pure granular, and alloy. The Commission’s determinations related to those orders are: *Magnesium From China, Russia, and Ukraine*, Inv. Nos. 731-TA-696-698 (Final), USITC Publication 2885, May 1995 (pure magnesium in cast or ingot form); *Pure Magnesium From China and Israel*, Inv. Nos. 701-TA-403 and 731-TA-895-896 (Final), USITC Publication 3467, November 2001 (pure magnesium in granular form); and *Magnesium From China and Russia*, Inv. Nos. 731-TA-1071-1072 (Final), USITC Publication 3763, April 2005 (alloy magnesium). See the sections of this report entitled “Other Investigations Concerning Magnesium” and “Domestic Like Product and Domestic Industry” for further information.

Also see the domestic interested party’s *Response*, dated November 21, 2006 (“*Response*”) for a comparison of import trends for the three magnesium products and the timing of the filing of petitions for import relief and issuance of the various antidumping duty orders. The domestic interested party argues that “the history of these cases demonstrates that revocation of any one of the orders would be tantamount to revoking all three orders, because the Chinese would simply shift their efforts in the U.S. market to selling the product that is no longer covered by an order.” The domestic interested party requests, therefore, that the Commission “consider the order on pure magnesium in granular form in the context of the other two antidumping orders on Chinese magnesium.” *Response*, pp. 4-5 and attachment 1.

³ 70 FR 31537, June 1, 2005. All interested parties were requested to respond to this notice by submitting the information requested by the Commission. The Commission’s notice of institution is presented in app. A.

⁴ The Commission received one submission in response to its notice of institution for the subject review (hereinafter “*Response*”). It was filed on behalf of US Magnesium LLC (“US Magnesium” or “the domestic interested party”), a domestic producer of pure and alloy magnesium and the successor firm to Magcorp (a petitioner in the original investigation on pure magnesium in granular form from China). US Magnesium indicated in its response that it accounted for 100 percent of domestic production of primary (pure and alloy) magnesium during 2005. Based on a definition of a single domestic like product consisting of pure magnesium in both ingot and granular forms and based on the treatment of granular magnesium shipments as production by US Magnesium, US Magnesium estimated that it accounted for *** percent of U.S. production in 2005; if the volume shipped by US Magnesium to U.S. grinders is treated as production by the U.S. grinders rather than production by US Magnesium, US Magnesium accounted for *** percent of production of the domestic like product. Based on a definition of the domestic like product that encompasses both primary pure and alloy magnesium (in both ingot and granular forms) and secondary alloy magnesium and based on the treatment of magnesium shipments as production by US Magnesium, US Magnesium accounted for *** percent of U.S. production in 2005; if the volume shipped by US Magnesium to U.S. grinders is treated as production by the U.S. grinders, rather than production by US Magnesium, US Magnesium accounted for *** percent of U.S. production of the domestic like product. Letter from US Magnesium, December 5, 2006, pp. 3-4.

interested party response was inadequate.^{5 6} The Commission found no other circumstances that would warrant conducting a full review.⁷ Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930.^{8 9} The Commission voted on this review on February 20, 2007, and notified the U.S. Department of Commerce (“Commerce”) of its determination on March 1, 2007. Information relating to the background of the review is presented below:¹⁰

Effective date	Action	<i>Federal Register</i> citation
November 19, 2001	Commerce’s antidumping duty order	66 FR 57936
October 2, 2006	Commission’s institution of five-year review	71 FR 58001
January 5, 2007	Commission’s determination to conduct expedited five-year review	72 FR 3876, January 26, 2007
February 6, 2007	Commerce’s notice of final results of expedited five-year review	72 FR 5417
February 20, 2007	Commission’s vote	Not applicable
March 1, 2007	Commission’s determination transmitted to Commerce	Not applicable

The Original Investigations

The original investigations resulted from a petition filed on October 17, 2000, by Magnesium Corp. of America (“Magcorp”) and the United Steel Workers of America, Local 8319,¹¹ alleging that an industry in the United States was materially injured and threatened with material injury by reason of

⁵ The Commission did not receive any responses to its notice of institution from Chinese producers or importers of the subject merchandise.

⁶ Commissioner Jennifer A. Hillman found both the domestic interested party group response and the respondent interested party group response to be inadequate. In the original determination, the Commissioner defined the relevant domestic like product as pure granular magnesium. No domestic producer of granular pure magnesium (other than US Magnesium) responded to the Commission’s notice of institution, nor was there any response from any respondent interested party. Commissioner Hillman found an inadequate domestic interested party group response as well as an inadequate respondent interested party group response and voted for an expedited review.

⁷ The Commission’s statement on adequacy is presented in app. B.

⁸ 19 U.S.C. § 1675(c)(3).

⁹ Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun dissented. Chairman Pearson and Commissioner Okun voted to conduct a full review in order to reconsider the like product definition.

¹⁰ Cited *Federal Register* notices beginning with the Commission’s institution of a five-year sunset review are presented in app. A.

¹¹ On October 26, 2000, the petitioners amended the petition to include the USWA International as a co-petitioner, and on April 20, 2001 amended the petition to add “concerned employees of Northwest Alloys, Inc.” as co-petitioners.

imports of pure magnesium from Israel and Russia,¹² and pure granular magnesium from China, that were alleged to be sold in the United States at less than fair value (“LTFV”), and by reason of imports of pure magnesium from Israel that were alleged to be subsidized by the Government of Israel.¹³

Commerce made its final affirmative dumping determination with respect to pure magnesium in granular form from China on September 27, 2001. Commerce determined that the following percentage weighted-average margins existed for the period April 1, 2000 through September 30, 2000: Minmetals Precious & Rare Minerals Import and Export/China National Nonferrous Metals Industry Trading Group Corp. (“Minmetals”) (24.67 percent) and all others (305.56 percent).¹⁴ The Commission subsequently determined that an industry in the United States was materially injured by reason of imports of pure magnesium (in granular form) from China that were sold at LTFV.¹⁵ Commerce issued an antidumping duty order on November 19, 2001.¹⁶

Other Investigations Concerning Magnesium

Beginning in 1992, the Commission has conducted a series of Title VII investigations and five-year reviews of existing orders on magnesium from five countries: Canada, China, Israel, Russia, and Ukraine. Table I-1 presents actions taken by the Commission and Commerce with respect to the magnesium investigations concerning China. With respect to the other sources, during portions of the period from 1998 to date, countervailing duty and antidumping duty orders were in place for pure and alloy ingot magnesium from Canada¹⁷ and Russia¹⁸ and for pure ingot from Ukraine.¹⁹ See table I-3 in

¹² On September 27, 2001, Commerce published notice of a negative final determination of sales at less than fair value (“LTFV”) in connection with the investigation on Russia (66 FR 49347). Accordingly, the Commission terminated its antidumping investigation concerning pure magnesium from Russia (Inv. No. 731-TA-897 (Final)).

¹³ The Commission determined that an industry in the United States was not materially injured or threatened with material injury, and the establishment of an industry in the United States was not materially retarded, by reason of imports of pure magnesium from Israel that Commerce found to be subsidized and sold in the United States at LTFV. *Pure Magnesium From China and Israel* (hereinafter “*Original Views*”), p. 3.

¹⁴ 66 FR 49345, September 27, 2001.

¹⁵ *Original Views*, p. 3. Commissioners Marcia E. Miller and Jennifer A. Hillman dissented. *Pure Magnesium from China and Israel*, Dissenting Views of Commissioners Marcia E. Miller and Jennifer A. Hillman (hereinafter “*Original Miller/Hillman Dissenting Views*”), p. 31. The Commission made a negative final determination with respect to pure magnesium from Israel. *Original Views*, p. 3.

¹⁶ 66 FR 57936.

¹⁷ The countervailing duty orders on pure ingot magnesium and alloy magnesium and the antidumping duty order on pure ingot magnesium from Canada were issued in 1992 (57 FR 39392, August 31, 1992) following an affirmative determination in Inv. Nos. 701-TA-309 and 731-TA-528 (Final), and were continued in 2000 (65 FR 49964, August 16, 2000) following sunset reviews. The antidumping duty order on pure magnesium from Canada was retroactively revoked effective August 1, 2000 (69 FR 70649, December 7, 2004), and the countervailing duty orders on pure ingot magnesium and alloy magnesium from Canada were retroactively revoked effective August 16, 2005 (71 FR 38382, July 6, 2006).

¹⁸ An antidumping duty order on pure ingot magnesium from Russia was issued in 1995 (60 FR 25691, May 12, 1995) following an affirmative determination in Inv. No. 731-TA-697 (Final). The order was revoked effective May 12, 2000 (65 FR 41944, July 7, 2000; as amended by 65 FR 53700, September 5, 2000). Another antidumping duty order for pure and alloy magnesium from Russia was issued in 2005 (70 FR 19930, April 15, 2005) following an affirmative determination in Inv. No. 731-TA-1072 (Final).

¹⁹ An antidumping duty order on pure ingot magnesium from the Ukraine was issued in 1995 (60 FR 25691, May 12, 1995) following an affirmative determination in Inv. No. 731-TA-698 (Final)). The order was revoked in 1999 (64 FR 46182, August 24, 1999) following a remand determination by the Commission.

Table I-1

Magnesium: Actions taken by the Commission and Commerce in Title VII investigations with respect to China

Action	Date of action	Federal Register citation
Commission's affirmative determination in Inv. No. 731-TA-696 (Final) (<i>pure ingot</i>) ¹	05/17/1995	60 FR 26456
Antidumping duty order issued ² (A-570-832) (<i>pure ingot</i>)	05/12/1995	60 FR 25691
Institution of first five-year review (expedited)	04/03/2000	65 FR 17531
Commission's affirmative determination in first five-year review	09/12/2000	65 FR 55047
Continuation of antidumping duty order ³ (<i>pure ingot</i>)	10/27/2000	65 FR 64422
Institution of second five-year review (full)	07/01/2005	70 FR 38101
Commission's affirmative determination in second five-year review	06/26/2006	71 FR 36359
Continuation of antidumping duty order ⁴ (<i>pure ingot</i>)	07/10/2006	71 FR 38860
Commission's affirmative determination in Inv. No. 731-TA-895 (Final) (<i>pure granular</i>)	11/20/2001	66 FR 58162
Antidumping duty order issued ⁵ (A-570-864) (<i>pure granular</i>)	11/19/2001	66 FR 57936
Commission's affirmative determination in Inv. No. 731-TA-1071 (Final) (<i>alloy</i>)	04/15/2005	70 FR 19969
Antidumping duty order issued (A-570-896) ⁶ (<i>alloy</i>)	04/15/2005	70 FR 19928
¹ The Commission made a negative determination with respect to alloy magnesium. ² Commerce found the weighted-average antidumping duty margin to be 108.26 percent <i>ad valorem</i> (65 FR 47713, August 3, 2000). ³ In its first five-year review, Commerce found the weighted-average antidumping duty margin to be 108.26 percent <i>ad valorem</i> (65 FR 47713, August 3, 2000). ⁴ In its second five-year review, Commerce found the weighted-average antidumping duty margin to be 108.26 percent <i>ad valorem</i> (71 FR 580, January 5, 2006). ⁵ Commerce found a weighted-average antidumping duty margin of 24.67 percent <i>ad valorem</i> for Minmetals and a country-wide rate of 305.56 percent <i>ad valorem</i> . ⁶ Commerce found a weighted-average antidumping duty margin of 24.67 percent <i>ad valorem</i> for Minmetals and 305.56 percent <i>ad valorem</i> for all other manufacturers and exporters in China (66 FR 49345, September 27, 2001). Source: Cited <i>Federal Register</i> notices.		

Pure and Alloy Magnesium From Canada and Pure Magnesium From China, Investigation Nos. 701-TA-309-A-B and 731-TA-696 (Second Review), USITC Publication 3859, July 2006, for additional information on these actions. In addition, on December 17, 1999, the Commission received a request from the United States Trade Representative ("USTR") for an investigation under section 332(g) of the Act for the purpose of providing advice concerning possible modifications to the U.S. Generalized System of Preferences ("GSP") for several products including alloy and granular magnesium. Subsequently, on December 23, 1999, the Commission instituted investigation No. 332-410.²⁰ In a

²⁰ 64 FR 73574, December 30, 1999.

Presidential Proclamation of June 29, 2000, the President added granular magnesium to the list of GSP-eligible articles.²¹

With respect to the Commission's affirmative determination in its recent review on pure magnesium (ingot) from China, the domestic interested party states that "the near-contemporaneity of the Commission's affirmative determination regarding the likelihood of material injury due to imports of pure magnesium in ingot form from China is highly probative of the likely injury that would be suffered by the domestic industry if the order on pure magnesium in granular form were revoked."²²

COMMERCE'S REVIEWS

Administrative Reviews

Commerce has not completed any antidumping duty administrative reviews of subject merchandise from China.

Results of Expedited Five-Year Review

Table I-2 presents the margins calculated by Commerce in its original investigation and in its expedited five-year review.

Table I-2

Pure magnesium: Commerce's original and five-year review antidumping duty margins for producers/exporters from China

Producer/exporter	Original margin (percent ad valorem)	Five-year review margin (percent ad valorem)
Minmetals	24.67	24.67
All others	305.56	305.56
Source: <i>Antidumping Duty Order</i> , 66 FR 57936, November 19, 2001, and <i>Final Results of the Expedited Sunset Review of the Antidumping Duty Order</i> , 72 FR 5417, February 6, 2007.		

DISTRIBUTION OF CONTINUED DUMPING AND SUBSIDY OFFSET ACT FUNDS

The Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA") (also known as the Byrd Amendment) provides that assessed duties received pursuant to antidumping or countervailing duty orders must be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such orders.²³ During the review period, qualified U.S. producers of pure magnesium were eligible to receive disbursements from U.S. Customs and Border Protection ("Customs") under CDSOA relating to the antidumping duty order on the subject product beginning in

²¹ *Proclamation 7325 of June 29, 2000 to Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes*, 65 FR 41315, July 3, 2000.

²² Domestic interested party comments on adequacy, December 11, 2006 (hereinafter "*Adequacy Comments*"), p. 4.

²³ Section 754 of the Tariff Act of 1930, as amended (19 U.S.C. § 1675c).

Federal fiscal year 2001.²⁴ Table I-3 presents CDSOA disbursements and claims for Federal fiscal years (October 1-September 30) 2001-06, by firm.

Table I-3

Pure magnesium: CDSOA disbursements, by firm, and total claims, Federal fiscal years 2001-06

Item	Federal fiscal year					
	2001	2002	2003	2004	2005	2006
Disbursements (1,000 dollars)						
US Magnesium ¹	0	0	0	0	0	293
Claims (1,000 dollars)						
US Magnesium ¹	0	38,757	37,649	0	37,597	37,533
¹ US Magnesium was the only claimant.						
Source: U.S. Customs and Border Protection's CDSOA <i>Annual Reports</i> . www.cbp.gov/xp/cgov/import/add_cvd , retrieved January 11, 2007.						

THE PRODUCT

Scope

In its original antidumping duty order, Commerce defined the subject merchandise (pure magnesium in granular form) as follows:

The scope of this order includes imports of pure magnesium products, regardless of chemistry, including, without limitation, raspings, granules, turnings, chips, powder, and briquettes, except as noted above. Pure magnesium includes: (1) Products that contain at least 99.95 percent primary 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 primary magnesium, by weight (generally referred to as “pure” magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an “ASTM Specification for Magnesium Alloy”²⁵ (generally referred to as “off-specification pure magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight.

Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials of which the Department is aware used to make such excluded reagents are: Lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nepheline syenite, feldspar, aluminum, alumina (Al₂O₃), calcium aluminate, soda ash,

²⁴ 19 CFR 159.64 (g).

²⁵ The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of antidumping duties.

The merchandise subject to this order is currently classifiable under 8104.30.00 of the Harmonized Tariff Schedule of the United States (“HTS”) ²⁶

Commerce further explained in the original antidumping duty order that:

There is an existing antidumping duty order on pure magnesium from the People’s Republic of China (PRC). *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). The scope of this order excludes pure magnesium that is already covered by the existing order on pure magnesium in ingot form, and currently classifiable under item numbers 8104.11.00 and 8104.19.00 of the HTS. ²⁷

U.S. Tariff Treatment

Table I-4 presents the latest published tariff rates for the subject magnesium in granular form. ²⁸ U.S. imports from China of pure magnesium in ingot form and alloy magnesium are also subject to current antidumping duty orders but are not the subject of this review (see table I-1). ²⁹

Table I-4
Magnesium in granular form: Tariff rates, 2007

HTS subheading ¹	Article description ²	General ³	Special ⁴	Column 2 ⁵
		Rates (percent <i>ad valorem</i>)		
8104.30.00	Magnesium and articles thereof, including waste and scrap: Raspings, turnings and granules, graded according to size; powders	4.4	Free	60.5

Notes on next page.

²⁶ 66 FR 57936, November 19, 2001.

²⁷ Ibid.

²⁸ HTS subheading 8104.30.00 may contain either pure or alloy magnesium products. However, according to petitioners in the original investigation, more than 95 percent of the entries under this subheading are pure magnesium products containing at least 99.8 percent magnesium by weight. *Staff Report of October 24, 2001 for Investigation Nos. 701-TA-403 and 731-TA-895-896 (Final): Pure Magnesium from China and Israel (hereinafter “Original Staff Report”)*, p. I-7, fn. 20, citing conference transcript (p. 67).

²⁹ Pure magnesium in ingot form is generally classified under HTS subheading 8104.11.00 and alloy magnesium is generally classified under HTS subheading 8104.19.00.

Continuation.

¹ While HTS subheadings are provided for convenience and customs purposes, Commerce states that the written description of the scope is dispositive.

² An abridged description is provided for convenience; however, an unabridged description may be obtained from the respective headings, subheadings, and legal notes of the HTS.

³ Normal trade relations rates, formerly known as the most-favored-nation duty rate. Imports from China enter under the general rate.

⁴ For eligible goods under the Generalized System of Preferences, Australia Free Trade Agreement, Caribbean Basin Economic Recovery Act, Andean Trade Preference Act, Israel Free Trade Agreement, Central American Free Trade Agreement, Jordan Free Trade Agreement, Chile Free Trade Agreement, Morocco Free Trade Agreement, Singapore Free Trade Agreement, and NAFTA-originating goods of Canada and Mexico. Imports from Canada are eligible to enter duty-free.

⁵ Applies to imports from a small number of countries that do not enjoy normal trade relations duty status.

Source: Harmonized Tariff Schedule of the United States (2006).

Description and Uses³⁰

Magnesium, the eighth most abundant element in the earth's crust and the third most plentiful element dissolved in seawater, is a silver-white metallic element. It is the lightest of all structural metals with a density approximately 63 percent of that of aluminum, the principal metal with which it competes in the U.S. market. Magnesium's light weight and high vibrational-dampening properties have encouraged research to develop magnesium-based alloys with improved physical and mechanical properties for use as a structural metal in applications where minimizing weight is an important design consideration. Magnesium is available in two principal forms, pure³¹ and alloy. Magnesium may also be classified as primary magnesium (which is magnesium produced by directly decomposing raw materials into magnesium metal) or as secondary magnesium. Secondary magnesium is magnesium produced by recycling magnesium-based scrap, containing less than 50 percent of primary magnesium.

Pure magnesium in unwrought form³² contains at least 99.8 percent magnesium by weight.³³ Alloy magnesium (or magnesium alloy) consists of magnesium and other metals, typically aluminum and zinc, containing less than 99.8 percent magnesium by weight but more than 50 percent magnesium by weight, with magnesium the largest metallic element in the alloy by weight. "Off-specification pure" magnesium is magnesium that contains 50 percent or greater, but less than 99.8 percent, magnesium by weight, that does not conform to an ASTM specification for alloy magnesium.

³⁰ Unless otherwise noted, all of the discussion in this section is from the original investigation (*see Original Staff Report*, pp. I-7 through I-9) supplemented with information on the public record for the Commission's full review in 2006 on pure and alloy aluminum (*see Pure and Alloy Magnesium From Canada and Pure Magnesium From China* (Second Review), USITC Publication 3859, July 2006, pp. I-16 through I-21).

³¹ Unless otherwise noted, the term "pure magnesium" consists of pure magnesium ingot and pure granular magnesium.

³² "Unwrought" magnesium is pure magnesium that has not been worked in any way. "Wrought" magnesium is magnesium that has been worked into a desired shape, for example the working of the magnesium to produce extrusions, rolled product, forgings, etc. Wrought magnesium is not within the scope of any of the current antidumping duty orders in place for magnesium from China.

³³ Ultra-high purity ("UHP") magnesium is unwrought magnesium containing at least 99.95 percent magnesium by weight and is used as a reagent in the pharmaceutical and chemical industries. Commodity-grade magnesium is unwrought magnesium containing at least 99.8 percent magnesium but less than 99.95 percent magnesium by weight and is most commonly used in the aluminum alloying industry.

Pure magnesium is widely used in commercial and industrial applications because it is easily machined and lightweight, has a high strength-to-weight ratio, and has special chemical and electrical properties. It also has special metallurgical and chemical properties that allow it to alloy well with metals such as aluminum. Pure magnesium was described during the original investigation as typically used in the production of aluminum alloys for use in beverage cans and in some automotive parts, in iron and steel desulfurization, as a reducing agent for various nonferrous metals (titanium, zirconium, hafnium, uranium, beryllium), and in magnesium anodes for the protection of iron and steel in underground pipe and water tanks and various marine applications. According to the U.S. Geological Survey (“USGS”) *2000 Minerals Handbook (Magnesium)*, “Magnesium” (Deborah Kramer), p. 48.1:³⁴

“Aluminum alloying was the largest application for primary magnesium, with about 53%, but structural magnesium alloy components, particularly diecastings, have grown to account for about 23% of the total primary magnesium consumed in the United States. Smaller quantities of magnesium were used for desulfurization of iron and steel and as a reducing agent for other nonferrous metals, such as titanium and beryllium.”

The most recently available update indicates that: “Diecasting, aluminum alloying, and iron and steel desulfurization, in descending order, were the principal end-use applications for magnesium in the United States in 2005.”^{35 36}

Alloy magnesium is typically produced to meet various industry-recognized American Society for Testing and Materials (“ASTM”) specifications for alloy magnesium such as AM50A, AM60B, and AZ91D.³⁷ It is principally used in structural applications, primarily in castings (die, permanent mold, and sand) and extrusions for the automotive industry. Alloy magnesium has certain properties that improve its strength, ductility, workability, corrosion resistance, density, or castability compared to pure magnesium. In contrast, pure magnesium is seldom used in structural applications due to its low tensile and yield strengths.

The granular magnesium that is subject to this review consists of all physical forms of pure unwrought magnesium other than ingots, such as raspings, turnings, granules, and powders.³⁸ Granular magnesium is typically used in the production of magnesium-based desulfurizing reagent mixtures that are used in steelmaking to reduce the sulfur content of steel.³⁹ Lesser amounts of granular magnesium

³⁴ Attachment 2 to the *Response*.

³⁵ *2005 Minerals Handbook (Magnesium)*, “Magnesium” (Deborah Kramer), p. 46.1, attachment 3 to the *Response*.

³⁶ The domestic interested party stated that pure magnesium continues to be sold mainly for use in (1) aluminum alloying, (2) steel desulfurization, and (3) chemical and pharmaceutical manufacturing. *Response*, p. 6.

³⁷ The ASTM specifications designate the chemical composition of the alloy. The first two letters designate the two alloying elements most prevalent in the alloy (e.g., “A” for aluminum, “M” for manganese, or “Z” for zinc), while the numbers represent the percent of other elements contained in the alloy, by weight. For example, AZ91D contains 9 percent aluminum, 1 percent zinc, and 90 percent magnesium.

³⁸ Although alloy magnesium can be in granular form, most granular magnesium is classified as pure or “off-specification pure” magnesium (alloy magnesium not meeting ASTM specifications for alloy magnesium). “Off-specification pure” magnesium falls within the scope of the antidumping duty on magnesium from China in granular form that is subject to this review.

³⁹ U.S. grinders were reported during the original investigations to typically sell three different steel desulfurization blends: (1) containing 90 percent pure magnesium powder and 10 percent lime; (2) containing 25 percent magnesium and 75 percent lime; and (3) containing 8-10 percent magnesium with the remainder lime and calcium carbonate. Fluorspar and a fluidizer are also incorporated in these products.

are used in defense applications, such as military ordnance and flares. The Commission concluded during the original investigation that Chinese subject imports were “highly substitutable” for domestically produced pure magnesium, particularly in the production of reagent mixtures in the desulfurization segment of the U.S. market.⁴⁰

Manufacturing Process⁴¹

Primary Magnesium

Worldwide, most magnesium is derived from magnesium-bearing ores (dolomite, magnesite, brucite, and olivine) or seawater and well and lake brines.⁴² Large deposits of dolomite are widely distributed throughout the world, and dolomite is the principal magnesium-bearing ore found in the United States. Magnesium-bearing ores are mined by the open-pit method. In the United States, the production of primary magnesium is currently done by extracting magnesium from brines of the surface waters of the Great Salt Lake in Utah (by US Magnesium); the former U.S. producer Northwest Alloys used dolomite in its process.⁴³

Magnesium metal is normally produced by either an *electrolytic process* or a *silicothermic process*, with the electrolytic process dominating in terms of the volume of United States and world production.⁴⁴ The silicothermic process (also known as the Pidgeon process) is used by a majority of the largest producers in China.⁴⁵ The silicothermic process was reported during the original investigation to be less cost-effective than the electrolytic process for production of magnesium.⁴⁶ In its original views, the Commission referred to domestic producer Northwest Alloys’ argument that the silicothermic process involves higher raw material costs than most magnesium production plants in the world (including the

⁴⁰ *Original Views*, p. 19. The domestic interested party states that this finding remains characteristic of competition within the U.S. market. *Response*, p. 6.

⁴¹ Unless otherwise noted, all of the discussion in this section is from the original investigation (*see Original Staff Report*, pp. I-9 and I-10) supplemented with information on the public record for the Commission’s full review in 2006 on pure and alloy magnesium (*see Pure and Alloy Magnesium From Canada and Pure Magnesium From China*, pp. I-21 through I-25).

⁴² The magnesium content of magnesium-bearing ores typically ranges from nearly 22 percent for dolomite to 69 percent for brucite. The magnesium content of seawater is 0.13 percent, which is much lower than that of the lowest grade of magnesium ore deposits; however, seawater has the advantage of being abundant, accessible, and extremely uniform in its magnesium content, allowing for easier standardization of the refining process.

⁴³ Northwest Alloys ceased production of magnesium in October 2001.

⁴⁴ The domestic interested party cites an earlier Commission finding that “the electrolytic cells used in the production of primary magnesium will deteriorate if they are not kept running constantly. If they deteriorate, they must be rebuilt. The costs of rebuilding these cells are so high that producers must try to keep the cells in constant operation. Thus, to be cost effective, producers must maintain a continuous and steady production of the product.” *Response*, p. 6, citing *Magnesium From China, Russia, and Ukraine*, pp. 10-11.

⁴⁵ The raw material source for silicothermic production in China is dolomite ($\text{MgCO}_3 \cdot \text{CaCO}_3$). Deborah Kramer, *Magnesium, Its Alloys and Compounds*, USGS Open-File Report 01-341, pp. 11-12, as cited in *Pure and Alloy Magnesium from Canada and Pure Magnesium From China*, p. I-22.

⁴⁶ *See* testimony of Mr. Ozzie Wilkinson, Manager, Public Affairs, Northwest Alloys, transcript of hearing in *Magnesium From China and Russia* (Final), pp. 148 and 174, as cited in the staff report for the original investigation.

predecessor firm to US Magnesium) that use electrolytic processes because: (1) it is a batch rather than a continuous process; (2) it requires expensive reductants (ferrosilicon and/or aluminum); and (3) final processing requires added costs due to the remelting of magnesium.⁴⁷

Primary magnesium is typically cast into ingots or slabs. Aluminum producers usually purchase larger pure cast shapes such as rounds, billets, peg-lock ingots, or T-shapes. Producers of magnesium powder for steel desulfurization applications typically purchase smaller ingots or magnesium “chips” that are then ground into powder⁴⁸ and used internally to produce magnesium-based reagent mixtures or, to a lesser extent, pyrotechnic products. Diecasters purchase ingots and granular primary alloy magnesium for use in magnesium alloy castings, and/or recycle scrap magnesium generated in their diecasting operations into secondary alloy magnesium.

Secondary Magnesium⁴⁹

Secondary magnesium is produced from recycling magnesium-based “scrap.” Magnesium scrap arrives at the recycler either in a loose form or contained in boxes. After the magnesium is separated from other alloys by the recycler, the sorted magnesium is heated in a steel crucible to nearly 675 degrees Celsius. Alloying elements such as aluminum, manganese, or zinc can then be added to the liquid magnesium and the alloyed magnesium can then be transferred to ingot molds by hand ladling, pumping, or tilt pouring. Magnesium scrap can also be generated by the direct grinding of scrap into powder for iron and steel desulfurization applications.⁵⁰

“Off-Specification Pure” Magnesium

“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 percent by weight. “Off-specification pure” magnesium products contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, do not conform to ASTM specifications for alloy magnesium, and generally do not contain individually or in combination, 1.5 percent or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium, and rare earths. No U.S. producer reported producing “off-specification pure” magnesium during the Commission’s full review in 2006 on pure and alloy magnesium.⁵¹

⁴⁷ *Original Views*, pp. 16-17, citing Northwest Alloys/Alcoa’s prehearing brief, pp. 1 and 2-3.

⁴⁸ Magnesium chips are ground into powder using a particle reduction process. Magnesium powder can also be produced by atomization of molten pure magnesium; however, this technique is less frequently used than grinding.

⁴⁹ Information from this section is drawn from Deborah A. Kramer, *Magnesium Recycling in the United States in 1998*, Flow Studies for Recycling Metal Commodities in the United States, pp. E5-E6, as cited *Pure and Alloy Magnesium from Canada and Pure Magnesium From China*, p. I-24.

⁵⁰ Aluminum beverage can manufacturers are sensitive to the presence of beryllium in melted scrap. Therefore, these firms generally do not purchase recycled alloy magnesium produced from scrap.

⁵¹ Typically, producers do not set out to produce “off-specification pure” magnesium. Rather, its production results from starting or re-starting the primary magnesium production process, or is the result of some malfunction in the production process.

Channels of Distribution, Marketing, and Pricing⁵²

Domestically produced and imported pure magnesium in ingot form is primarily sold to aluminum producers and producers of pure granular magnesium (grinders), with shipments made directly from the production site, port, or warehouse. Most manufacturers of the subject granular magnesium first purchase pure magnesium ingots or magnesium chips from domestic or import sources for conversion into granular form. During the period examined in the original investigation, most granular magnesium was then used in the captive production of desulfurization reagents. Magnesium in granular form was also sold to military flare, chemical, pharmaceutical, and other manufacturers. Shipments to end-users were made directly from the grinding facilities.

*** reported in the original investigation that pricing for pure magnesium in granular form was generally determined in transaction-by-transaction negotiations and in contracts and depended on such factors as the prevailing competitive environment and potential purchase volumes. In general, neither U.S. grinders nor subject importers issued price lists.⁵³ Magnesium prices were usually quoted on a delivered basis, and typical sales terms were net 30 days. (These pricing practices were also reported in the original report to be characteristic of the U.S. magnesium ingot market.)

Domestic Like Product and Domestic Industry

Definition of the Domestic Like Product

In its original determinations, the Commission defined the like product as pure magnesium, consisting of both granular magnesium and magnesium ingot.⁵⁴ The Commission determined that:

“Granular magnesium and magnesium ingot are produced in a continuum of forms and sizes, without any clear dividing line, they share the same chemical properties, and they were sold through similar channels of distribution. They are interchangeable at least for significant end uses, particularly in the desulfurization segment. Although the grinding operations generally took place in separate facilities using separate workers, the same production facilities, processes, and workers are used to produce magnesium ingot and granular magnesium up to the grinding stage.”⁵⁵

The Commission further indicated that with respect to China:

“We find that the lack of a clear dividing line between granular magnesium and magnesium ingot warrants broadening the domestic like product beyond the scope of the Chinese investigation, which is limited to granular magnesium, to include magnesium ingot. In light of the scope language of the existing antidumping duty order on magnesium ingot from China and Commerce’s explicit exclusion of Chinese magnesium ingot from the scope of the Chinese investigation, our broadening of the definition of the

⁵² Unless otherwise noted, all of the discussion in this section is from the original investigation (*see Original Staff Report*, pp. I-13, II-11, and V-3).

⁵³ Published price series for magnesium are found in *American Metal Market*; these prices are based upon list prices and, thus, do not necessarily reflect current market transaction prices.

⁵⁴ *Original Views*, p. 8. Commissioners Miller and Hillman dissented, finding that pure granular magnesium and pure magnesium ingot were separate domestic like products. *Original Miller/Hillman Dissenting Views*, p. 37.

⁵⁵ *Original Views*, pp. 8-9.

domestic like product does not affect our treatment of magnesium ingot from China to the United States during the period of investigation as non-subject imports.”⁵⁶

The Commission declined, however, in its original determinations to further broaden the domestic like product to include alloy magnesium. It stated that:

“We note that in the final phase of these investigations, DSM {an Israeli producer} abandoned its argument that the domestic like product should include alloy and pure magnesium, and there were no additional data or arguments in the final phase of these investigations that warranted reconsideration of the Commission’s finding in the preliminary phase of these investigations that the domestic like product does not include alloy magnesium.”⁵⁷

The Commission’s most recent domestic like product determinations concerning magnesium were made in *Pure and Alloy Magnesium From Canada and Pure Magnesium From China*, Inv. Nos. 701-TA-309-A-B and 731-TA-696 (Second Review),⁵⁸ where it considered whether to include pure and alloy magnesium,⁵⁹ secondary magnesium,⁶⁰ and granular magnesium in one domestic like product. In those reviews, three Commissioners⁶¹ found one domestic like product consisting of all magnesium that

⁵⁶ *Original Views*, p. 8, fn. 34.

⁵⁷ *Original Views*, p. 9, fn. 37.

⁵⁸ *Pure and Alloy Magnesium From Canada and Pure Magnesium From China*, Inv. Nos. 701-TA-309-A-B and 731-TA-696 (Second Review), USITC Pub. 3859 (July 2006)

⁵⁹ The Commission defined one like product in its first investigation involving imported pure and alloy magnesium, Magnesium from Canada (Final) in August 1992. The issue of granular vs. ingot magnesium was not presented or discussed. A U.S.-Canadian binational panel subsequently found the Commission’s like product determination not supported by substantial evidence. On remand, the Commission determined in 1993 that pure and alloy magnesium were separate like products. After this remand determination, in investigations involving both pure and alloy magnesium the Commission found pure and alloy magnesium to be separate like products until its 2005 investigations of alloy magnesium from China and pure and alloy magnesium from Russia where the Commission found pure and alloy magnesium to be a single domestic like product. (Magnesium from China and Russia (Final) in April 2005.) The Commission found that magnesium in ingot and granular forms were included in this definition. (Commissioners Miller and Hillman dissenting). See *Pure and Alloy Magnesium from Canada and Pure Magnesium from China* (Second Review), pp. 3-9 and 34-37, for a full discussion.

⁶⁰ The Commission first determined to include secondary magnesium in a single domestic like product in the preliminary phase of its investigations on magnesium (in alloy form) from China and Russia. It stated that “{i}f secondary magnesium is compared with primary alloy magnesium, it is clear that the products are similar in terms of physical characteristics and uses, interchangeability, customer and producer perceptions, channels of distribution, and price ...” (*Magnesium from China and Russia*, Inv. Nos. 731-TA-1071 and 1072 (Preliminary), USITC Publication 3685, April 2004, p. 10.) The Commission did not explore this issue any further in its final determinations, in which it found pure and alloy magnesium to constitute a single domestic like product. (Magnesium from China and Russia (Final) in April 2005.)

⁶¹ Chairman Pearson and Commissioners Okun and Lane found one domestic like product that encompassed primary and secondary magnesium and magnesium in ingot and granular form. *Pure and Alloy Magnesium from Canada and Pure Magnesium from China* (Second Review), p. 13. With respect to the inclusion of pure and alloy magnesium in one domestic like product, the three Commissioners noted the earlier Commission decision to place pure and alloy magnesium in a single domestic like product in the above-referenced 2005 investigations of alloy magnesium from China and pure and alloy magnesium from Russia (Magnesium from China and Russia (Final) in April 2005). In the 2006 reviews (as in the China/Russia investigations), the Commissioners stated that

(continued...)

included alloy magnesium, secondary magnesium, as well as ingot and granular magnesium. The remaining three Commissioners determined not to expand the domestic like product beyond the scope definitions for Canada and China, instead finding domestic like products co-extensive with Commerce's scope definitions.⁶²

Information addressing like product issues with respect to pure magnesium in both ingot and granular forms and the alloy product was provided in the original staff report placed on the record of this

⁶¹ (...continued)

circumstances had changed sufficiently as to blur the dividing line between pure and alloy magnesium. The three Commissioners also indicated that interchangeability and overlapping uses in aluminum production (the single largest use for magnesium) between pure and alloy magnesium had increased over time. Ibid., pp. 9-11. With respect to the inclusion of secondary aluminum, the Commissioners stated in the 2006 reviews that there was no indication in the record that the circumstances that led the Commission to include secondary and primary magnesium in the 2005 China/Russia investigations had changed. Ibid., p. 12. Likewise, the three Commissioners noted that there was no evidence that the product or characteristics of granular magnesium had changed since prior investigations where it was included in the domestic like product with cast magnesium. Ibid., p. 12.

⁶² For the review of the countervailing duty orders on pure and alloy magnesium from Canada, Vice Chairman Shara L. Aranoff and Commissioners Jennifer A. Hillman and Stephen Koplan found two domestic like products: one encompassing pure magnesium (not including granular magnesium) and the other encompassing primary and secondary alloy magnesium (but not including granular magnesium). (However, Commissioner Koplan found that the pure magnesium domestic like product included both cast and granular pure magnesium.) For the review of the antidumping duty order on pure magnesium from China, the Commissioners found one domestic like product encompassing pure magnesium coextensive with the scope of the review but not including secondary, alloy, or granular magnesium. (Commissioner Koplan again found that the pure magnesium domestic like product included both cast and granular pure magnesium.) *Pure and Alloy Magnesium from Canada and Pure Magnesium from China* (Second Review), pp. 42-43.

With respect to the issue of pure magnesium vs. alloy magnesium, the three Commissioners stated that “{i}n sum, we find that based on the record in these reviews, a departure from the Commission's decisions in the 1993 remand determination and in the 2000 first sunset reviews that pure and alloy magnesium are separate like products is not warranted. Although Petitioner argues that this is a case involving a continuum of products, in our view there is a clear dividing line between pure and alloy magnesium which is most evident in the different predominant uses for the two products and the lack of substantial interchangeability between them under normal market conditions.” Ibid., p. 40. With respect to the issue of including secondary alloy magnesium in the domestic like product, the Commissioners stated that “there is no indication in the record of these reviews that the circumstances that led the Commission to include secondary and primary magnesium in the same like product in the 2005 China/Russia investigations have changed” and that “the record indicates that primary and secondary alloy magnesium are nearly identical in terms of physical characteristics and uses, interchangeability, customer and producer perceptions, channels of distribution, and price.” Ibid., pp. 40-41. With reference to the issue of ingot (cast) vs. granular pure magnesium, Vice Chairman Aranoff and Commissioner Hillman cite dissenting views in earlier 2001 and 2005 investigations where the magnesium products were found to be separate domestic like products. They stated: “{i}n particular, while ingot (cast) and granular magnesium share some basic properties, they differ in size, dimensions, shape, and other physical characteristics, such as volatility; granular magnesium has a different end-use, namely steel desulfurization. There is no meaningful overlap in manufacturing facilities and employees, with granular magnesium for commercial sale being produced exclusively by grinders, which do not produce ingot magnesium. Ingot and granular magnesium are not interchangeable since ingot magnesium cannot be used for steel desulfurization without being converted to granular form; because of the differences in end uses, producer and customer perceptions differ, as do channels of distribution. Granular magnesium appears to command a price premium over ingot magnesium.” Ibid., p. 42, citing Pure Magnesium from China and Israel (Final) in November 2001 and Magnesium from China and Russia (Final) in April 2005.

review.⁶³ More recent information addressing domestic like product issues for (1) pure vs. alloy magnesium, (2) primary vs. secondary magnesium, and (3) cast vs. granular magnesium is available in the public report for the Commission's second five-year full reviews on pure and alloy magnesium from Canada and pure magnesium from China.⁶⁴

Definition of the Domestic Industry

In the original investigation, the Commission defined the domestic industry as producers of pure magnesium, including grinding operations.⁶⁵ It stated that:

“Although the evidence is mixed, on balance, we find that grinding operations constitute sufficient production-related activity to qualify these firms as domestic producers. The capital investment for grinding operations is not insignificant, nor were the capital expenditures during the period of investigation. Grinding is not a particularly complex process, but ***, and there is some degree of technical expertise involved in handling granular magnesium. Moreover, the Commission has found in previous investigations involving other products that grinding could be sufficient production-related activity. The value-added data are of limited use, given the fact that they also include reagent activities. Although employment levels are low, they are not insignificant.”⁶⁶

The Commission further found that appropriate circumstances existed to exclude ESM Manufacturing (“ESM”) from the domestic industry as a related party.⁶⁷

In the recent second reviews on pure and alloy magnesium from Canada and pure magnesium from China, Chairman Pearson and Commissioners Okun and Lane determined that there was one domestic industry composed of the domestic producers of pure and alloy magnesium, again including

⁶³ See *Original Staff Report*, pp. I-12 and I-13 for a discussion of the physical characteristics and uses, manufacturing facilities and production employees, interchangeability and customer and producer perceptions, channels of distribution, and price of pure granular magnesium compared to pure magnesium ingot.

⁶⁴ See *Pure and Alloy Magnesium From Canada and Pure Magnesium From China* (Second Review), pp. I-27 through I-32, for recent information on the physical characteristics and uses, common manufacturing facilities and production employees, interchangeability, customer and producer perceptions, and channels of distribution of pure vs alloy magnesium, primary vs. secondary magnesium, and cast vs. granular magnesium.

⁶⁵ *Original Views*, p. 11. Commissioner Okun did not join the Commission’s views of the domestic industry, instead concluding that grinders/reagent producers do not engage in sufficient production-related activity to qualify as domestic producers. *Original Dissenting Views of Commissioner Okun*, p. 29. The Commissioner stated that “it is clear that the value added by grinders/reagent producers is low. Capital investment by grinders/reagent producers also appears low, particularly compared to the capital investment required to establish and maintain a magnesium ingot facility. Grinding is not particularly complex even though there is some degree of technical expertise involved in handling granular magnesium because of its reactivity. While employment levels are not insignificant, they are low compared to magnesium ingot production employment levels.” *Ibid.*, p. 30.

Commissioners Miller and Hillman also dissented, finding two separate domestic industries, one producing pure granular magnesium and one producing pure magnesium ingot. *Original Miller/Hillman Dissenting Views*, p. 39.

⁶⁶ Confidential *Original Views*, pp. 14-15. The Commission further concluded that *** did not engage in sufficient production-related activity to qualify it as a domestic producer. *Ibid.*

⁶⁷ *Original Views*, p. 13. The Commission stated that it based its finding on “***.” Confidential *Original Views*, p. 18. It also stated that the level of ESM’s imports of *** was significant, equivalent to ***. *Ibid.* The Commission did not exclude ESM from its analysis of the effect of subject imports from ***. *Ibid.*, fn. 64.

primary and secondary magnesium and magnesium in ingot and granular form. The three Commissioners also included grinders in the domestic industry producing magnesium but did not include magnesium diecasters in the domestic alloy magnesium industry.⁶⁸ These three Commissioners noted that there were no data provided by grinders in those reviews. Vice Chairman Aranoff and Commissioners Hillman and Koplan found that there were two domestic industries composed respectively of the domestic producer of pure magnesium (US Magnesium) and the domestic producers of alloy magnesium (US Magnesium and the secondary producers). For the review regarding China, the latter three Commissioners determined that there was one domestic industry composed of the domestic producer of pure magnesium (US Magnesium). With the exception of Commissioner Koplan, they further concluded that diecasters did not engage in sufficient production-related activities in their scrap recycling operations to be included in the domestic industry producing alloy magnesium.⁶⁹

Position of the Domestic Interested Party

The domestic interested party in this five-year review, US Magnesium, urged the Commission in its response to the Commission's notice of institution to again include both pure magnesium in granular form and pure magnesium ingot in the definition of the domestic like product and, further, to expand the definition to include alloy magnesium. The domestic interested party indicated agreement with the Commission's original determination to include grinders in the domestic industry.⁷⁰ In a subsequent letter dated December 5, 2006, US Magnesium indicated support for a single domestic like product of primary (pure and alloy) magnesium and secondary magnesium (or magnesium produced by recycling magnesium-based scrap).⁷¹

THE INDUSTRY IN THE UNITED STATES

U.S. Producers' Domestic Operations⁷²

At the time of the original investigation there were two producers of pure magnesium ingot that represented 100 percent of U.S. production of that product in 2000: Magcorp and Northwest Alloys, Inc. ("Northwest Alloys").⁷³ The Commission also identified five pure granular magnesium producers that represented nearly all U.S. production of pure granular magnesium in 2000: ESM Manufacturing ("ESM"); Magcorp; Reade Manufacturing Co. ("Reade"); Rossborough Manufacturing Co.

⁶⁸ *Pure and Alloy Magnesium from Canada and Pure Magnesium from China* (Second Review), pp. 14-15. The Commission had, however, considered diecasters to be domestic producers of secondary magnesium in its views in the 2004-05 investigations on alloy magnesium from China and pure and alloy magnesium from Russia. It noted at the time, however, the absence of data from diecasters. *See Magnesium from China and Russia*, Inv. Nos. 731-TA-1071 and 1072 (Final), USITC Publication 3763 (April 2005), p. 12, fn. 62.

⁶⁹ *Pure and Alloy Magnesium from Canada and Pure Magnesium from China* (Second Review), pp. 43-45. Commissioner Koplan determined that diecasters with secondary scrap recycling operations were part of the domestic industry producing alloy magnesium. *Ibid.*, p. 43, fn. 274.

⁷⁰ *Response*, p. 21.

⁷¹ Letter from US Magnesium, December 5, 2006, p. 2.

⁷² Unless otherwise noted, all of the discussion in this section is from the original investigation (*see Original Staff Report*, pp. III-2 through III-6) supplemented with information on the public record for the Commission's full review in 2006 on pure and alloy magnesium (*see Pure and Alloy Magnesium From Canada and Pure Magnesium From China*, pp. I-32, I-33, and III-5).

⁷³ A third magnesium ingot producer, Dow Magnesium, exited the domestic industry in November 1998.

(“Rossborough”); and Superior Powder.⁷⁴ Table I-5 presents the location of the production facilities, positions with respect to the original petition, and shares of production, by firm, in 2000.

Table I-5

Pure magnesium: U.S. producers, location of production facilities, position with respect to the petition, and share of U.S. production, by products, 2000

Product and company	Location of production facilities	Position with respect to the petition	Production in 2000 (metric tons)	Share of U.S. production in 2000 (percent)
Ingot:				
Dow Magnesium ¹	Freeport, TX	***	0	0
Magcorp	Rowley, UT	Petitioner	***	***
Northwest Alloys	Addy, WA	Oppose	***	***
Total	--	--	***	100.0
Granules:				
ESM	Saxonburg, PA Kingsbury, IN	***	***	***
Magcorp	Rowley, UT	Petitioner	***	***
Reade ²	Lakehurst, NJ Tamaqua, PA	Oppose	***	***
Rossborough ³	Avon Lake, OH Walkerton, IN	Oppose	***	***
Superior Powder	Stoneboro, PA	Oppose	***	***
Total	--	--	***	100.0
¹ Dow Magnesium exited the domestic industry in November 1998 after its 65,000-metric-ton facility in Freeport, TX, suffered extensive damage from lightning strikes and flooding. Dow was unable to provide a completed questionnaire response in the original investigation. ***. ² Includes the operations of related firm Hart Metals, Tamaqua, PA. ³ Remacor and Rossborough merged in August 2001 after Remacor filed for Chapter 11 bankruptcy in March 2001. Rossborough ***. Note 1.--Parties during the original investigation estimated that a metric ton of magnesium ingot was roughly equivalent to a metric ton of granular magnesium. Original Views, p. 18, fn. 97 (citing hearing transcript, pp. 210-211). Note 2.--Does not include data for Remacor prior to its merger with Rossborough in August 2001. Remacor was believed to have produced about *** metric tons of pure granular magnesium in 2000. Source: <i>Original Staff Report</i>, p. III-2 (table III-1).				

⁷⁴ As noted earlier, ESM was excluded by the Commission in its original determination from the domestic industry under the related parties provision; the Commission further concluded that the activities of *** did not constitute sufficient production-related activity to qualify it as a domestic producer.

US Magnesium⁷⁵ indicated in its response to the Commission's notice of institution that it is the only remaining producer of primary pure (and alloy) magnesium in the United States.⁷⁶ US Magnesium also identified the four following current U.S. grinders in its response: ESM Group, Inc.; Hart Metals, Inc.; Reade Manufacturing Co.; and Rossborough Manufacturing Co., but did not provide any information on the firms manufacturing secondary magnesium.⁷⁷ US Magnesium claims that alone it currently accounts for well over a majority of total U.S. production of the domestic like product (see calculated shares in footnote 4 of this report that were provided by the domestic interested party).⁷⁸ Information on firms that produce pure and alloy magnesium in ingot form (primary magnesium producers) and firms that produce magnesium in granular form (grinders) follows. Also presented below is available information on secondary magnesium producers and on diecasters.

Primary Magnesium Producers

Magcorp was, at the time of the original investigation, a wholly owned subsidiary of Renco Metals, Salt Lake City, UT, which in turn is a wholly owned subsidiary of the holding company The Renco Group, New York, NY. The firm produced both pure and alloy magnesium ingot and slab although, as shown in table I-5, it accounted for *** of total U.S. production of granular magnesium in 2000. On August 3, 2001, Magcorp filed for Chapter 11 bankruptcy in Federal Bankruptcy Court in New York, NY, blaming imports and the cost of electricity. The bankruptcy court authorized the sale of substantially all of Magcorp's assets to US Magnesium. The sale was completed on June 24, 2002. Renco Group, a holding company that is, in turn, owned by Mr. Ira Rennert and certain family trusts, is the direct parent of US Magnesium. Prior to its purchase by US Magnesium, Magcorp had completed a \$50 million capital modernization program at its Rowley, UT plant, that, according to a company press release, "resulted in the largest decrease in chlorine emissions in the United States and reduced electrical energy demand by more than 25%. The modernization has enabled the facility to survive and maintain more than 420 Utah jobs."⁷⁹

Northwest Alloys, a wholly owned subsidiary of Aluminum Company of America (Alcoa), Pittsburgh, PA, was *** of pure magnesium in the United States during the original investigation. It also produced alloy magnesium. Most of Northwest Alloys' shipments were transferred to parent company Alcoa for use in the production of aluminum. Northwest Alloy ceased producing magnesium in October 2001. In its press release of June 22, 2001, Alcoa announced that it would shut down Northwest Alloys as of October 1, 2001 "due to high production costs and unfavorable market conditions." (Electricity costs escalated sharply in the U.S. Pacific Northwest as a result of a power crisis.)⁸⁰

⁷⁵ US Magnesium is the successor firm to Magcorp, the petitioner in the original investigation.

⁷⁶ *Response*, p. 17.

⁷⁷ *Response*, p. 18.

⁷⁸ As noted earlier, the domestic interested party argues that the domestic industry should be defined "to include the U.S. companies that grind magnesium ingot into granular magnesium and U.S. companies that produce secondary magnesium, in addition to US Magnesium." It further states that "{r}egardless of how the Commission defines the industry, however, US Magnesium alone accounts for a substantial majority of domestic production of the like product." Domestic interested party letter dated December 11, 2006 ("adequacy comments"), p. 1, citing its *Response*, pp. 6-7.

⁷⁹ USMag Press Release (September 23, 2004) from www.usmagnesium.com, retrieved January 31, 2007.

⁸⁰ Alcoa also stated that its magnesium requirements would be sourced through its worldwide contacts.

Magnesium Grinders⁸¹

In its response to the Commission's notice of institution in this review, US Magnesium indicated that to the best of its knowledge, the current U.S. magnesium grinders are ESM Group Inc.; Hart Metals, Inc; Reade Manufacturing Co; and Rossborough Manufacturing Co.⁸² ESM, Hart, Reade, Remacor (which merged with Rossborough in August 2001), and Superior Powder were grinders in the original investigation.

ESM, a wholly owned subsidiary of SKW Americas, Inc., was described in the original investigation as a grinder of pure magnesium ingot, chips, and granules and produced desulfurization reagents for the steel industry and powdered magnesium for use in the chemical and munitions industries. ESM was reported to be related to ESM (Tianjin) Company, Ltd., Tianjin, China, a Chinese producer/exporter of pure ingot and granular magnesium.⁸³ *** of ESM's shipments were internal transfers for use in making downstream products such as reagents.⁸⁴ At the present time, ESM continues to operate within the SKW umbrella and is a subsidiary of Degussa (Germany). It manufactures magnesium-based steel desulfurization reagents (along with injection equipment and slag conditioners) at three U.S. plants (two in Pennsylvania and one in Indiana) and at a plant in Canada and one in Tianjin, China.⁸⁵

Hart Metals, related to Reade in the original investigation, was engaged in the mechanical grinding and atomization of pure magnesium. It has been acquired by the Luxter Group and is one of the magnesium powder business units within Magnesium Elektron (Manchester, UK). Hart Metals is still based in Tamaqua, PA.

Reade produced pure magnesium granules, powder, and chips for use in the *** during the original investigation. It continues to operate its Lakehurst, NJ facility and remains a division of Magnesium Elektron (Manchester, UK).⁸⁶

Remacor produced pure magnesium powder for the steel desulfurization market. *** during the original investigation. ***. Remacor filed for Chapter 11 bankruptcy in March 2001 and merged with Rossborough in August 2001.

Rossborough was reported as producing pure magnesium powder for the steel desulfurization market during the original investigation. The company has a production facility in Walkerton, IN.⁸⁷ ***. It continues to sell magnesium products (chips, powder, and blends) for use in steel desulfurization⁸⁸ and is described by the USGS as importing a mixture of magnesium and limestone from China for subsequent blending at the Walkerton, IN plant. After several reorganizations and filing for Chapter 11 bankruptcy,

⁸¹ No grinders provided data in response to the Commission's questionnaire in Pure and Alloy Magnesium from Canada and Pure Magnesium from China (Second Review) in July 2006. Most firms returned a "no" response to the producers' questionnaire, indicating that they did not produce magnesium but rather provided a service to end users by transforming cast pure magnesium into powdered magnesium.

⁸² *Response*, p. 18.

⁸³ ***.

⁸⁴ During the original investigation, ***.

⁸⁵ "ESM: Introduction" from ESM II LP USA, retrieved January 31, 2007.

⁸⁶ Reade also operated as a division of Magnesium Elektron during the original investigation. "About READE" from www.reade.com, retrieved January 31, 2007.

⁸⁷ ***. Producers' questionnaire response of Rossborough, p. 3. Rossborough ***. Producers' questionnaire response of Rossborough in the original investigation.

⁸⁸ From www.magnesium.com, retrieved January 31, 2007.

Rosborough reorganized as Magnesium Technologies, Inc. In February 2006, Magnesium Technologies was purchased by Opta Minerals, Inc. (Canada).⁸⁹

Superior Powder, Stoneboro, PA, produced pure magnesium powder for the steel desulfurization market. ***.

As shown above, grinders that produced granular magnesium internally consumed the production in the manufacture of reagent mixtures for desulfurization. In 2000, *** percent of total U.S. producers' granular magnesium shipments were to the desulfurization market.⁹⁰

US Magnesium continues to supply *** U.S. grinders with pure magnesium ingot that the grinders process into granular form.⁹¹

Secondary Magnesium Producers

There were four known U.S. producers of secondary alloy magnesium (remelted from scrap) during 2000-05 that sold magnesium commercially, namely Advanced Magnesium Alloys Corp. ("Amacor");⁹² Garfield Alloys, Inc.; Halaco Engineering, Inc.; and MagReTech, Inc. Of these firms, only Amacor and MagReTech currently produce secondary magnesium, as Garfield Alloys' production facility was destroyed in a fire on December 29, 2003, and Halaco Engineering filed for chapter 11 bankruptcy protection on July 24, 2002 and ceased production of magnesium on September 23, 2004.⁹³ A new firm, MagPro LLC, started magnesium recycling operations in 2006 in Camden, TN.⁹⁴

Magnesium Diecasters

In addition to firms such as Amacor and MagReTech that sell secondary alloy magnesium commercially, several diecasters have produced secondary alloy magnesium from scrap for use in their own diecasting operations, namely Gibbs Die Casting, Inc.; Meridian Technologies, Inc.; Spartan Light Metal Products, Inc.; and possibly others. Of these, only Spartan provided a full response to the Commission's questionnaire in its second review of pure and alloy magnesium from Canada and pure magnesium from China in 2006, despite staff efforts to obtain full responses from the other firms. The Commission considered diecasters to be domestic producers of secondary magnesium in its views in the 2004-05 investigations on alloy magnesium from China and pure and alloy magnesium from Russia and included them in the domestic industry, although the Commission noted that it had insufficient data on

⁸⁹ USGS, "Mineral Industry Surveys," May 2006.

⁹⁰ Confidential *Original Miller/Hillman Dissenting Views*, p. 64, fn. 77, citing the producer questionnaire responses of ***. The Commissioners further stated that: "{w}e note that, while ***. Its shipments of granular magnesium are entirely captively consumed for production of that reagent. Similarly, ***. Thus, the actual portion of the industry's shipments that is captively consumed is likely much higher than indicated in the Staff Report." Ibid., p. 55, fn. 35.

⁹¹ Letter from US Magnesium, December 5, 2006, p. 3.

⁹² Amacor began operations in 2001. On April 3, 2003, Amacor purchased Xstrata Magnesium Corporation (XMC) from Xstrata PLC, Zug, Switzerland, for \$1.2 million. The major asset of XMC is a magnesium recycling plant in Anderson, IN. The Xstrata plant was commissioned in 2000 to recycle scrap to produce magnesium alloy for the U.S. auto industry. A January 2005 fire at its production facility temporarily halted its production. *Pure and Alloy Magnesium From Canada and Pure Magnesium From China*, p. III-2.

⁹³ *Magnesium From China and Russia*, USITC Publication 3763, April 2005, p. I-33.

⁹⁴ 2005 *Minerals Handbook (Magnesium)*, "Magnesium" (Deborah Kramer), p. 46.2, attachment 3 to the Response and USGS "Mineral Industry Surveys," August 2006.

their operations to include them in the industry data.⁹⁵ However, in the 2005-06 reviews on pure and alloy magnesium from Canada and pure magnesium from China, the Commission excluded diecasters from the domestic industry.”⁹⁶

U.S. Producers’ Imports and Purchases

*** during the original investigation. With respect to the grinders, ESM ***. As noted earlier, ESM was also related to ESM (Tianjin) Company, Ltd., Tianjin, China, which is a Chinese producer/exporter of pure ingot and granular magnesium. *** also purchased pure magnesium ingot from China.⁹⁷ The Commission stated in its original views that “there is evidence that over the period of investigation, grinders, in particular, who use either magnesium ingot (once ground) or granular magnesium in their production processes, displaced purchases of domestic and imported magnesium ingot with purchases of granular magnesium from China.”⁹⁸ US Magnesium estimates that “*** imported *** metric tons of imported pure magnesium in 2005 to be processed into granular form.”⁹⁹

U.S. Production, Capacity, Shipments, and Financial Data

Pure Magnesium

Data reported by the U.S. magnesium industry in the Commission’s original investigation and in response to its review institution notice are presented in tables I-6 (pure granular magnesium) and I-7 (pure magnesium ingot). To avoid double-counting the pure magnesium ingot that is consumed in the production of the downstream granular product, the Commission separately analyzed data for granules and ingots during the original investigation. An added complication to the Commission’s analysis in this review is its determination during the original investigation to exclude certain grinders from the domestic industry. Accordingly, table I-6 presents both the data gathered by Commission staff during the original investigation (shown under header (1) labeled “data for all reporting firms shown in table I-5 of this report”) and data for the firms that (essentially) remained within (or were not excluded from) the domestic industry and on which the Commission based its views (shown under header (2) labeled “data for *** and ***”).

Any comparison of total U.S. production of granular magnesium in 1998-2000 to the data shown for 2005 in table I-6 under header (1) is potentially inaccurate in that the 2005 production figure is based only on US Magnesium’s shipments to U.S. grinders and may not reflect all purchases of imported ingot by grinders for subsequent granular production. (As shown in the table notes, US Magnesium does, however, include the estimated *** metric tons of imported ingot known to be purchased for grinding by ***.) With respect to the data listed under header (2) on which the Commission based its original determination for China, any comparison of the 1998-2000 production figures to US Magnesium’s reported production figure in header (1) for 2005 is inaccurate to the extent that any of US Magnesium’s

⁹⁵ *Magnesium from China and Russia*, p. 12, fn. 62.

⁹⁶ *Pure and Alloy Magnesium From Canada and Pure Magnesium From China*, pp. 15 and 44. Commissioner Koplan determined that diecasters with secondary scrap recycling operations are part of the domestic industry. *Ibid.*, p. 44, fn. 277.

⁹⁷ *Original Staff Report*, pp. III-2-III-6.

⁹⁸ *Original Views*, p. 7.

⁹⁹ Letter from US Magnesium, December 5, 2006, p. 3. US Magnesium did not provide ***. US Magnesium also estimated that ***. *Ibid.*, p. 4.

Table I-6

Pure granular magnesium: U.S. producers' capacity, production, and U.S. shipments, 1998-2000, and 2005

Item	Original investigation			Review
	1998	1999	2000	2005
(1) Data for all reporting firms shown in table I-5 of this report				
Capacity (<i>metric tons</i>)	***	***	***	(1)
Production (<i>metric tons</i>)	***	***	***	***2
Capacity utilization (<i>percent</i>)	***	***	***	(1)
U.S. shipments: Quantity:				
Open-market (<i>metric tons</i>)	***	***	***	(1)
Captive consumption (<i>metric tons</i>)	***	***	***	(1)
Transfers to related firms (<i>metric tons</i>)	***	***	***	(1)
Total (<i>metric tons</i>)	***	***	***	(1)
Value:				
Open-market (<i>1,000 dollars</i>)	***	***	***	(1)
Captive consumption (<i>1,000 dollars</i>)	***	***	***	(1)
Transfers to related firms (<i>1,000 dollars</i>)	***	***	***	(1)
Total (<i>1,000 dollars</i>)	***	***	***	(1)
Unit value:				
Open-market (<i>per metric ton</i>)	\$***	\$***	\$***	(1)
Captive consumption (<i>per metric ton</i>)	***	***	***	(1)
Transfers to related firms (<i>per metric ton</i>)	(1)	(1)	(1)	(1)
Total (<i>per metric ton</i>)	***	***	***	(1)
(2) Data for *** and ***				
Capacity (<i>metric tons</i>)	***	(1)	***	(1)
Production (<i>metric tons</i>)	***	(1)	***	(1)
Capacity utilization (<i>percent</i>)	***	(1)	***	(1)
U.S. shipments: Quantity:				
Open-market (***) (<i>metric tons</i>)	***	***	***	(1)
Captive (***) (<i>metric tons</i>)	***	***	***	(1)
Total (<i>metric tons</i>)	***	***	***	(1)

Notes on next page.

Continuation.

¹ Not available.

² Calculated by adding the *** metric tons of pure ingot magnesium produced by US Magnesium and shipped to U.S. grinders plus the estimated *** metric tons of imported pure ingot magnesium ***. Letter from US Magnesium, December 5, 2006, p. 3. Calculated production is understated in that it excludes any pure magnesium in granular form that is produced by US Magnesium and sold to firms other than U.S. grinders. There were *** such sales during the original investigation (table I-5).

Note.—Reporting domestic manufacturers are believed to account for nearly all known U.S. pure granular magnesium production in 2000. A “portion” of the data supplied by grinders/reagent producers during the original investigation, however, reflects the production and sale of reagents and therefore overstates their grinding operations.

Source notes:

1. Aggregate data for 1998-2000: *Original Staff Report*, pp. III-7 and III-8 through III-10 (tables III-2 and III-3).
2. Data for *** and *** for 1998-2000: Confidential *Original Miller/Hillman Dissenting Views*, p. 69, fn. 102.
3. Data for 2005: Letter from US Magnesium, December 5, 2006, p. 3.

Table I-7

Pure magnesium ingot: U.S. producers' capacity, production, and U.S. shipments, 1998-2000, and 2005

Item	Original investigation			Review
	1998	1999	2000	2005
Capacity (<i>metric tons</i>)	***	***	***	(1)
Production (<i>metric tons</i>)	***	***	***	***
Capacity utilization (<i>percent</i>)	***	***	***	(1)
U.S. shipments: Quantity: Open-market (<i>metric tons</i>)	***	***	***	***
Internal consumption (<i>metric tons</i>)	***	***	***	***
Transfers to related firms (<i>metric tons</i>)	***	***	***	***
Total (<i>metric tons</i>)	***	***	***	***
Value: Open-market (<i>1,000 dollars</i>)	***	***	***	***
Internal consumption (<i>1,000 dollars</i>)	***	***	***	***
Transfers to related firms (<i>1,000 dollars</i>)	***	***	***	***
Total (<i>1,000 dollars</i>)	***	***	***	***
Unit value: Open-market (<i>per metric ton</i>)	\$***	\$***	\$***	\$***
Internal consumption (<i>per metric ton</i>)	***	***	***	-
Transfers to related firms (<i>per metric ton</i>)	***	***	***	-
Total (<i>per metric ton</i>)	***	***	***	***

¹ Plant capacity (pure and alloy) reported at 43,000 metric tons. ***.

Note 1.—Reporting domestic manufacturers are believed to account for all known U.S. pure magnesium ingot production.

Note 2.—***. *Response*, attachment 8. US Magnesium states that it *** following Commerce's 2002 scope ruling that Chinese pure magnesium ingot imported into Canada, ground into powder, and exported to the United States is covered by the order. *Ibid.*, pp. 10-11.

Source notes:

1. 1998-2000 data: Compiled from data submitted in response to Commission questionnaires as presented in the *Original Staff Report*, pp. III-7 and III-8 through III-10 (tables III-2 and III-3).

2. 2005 data: Capacity figure ("About US Magnesium" from www.usmagnesium.com retrieved January 31, 2007). Figures for pure magnesium produced by US Magnesium from *Response*, attachment 8, and letter from US Magnesium, December 5, 2006, p. 3. Reported data are overstated in that they include any pure magnesium in granular form produced by the company. There were *** such sales during the original investigation (table I-5).

ingot shipments to U.S. grinders in 2005 were to firms other than *** and ***.¹⁰⁰ Finally, as shown in the note to table I-6, a “portion” of the data for 1998-2000 supplied by grinders/reagent producers during the original investigation reflected the production and sale of reagents and therefore overstated their grinding operations; this distortion would not be present in the 2005 production figure, which reflects the volume of ingot input to the grinding operations.

The 1998-2000 data series and 2005 figures presented in table I-7 for pure magnesium ingot are believed to be comparable (i.e., measure all U.S. pure ingot magnesium production). The *** percent decline in U.S. ingot shipments from 2000 to 2005 reflects the October 2001 shutdown of Northwest Alloys. As indicated earlier, most of Northwest Alloys’ shipments had been transferred to its parent company, Alcoa. Open-market U.S. shipments of magnesium ingot increased by *** percent from 2000 to 2005. With respect to the individual operations of the petitioner/domestic interested party, Magcorp produced *** metric tons of pure magnesium ingot in 2000 (table I-5) while US Magnesium reported production of *** metric tons in 2005 (table I-7), resulting in a production increase of *** percent from 2000 to 2005.

US Magnesium argues in its response to the notice of institution that the order has been beneficial to its operations and, in support of its position, cites the decline in its shipments of pure magnesium ingot to U.S. grinders from 1996 to 1999 compared with the increase in U.S. imports of granular magnesium from China during that period, and the fact that in the period following the imposition of the order, imports of granular magnesium from China dropped sharply and US Magnesium ***.¹⁰¹

Item	1996	1999	2005 ¹
Quantity (metric tons)			
Magcorp's U.S. shipments of pure magnesium ingot to U.S. grinders	*** ^{2 3}	*** ^{2 3}	*** ⁴
U.S. imports of granular magnesium from China	1,652 ⁵	13,185 ⁵	1,484 ⁵
¹ US Magnesium cited data only for 1996 and 1999 in its <i>Response</i> . ² Figures do not appear to include a lost sale of *** metric tons annually to ***. ³ <i>Response</i> , p. 10. ⁴ Letter from US Magnesium, December 5, 2006, p. 3. ⁵ Official Commerce statistics for HTS subheading 8104.30.00.			

US Magnesium states in its response that it *** in the period following the imposition of the order.¹⁰² As shown above, however, its shipments of pure magnesium ingot to grinders in 2005 *** the 1996 level.

¹⁰⁰ ***. As is discussed in greater detail in the section of this report entitled “U.S. importers,” ESM indicated during the preliminary phase of the investigations that ***. Confidential *Original Views*, p. 18.

¹⁰¹ *Response*, p. 10, and attachment 1. The Commission indicated in its views that grinders “essentially replaced magnesium ingot purchases with granular magnesium imports during the period of investigation.” *Original Views*, p. 9, fn. 35. With respect to Rossborough’s operations, the Commission stated: “its ***, it admits that some of its grinding operations have been idled, and ***.” Confidential *Original Views*, p. 17, fn. 61.

¹⁰² *Response*, p. 10.

Data on the financial experience of the U.S. magnesium industry for the period following the imposition of the antidumping duty order are not available.¹⁰³ See Part VI of the original staff report for financial data on both trade sales and trade and transfer activities of magnesium ingot for the period examined during the original investigation. Financial data gathered on magnesium in granular form were incomplete. According to the staff report: “{n}ot all reporting firms were able to provide profit and loss information that was specific to pure granular magnesium since the powder is generally used in the production of downstream desulfurization reagents. With respect to the firms that were defined as the domestic industry, ***.”¹⁰⁴

Alloy Magnesium

With respect to alloy magnesium, US Magnesium manufactured *** metric tons of alloy magnesium in 2005.¹⁰⁵ US Magnesium is currently the only U.S. producer of (primary) alloy magnesium, although there may be some “U.S. production” of alloy magnesium in granular form from imported product by U.S. grinders.¹⁰⁶ There are no data on the confidential record for this review of the U.S. industry’s production of alloy magnesium during the period for which data were gathered during the original investigation (1998-2000). Data on such production were not gathered during the original investigation and, while collected by the Commission in subsequent investigations and reviews (most recently in Pure and Alloy Magnesium From Canada and Pure Magnesium From China (Second Review) in July 2006), they were suppressed as confidential in the Commission’s public reports and therefore are not included in the record of this review. The USGS likewise does not publish data compiled on U.S. production of primary magnesium (pure plus alloy) to avoid disclosing company proprietary information.¹⁰⁷ The USGS estimates U.S. primary magnesium production capacity at 45,000 metric tons in 2005.¹⁰⁸ US Magnesium produced *** metric tons¹⁰⁹ of primary magnesium in 2005.

¹⁰³ Virtually all data on the U.S. magnesium industry collected during the recent reviews on pure and alloy magnesium from Canada and pure magnesium from China were business proprietary and, accordingly, were redacted from the public report.

¹⁰⁴ *Original Staff Report*, pp. VI-13. The Commission cited the individual questionnaire responses of *** in its views where it stated that *** and capital expenditures and research and development expenses of the domestic granular magnesium industry *** over the period of investigation. Confidential *Original Views*, pp. 30-31, fn. 118. Commissioners Miller and Hillman noted in their dissent that the data on the record indicated “***.” Confidential *Original Miller/Hillman Dissenting Views*, pp. 68-69.

¹⁰⁵ *Response*, attachment 8. US Magnesium further reported U.S. commercial shipments, in 2005, of *** metric tons valued at \$*** and U.S. exports of ***. Ibid.

¹⁰⁶ As noted in the section of this report on “U.S. Producers’ Imports and Purchases,” *** purchased imported alloy magnesium to convert to granular form.

¹⁰⁷ See table 8 of the *USGS 2005 Minerals Handbook (Magnesium)* included as attachment 3 to the *Response*.

¹⁰⁸ See table 7 of the *USGS 2005 Minerals Handbook (Magnesium)* included as attachment 3 to the *Response*. USGS worldwide capacity data include capacity at operating plants as well as at plants on standby basis, although it is not clear in the table notes if any such standby data are included in figures reported for the United States.

¹⁰⁹ Calculated from US Magnesium’s reported production of *** metric tons of pure magnesium and *** metric tons of alloy magnesium in 2005. *Response*, attachment 8.

Secondary Magnesium

With respect to secondary magnesium, the following tabulation lists figures on U.S. production published by the USGS:¹¹⁰

U.S. production	2001	2002	2003	2004	2005
Metric tons					
Secondary magnesium	65,800	73,600	70,100	72,000	72,800

US Magnesium, in contrast, estimates that secondary magnesium producers produced *** metric tons of alloy magnesium in 2005.¹¹¹ Virtually all secondary magnesium is alloy magnesium.¹¹² Based upon the calculations provided in notes 7 through 10 to its letter of December 5, 2006, ***. The apparent discrepancy between the USGS figures for U.S. secondary magnesium production and that supplied by US Magnesium appears to be due to the “production” of secondary magnesium from scrap by diecasters for captive use in their diecasting operations.¹¹³ As discussed earlier, the Commission did not include diecasters in its definition of the domestic industry in Pure and Alloy Magnesium From Canada and Pure Magnesium From China (Second Review) in July 2006 although it had done so in earlier investigations.¹¹⁴

Other information on the record concerning US Magnesium is an announcement noted in the USGS yearbook of a delay in the startup of a planned expansion of 11,000 metric tons per year. According to the yearbook: “{t}he company cited unfavorable market conditions that did not exist when the expansion plans were announced in 2004 as the main reason for its decision to delay the expansion. U.S. Magnesium did not announce a new date to bring the additional capacity online (Blarney and McBeth, 2005).”¹¹⁵

¹¹⁰ See table 1 of the *USGS 2005 Minerals Handbook (Magnesium)* included as attachment 3 to the *Response*.

¹¹¹ Letter from US Magnesium, December 5, 2006, p. 4.

¹¹² *Pure and Alloy Magnesium From Canada and Pure Magnesium From China*, p. 40.

¹¹³ *Ibid.*, pp. I-33 and III-2.

¹¹⁴ Commissioner Koplan did include diecasters in the domestic industry in the 2006 reviews.

¹¹⁵ *USGS 2005 Minerals Yearbook*, “Magnesium” (Deborah Kramer), p. 46 (citing “US Magnesium delays expansion startup, cites excess supply” (Andy Blamey and Karen McBeth), *Platts Metals Week*, v. 76, no. 43, October 24, 2005, pp. 1, 7-8), included as attachment 3 to the *Response*. US Magnesium’s September 2004 press release indicated that construction was to have begun immediately with an initial increase in capacity to 51,000 metric tons. The President and CEO of US Magnesium is further quoted in the release as follows: “foreign competition and increasing energy costs demand that we expand the facility and reduce unit costs in order to survive. Engineering and cost analysis for future expansion to 59,000 metric tons and even 73,000 metric tons have been completed and financing will be pursued for further expansion subject to successful resolution of current anti-dumping trade petitions before the Department of Commerce and International Trade Commission and completion of energy contract negotiations.” USMag Press Release (September 23, 2004) from www.usmagnesium.com, retrieved January 31, 2007.

U.S. IMPORTS AND CONSUMPTION¹¹⁶

U.S. Importers

The Commission identified the following five importers of pure magnesium in granular form from China during the original investigation: ***. ***.¹¹⁷ ***.¹¹⁸ The domestic interested party indicated that it does not have information on firms that currently import granular magnesium from China.¹¹⁹

U.S. Imports¹²⁰

As shown in figure I-1 and table I-8, the quantity of U.S. imports of pure granular magnesium from China rose rapidly during the original investigation but then fell to negligible levels for the period immediately following the imposition of the antidumping duty order in November 2001 before rising again in 2004. Available record information does not provide an explanation for the increase in imports shown in the figure for 2003 to 2004 and they may be in error. The period covered by the only administrative review of the antidumping duty order on pure magnesium (other than granular magnesium) from China was May 1, 2004 through April 30, 2005.¹²¹ U.S. subject imports fell sharply from 2004 to 2005 but did not reach the minimal levels reported for 2002 and 2003. In its response to the notice of institution, the domestic interested party points to the decline in U.S. imports of granular magnesium and argues that the order was “crucial to the improvement in the condition of the U.S. pure magnesium industry.”¹²²

Canada was the primary source of nonsubject imported granular magnesium during both the period examined in the original investigation and in 2005 (table I-8). In 2000, Canada accounted for 28.1 percent of total imports while imported Chinese merchandise accounted for 71.5 percent. U.S.

¹¹⁶ Due to concerns about double-counting, the Commission in its original views compared the volume of subject imports from China with apparent domestic consumption of granular magnesium (instead of apparent domestic consumption of all pure magnesium). Parties during the original investigation estimated that a metric ton of magnesium ingot was roughly equivalent to a metric ton of granular magnesium. *Original Views*, p. 18, fn. 97 (citing hearing transcript, pp. 210-211).

¹¹⁷ *Original Staff Report*, p. IV-1.

¹¹⁸ The Commission indicated in its views that ***. Confidential *Original Views*, p. 18. The Commission further indicated that: “Although ESM purchased ***,” Ibid.

¹¹⁹ *Response*, p. 18.

¹²⁰ Official Commerce statistics for pure magnesium are based on HTS subheading 8104.30.00 (magnesium raspings, turnings, and powders). To the extent that subject pure magnesium from China enters the United States under HTS subheadings 8104.11.00 (pure magnesium (unwrought magnesium containing at least 99.8 percent by weight of magnesium)), 8104.20.00 (magnesium waste and scrap), 8104.30.00, 8104.90.00 (other magnesium), 3824.90.11 and 3824.90.19 (prepared binders for foundry molds and cores), and 9817.00.90 (remelt scrap ingot)), the subject import data for China presented may be slightly understated. Official Commerce statistics for alloy magnesium are based on HTS subheading 8104.19.00.

¹²¹ 71 FR 61019, October 17, 2006. The administrative review was requested by Tianjin Magnesium International (“TMI”), Ltd. on May 26, 2005 in response to Commerce’s May 2, 2005 notice of opportunity to request an administrative review for the period May 1, 2004 through April 30, 2005. TMI’s request included a request that Commerce also conduct a new shipper review; Commerce determined, however, that TMI did not meet the requirements to initiate a new shipper review. Commerce’s preliminary weighted-average LTFV margin for TMI was 89.05 percent but was subsequently revised downward to zero in the final results published in October 2006. Ibid. and 71 FR 18067, April 10, 2006.

¹²² *Response*, p. 10.

Figure I-1

Pure granular magnesium: U.S. imports from China, by quantity, 1998-2005



Source: Official Commerce statistics (HTS subheading 8104.30.00 for pure granular magnesium).

Table I-8
Primary magnesium: U.S. imports from all sources, 1998-2000, and 2005

Source	Original investigation			Review
	1998	1999	2000	2005
Quantity (metric tons)				
Pure granular magnesium: China	9,972	13,185	15,262	1,484
Canada ¹	4,551	5,236	5,993	758
All other sources	111	197	104	269
Total	14,634	18,618	21,359	2,510
Pure magnesium ingot: China (nonsubject) ²	2,194	0	244	19
All other sources ³	24,266	26,855	22,689	28,693
Total	26,460	26,855	22,933	28,712
Alloy magnesium: China ⁴	3,751	3,644	6,671	36
All other sources ⁵	34,270	37,439	31,744	41,384
Total	38,021	41,084	38,415	41,420
Landed, duty-paid value (1,000 dollars)				
Pure granular magnesium: China	27,562	35,463	33,527	4,211
Canada ¹	14,643	13,437	12,583	2,500
All other sources	780	1,023	448	1,448
Total	42,985	49,922	46,558	8,159
Pure magnesium ingot: China (nonsubject) ²	5,469	0	345	35
All other sources ³	75,026	81,838	62,200	85,248
Total	80,495	81,838	62,545	85,283
Alloy magnesium: China ⁴	10,430	9,870	13,497	89
All other sources ⁵	119,109	128,673	114,399	137,364
Total	129,540	138,543	127,896	137,453

Continued on next page.

Table I-8--Continued
Primary magnesium: U.S. imports from all sources, 1998-2000, and 2005

Source	Original investigation			Review
	1998	1999	2000	2005
Landed, duty-paid unit value (per metric ton)				
Pure granular magnesium: China	\$2,764	\$2,690	\$2,197	\$2,839
Canada ¹	3,218	2,566	2,100	3,298
All other sources	7,031	5,202	4,321	5,385
Average	2,937	2,681	2,180	3,250
Pure magnesium ingot: China (nonsubject) ²	2,493	(6)	1,413	1,835
All other sources ³	3,092	3,047	2,741	2,971
Average	3,042	3,047	2,727	2,970
Alloy magnesium: China ⁴	2,781	2,709	2,023	2,452
All other sources ⁵	3,476	3,437	3,604	3,319
Total	3,407	3,372	3,329	3,319
¹ Canada was the primary other source of pure granular magnesium during 1998-2000 and in 2005. ² Imports of pure magnesium ingot from China were under an antidumping duty order throughout the period. ³ Russia, Israel, and Canada were the primary sources of nonsubject pure magnesium ingot during 1998-2000 and in 2005. China was a substantial source in 1998 but not in subsequent years. ⁴ Imports of alloy magnesium from China were placed under an antidumping duty order in April 2005. ⁵ Canada was the primary source of nonsubject alloy magnesium during 1998-2000 and in 2005. ⁶ Cannot be calculated. Source notes: 1. 1998-2000 data: Official Commerce statistics (HTS subheadings 8104.11.00 and 8104.30.00 for pure magnesium ingot and pure granular magnesium, respectively) as presented in the <i>Original Staff Report</i> , pp. IV-3 through IV-6 (tables IV-2, IV-3, and IV-4) and official Commerce statistics (HTS subheading 8104.19.00 for alloy magnesium). 2. 2005 data: Official Commerce statistics (HTS subheadings 8104.11.00, 8104.30.00, and 8104.19.00 for pure magnesium ingot, pure granular magnesium, and alloy magnesium, respectively).				

imports of pure granular magnesium from Canada have also declined since 2000¹²³ and, since neither the Canadian or Chinese-produced product were replaced by U.S. imports from other sources, there was a net

¹²³ There has not been an antidumping or countervailing duty order in place on pure granular magnesium from Canada. An antidumping duty order on pure magnesium (not including granular magnesium) and countervailing duty orders on pure magnesium (not including granular) and alloy magnesium were issued in August 1992. The antidumping duty order on pure magnesium was revoked effective August 2000 after a NAFTA Binational Panel final decision was affirmed in October 2004. The countervailing duty orders were revoked following the Commission's negative final determinations in its second review of the orders in July 2006.

decline in total imports.¹²⁴ Production of primary magnesium in Canada fell from 83,000 metric tons in 2001 to 54,000 metric tons in 2005. A substantial portion of total Canadian capacity of 123,000 metric tons in 2005 is reported to be on “standby basis.”¹²⁵

Apparent U.S. Consumption and Market Shares

Primary Magnesium

The domestic interested party states that demand conditions have not changed since the original investigation, with demand determined by the downstream industries where magnesium is consumed.¹²⁶ U.S. consumption of primary magnesium in 2005 was estimated at 100,000 metric tons by the USGS. Diecasting (accounting for 52 percent of the total) reportedly was the leading use for primary magnesium in 2005, followed by aluminum alloying (accounting for 30 percent) and iron and steel desulfurization (accounting for 7 percent).¹²⁷ The following tabulation presents (open market) U.S. consumption of primary magnesium from 1998 to 2005:

1998	1999	2000	2001	2002	2003	2004	2005
Quantity (metric tons)							
107,000 ¹	131,000 ¹	104,000 ¹	95,700 ¹	96,100	103,000 ²	101,000 ²	100,000
¹ Figures apparently do not include the internal transfer of pure magnesium. Most such consumption was by Northwest Alloys to its parent Alcoa. As indicated earlier, Northwest Alloys shut down operations in October 2001. Northwest Alloys reported the following related party transfers during the original investigation: *** metric tons in 1998; *** metric tons in 1999; *** metric tons in 2000; and *** metric tons in January-June 2001. (The firm also reported trade sales of between *** metric tons on an annual basis.) ***. <i>Original Staff Report</i>, pp. VI-10 and VI-11 (tables VI-5 and VI-6). ² Revised. Source: <i>USGS Minerals Handbook (Magnesium)</i> (table 3). The tables from the 2004 and 2005 Handbooks are included as attachment 3 to the <i>Response</i> and tables from the 1998-2003 Handbooks are on the public record of this review.							

As noted earlier, US Magnesium is currently the only U.S. producer of primary (pure and alloy) magnesium. US Magnesium reported U.S. shipments of *** metric tons of pure magnesium and *** metric tons of alloy magnesium in 2005 for a total of *** metric tons¹²⁸ or approximately *** of U.S. consumption of primary magnesium.

The Commission’s general practice in defining the domestic industry has been to include in the industry all of the domestic production of the domestic like product, whether toll-produced, captively

¹²⁴ In contrast, total U.S. imports of pure magnesium ingot and alloy magnesium remained relatively level in 2005 compared to 1998-2000 (table I-8).

¹²⁵ See tables 7 and 8 of the *USGS 2005 Minerals Handbook (Magnesium)* included as attachment 3 to the *Response*.

¹²⁶ *Response*, p. 21.

¹²⁷ Table 3 of the *USGS 2005 Minerals Handbook (Magnesium)* included as attachment 3 to the *Response*.

¹²⁸ *Response*, attachment 8.

consumed, or sold in the domestic merchant market.¹²⁹ Table I-9 presents a calculation for the apparent U.S. consumption that adjusts publicly available data for the period examined during the original investigation¹³⁰ to include the internal consumption and company transfers of primary magnesium. As shown, total apparent U.S. consumption of primary magnesium fell on an overall basis by about *** metric tons (the *** consumed internally or transferred during the original investigation) from 2000 to 2005. US Magnesium reported *** of primary magnesium; Northwest Alloys shut down in 2001. U.S. imports of primary magnesium fell by 10,000 metric tons on an overall basis from 2000 to 2005.

Pure Magnesium in Granular Form

As discussed earlier in this report, in the original investigation the Commission majority found a single domestic like product that combined pure granular magnesium and pure magnesium ingot while Commissioners Miller and Hillman found two separate domestic like products (granular and ingot). None of the Commissioners included alloy magnesium in the definition of the domestic like product. Both the Commission majority and Commissioners Miller and Hillman concluded that grinding operators (with the exception of ***) were within the domestic industry while Commissioner Okun did not support their inclusion. ESM was excluded from the domestic industry as a related party by both the Commission majority and Commissioners Miller and Hillman. Tables I-10 and I-11 present the market penetration ratios cited by the Commissioners in their views. As indicated in the table notes, Commissioners Miller and Hillman utilized the data shown in table I-10 while the Commission majority¹³¹ relied on the data shown in table I-11.

The primary use for pure magnesium in granular form is in the production of desulfurizing reagent mixtures, although lesser amounts are used in other applications including defense.¹³² The following tabulation shows data on the U.S. consumption of primary magnesium for use in iron and steel desulfurization:

1998	1999	2000	2001	2002	2003	2004	2005
Quantity (metric tons)							
11,200	9,440	12,200	8,150	8,510	8,130	8,360	7,410
Source notes: 1. 2001-2005 data: <i>USGS Minerals Handbook (Magnesium)</i> , tables 3 and 4, on the public record of this review. 2. 2004-2005 data: <i>USGS 2005 Minerals Yearbook (Magnesium)</i> , table 3, p. 46.8, attachment 3 to the <i>Response</i> .							

¹²⁹ *Original Views*, p. 9; *Original Miller/Hillman Dissenting Views*, pp. 37-38.

¹³⁰ Data were not collected on primary magnesium during the original investigation.

¹³¹ The Commission majority explained in its views that due to concerns about double-counting the downstream use of magnesium ingot in grinding operations, they compared the volume of Chinese subject imports with apparent domestic consumption of granular magnesium (instead of apparent domestic consumption of all pure magnesium). *Original Views*, p. 18, fn. 97.

¹³² See the discussion on the description and uses of granular magnesium presented earlier in this report.

Table I-9

Pure magnesium and primary magnesium (including pure and alloy): U.S. apparent consumption, 1998-2000, and 2005

Source	Original investigation			Review
	1998	1999	2000	2005
Quantity (<i>metric tons</i>)				
Pure magnesium: U.S. producers' U.S. shipments	*** ¹	*** ¹	*** ¹	***
U.S. imports of granular	14,634	18,618	21,359	2,510
U.S. imports of ingot	26,460	26,855	22,933	28,712
Apparent U.S. consumption ²	***	***	***	***
Primary magnesium: U.S. imports ³	79,115	86,556	82,706	72,642
U.S. producers' U.S. shipments	(4)	(4)	(4)	27,358 ⁵
Apparent U.S. consumption: Open-market ⁶	107,000	131,000	104,000	100,000
Internal consumption/transfers of pure magnesium: Magcorp ⁷	***	***	***	***
Northwest Alloys	***	***	***	0
Subtotal	***	***	***	***
Total apparent U.S. consumption	*** ⁸	*** ⁸	*** ⁸	***

¹ Does not include the volume of pure magnesium that *** sold in granular form. In 1998, the firm sold *** of pure granular magnesium (table I-5). ***.

² Calculated from figures in table. Note that the internal consumption and company transfers of pure magnesium are included in these data. The fall in apparent U.S. consumption from 1998-2000, therefore, is believed to be due to the shutdown of Northwest Alloys.

³ Calculated by totaling U.S. imports of pure granular magnesium, pure ingot magnesium, and alloy magnesium (table I-8).

⁴ Cannot be calculated. Data are not available for the internal consumption/transfers of alloy magnesium.

⁵ Calculated from figures in table (i.e., by subtracting U.S. imports (Commerce statistics) from total apparent U.S. consumption (USGS data)). The "correct" figure as reported directly by US Magnesium is *** metric tons (*** metric tons of pure magnesium plus *** metric tons of alloy magnesium). *Response*, attachment 8. Therefore, there is a discrepancy of *** metric tons between the figure reported by US Magnesium and the figure obtained by subtracting U.S. imports from the USGS consumption figure.

⁶ Data are not calculated from the above figures but are derived from a separate data source. (See source notes.)

⁷ Fiscal year basis.

⁸ Understated by the volume of any internal consumption/transfers of alloy magnesium by U.S. producers.

Source notes:

1. U.S. producers' U.S. shipments of pure magnesium: U.S. shipments of pure magnesium ingot (table I-7) for 1998-2000 and *Response*, attachment 8, for 2005.

2. U.S. imports: table I-8.

3. Open-market consumption of primary magnesium: *USGS Minerals Handbook (Magnesium)* (table 3). The tables for 2004 and 2005 are included as attachment 3 to the *Response* and the tables for 1998-2003 are on the public record of this review.

4. Internal consumption/transfers of pure magnesium: *Original Staff Report*, pp. VI-10 and VI-11 (tables VI-5 and VI-6) for 1998-2000, and *Response*, attachment 8 for 2005.

Table I-10
Pure granular magnesium: U.S. producers' U.S. shipments (based on all reporting producers),
U.S. imports, and apparent U.S. consumption, on the basis of quantity, 1998-2000, and 2005

Source	Original investigation			Review
	1998	1999	2000	2005
Quantity (metric tons)				
U.S. producers' U.S. shipments: ***	***	***	***	(1)
***	***	***	***	(1)
Subtotal	***	***2	***	(1)
Firms other than *** and ***	***2	***2	***2	(1)
Total ³	***	***	***	***
U.S. imports from— China	9,972	13,185	15,262	1,484
All other sources	4,662	5,433	6,097	1,027
Total	14,634	18,618	21,359	2,510
Total apparent U.S. consumption	***	***	***	***
Share of quantity (percent)				
U.S. producers' U.S. shipments: ***	***2	***2	***2	(1)
***	***2	***2	***2	(1)
Subtotal	***2	***2	***2	(1)
Firms other than *** and ***	***2	***2	***2	(1)
U.S. imports from— China	***	***	***	***
All other sources	***	***	***	***
Total	***	***	***	***
¹ Not available. ² Staff calculation for this review. ³ The figure for 2005 represents shipments of pure magnesium ingot produced by US Magnesium that are shipped to U.S. grinders. As discussed earlier, total U.S. shipments (including captive use) of granular magnesium by the grinders are possibly substantially understated in 2005 to the extent that grinders produce granular magnesium from offshore-purchased ingot. They will also be understated to the extent that US Magnesium sells product to firms other than grinders. However, production figures for 1998-2000 will be <u>overstated</u> to the extent that they also reflect the production of the downstream product (reagents). Note.—The data in this table correspond to those presented in the <i>Original Staff Report</i> , table IV-11 (apparent U.S. consumption and market shares for pure granular magnesium) except for the separate figures that have been calculated by staff in this review for *** and for *** in order to provide data corresponding to the definition of the domestic industry adopted by both the majority and by Commissioners Miller and Hillman in the original investigation. Source notes: 1. 1998-2000 data: Confidential <i>Original Views</i> , p. 22 (for ***'s and ***'s U.S. shipments); Confidential <i>Original Miller/Hillman Dissenting Views</i> , p. 65 (for nonsubject import shares) and p. 66 (for subject import shares); table I-8 of this report (for import data); and <i>Original Staff Report</i> , p. IV-12 (table IV-9) (for apparent U.S. consumption). 2. 2005 data: tables I-6 and I-8.				

Table I-11

Pure granular magnesium: U.S. producers' U.S. shipments, U.S. imports, and apparent U.S. consumption (excluding data for grinders other than *** and ***), on the basis of quantity, 1998-2000, and 2005

Source	Original investigation			Review
	1998	1999	2000	2005
Quantity (metric tons)				
U.S. producers' U.S. shipments: ***	***	***	***	(1)
***	***	***	***	(1)
Total	***	*** ²	***	(1)
U.S. imports from— China	9,972	13,185	15,262	1,484
All other sources	4,662	5,433	6,097	1,027
Total	14,634	18,618	21,359	2,510
Total apparent U.S. consumption ³	*** ²	*** ²	*** ²	(1)
Share of quantity (percent)				
U.S. producers' U.S. shipments	*** ⁴	*** ⁴	*** ⁴	(1)
U.S. imports from— China	***	***	***	(1)
All other sources	***	***	***	(1)
Total	***	***	***	(1)
¹ Not available. ² Staff calculation for this review. ³ Apparent U.S. consumption as calculated and as cited in the Commission's views in the original investigation does <u>not</u> include data for U.S. grinders other than *** and ***. ⁴ These figures do not appear in the Commission's majority (or dissenting) views but are presented in this table since they are derived using the methodology employed in the calculation of the import penetration ratios that <u>were</u> cited in the Commission's majority views and which appear in this table.				
Source notes: 1. 1998-2000 data: Confidential <i>Original Views</i> , p. 22 (for producers' U.S. shipments), p. 25 (for nonsubject import shares), and p. 26 (for subject import shares); and table I-8 of this report (for import data). 2. 2005 data: table I-8 of this report.				

PRICING

The Commission found significant price underselling by the subject merchandise and price depression of the domestic like product during its original investigation.¹³³ In contrast, the dissenting Commissioners could not determine that significant underselling had occurred nor that there had been an adverse impact on prices of the domestic like product.¹³⁴ The domestic interested party indicates in its response to the notice of institution that the U.S. market for pure magnesium is still “highly price sensitive.”¹³⁵ Further, China “remains the low-price supplier to the world market” with published f.o.b. prices in China for magnesium ingot¹³⁶ well below those for the U.S. market. The domestic interested party argues that even with the changes to the export tax rebate,¹³⁷ China “remains the low-priced supplier to the world market.”¹³⁸

The USGS yearbook for 2005 provided the following discussion on pricing:

¹³³ *Original Views*, p. 20. It stated: “Average unit values as well as the direct pricing data collected in these investigations show declining prices of Chinese subject imports, declining domestic prices, as well as considerable underselling by Chinese subject imports at significant margins over the period of investigation. Chinese subject imports undersold the domestic like product in all possible price comparisons at average margins that increased from 49.1 percent in 1998 to 72.7 percent in 1999, and to 79.5 percent in 2000. Although most of the shipments of Chinese subject imports were to the desulfurization segment of the U.S. market ***, the record indicates that Chinese subject imports had adverse effects throughout the market. The prices of Chinese subject imports in the desulfurization segment of the market were so low that they were even lower than magnesium ingot prices to that and other segments of the market.” Confidential *Original views*, pp. 27-28 (fn. omitted).

With reference to the impact of the subject pure granular magnesium, the Commission determined that “significant volumes of Chinese subject imports at low prices displaced the domestic like product in the desulfurization segment of the market, and intensified competition throughout the U.S. market, including in the aluminum alloying segment where the domestic like product also competed with subject imports from Israel and non-subject imports from countries like Russia. Domestic producer Magcorp declared bankruptcy at the end of the period of investigation, Northwest Alloys announced the closure of its production facilities in September 2001, and the condition of the magnesium ingot producers declined during the period of investigation.” *Original Views*, pp. 29-30.

¹³⁴ Commissioners Miller and Hillman stated that “{t}here is little directly comparable pricing for granular pure magnesium. The Commission collected pricing data for granular magnesium for two market segments: (1) steel producers and grinders, and (2) other end users. With respect to the first segment, these subject imports are entirely or almost entirely purchased by reagent producers, who further process the imports into desulfurization reagents. Thus, the reported prices for subject imports are for sales to grinders. (The exception is ***) In contrast, domestic producers reported prices for sales of desulfurization reagents to steel producers. Thus, these prices are not directly comparable. With respect to the second segment, the record indicates a variety of products with different prices. Again, these prices are not directly comparable.” Further, “{b}ecause of the very limited direct competition between subject imports and domestic producers’ end-products, the substantial portion of domestic production that is internally consumed, and the fact that the domestic producers are themselves the purchasers of *** of the subject imports,” the two Commissioners stated that they could not “determine that significant underselling has occurred, nor can we determine that the subject imports adversely affect prices for the domestic like product to a significant degree.” Confidential *Original Miller/Hillman Dissenting Views*, pp. 66-67.

¹³⁵ *Response*, p. 7.

¹³⁶ US Magnesium reported that the costs to convert magnesium ingot into granular form are “minimal.” *Response*, p. 17, fn. 16.

¹³⁷ See the section of this report entitled “The Industry in China” for information on the export tax rebate in China for magnesium.

¹³⁸ *Response*, pp. 16-17.

“With the exception of a slight increase at the beginning of the year in anticipation of antidumping duties being established for magnesium imported from China and Russia, United States magnesium prices fell throughout 2005. The yearend 2005 U.S. magnesium price range was 30 to 40 cents per pound lower than that at yearend 2004. Several reasons were suggested for the downturn in prices, particularly in the latter part of the year. Oversupply of magnesium, particularly from Russian producers, was cited as one reason for the drop in prices. Competition from recycled magnesium, which has a lower price, was cited as another reason. In addition, the phasing out of one of General Motors Corp.’s (GM) most comprehensive truck and sport utility vehicle redesign programs, which had been incorporating magnesium parts, contributed to the price decline (McBeth, 2005). Contract prices among the magnesium producers and large consuming companies for 2006 were reported to be between \$1.25 and \$1.32 per pound, which was less than the 2005 contract level of about \$1.40 to \$1.50 per pound (Carroll, 2005).”¹³⁹

THE INDUSTRY IN CHINA

The Chinese magnesium metal producing industry at the time of the original investigation was characterized by a large number of production facilities manufacturing magnesium ingot. The total number of magnesium metal-producing plants in China was estimated at 84, with production dominated by nearly 60 export-oriented plants.¹⁴⁰ According to the China Magnesium Association (“CMA”), only 22 Chinese manufacturers had plants with an annual capacity of over 3,000 metric tons. The number of Chinese facilities producing magnesium was also reported during the original investigation to depend largely on the price level of magnesium ingot. In 1997, when magnesium ingot prices had been relatively higher, there were an estimated 400 magnesium plants in China. The Commission received completed foreign producer questionnaire responses from only two Chinese firms (Shanxi Wenxi Yinguang Magnesium in Shanxi Province and Nanjing Ube Magnesium in Jiangsu Province) during the original investigation. ***.^{141 142}

The domestic interested party indicated in its response to the notice of institution that it does not have information on producers that currently export Chinese-manufactured granular magnesium to the United States.¹⁴³ However, according to the domestic interested party, the Chinese magnesium industry has developed very rapidly since the original investigation and most of the world’s supply of magnesium is produced in China.¹⁴⁴ The following tabulation presents primary magnesium production in China for 1998 through 2005:

¹³⁹ *USGS 2005 Minerals Yearbook*, “Magnesium” (Deborah Kramer), p. 46.2, attached as attachment 3 to the *Response*.

¹⁴⁰ The petition listed 22 firms producing pure magnesium in China and identified an additional 24 firms believed to be traders and/or exporters of pure magnesium; however, petitioners did not distinguish pure granular magnesium producers from pure magnesium ingot producers.

¹⁴¹ *See* table VII-1 in the *Original Staff Report* for the data reported by these two firms.

¹⁴² *Original Staff Report*, pp. II-5 and VII-1 through VII-4.

¹⁴³ *Response*, p. 18.

¹⁴⁴ *Response*, p. 12.

Item	1998	1999	2000	2001	2002	2003	2004	2005
Quantity (metric tons)								
Production ¹	70,500	120,000	140,000	200,000	250,000	340,000	442,000	470,000
¹ Estimated. Source notes: 1. 1998-2000 data: <i>USGS 2000 Minerals Handbook (Magnesium)</i> , table 8, on the public record of this review. 2. 2001-2005 data: <i>USGS 2005 Minerals Yearbook (Magnesium)</i> , table 8, p. 46.10, attachment 3 to the Response.								

Although only granular pure magnesium is subject to the antidumping duty currently under review, the domestic interested party argues that product shifting is likely in the magnesium industry, stating that “virtually all magnesium can be converted into granular form.”¹⁴⁵

The USGS estimated China’s capacity for primary magnesium at 528,000 metric tons in 2005.¹⁴⁶ US Magnesium notes the reports of the closing of smaller magnesium plants with capacity of less than 1,000 metric tons per year in its response but also refers to reports of 105,000 metric tons of capacity to be added in 2005 and 2006.¹⁴⁷ China’s Shanxi province accounted for 71 percent of the total Chinese production capacity in 2005, and the top six producers are all located in that province.¹⁴⁸

The following tabulation provides China Customs’ export data for magnesium in granular form (in metric tons):

Item	1998	1999	2000	2001	2002	2003	2004	2005
Quantity (metric tons)								
Exports to the United States	9,111	15,361	15,362	2,794	82	13	6,812	735
Total exports	11,228 ¹	24,451 ¹	28,408 ²	20,952 ²	24,288 ²	33,223 ²	39,125 ²	45,245 ²
¹ Other significant export markets include Germany and Japan. ² Other significant export markets include the European Union and Japan. Note.—Reported exports of pure granular magnesium to the United States from China are comparable to U.S. imports of subject merchandise as shown in figure I-1 and table I-8. Source notes: 1998-1999 data: <i>The World Trade Atlas</i> , 2000, as cited in the <i>Original Staff Report</i> , pp. VII-1 through VII-4. 2000-2005 data: <i>Global Trade Atlas</i> , on the public record of this review.								

¹⁴⁵ Response, p. 15.

¹⁴⁶ USGS, *2000 Minerals Yearbook (Magnesium)*, table 7, p. 46.10, attachment 3 to the Response.

¹⁴⁷ Response, p. 13.

¹⁴⁸ The top seven Chinese producers represent 42 percent of Chinese magnesium production capacity. They are, in descending order: Shanxi Wanke Jinrun Magnesium Co.; Shanxi Wenxi Yinguan Magnesium Industry Group Corp.; Jishan County Silicon Magnesium Smelter (Huayu); Taiyuan Tongxiang Magnesium Co. Ltd.; Jilin Linjian Magnesium Industry Group; Qinghai Dongli Machinery Manufacturing Corp.; and Shanxi Qingxu Tongxiang Magnesium Corp. Ltd. Public spreadsheet supplied by Deborah A. Kramer, Commodity Specialist, USGS, February 27, 2006. *Pure and Alloy Magnesium From Canada and Pure Magnesium From China*, p. IV-8.

US Magnesium argues that the Chinese magnesium industry continues to be export-oriented¹⁴⁹ and noted in its response that Chinese exporter TMI achieved a zero dumping margin effective October 17, 2006 in an administrative review on pure magnesium (but not including granular magnesium) based on one shipment of pure magnesium to the U.S. market.¹⁵⁰ The domestic interested party stated that “China remains the low-price supplier to the world market,”¹⁵¹ and also noted that China reduced its export tax rebate on magnesium from 13 percent to 5 percent beginning on January 1, 2006.¹⁵² Antidumping duties are currently in place in Brazil for imports of pure magnesium (both ingot and granular) and alloy magnesium from China.¹⁵³

GLOBAL SUPPLY

The domestic interested party indicated in its response to the notice of institution that the expansion of Chinese magnesium production capacity and resulting closure of producers in other parts of the world has led to “a major upheaval” in the structure of the worldwide industry. It cited the closure of the following producers since 2000: Pechiney in June 2001 (17,000 metric ton primary magnesium facility in Marignac, France); Northwest Alloys in October 2001 (a U.S. producer with 45,000 metric tons of capacity); Norsk Hydro Norway in 2002 (42,000 metric tons of capacity in Porsgrunn, Norway); and Southern Magnesium and Chemical (India). In addition, a new facility in Canada (Magnola Metallurgy) was idled in 2003 before construction was completed and, further, the Canadian producer, Timminco, Ltd., announced (although later postponed) plans to shut down primary magnesium production for several months in 2004 at a 6,000 metric ton per year plant in Ontario. Recently (October 2006), Norsk Hydro (“NHCI”) announced the possible closure (assessed as “likely” in a trade publication) of the Becancour, Quebec plant with an annual production of 48,000 metric tons of primary magnesium.¹⁵⁴ US Magnesium assessed any closure of this plant in its *Response* as “particularly significant” since “NHCI is the world’s largest producer of magnesium and is thought to operate the world’s most modern and lowest cost plant.” US Magnesium attaches articles and announcements to its *Response* that attribute, at least in part, a number of these closures to cheaper imports (most often from China). The domestic interested party also maintains that “[d]espite these numerous closures of magnesium production facilities, there has been no shortage of magnesium in world markets. Rather, there is substantial global excess production capacity for pure magnesium, and it is growing. China accounts for a significant share of this excess capacity.”¹⁵⁵

Table I-12 lists world annual primary magnesium production and production capacity in 2005.

¹⁴⁹ *Response*, p. 13.

¹⁵⁰ *Ibid.*, p. 14. See also the article entitled “Chinese magnesium producer ready to begin exporting to the US,” attachment 7 to the *Response*. TMI is reported in the article to be the sole export sales agent for Wenxi Yinguang, a 50,000 metric ton magnesium producer in northern China. Also discussed in the article is whether other exporters could obtain comparable margins in Commerce reviews.

¹⁵¹ *Response*, p. 16.

¹⁵² 2005 *Minerals Handbook (Magnesium)*, “Magnesium” (Deborah Kramer), p. 46.4, attachment 3 to the *Response*.

¹⁵³ *Response*, p. 15.

¹⁵⁴ The closure was also cited in the “USGS Mineral Industry Surveys” (November 2006). The survey indicated that “the timing of the closure is in connection with the end of a 10-year supply contract with General Motors Corp. ... Competition from low-cost magnesium from China was cited as the reason for the company’s decision” (citing, in turn, “Magnesium market likely to lose world’s largest plant” (Karen McBeth and Michelle de Klerk), *Platts Metals Week*, v. 77, no. 44, October 30, 2006, p. 1-2). The anticipated closure was also attributed, in part, to the rise in energy prices (in Canada) in a Yahoo!News item (2006), cited in “USGS Mineral Industry Surveys” (August 2006).

¹⁵⁵ *Response*, pp. 19-21, and attachments 9 through 14.

Table I-12
Primary magnesium: World annual primary magnesium production and capacity, 2005¹

Country	Capacity	Production
<i>(metric tons)</i>		
Brazil	12,000	6,000
Canada	123,000 ²	54,000
China	528,000	470,000
India	900	-
Israel	27,500	27,600
Kazakhstan	10,000	20,000
Russia ³	46,000	45,000
Serbia and Montenegro	5,000	1,500
Ukraine	15,000	2,000
United States	45,000	(⁴)
Total	812,000	626,000
¹ Includes plants on standby basis. ² Includes 63,000 metric tons per year of idle capacity. ³ Includes secondary magnesium. ⁴ Withheld to avoid disclosing company proprietary data; not included in total. Source: <i>USGS 2005 Minerals Year (Magnesium) - tables 7 and 8, attachment 3 to the Response.</i>		

As shown in the following tabulation (in *metric tons*), worldwide non-U.S. production of primary magnesium has risen steadily since 2001.¹⁵⁶

Item	2001	2002	2003	2004	2005
Production ¹	420,000	440,000	485,000	595,000	626,000
¹ Excludes the United States.					

¹⁵⁶ *USGS 2005 Minerals Year (Magnesium), table 8, attachment 3 to the Response.*

APPENDIX A
***FEDERAL REGISTER* NOTICES**

Merchandise in the Subject Country(ies), provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Countries* after 2000, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Countries*, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: September 25, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6-16082 Filed 9-29-06; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-895 (Review)]

Pure Magnesium From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on pure magnesium in granular form from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on pure magnesium in granular form from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;¹ to be assured of consideration, the deadline for responses is November 21, 2006. Comments on the adequacy of responses may be filed with the Commission by December 15, 2006. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 2, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the

¹ No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117-0016/USITC No. 07-5-161, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On November 19, 2001, the Department of Commerce issued an antidumping duty order on imports of pure magnesium in granular form from China (66 FR 57936). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—*The following definitions apply to this review:*

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined one *Domestic Like Product*—pure magnesium that includes both granular magnesium and magnesium ingot.

Two Commissioners defined the domestic like product differently in the original determination.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as producers of pure magnesium, including grinding operations. One Commissioner defined the domestic industry differently in the original determination, and two Commissioners defined two separate domestic industries. The Commission also found that appropriate circumstances existed to exclude ESM from the *Domestic Industry*.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is November 19, 2001.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested

parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 21, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is December 15, 2006. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall

notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2005 (report quantity data in metric tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in metric tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in metric tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis,

for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: September 25, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6-16085 Filed 9-29-06; 8:45 am]

BILLING CODE 7020-02-P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: November 15, 2006.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Meacham Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502-1820.

Dated: September 22, 2006.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 06-8380 Filed 9-29-06; 8:45 am]

BILLING CODE 2210-55-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committees on Rules of Bankruptcy and Criminal Procedure, and the Rule of Evidence

AGENCY: Judicial Conference of the United States, Advisory Committees on Rules of Bankruptcy and Criminal Procedure, and the Rules of Evidence.

ACTION: Notice of Proposed Amendments and Open Hearings.

SUMMARY: The Advisory Committees on Rules of Bankruptcy and Criminal Procedure, and the Rules of Evidence have proposed amendments to the following rules:

Bankruptcy Rules: 1005, 1006, 1007, 1009, 1010, 1011, 1015, 1017, 1019, 1020, 2002, 2003, 2007.1, 2015, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5001, 5003, 6004, 8001, 8003, 9006, and 9009, and New Rules 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, 5012, and 6011, and Official Forms 1, 3A, 3B, 4, 5, 6, 7, 8, 9, 10, 16A, 18, 19A, 19B, 21, 22A, 22B, 22C, 23, 24, and new Official Forms 25A, 25B, 25C, 26, and Exhibit D to Form 1.

and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bernadine T. Martinez, BLM, New Mexico State Office, at (505) 438-7530.

SUPPLEMENTARY INFORMATION: No lease has been issued that affect the lands. The lessee agrees to new lease terms for rentals and royalties of \$20.00 per acre or fraction thereof, per year, and 18 $\frac{2}{3}$ percent, respectively. The lessee paid the required \$500.00 administrative fee for the reinstatement of the lease and \$166.00 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate lease NMNM 108883, effective the date of termination, September 1, 2006, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: January 23, 2007.

Bernadine T. Martinez,
Land Law Examiner.

[FR Doc. E7-1287 Filed 1-25-07; 8:45 am]

BILLING CODE 4310-FB-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-895 (Review)]

Pure Magnesium From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on pure magnesium from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on pure magnesium from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* January 5, 2007.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202-205-3180), Office of

Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: *Background.* On January 5, 2007, the Commission determined that the domestic interested party group response to its notice of institution (71 FR 58001, October 2, 2006) of the subject five-year review was adequate and that the respondent interested party group response was inadequate.¹ The Commission did not find any other circumstances that would warrant conducting a full review.² Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.³

Staff report. A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on February 1, 2007, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,⁴ and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before

¹ Commissioner Jennifer A. Hillman found both the domestic interested party group response and the respondent interested party group response to be inadequate.

² A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

³ Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun dissenting.

⁴ The Commission has found the response submitted by U.S. Magnesium LLC to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

February 6, 2007 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by February 6, 2007. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 23, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7-1286 Filed 1-25-07; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-483]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2006 Review

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

DATES: *Effective Date:* January 18, 2007.

year. We use the data, a component of the index of leading economic indicators, to estimate the number of housing units started, completed, and sold, if single-family. The Census Bureau also uses these data to select samples for its demographic surveys. Policymakers, planners, businessmen/women, and others use the detailed geographic data collected from state and local officials on new residential construction authorized by building permits to monitor growth and plan for local services, and to develop production and marketing plans. The BPS is the only source of statistics on residential construction for states and smaller geographic areas.

Affected Public: State, local or tribal government.

Frequency: Monthly and annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395-7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dhynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202-395-7245) or e-mail (bharrisk@omb.eop.gov).

Dated: January 31, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7-1823 Filed 2-5-07; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2004 Panel of the Survey of Program Participation, Waves 10, 11, and 12.

Form Number(s): SIPP 241005(L) Director's Letter; SIPP/CAPI Automated Instrument; SIPP 24003 Reminder Card.

Agency Approval Number: 0607-0905.

Type of Request: Extension of a currently approved collection.

Burden: 44,799.

Number of Respondents: 44,713.

Average Hours Per Response: 30 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to extend the expiration date for the 2004 Panel of the Survey of Income and Program Participation (SIPP) to February 28, 2008.

This will provide the time necessary to conduct the Wave 10, 11, and 12 interviews for the 2004 Panel of the SIPP. The interviews will include the core SIPP, which has already been approved by OMB under Authorization No. 0607-0905. Due to budget constraints, there are no topical modules for the Wave 10, 11, and 12 interviews.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of a panel.

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having durations of 3 to 4 years. The 2004 Panel is scheduled for 4 years and will include 12 waves which began on February 1, 2004. All household members 15 years old or over are interviewed using regular proxy-respondent rules. They are interviewed a total of 12 times (12 waves), at 4-month intervals, making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be

followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these people move, they are not followed unless they happen to move along with a Wave 1 sample individual.

Data provided by the SIPP are being used by economic policymakers, the Congress, state and local governments, and federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395-7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dhynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202-395-7245) or e-mail (bharrisk@omb.eop.gov).

Dated: January 31, 2007.

Gwellnar Banks,

Office of the Chief Information Officer.

[FR Doc. E7-1836 Filed 2-5-07; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

International Trade Administration

Pure Magnesium in Granular Form from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order

A-570-864

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

SUMMARY: On October 2, 2006, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on pure magnesium in granular form from the People's Republic of China ("PRC") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive

response filed on behalf of domestic interested parties and inadequate response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: February 6, 2007.

FOR FURTHER INFORMATION CONTACT:

Hilary E. Sadler, Esq., or Juanita Chen, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4340, or (202) 482-1904, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 2006, the Department published the notice of initiation of the second sunset review of the antidumping duty order on pure magnesium in granular form from the PRC pursuant to section 751(c) of the Act. *See Initiation of Five-year ("Sunset") Reviews*, 71 FR 57921 (October 2, 2006). The Department received the Notice of Intent to Participate from US Magnesium LLC¹ ("US Magnesium"), the domestic party, within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations ("Sunset Regulations"). US Magnesium claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of pure magnesium in granular form. The Department received a complete substantive response only from US Magnesium within the 30-day deadline specified in section 351.218(d)(3)(i) of the Department's regulations. The Department received no responses from the respondent interested parties. As a result, pursuant to section 751(c)(5)(A) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted an expedited (120-day) sunset review of this order.

Scope of the Order

There is an existing antidumping duty order on pure magnesium from the People's Republic of China (PRC). *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). The scope of this order excludes pure magnesium that is already covered by the existing order on pure magnesium in ingot form and currently classifiable under item numbers 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The scope of this order includes imports of pure magnesium products, regardless of chemistry, including, without limitation, raspings, granules, turnings, chips, powder, and briquettes, except as noted above. Pure magnesium includes: (1) Products that contain at least 99.95 percent primary 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 primary magnesium, by weight (generally referred to as "pure" magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight that do not conform to an "ASTM Specification for Magnesium Alloy"² (generally referred to as "off-specification pure" magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight. Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials of which the Department is aware used to make such excluded reagents are: Lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nepheline syenite, feldspar, aluminum, alumina (Al₂O₃), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before

such a mixture may be imported free of antidumping duties.

The merchandise subject to this order is currently classifiable under item 8104.30.00 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in this review is addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated January 30, 2007, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were to be revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>, under the heading "February 2007." The paper copy and electronic versions of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on pure magnesium in granular form from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
Minmetals	24.67
PRC-wide Rate	305.56

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

Dated: January 30, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.
[FR Doc. E7-1894 Filed 2-5-07; 8:45 am]

BILLING CODE 3510-DS-S

¹ US Magnesium's predecessor is Magnesium Corporation of America, the original petitioner in this proceeding.

² The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

APPENDIX B
STATEMENT ON ADEQUACY

EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY

in

Pure Magnesium from China
Inv. No. 731-TA-895 (Review)

On January 5, 2007, the Commission determined that it should conduct an expedited review in the subject five-year review pursuant to section 751(c)(5) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675(c)(5).¹

The Commission received a response to its notice of institution from US Magnesium LLC, a domestic producer of pure magnesium. The Commission determined that this response was individually adequate. The Commission also determined that the domestic interested party group response was adequate.² The Commission received no response from any respondent interested party and determined that the respondent interested party group response was inadequate. In the absence of an adequate respondent interested party group response, or any other circumstances that warranted a full review, the Commission determined to conduct an expedited review.

A record of the Commissioners' votes is available from the Office of the Secretary and the Commission's web site (<http://www.usitc.gov>).

¹ Chairman Pearson and Commissioner Okun voted to conduct a full review in order to reconsider the like product definition.

² In her determination in the original investigation, Commissioner Hillman defined the domestic like product as granular pure magnesium (the Commission majority found a broader like product consisting of both granular and ingot pure magnesium). Therefore, she defined the domestic industry to be producers of granular pure magnesium (the Commission majority defined the domestic industry to include producers of granular pure magnesium and producers of ingot pure magnesium). In this review, no domestic producer of granular pure magnesium responded to the Commission's Notice of Institution. Therefore, Commissioner Hillman found an inadequate domestic interested party group response as well as an inadequate respondent interested party group response and voted for an expedited review.

