

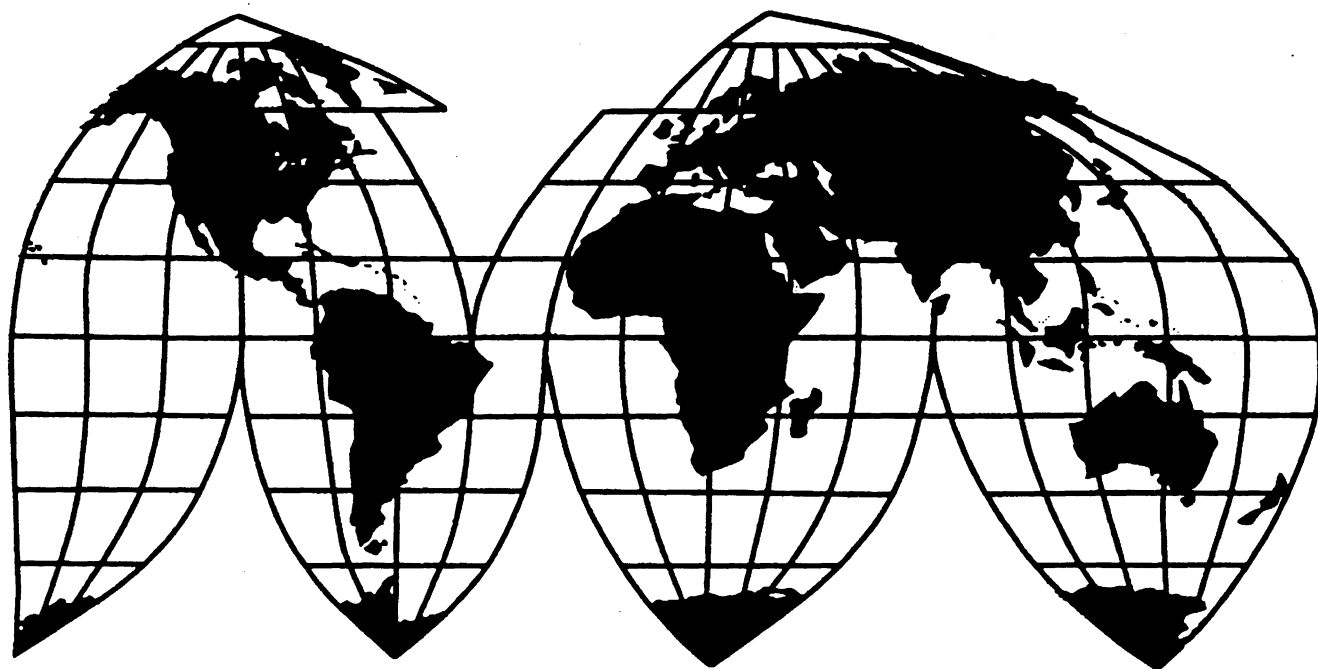
Pure Magnesium From China

Investigation No. 731-TA-696 (Review)

Publication 3346

August 2000

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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GLOSSARY

AD	Antidumping duty
ASTM	American Society for Testing and Materials
Alcoa	Aluminum Co. of America
CIT	Court of International Trade
CMA	China Magnesium Association
CVD	Countervailing duty
CY	Calendar year
Commerce	U.S. Department of Commerce
Commission/USITC	U.S. International Trade Commission
Customs	U.S. Customs Service
Dow	Dow Chemical Co.
EC	European Commission
EU	European Union
FR	<i>Federal Register</i>
FY	Fiscal year
Federal Circuit	U.S. Court of Appeals for the Federal Circuit
HTS	Harmonized Tariff Schedule of the United States
LTFV	Less than fair value
Labor	U.S. Department of Labor
Magcorp	Magnesium Corp. of America
Magnola	Magnola Metallurgy, Inc.
Northwest Alloys	Northwest Alloys, Inc.
Off-spec	Off-specification
PIERS	Journal of Commerce's Port Import Export Reporting Service
R&D	Research & development
<i>Response</i>	Response to the Commission's Notice of Institution
Rossborough	Rossborough Manufacturing Co. L.P.
TIB	Temporary Importation under Bond
Taiyuan East-United Magnesium	Taiyuan East-United Magnesium Co., Ltd.
Taiyuan Heavy Machinery	Taiyuan Heavy Machinery Import and Export Corp.
Wenxi Yinguang	Wenxi Yinguang Magnesium Group

Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been identified by the use of *.**

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-696 (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 determines,² pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty order on 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.

BACKGROUND

The Commission instituted this review on April 3, 2000 (65 F.R. 17531, April 3, 2000) and determined on July 6, 2000 that it would conduct an expedited review (65 F.R. 45105, July 20, 2000).

The Commission transmitted its determination in this review to the Secretary of Commerce on August 31, 2000.

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

² Commissioner Askey dissenting.

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 covering imports of 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.¹

I. BACKGROUND

In May 1995, the Commission determined that an industry in the United States was materially injured by reason of imports of pure magnesium from China that the Department of Commerce (“Commerce”) had determined to be sold in the United States at less than fair value (“LTFV”).² On May 12, 1995, Commerce published an antidumping duty order covering the subject merchandise.³

On April 3, 2000, the Commission instituted a review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on pure magnesium from China likely would lead to continuation or recurrence of material injury.⁴

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses of interested parties to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties – domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) – demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁵ If the Commission finds the responses from either group of interested parties to be inadequate, the Commission may determine, pursuant to

¹ Commissioner Thelma J. Askey dissenting. *See* Dissenting Views of Commissioner Thelma J. Askey. Except as otherwise noted, Commissioner Askey joins in sections I, II, III.A., and III.B. of these Views.

² Magnesium from China, Russia, and Ukraine, Invs. Nos. 731-TA-696-698 (Final), USITC Pub. 2885 (May 1995) (“Original Determination”). The Commission cumulated LTFV imports of pure magnesium from China with LTFV imports of pure magnesium from Russia and Ukraine, and found that the domestic industry producing pure magnesium was materially injured by reason of the cumulated imports. Original Determination, USITC Pub. 2885 at 15-16, 22. Following an appeal by a Ukraine respondent, the Commission subsequently reached a negative determination on remand with respect to imports of pure magnesium from Ukraine. Magnesium from Ukraine, Inv. No. 731-TA-698 (Final) (Remand) (June 1998), *aff’d after remand*, 27 F. Supp. 2d 1351 (Ct. Int’l Trade, Oct. 1998). Commerce then revoked the antidumping duty order on pure magnesium from Ukraine. *See* 63 Fed. Reg. 67854-55 (Dec. 9, 1998).

³ 60 Fed. Reg. 25691 (May 12, 1995).

⁴ 65 Fed. Reg. 17484 (April 3, 2000). The Notice of Institution covering the antidumping duty order issued on pure magnesium from China included notice of the five year review of the antidumping duty order on pure magnesium from Russia. In July 2000, Commerce revoked the order on imports from Russia, since no domestic interested party filed a Notice of Intent to Participate in the sunset review of that order. 65 Fed. Reg. 41944 (July 7, 2000). The Commission accordingly terminated its review of pure magnesium from Russia effective July 7, 2000. Confidential Report, Memorandum INV-X-173 (Aug. 1, 2000) (“CR”) at I-3, n.1, Public Report (“PR”) at I-3, n.1.

⁵ *See* 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

section 751(c)(3)(B) of the Act, to conduct an expedited review unless it finds that other circumstances warrant a full review.

The Commission received one response to the notice of institution from Magnesium Corporation of America (“Magcorp”), a domestic producer of pure magnesium and one of the petitioners in the original investigation. The Commission received no responses to the notice of institution from any foreign producer, exporter, importer, or other respondent interested party.⁶

On July 6, 2000, the Commission determined that the individual and group domestic interested party responses to its notice of institution were adequate and the respondent interested party group response was inadequate.⁷ Pursuant to section 751(c)(3) of the Act,⁸ the Commission voted to expedite its review of this matter.⁹

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 “domestic industry.”¹⁰ The Act defines “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.”¹¹ In a section 751(c) review, the Commission also must take into account “its prior injury determinations.”¹²

In its final expedited sunset review, Commerce defined the subject merchandise as:

pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this order. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy. Pure primary magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents. . . . : (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as

⁶ Nor did any other person file a submission under Commission Rule 207.61(d).

⁷ See Pure Magnesium from China, Inv. No. 731-TA-696 (Review), Explanation of Commission Determination on Adequacy (July 2000) (“Adequacy Explanation”).

⁸ 19 U.S.C. § 1675(c)(3)(B).

⁹ 65 Fed. Reg. 45105 (July 20, 2000). The record from the full five-year review of Magnesium from Canada, Invs. Nos. 701-TA-309 A-B (Review) and 731-TA-528 (Review) (July 2000) was incorporated into the record in this expedited review. Adequacy Explanation at n.1.

¹⁰ 19 U.S.C. § 1677(4)(A).

¹¹ 19 U.S.C. § 1677(10). See NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹² 19 U.S.C. § 1675a(a)(1)(a).

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

Excluded from the scope of this order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder), having a maximum physical dimension (i.e., length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50 percent by weight), and remelted magnesium whose pure primary magnesium content is less than 50 percent by weight.¹³

In the original determination, the Commission determined the domestic like product corresponding to the subject imports of pure magnesium was domestically-produced pure magnesium, including off-specification (“off-spec”) pure magnesium.¹⁴ In its Response to the Notice of Institution (“Magcorp’s Response”), Magcorp stated that it has no objection to the Commission’s original like product definition.¹⁵ There is no new information obtained during this five-year review that would suggest a reason for revisiting the Commission’s original like product determination. We consequently continue to define the domestic like product as pure magnesium, including off-spec magnesium, coextensive with Commerce’s scope definition.

B. Domestic Industry

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

¹³ Pure Magnesium from China: Final Results of Antidumping Sunset Review, 65 Fed. Reg. 47713/47714 (Aug. 3, 2000). Since the original antidumping duty order was issued, Commerce clarified that the scope of the order includes, but is not limited to, butt ends, stubs, crowns, and crystals. *Id.*

¹⁴ Original Determination, USITC Pub. 2885 at 9-10. “Off-spec” 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-spec” pure magnesium products contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, and do not conform to ASTM specifications for alloy magnesium. *See* Pure Magnesium from China: Final Results of Antidumping Sunset Review, 65 Fed. Reg. at 47714.

¹⁵ Magcorp’s Response to Notice of Institution (“Magcorp’s Response”) at 32. Magcorp did not file additional comments after the Commission determined to conduct an expedited review.

proportion of the total domestic production of that product.”¹⁶ Given our definition of the domestic like product, we find the domestic industry to consist of all domestic producers of pure magnesium. The domestic industry consists of two producers—Magcorp and Northwest Alloys, Inc. (“Northwest Alloys”).¹⁷

III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON PURE MAGNESIUM FROM CHINA WOULD LIKELY LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME¹⁸

A. Legal Standard

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 an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”¹⁹ The Uruguay Round Agreements Act Statement of Administrative Action (“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 [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”²⁰ Thus, the likelihood standard is prospective in nature.²¹ The statute provides that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”²² According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case,

¹⁶ 19 U.S.C. § 1677(4)(A).

¹⁷ CR at I-12, PR at I-9.

¹⁸ Commissioner Askey finds that revocation of the order is not likely to lead to continuation or recurrence of material injury to the domestic industry. *See* Dissenting Views of Commissioner Thelma J. Askey.

¹⁹ 19 U.S.C. § 1675a(a).

²⁰ 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).” SAA at 883.

²¹ 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.

²² 19 U.S.C. § 1675a(a)(5).

but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping duty investigations].”^{23 24}

Although the standard in five-year reviews is not the same as the standard applied in original antidumping duty investigations, 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 order is revoked.”²⁵ 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 under review, and whether the industry is vulnerable to material injury if the order is revoked.^{26 27}

Section 751(c)(3) of the Act and the Commission’s regulations provide that in an expedited five-year review the Commission may issue a final determination “based on the facts available, in accordance with section 776.”²⁸ We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but emphasize that such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our

²³ 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.*

²⁴ In analyzing what constitutes a reasonably foreseeable time, Chairman Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

²⁵ 19 U.S.C. § 1675a(a)(1).

²⁶ 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. SAA at 886.

²⁷ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings in this review.

²⁸ 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to “use the facts otherwise available” in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information from the record of our original determination and any other information placed on the record. *Id.*

decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive."²⁹ As noted above, no respondent interested party responded to the Commission's notice of institution. Accordingly, we have relied on the facts available in this review, which consist primarily of the record in the Commission's original investigation, the limited information specific to subject imports collected by the Commission since the institution of this review, the information submitted by Magcorp in its Response to the Notice of Institution, and the record in the recent five-year review of Magnesium from Canada.³⁰

For the reasons stated below, we determine that revocation of the antidumping duty order on pure magnesium from China would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.³¹

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, 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."³²

Pure magnesium is sold mainly to aluminum producers, to magnesium granule producers for steel desulfurization, and to chemical and pharmaceutical manufacturers.³³ Demand for pure magnesium is dictated largely by the demand in these end-use markets. In particular, demand for pure magnesium largely depends on the demand for aluminum sheet used in the production of beverage cans and other packaging.³⁴ In the original investigation, the Commission observed that demand in the consuming industries, and therefore demand for pure magnesium, remained relatively steady from 1992 to 1994.³⁵ Apparent U.S. consumption of pure magnesium declined between the original investigation and this review, and continued to decline from 1998 to 1999.³⁶ Pure magnesium producers and purchasers predict little change in the demand for pure magnesium in the next few years.³⁷

The production processes for alloy magnesium and pure magnesium are very similar and are typically performed at common manufacturing facilities using the same employees and basic

²⁹ SAA at 869.

³⁰ See Adequacy Statement at n.1.

³¹ Commissioner Askey finds that revocation of the order is not likely to lead to continuation or recurrence of material injury to the domestic industry. See Dissenting Views of Commissioner Thelma J. Askey.

³² 19 U.S.C. § 1675a(a)(4).

³³ Magnesium from Canada, Invs. Nos. 701-TA-309 A-B (Review) and 731-TA-528 (Review), Confidential Report, Memorandum INV-X-141 (June 26, 2000) ("Canada CR") at II-1, USITC Pub. 3324 (July 2000) at II-1.

³⁴ Canada CR at II-7, USITC Pub. 3324 at II-4.

³⁵ Original Determination, USITC Pub. 2885 at 10.

³⁶ CR and PR at Table I-5.

³⁷ Canada CR at II-7-8, USITC Pub. 3324 at II-4-5.

equipment.³⁸ From a production standpoint, a domestic or foreign producer can easily switch between production of pure magnesium and alloy magnesium.³⁹

In the original investigation, the Commission noted that the subject imports and the domestic product competed directly in the market.⁴⁰ Most producers, importers, and purchasers agreed that domestically-produced pure magnesium and pure magnesium from China could be used in the same range of uses and were generally of comparable quality.⁴¹ In today's market, imports of pure magnesium from China are subject to the same qualification requirements as pure magnesium produced by U.S. producers and by third country producers.⁴² Most purchasers of pure magnesium require their suppliers to become certified or prequalified and many buy pure magnesium exclusively from qualified suppliers.⁴³ Thus, although not perfect substitutes, domestic pure magnesium and subject imports from China generally are substitutable with one another and with imports from third countries.

The market for pure magnesium continues to be price competitive.⁴⁴ Pure magnesium purchasers reported that their purchasing patterns have not changed significantly since 1992 and that they do not expect these patterns to change in the next two years.⁴⁵ Before making a purchase, most pure magnesium purchasers contact between two and five suppliers.⁴⁶ Although *** sell the vast majority of their magnesium on a contract basis,⁴⁷ Magcorp currently ***.^{48 49}

Although some U.S. market conditions discussed above have not changed significantly since the original investigation, there have been some significant changes in the domestic industry. Most notably, Dow Chemical Company ("Dow"), the largest domestic producer of pure magnesium during the original investigation, exited the market in November 1998.⁵⁰ As a result of Dow's exit, the industry has been further consolidated and now consists of only two producers. One, Northwest Alloys, internally transfers approximately *** percent of its pure magnesium production to its corporate parent, Alcoa, Inc., an aluminum manufacturer.⁵¹ With Northwest Alloy's internal transfers and Magcorp's internal consumption of approximately *** percent of its production, the domestic industry internally transferred

³⁸ Canada CR at I-16 & n.12, USITC Pub. 3324 at I-9 & n.12.

³⁹ Canada CR at I-16, III-1-2, USITC Pub. 3324 at I-9, III-1; Magnesium from Canada, Invs. Nos. 701-TA-309 A-B (Review) and 731-TA-528 (Review), Transcript of Hearing, May 31, 2000 ("Canada Tr.") at 53-54, 62, 107, 138. Therefore, we have considered not only reported capacity for pure magnesium individually, but also total primary magnesium capacity, which includes alloy magnesium.

⁴⁰ Original Determination, USITC Pub. 2885 at 20.

⁴¹ Original Determination, USITC Pub. 2885 at 16, 20.

⁴² See Canada CR at II-13, USITC Pub. 3324 at II-7.

⁴³ Canada CR at II-13, USITC Pub. 3324 at II-7.

⁴⁴ See Canada CR at II-9-10 and V-3, USITC Pub. 3324 at II-6 and V-2.

⁴⁵ Canada CR at II-9, USITC Pub. 3324 at II-6.

⁴⁶ Canada CR at II-9-10, USITC Pub. 3324 at II-6.

⁴⁷ Canada CR at V-3, USITC Pub. 3324 at V-2.

⁴⁸ Canada CR at V-3, USITC Pub. 3324 at V-2.

⁴⁹ Canada CR at V-3, USITC Pub. 3324 at V-2.

⁵⁰ CR at I-12, PR at I-9.

⁵¹ CR at I-12-13, PR at I-10.

approximately *** percent of its 1998 pure magnesium production and *** percent of its 1999 production.^{52 53 54 55}

Since the period of the original investigation, there has been an increase in the quantity and share of imports of pure magnesium from third countries, including Israel and Russia.⁵⁶ As noted earlier, domestic, subject, and nonsubject imports of pure magnesium are generally substitutable for one another. In addition, a large new Canadian supplier, Magnola Metallurgy (“Magnola”), is poised to enter the market.⁵⁷ At full capacity for primary magnesium production, Magnola will be able to produce 63,000 metric tons, making it the largest North American magnesium producer.⁵⁸

We find that the foregoing conditions of competition are likely to prevail for the reasonably foreseeable future and thus provide an adequate basis by which to assess the likely effects of revocation within the reasonably foreseeable future.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is 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.⁵⁹ 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

⁵² CR at I-12-13 and Table I-1, PR at I-10 and Table I-1.

⁵³ Commissioners Bragg, Miller, and Askey note that the captive production provision of the statute, 19 U.S.C. § 1677(7)(c)(iv), does not apply to five-year reviews, but they consider the significant degree of captive production as a condition of competition. *See, e.g., Magnesium from Canada*, USITC Pub. 3324 at 11, n.72; *Electrolytic Manganese Dioxide from Greece and Japan*, Invs. Nos. 731-TA-406-08 (Review), USITC Pub. 3296 (May 2000) at 15, n.90; *Sebacic Acid from China*, Inv. No. 731-TA-653 (Review), USITC Pub. 3189 (May 1999) at 7, n.26.

⁵⁴ Chairman Koplán, Vice Chairman Okun, and Commissioner Hillman do not reach the issue of whether the captive production provision of the statute, 19 U.S.C. § 1677(7)(C)(iv), applies to five-year reviews, because even if it does, it would clearly not apply in this case. The evidence in the record of this review indicates that the second criterion of the test, (whether “the domestic like product is the predominant input in the production of [the] downstream article” that is produced captively), is not met. *See Canada CR at II-9*, USITC Pub. 3324 at II-6 (cost share for pure magnesium used in aluminum products is approximately 1 percent). However, these Commissioners consider the significant degree of captive production as a condition of competition.

⁵⁵ Commissioner Askey notes that the Commission has recognized on previous occasions that the subject imports do not compete with captive production of domestic merchandise in the same way that they compete with domestic production sold in the merchant market. While the subject imports may arguably have some indirect effect on captive domestic production as a result of competition in downstream markets, any competitive price or volume effects between the subject imports and captive domestic consumption is attenuated, at best.

⁵⁶ *See CR and PR at Table I-5*. Although the 1995 antidumping duty orders covered imports of pure magnesium from Russia, the order on imports from Russia excluded major Russian producers and exporters of pure magnesium.

⁵⁷ *See Canada CR at IV-6-7 & nn.3, 4*; USITC Pub. 3324 at IV-4 & nn.3, 4.

⁵⁸ *Canada CR at IV-6-7*; USITC Pub. 3324 at IV-4; Magcorp’s Response at Exhibit 2. *See also* <http://www.noranda.com> (June 2000); <http://www.magnola.com> (June 2000).

⁵⁹ 19 U.S.C. § 1675a(a)(2).

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.⁶⁰

In the original investigation, the Commission found that the volume of cumulated LTFV imports was significant and increased substantially from 1992 through the first half of 1994.⁶¹ The Commission further found that market penetration of the LTFV imports of pure magnesium, by both quantity and value, increased significantly during the period of investigation.⁶² Following imposition of the antidumping duty order in 1994, imports from China subject to antidumping duties dropped sharply and have been at nominal levels since 1996.⁶³ Only 14 metric tons of pure magnesium from China subject to the antidumping duty order entered the United States in 1998, and none entered in 1999.⁶⁴ The record indicates, therefore, that the antidumping duty order has led to the reduced presence of subject imports in the U.S. market.

The evidence in the record indicates that Chinese producers have the capability to increase significantly shipments of subject pure magnesium to the United States within the reasonably foreseeable future. Since the original investigation, the Chinese magnesium industry has developed rapidly to become the world's largest manufacturer and exporter of magnesium.⁶⁵ China's current magnesium production capacity is estimated to be between 170,000 metric tons and 180,000 metric tons, a considerable increase over the 26,000 metric ton figure reported for 1993.⁶⁶ The evidence also indicates that the Chinese industry has increased its efficiency and competitiveness during 1998 and 1999, with at least one major consolidation of smaller firms into a larger one.⁶⁷

Absent the antidumping duty order, it is likely that significant volumes of Chinese producers' production will be targeted at the U.S. pure magnesium market. Available industry data estimate Chinese home market consumption of primary magnesium to be only 24,000 metric tons in 1999, accounting for approximately 14 percent of Chinese production capacity.⁶⁸ A representative of the Chinese industry reported that Chinese producers expect home market consumption to reach 50,000 metric tons by 2001.⁶⁹ However, even with this projected doubling of Chinese home market consumption, Chinese producers will still be forced to look elsewhere to place approximately two-thirds of their potential production.⁷⁰

⁶⁰ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁶¹ Original Determination, USITC Pub. 2885 at 19.

⁶² Original Determination, USITC Pub. 2885 at 19.

⁶³ CR and PR at Figure I-1.

⁶⁴ CR and PR at Table I-5.

⁶⁵ CR at I-30, *citing* Magcorp's Response at 18 and 19, PR at I-21.

⁶⁶ CR at I-29, PR at I-20. The significance of this capacity is highlighted by comparison to the total volume of pure magnesium imports from all sources into the United States during the original investigation, which, at their peak, reached only 25,590 metric tons. CR and PR at Table I-3.

⁶⁷ CR at I-28 & n.73, PR at I-20 & n.73.

⁶⁸ See Magcorp's Response at 20 and Exhibit 10. Magcorp based this estimate on Metal Bulletin Research ("MBR") data reportedly reflecting information obtained from the Chinese Magnesium Association ("CMA").

⁶⁹ CR at I-30, PR at I-21.

⁷⁰ See CR at I-29-30, PR at I-20-21. Moreover, reported increases in government sponsored export tax rebates will provide additional incentive for Chinese producers to export their magnesium. See CR at I-31, PR at I-22 and Magcorp's Response at 22.

Thus, Chinese magnesium producers must rely heavily on exports, and the available evidence indicates they have in fact increasingly done so as they have increased capacity.⁷¹

Both India and the EU imposed antidumping duty orders on pure magnesium from China in 1998.⁷² Further, there are reports that the EU is considering tightening its order to counter Chinese circumvention through duty absorption.⁷³ These actual and potential import barriers further suggest that Chinese producers will look to the U.S. market if the order is lifted.

The willingness and ability of Chinese producers to export significant volumes of pure magnesium to the United States are evidenced by their exports during the period examined in this review. Since imposition of the order, there have been substantial U.S. imports of pure magnesium from China under temporary importation under bond (“TIB”) provisions,⁷⁴ as well as significant U.S. imports of non-subject magnesium products from China. While non-TIB, pure magnesium imports essentially ceased after the order was imposed, TIB imports surged in 1997 and 1998, at volumes above those attained by the subject Chinese imports during the original investigation.⁷⁵ The importation of these products indicates that Chinese producers have the ability to export significant volumes of non-TIB pure magnesium to the United States if the antidumping duty order were revoked.

In addition, Chinese magnesium producers exported 3,644 metric tons of alloy magnesium (which is not subject to antidumping duties) to the United States in 1999.⁷⁶ Chinese producers can easily switch production from alloy magnesium to pure magnesium.⁷⁷ Likewise, since the order was imposed, increasing volumes of non-subject magnesium powder from China have been imported into the United States.⁷⁸ Chinese magnesium producers would have an incentive either to revert to exporting pure magnesium to U.S. magnesium powder producers, or to supplement their magnesium powder sales with sales of pure magnesium, if the antidumping duty order were revoked.

We consequently find it is likely that producers in China would increase significantly exports of the subject merchandise to the U.S. market if the order is revoked. We therefore conclude that, based on the record evidence, the volume of subject imports likely would increase to a significant level upon revocation of the order.

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the

⁷¹ See Magcorp’s Response at 20; CR at I-30, PR at I-21.

⁷² CR at I-31, PR at I-22.

⁷³ See Magcorp’s Response at 21 and Exhibit 9.

⁷⁴ CR and PR at Table I-5; Magcorp’s Response at I-15 and Exhibit 4. TIB provisions permit temporary entry of the items without deposit of antidumping duties so long as the items are re-exported within a specified period of time. Magcorp’s Response at 15. See CR at I-21-22 & n.47, PR at I-12 & n.27.

⁷⁵ CR and PR at Figure I-1 and Table I-5.

⁷⁶ Canada CR at I-20, n.18, USITC Pub. 3324 at I-5, n.18.

⁷⁷ See Canada CR at I-15-16, USITC Pub. 3324 at I-9.

⁷⁸ CR at I-23, n.53, PR at I-16, n. 53. See Magcorp’s Response at 22-23.

United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like products.⁷⁹

During the original investigation, the Commission found that the large and increasing volume of subject imports during the period of investigation depressed prices or prevented price increases to a significant degree.⁸⁰ Noting the general substitutability between domestic product and subject imports, the Commission observed that prices for domestic pure magnesium rose and fell in relation to the presence in the U.S. market of unfairly traded imports. In contrast, prices for U.S.-produced alloy magnesium, which were not forced to respond to large increases of LTFV alloy imports from the subject countries, remained stable throughout the original period of investigation.⁸¹ Additionally, the cumulated subject imports undersold domestically-produced pure magnesium in the vast majority of pricing comparisons.⁸² In particular, price data collected from U.S. purchasers during the original investigation showed underselling by imports from China in 9 of 13 price comparisons.⁸³

The current pricing data on this record for subject imports are limited to data on average unit values (“AUVs”). As previously stated, no pure magnesium imports from China entered the U.S. market in 1999. However, the AUV for TIB imports from China in 1998, \$1.13 per pound, was well below the 1998 AUVs of \$1.65 per pound for non-TIB pure magnesium imports from China and \$*** per pound for domestically-produced pure magnesium.⁸⁴ The AUVs for these TIB imports were also below the AUVs for pure magnesium imported from China during the first two years of the original investigation.⁸⁵ By contrast, the AUVs for non-TIB, pure magnesium imports from China and for domestically-produced pure magnesium were higher in 1998 than they were during the original investigation.⁸⁶

The pricing patterns for imports of pure magnesium from China both currently and during the original period of investigation indicate that, if the antidumping duty order is revoked, subject imports are likely to be priced aggressively to regain market share currently held by both domestically-produced pure magnesium and nonsubject imports.⁸⁷ As noted, the original record and the evidence available in this review indicate that the domestic like product and subject imports are fairly good substitutes. In light of the importance of price in purchasing decisions for pure magnesium and static demand for pure magnesium, increases in subject import volumes will likely drive down pure magnesium prices by forcing domestic producers and importers of nonsubject pure magnesium to match the low prices offered by the subject imports. Consequently, we find that, if the antidumping duty order is revoked, the subject imports likely will have significant price-depressing or -suppressing effects.

⁷⁹ 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.

⁸⁰ Original Determination, USITC Pub. 2885 at 20.

⁸¹ Original Determination, USITC Pub. 2885 at 21.

⁸² Original Determination, USITC Pub. 2885 at 21.

⁸³ Original Staff Report, USITC Pub. 2885 at I-34.

⁸⁴ CR and PR at Table I-1; Magcorp’s Response at Exhibit 4.

⁸⁵ CR and PR at Table I-4.

⁸⁶ See CR and PR at Table I-1; Magcorp’s Response at Exhibit 4.

⁸⁷ Commissioner Bragg infers that, in the event of revocation, subject producers will revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission’s original determination.

The likelihood of price depression in this market is highlighted by the information on the record regarding the first quarter of 2000, showing a trend towards contracts of no more than one year in duration that ***, and a shift from ***.⁸⁸ This trend increases the likelihood that re-entry of low-priced subject imports would be able to gain volume quickly and adversely affect pricing even in the short-term. These contract trends have already resulted in ***.⁸⁹ These *** during the first quarter of 2000 coincided with declines in the AUVs for the non-TIB imports of pure magnesium from China.⁹⁰

For the foregoing reasons, we find that revocation of the antidumping duty order on pure magnesium from China would be likely to lead to significant underselling by the subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the order is 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.⁹¹ 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.⁹² As required by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.⁹³

In the original investigation, the Commission found that the significant and increasing LTFV imports and the declines in their prices from 1992 to mid-1994 had a significant adverse impact on the

⁸⁸ See Canada CR at V-3-4, USITC Pub. 3324 at V-5. *** Magcorp's pure magnesium contracts contain ***. See Magnesium from Canada, Invs. Nos. 701-TA-309 A-B (Review) and 731-TA-528 (Review): Magcorp's Posthearing Brief at 2 and Magcorp's Producers' Questionnaire Response at 29-A.

⁸⁹ Canada CR and PR at Table V-1.

⁹⁰ Magcorp's Response at Exhibit 4. Prices for TIB imports have also declined.

⁹¹ 19 U.S.C. § 1675a(a)(4).

⁹² 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" 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.

In the final results of its five-year review of pure magnesium from China, Commerce published a rate of 108.26 percent for all Chinese manufacturers and exporters. 65 Fed. Reg. 47713, 47714 (Aug. 3, 2000).

⁹³ 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.

domestic pure magnesium industry.⁹⁴ The entry of these imports resulted in increased domestic inventories and placed significant pressure on the domestic producers to lower their prices.⁹⁵ The Commission determined that the losses in market share and price pressures resulted in reductions in industrywide capacity to produce pure magnesium, as well as *** and declines in employment of workers producing pure magnesium.

It is difficult to assess the effect of the antidumping duty order on the domestic industry's performance, in light of the lack of post-order data for Dow's operations. A comparison of the financial data for Magcorp during the original period of investigation with Magcorp's data in the record of this review indicates some improvement in Magcorp's financial condition since the original investigation.⁹⁶ However, Magcorp's financial performance, as well as that for the industry as a whole, *** somewhat from 1998 to 1999.⁹⁷

The industry's *** operating performance during much of the review period does not support a finding that the industry is vulnerable at the present time.⁹⁸ However, the condition of the domestic industry reveals several important signs of ***. As noted, many of the industry's financial indicia *** from 1998 to 1999, and, as reflected in Magcorp's first fiscal quarter 2000 data, the ***.⁹⁹

Given the vast amounts of Chinese production capacity as well as increasing worldwide magnesium capacity, the return of significant volumes of pure magnesium from China into the U.S. market likely would push the domestic industry into a further decline and prevent the industry from improving its financial condition. 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 undersell the domestic like product and significantly depress U.S. prices. With demand for pure magnesium essentially stagnant in a price-sensitive market, the increase in subject imports is likely to cause decreases in both the prices and volume of domestic producers' shipments. These declines in turn would translate into lost revenues for the domestic industry, making it more difficult for Magcorp to finance its planned improvements and continue to meet its large interest expenses.

Thus, the price and volume declines likely would have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. The reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability as

⁹⁴ Original Determination, USITC Pub. 2885 at 22.

⁹⁵ Original Determination, USITC Pub. 2885 at 22.

⁹⁶ Compare Original Confidential Report at Table 8 with Canada CR and PR at Table III-8.

⁹⁷ See CR and PR at Table I-1; Canada CR and PR at Tables III-6 and III-8.

⁹⁸ Commissioners Miller and Hillman find that the domestic industry is vulnerable. The condition of the industry *** between 1998 and 1999 with regard to several indicia, including profitability, employment and inventories. Magcorp's first quarter financial data for 2000 reflect a continuing ***. Given Magcorp's ***, Commissioners Miller and Hillman find it is appropriate to consider not only operating income but also net income, which *** from 1998 to 1999 and into the first quarter of 2000. Prices are declining; due particularly to the substitutable nature of the product; additional imports are likely to further depress prices. Finally, Dow's exit from the industry, while triggered by a natural disaster, was at least in part due to weak market conditions. See Canada CR and PR at Tables III-4 through III-9; Canada Tr. at 32-34, 75-76, 195-97, 222; Magnesium from Canada, Invs. Nos. 701-TA-309 A-B (Review) and 731-TA-528 (Review); Magcorp's Prehearing Brief at Attachments 12, 25, 26, 27 and Staff Notes of telephone conversation with ***, June 9, 2000. The data in the record reflecting prices and the financial condition of domestic industry indicate that these weak conditions have continued.

⁹⁹ Magnesium from Canada, Invs. Nos. 701-TA-309 A-B (Review) and 731-TA-528 (Review); Magcorp's Producers' Questionnaire Response at 18; Magcorp's Prehearing Brief at Exhibit 12.

well as its ability to raise capital and make and maintain necessary capital investments. In addition, we find it likely that revocation of the order will result in commensurate employment declines for the industry. In particular, Magcorp has undertaken cost reductions and invested in new electrolytic cell technology in anticipation of increasing its efficiency and production capacity and improving its financial performance.¹⁰⁰ However, given Magcorp's ***, the loss of sales volume and price depression that are likely to result if the antidumping duty order is revoked likely would prevent Magcorp from implementing this new technology.

Accordingly, we conclude that, if the antidumping duty order is revoked, subject imports of pure magnesium 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 from China would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

¹⁰⁰ Canada CR at III-28 & n.19, USITC Pub. 3324 at III-8; Canada Tr. at 16-18. Replacement of just one half of its existing electrolytic cells would enable Magcorp to increase its capacity by 33 percent. Canada Tr. at 18.

DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY

Section 751(d) requires that Commerce revoke a countervailing duty or an antidumping duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.¹ In this review of the order on pure magnesium from China, I find that material injury is not likely to continue or recur in a reasonably foreseeable time if the order is revoked.

I join my colleagues’ discussion regarding domestic like product, domestic industry, conditions of competition, and in their explanation of the relevant legal standard. As a preliminary matter, I note that one domestic producer representing less than half of the domestic industry responded to the Commission’s notice of institution; no respondent interested parties chose to participate in the review.² The Commission therefore has a limited record to review in determining whether revocation of the order will likely lead to continuation or recurrence of material injury in the reasonably foreseeable future.^{3 4} In a case such as this, where only one domestic interested party participates in an investigation or review, that party has an advantage in terms of being able to present information to the Commission without rebuttal from the other side. However, irrespective of the source of information on the record, the statute obligates the Commission both to investigate the matters at issue and to evaluate the data before it in terms of the statutory criteria.⁵ The Commission cannot properly accept participating parties’ information and characterizations thereof without question and without evaluating other available information.⁶

¹ 19 U.S.C. §§ 1675(d)(2), 1675a(a)(1) (1994).

² Office of Investigations Memorandum INV-X-142, June 27, 2000.

³ Congress and the administration anticipated that the record in expedited sunset reviews would likely be more limited than that in full reviews and accordingly provided that the Commission’s determination would be upheld unless it was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 19 U.S.C. § 1516a(b)(1)(b)(ii). Nevertheless, even under a more relaxed standard of review, the Commission must ensure that its decision is based on some evidence in the record. See Genentech Inc. v. United States Int’l Trade Comm’n, 122 F.3d 1409, 1415 (Fed. Cir. 1997) (discussing the Commission’s decision on sanctions).

⁴ More data is available in this than in most expedited reviews, however, since the Commission incorporated into this record the record established as of July 6, 2000 for the review of Magnesium from Canada, Invs. Nos. 701-TA-309-A-B and 731-TA-528 (Review), Pub. No. 3324 (July 2000) [hereinafter, “Canada Review”]. CR at I-4, n.5; PR at I-3, n.5.

⁵ 19 U.S.C. § 1675a(a).

⁶ See, e.g., Alberta Pork Producers’ Mktg. Bd. v. United States, 669 F. Supp. 445, 459 (Ct. Int’l Trade 1987) (“Commission properly exercised its discretion in electing not to draw an adverse inference from the low response rate to questionnaires by the domestic swine growers since the fundamental purpose of the rule to ensure production of relevant information is satisfied by the existence of the reliable secondary data.”).

A. General Considerations

The statute directs the Commission to take into account some general considerations.⁷ I therefore have taken into account the Commission's prior injury determination, including the volume, price effects, and impact of the subject imports on the industry before the order was issued.⁸

The original determination concerned three countries whose imports were cumulated for purposes of the determination: Ukraine, Russia and China.⁹ In 1994, domestic magnesium producer Magnesium Corporation of America ("Magcorp") and two unions filed a petition alleging material injury or threat of material injury by reason of dumped imports of primary magnesium from China, Russia and Ukraine. The Commission issued its final determination in 1995: three Commissioners found that the domestic industry producing pure magnesium was materially injured by reason of cumulated imports from those three countries and three Commissioners made negative determinations.¹⁰ The Ukrainian respondents appealed and the Court of Appeals for the Federal Circuit vacated and remanded the decision. The Commission reached a negative determination on remand, with two Commissioners making negative determinations and one making an affirmative determination,¹¹ although the result applied only to imports from Ukraine because only Ukrainian respondents had appealed.¹² In July 2000, Commerce revoked the antidumping duty order on pure magnesium from Russia, since no domestic

⁷ 19 U.S.C. § 1675a(a)(1). The Commission is also to take into account the Commission's prior injury determinations, consider whether any improvement in the state of the industry is related to the order, consider whether the industry is vulnerable to material injury in the event of revocation, and consider any duty absorption orders made by Commerce. *Id.* Commerce has made no findings of duty absorption in this review. The statute also provides that the Commission may consider the margin of dumping when making its determination. 19 U.S.C. § 1675a(a)(6). Commerce determined that the margin it would expect in the event of revocation for Chinese producers would be 108.26 percent. 65 Fed. Reg. 47713 (Aug. 3, 2000).

⁸ 19 U.S.C. § 1675a(a)(1)(A). According to the Statement of Administrative Action ("SAA") to the Uruguay Round Agreements Act, if pre-order conditions are likely to recur, it is reasonable to conclude that there is a likelihood of continuation or recurrence of injury. H. R. Rep. No. 103-316, vol. 1 at 884 (1994).

⁹ Magnesium from China, Russia, and Ukraine, Invs. Nos. 731-TA-696-698 (Final), USITC Pub. 2885 (May 1995) ("Original Determination").

¹⁰ Original Determination, USITC Pub. 2885 at 15-16, 22. The Commission found that there were two separate like products—pure magnesium and alloy magnesium—coextensive with the two classes or kinds defined by Commerce. *Id.*

¹¹ Magnesium from Ukraine (Views on Remand), Inv. No. 731-TA-698 (Remand), USITC Pub. 3113 (June 1998).

¹² The Court of International Trade ("CIT") affirmed the Commission's determination in Gerald Metals, Inc. v. United States, 937 F. Supp. 930 (Ct. Int'l Trade 1996), and Gerald Metals appealed to the U.S. Court of Appeals for the Federal Circuit ("CAFC" or "Federal Circuit"), which vacated and remanded the CIT's order. In response to the Federal Circuit's remand, the CIT ordered the Commission to reconsider its original determination. On remand, the Commission reached a negative determination with respect to pure magnesium from Ukraine. Magnesium from Ukraine, Inv. No. 731-TA-698 (Final) (Remand) (June 1998), aff'd after remand, 27 F. Supp. 2d 1351 (Ct. Int'l Trade, Oct. 1998). The CIT subsequently affirmed the Commission's remand determination. Gerald Metals v. USITC, 27 F. Supp. 2d 1351 (Ct. Int'l Trade 1998).

interested party filed a Notice of Intent to Participate in the sunset review of that order.¹³ Accordingly, only the order concerning China remains from the original investigation.

In the original investigation, Russian and Ukrainian subject imports represented the large majority of subject imports, namely, *** percent of subject imports in 1992 and 1993, and *** percent in 1994.¹⁴ In other words, the present review concerns the order on the only remaining country from the original investigations involving cumulated imports from three countries, a country whose imports represented a small proportion of the subject imports at that time.

In a review such as this the statute directs that the Commission “shall revoke . . . an antidumping duty order . . . unless” dumping is likely to continue or recur and material injury is likely to continue or recur.¹⁵ In this regard, I note that the Commission on remand of the original determination made a negative determination with respect to Ukraine, based upon its evaluation of the same volume and price data for cumulated imports from China, Russia and Ukraine, and the same financial data concerning the domestic industry. I find little evidence on the current record to suggest that within a reasonably foreseeable time, subject import volumes for China alone will rise above the levels for the three cumulated countries that the Commission considered when it made that negative determination.

B. Volume

The Commission is to consider whether the likely volume of subject imports if the order under review is revoked would be significant either in absolute terms or relative to production or consumption in the United States.¹⁶ In so doing, the Commission shall consider “all relevant economic factors,” including four enumerated in the statute: (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 in 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.¹⁷

The Commission’s focus in a sunset review is whether subject import volume is likely to be significant in the reasonably foreseeable future if the antidumping duty order is revoked. Based upon the record in this review, I do not find it likely that subject import volumes would be significant in the reasonably foreseeable future if the antidumping duty order is revoked.

First, I note that the volume of the subject imports from China was very small during the course of the original investigation, at 410 metric tons, 2,071 metric tons and 800 metric tons in 1992, 1993 and 1994, respectively.¹⁸ These volumes represented shares of domestic apparent consumption of only ***,

¹³ 65 Fed. Reg. 41944 (July 7, 2000). The Commission accordingly terminated its review of pure magnesium from Russia effective on July 7, 2000. CR at I-3, n.1; PR at I-3, n. 1.

¹⁴ CR and PR at Table I-3.

¹⁵ 19 U.S.C. § 1675(d)(2).

¹⁶ 19 U.S.C. § 1675a(a)(2).

¹⁷ 19 U.S.C. § 1675(a)(2)(A)-(D). The SAA indicates that the statutory factors specified for analysis of volume, price, and impact are a combination of those used to determine both material injury by reason of subject imports and threat of material injury in original antidumping and countervailing duty investigations. See SAA at 886.

¹⁸ CR and PR at Table I-3.

*** and *** percent, respectively.¹⁹ At that time, Chinese subject imports were cumulated with those of Russia and Ukraine, for total market shares of *** percent, *** percent and *** percent in 1992, 1993 and 1994, respectively.²⁰ However, as noted above, the Commission on remand made a negative determination with respect to Ukraine, and the Russian order was recently terminated because of lack of domestic industry interest. Those two countries combined represented the large majority of subject imports during the original investigation.²¹ Accordingly, the subject imports at issue in this review represented a very small portion of the domestic market during the original investigation.

Moreover, since 1994, subject import volumes have been actually or essentially zero.²² Most recently, Chinese subject imports were 14 metric tons in 1998 and zero in 1999.²³ Since 1996 there has been an increase in the volume of Chinese pure magnesium entered under temporary importation under bond (“TIB”).²⁴ Such imports are not subject to the order under review because they are entered for purposes of re-export. In 1998, 2,180 metric tons of pure magnesium from China were entered under TIB; there were no imports in 1999.²⁵ However, even at their peak in 1998, combined imports of subject and TIB imports would have represented a mere *** percent of apparent domestic consumption had they been entered for domestic consumption.²⁶ Thus, in light of the previous and current small Chinese import volumes, I see no evidence that large volumes of Chinese pure magnesium are likely to be imported within a reasonably foreseeable time.

Second, nonsubject imports, including those from Russia, have grown significantly over the past years. Non-subject imports made up a consistently larger proportion of the domestic market in the review period than during the original investigation period. During the original POI, nonsubject imports made up relatively small proportions of domestic consumption, at *** percent of the market in 1992, *** percent in 1993 and *** percent in 1995.²⁷ By contrast, they made up a much higher proportion during the review period, holding *** and *** percent of the market in 1998 and 1999, respectively.²⁸ Nonsubject imports from Russia in 1998 and 1999 accounted for more than ten percent of domestic consumption.²⁹ However, as discussed below, even with the presence of large volumes of nonsubject imports, the domestic producers are performing well. Additionally, the order concerning pure magnesium from Canada was recently continued.³⁰

The statute directs the Commission to consider any likely increase in production capacity or existing unused production capacity in the exporting country. It appears that the Chinese industry has

¹⁹ CR and PR at Table I-5. This contrasts also with the fact that Canadian shares during the original investigation concerning Canada had increased more consistently and substantially, rising from less than *** percent in 1989 to *** percent in 1990 and to *** percent in 1991. Canada Review, CR and PR at Table I-1.

²⁰ Original Determination at Table A-1.

²¹ CR and PR at Table I-3.

²² CR and PR at Figure I-1.

²³ CR and PR at Table I-5.

²⁴ CR and PR at Figure I-1; CR at I-21-22, PR at I-12, I-15.

²⁵ CR and PR at Table I-5.

²⁶ CR and PR at Table I-25.

²⁷ Original Determination at Table A-1.

²⁸ CR and PR at Table I-5.

²⁹ See CR and PR at Table I-3 and Table I-5.

³⁰ Canada Review at 1.

undergone considerable consolidation since 1995, shrinking from 300 plants in 1995 to 85 in 1999.³¹ Production capacity for primary magnesium, which includes both pure and alloy magnesium, is reported to have increased, from 26,000 metric tons in 1993³² to an estimated 170,000-180,000 tons in 1999, making China the world's largest producer and exporter of magnesium.³³ The record also indicates there may be some current unused capacity in China.³⁴ However, during the original investigation, when Chinese import volumes were low, Chinese producers were reportedly operating at a capacity utilization rate of less than 50 percent.³⁵ Accordingly, prior to imposition of the order, there appears to have been considerable unused capacity that could have been utilized to increase exports to the United States, but import levels remained low nevertheless.

The statute also directs the Commission to consider the effects of existing inventories of the subject merchandise, or likely increases in inventory. Because no Chinese producer or importer participated in this investigation, the Commission has no information on existing Chinese producer or importer inventories. Further, the Commission is to consider the existence of barriers to the importation of the subject merchandise in countries other than the United States. The record indicates that the EU and India currently have antidumping orders in place against magnesium from China.³⁶

The data on the record indicates that on the one hand, China represents a large source of magnesium in the world and, therefore, could possibly become a substantial presence in the United States market. However, on the other hand, the record shows that Chinese import volumes and market shares during the original investigation period were small, particularly in comparison with those countries with which its imports had originally been cumulated, one of which was subject to a negative determination on remand and the other of which had its order revoked this year. Given that this is a review, and because the circumstances upon which the order was based in 1995 have changed so dramatically since that time, I focus on the fact that Chinese import volumes have never been a significant presence in the U.S. market, even when Chinese capacity utilization was low and there was no order in effect against Chinese imports, and conclude that while Chinese import volumes could increase, they are not likely to increase significantly given the current situation and in light of Chinese import activity during the original investigation.

In sum, I find that the volume of the subject imports of pure magnesium from China is not likely to be significant upon revocation of the order.

C. Price

In evaluating the likely price effects of the subject merchandise in the event of revocation, the Commission shall consider (1) whether imports are likely to be sold at a significantly lower price than the domestic like product, and (2) whether imports are likely to enter the United States at prices that

³¹ CR at I-28; PR at I-20.

³² CR at I-28; PR at I-20.

³³ CR at I-29-30; PR at I-21.

³⁴ CR at I-29; PR at I-21.

³⁵ Original Determination at I-39.

³⁶ CR at I-31; PR at I-22. The domestic industry also alleges that there is a potential for product shifting in that Chinese producers may shift from production of alloy magnesium and magnesium powder to pure magnesium if the order is revoked. Id.

otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.³⁷

In the original investigation the Commission “determine[d] that the effect of the large and increasing volume of subject imports during the period of investigation has been to depress prices or prevent price increases to a significant degree.”³⁸ The record in this review contains no current pricing data and limited AUV data.

Chinese import levels during the review period were low, and therefore AUV data are limited. The 1998 data show Chinese landed duty-paid unit values being lower than the landed duty-paid unit values for nonsubject imports. However, while the 1998 Chinese unit values are lower than those of Canada and other sources, they are similar to those of Russian imports, whose imports represented more than ten percent of domestic consumption in 1998 and 1999³⁹ and whose order was revoked this year.⁴⁰ The 1998 data also show Chinese unit values being lower than the domestic producer unit values.⁴¹ However, these two figures are not directly comparable because the domestic figure represents shipment data that is close to the actual price to purchasers while the Chinese figures do not include importer profits and U.S. inland freight costs.

Accordingly, while the limited available data suggest that Chinese imports are likely to be priced lower than the domestic like product and some nonsubject imports, they also suggest that Chinese import prices are likely to be similar to those of Russian imports. Moreover, as discussed above, there are likely to be small volume increases, at best, which would likely have small price effects in the domestic market. Therefore, because it is likely that Chinese imports would be priced similarly to other nonsubject imports that make up a substantial portion of U.S. imports and because I find that current and prior Chinese import levels do not suggest that Chinese imports will be significant in the future, I find it unlikely that subject imports of pure magnesium will have a significant adverse impact on domestic prices upon revocation of the order.

D. Impact

When considering the likely impact of subject imports, the Commission is to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including: (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

³⁷ 19 U.S.C. § 1675a(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 or 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.

³⁸ Original Determination at 20.

³⁹ See CR and PR at Table I-3 and Table I-5.

⁴⁰ Chinese landed duty-paid unit value for 1998 was \$1.13; there were no data for 1999 because there were no Chinese imports. Russian landed duty-paid unit values were \$1.32 in 1998 and \$1.21 in 1999. By contrast, values for Canada were \$*** in 1998 and \$*** in 1999 and for other sources were \$*** in 1998 and \$*** in 1999. CR and PR at Table I-3.

⁴¹ Domestic producers’ U.S. shipment per pound total unit values were \$*** in 1998 and \$*** in 1999, which represent an average of company transfers, which were \$*** and \$***, respectively in 1998 and 1999, and domestic shipments, which were \$*** and \$*** in 1999. CR and PR at Table I-1.

the existing development and production efforts of the industry, including efforts to develop a derivative or more enhanced version of the domestic like product.⁴²

As an initial matter, I find that the U.S. industry is not currently in a vulnerable state. The industry is not vulnerable despite the presence of large volumes of nonsubject imports that held roughly one-third of the market during the review period. Although the industry's market share is lower than during the original period of investigation,⁴³ the industry's operating income levels and capacity utilization rates remain healthy.⁴⁴ Moreover, the industry's condition is likely to strengthen considerably in the future with the departure of the domestic producer Dow from the marketplace. The consolidation of this already concentrated industry will contribute to the industry's competitiveness. Additionally, the industry's competitive position will likewise benefit from the recent continuation of the order against pure magnesium imports from Canada. Further, the industry is experiencing its current healthy state despite competition from a large volume of nonsubject imports, including imports from Russia that appear to be priced similarly to Chinese imports.

Because I find that subject imports are unlikely to have significant volume or price effects in the U.S. market in the reasonably foreseeable future, I find that subject imports are not likely to have a significant adverse impact on the domestic pure magnesium industry if the order is revoked. In this regard, I note that subject imports have essentially been absent from the market since 1995, and, as discussed above, even before the order went into effect, subject imports held a small share of domestic consumption. Moreover, while TIB imports increased in 1996 and 1997, they remained at relatively low levels and dropped to zero in 1999.

Additionally, even if I were to assume that subject imports may enter at prices that could perhaps adversely affect prices for the domestic like product (i.e., create some additional price competition apart from that which already exists in the market between and among domestic producers and nonsubject imports), I conclude that volume levels would not be sufficient to enable subject imports to have a price suppressing or depressing effect. I therefore find that subject imports would not be likely to have a significant impact on domestic pure magnesium producers' cash flow, inventories, employment, wages, growth, ability to raise capital, or investment. In conjunction with my conclusions regarding likely volume and price effects, I find that revocation is not likely to lead to a significant reduction in U.S. producers' output, sales, market share, profits, productivity, ability to raise capital, or return on investments. I therefore find that revocation is not likely to have a negative impact on the domestic industry in the reasonably foreseeable future.

Finally, the fact that only one of the two domestic producers expressed interest in maintaining the order supports my conclusion that the order should be revoked.

⁴² 19 U.S.C. § 1675a(a)(4).

⁴³ CR and PR at Table I-5. The industry's market share ranged between *** and *** percent during the original period of investigation, its market share was *** percent in 1998 and *** percent in 1999. *Id.* While these market shares are lower than the original period, they appear to be due, in part, to the departure of Dow from the industry in 1999. Canada Review, CR and PR at III-1.

⁴⁴ The industry's operating income levels were *** percent in 1998 and *** percent in 1999. Canada Review, CR and PR at Table I-1. The industry's combined capacity utilization rates, while understated, were *** percent in 1998 and *** percent in 1999. Canada Review, CR and PR at Table C-1.

E. Conclusion

For the reasons stated above, I determine that revocation of the order covering subject imports from China would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

INFORMATION OBTAINED IN THE REVIEW

INTRODUCTION

On April 3, 2000, the Commission gave notice that it had instituted a review to determine whether revocation of the AD order on pure magnesium from China would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.¹ All interested parties were requested to respond to this notice by submitting the information requested by the Commission.² On July 6, 2000, the Commission determined that the domestic interested party response to its notice of institution was adequate; the Commission also determined that the respondent interested party response was inadequate. The Commission found no other circumstances that would warrant conducting a full review. Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)).³ The Commission voted on this review on August 22, 2000, and notified Commerce of its determination on August 31, 2000.

The Original Investigation

The original investigation resulted from a petition filed, on March 31, 1994, by Magcorp; the International Union of Operating Engineers, Local 564; and the United Steelworkers of America.^{4 5} The petition alleged material injury and threat of material injury by reason of LTFV imports of primary magnesium (both pure and alloy) from China, Russia, and Ukraine. The Commission completed the original investigation in May 1995, finding that there were two like products corresponding to the two

¹ 65 FR 17531, April 3, 2000. Concurrently, the Commission instituted a review concerning the AD order on pure magnesium from Russia (inv. No. 731-TA-697 (Review)). However, on April 24, 2000, Commerce notified the Commission that it had not received a *Notice of Intent to Participate* from any domestic interested party in the sunset review for Russia and, as a result, intended to issue a final determination revoking the AD order on pure magnesium from Russia. Commerce revoked the AD order effective July 7, 2000 (65 FR 41944); the Commission terminated its review effective the same day.

² The Commission received one submission in response to its notice of institution for the subject review. It was filed on behalf of Magcorp, a U.S. producer of pure magnesium. Magcorp estimated that it accounted for *** percent of U.S. pure magnesium production in 1999, with Northwest Alloys accounting for the remaining *** percent. The company further noted that *** of Northwest Alloys' production is internally consumed by its parent company, Alcoa. Magcorp argued in its *Response* that shares based on merchant market production "are the best indicators of Magcorp's position with respect to U.S. production of pure magnesium." The company computed its share of domestic production of pure magnesium intended for the open market in 1999 at *** percent. *Response* of Magcorp, p. 30 and exhibit 16.

³ 65 FR 45105, July 20, 2000. The Commission's notice of its expedited review appears in app. A. See the Commission's web site (<http://www.usitc.gov>) for Commissioner votes on whether to conduct an expedited or full review. The Commission's statement on adequacy is presented in app. B.

⁴ Dow joined the original petitioners in June 1994.

⁵ Earlier, on September 5, 1991, Magcorp had filed a petition alleging that an industry in the United States was materially injured by reason of dumped and subsidized imports of pure magnesium and subsidized imports of alloy magnesium from Canada. *Staff Report of June 26, 2000* (Canada), p. I-2. Following the Commission's final affirmative determinations, Commerce issued an AD order on pure magnesium and CVD orders on pure magnesium and alloy magnesium from Canada on August 31, 1992. On August 2, 1999 (64 FR 41961, August 31, 1999), the Commission instituted full 5-year reviews of these orders (inv. Nos. 701-TA-309-A-B and 731-TA-528 (Review)) and, on July 13, 2000, voted to continue each order. The Commission has incorporated the record established, as of July 6, 2000, for the Canadian 5-year reviews into the record for this expedited review for China.

classes or kinds of merchandise then subject to review—pure magnesium and alloy magnesium.⁶ It also determined that the pure magnesium domestic like product included off-spec pure magnesium.^{7 8} The Commission issued an affirmative determination with respect to pure magnesium⁹ and a negative determination with respect to alloy magnesium.¹⁰ After receipt of the Commission’s determination,

⁶ Commerce defined the imported articles subject to the original investigation as encompassing two separate classes or kinds of merchandise—pure primary magnesium and alloy primary magnesium. (Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and is produced by decomposing raw materials into magnesium metal.) See the section of this report entitled “Scope” for Commerce’s definition of pure primary magnesium. Alloy primary magnesium products contain 50 percent or greater, but less than 99.8 percent, primary magnesium, by weight, and one or more of the following: aluminum, manganese, zinc, silicon, thorium, zirconium, and rare earths in the amounts which, individually or in combination, constitute not less than 1.5 percent of the material by weight, and do conform to the ASTM specifications for alloy magnesium. The Commission stated in its original views that although “companies that produce both pure and alloy magnesium use the same machinery, equipment, and employees for both ..., this factor is outweighed by the evidence in these final investigations concerning differences in certain physical characteristics, end uses, and customer perceptions, the lack of interchangeability between pure and alloy magnesium, and the differences in price levels and trends.” Pure primary magnesium is used chiefly as a chemical in the desulfurization and chemical reduction industries, and as an input in producing alloy. Alloy magnesium is used principally by die, sand, and mold casters for casting or in wrought form to manufacture structural products such as automobile and power tool components. Alloy magnesium is harder and stronger than pure magnesium and may possess a higher corrosion resistance. *Magnesium from China, Russia, and Ukraine*, USITC Publication 2885, May 1995, pp. 6-9.

⁷ Off-spec pure magnesium is that pure magnesium containing between 50 percent and 99.8 percent magnesium, but not meeting ASTM specifications for alloy magnesium. In its original views, the Commission indicated “{t}he prices for off-spec pure are lower than those for pure, since most purchasers are willing to purchase off-spec only at a discount. However, we find that this one factor is outweighed by the commonality of production processes and facilities, close similarities in physical characteristics, interchangeability for a number of uses, and customer perceptions.” *Id.*, pp. 9-10.

⁸ The Commission further found the relevant domestic industries to consist of the industry producing pure magnesium, whether or not it met ASTM specifications, and the industry producing alloy magnesium. *Id.*, p. 10.

⁹ In its original determination, the Commission cumulated LTFV imports of pure magnesium from China with LTFV imports of pure magnesium from Russia and Ukraine. *Magnesium from China, Russia, and Ukraine*, pp. 15-16 and 22. In response to an appeal from the Ukrainian respondent, the CIT affirmed the Commission’s determination. *Gerald Metals, Inc. v. United States*, 937 F. Supp. 930 (Ct. Int’l. Trade 1996). However, a subsequent appeal to the Federal Circuit resulted in the Federal Circuit vacating and remanding the CIT order. *Gerald Metals Inc. v. United States*, 132 F.3d 716, 720-21, 723 (Fed. Cir. 1997). In response to the Federal Circuit’s remand, the CIT ordered the Commission to reconsider its original determination “in a way that is consistent with the legal standard articulated by {the Federal Circuit} and that takes into account the existence and substitutability of fairly traded Russian imports of pure magnesium and the increase in the market share of said imports during the period of investigation.” *Gerald Metals v. United States*, 8 F. Supp. 2d 861 (Ct. Int’l. Trade 1998). The Commission reached a negative determination for Ukraine on remand, which was subsequently affirmed by the CIT. *Magnesium from Ukraine*, USITC Publication 3113, June 1998; *Gerald Metals v. USITC*, 27 F. Supp. 2d 1351 (Ct. Int’l. Trade 1998).

¹⁰ *Magnesium from China, Russia, and Ukraine*, p. 5. The Commission did not cumulate imports of alloy magnesium. With reference to alloy magnesium from China, the Commission stated that “{w}e find that the low volume of Chinese imports, both in absolute terms and as a share of apparent consumption, is not significant. Responses to questionnaires did not supply pricing data on these imports, but given the negligible volume of these

(continued...)

Commerce issued an AD order on imports of pure magnesium from China (as well as Russia and Ukraine).¹¹ Magcorp states that it does not object to the Commission's original determination that the domestic like product corresponding to the subject imports of pure magnesium is domestically produced pure magnesium, rather than all domestically produced primary magnesium.¹²

Commerce's Final Results of Expedited Sunset Review

Commerce extended the time limit for the final results of its expedited sunset review for pure magnesium from China to not later than August 1, 2000. Its determination is presented in app. A.

THE PRODUCT

Scope

Commerce's notice of its AD order for pure magnesium from China provided the following product definition:

The covered product is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the order. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industry. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses: (1) products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products containing less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as "pure" magnesium); and (3) products (generally referred to as off-spec

¹⁰ (...continued)

imports, we find that they could not have had significant adverse effects on domestic alloy magnesium prices, or an adverse impact on the domestic industry producing alloy magnesium." The Commission also found the volume of LTFV imports of alloy magnesium from Russia to not be significant. *Id.*, p. 23. (Earlier, it had made a negative preliminary determination with respect to alloy magnesium imports from Ukraine.)

¹¹ 60 FR 25691, May 12, 1995. The orders required the posting of a cash deposit equal to the estimated weighted-average AD margin, which was 108.26 percent for China. Effective January 21, 1998, Commerce published the final results of an AD new shipper administrative review for Taiyuan Heavy Machinery in which it determined a weighted-average AD margin of 69.53 percent for the period May 1, 1996 through October 31, 1996. 63 FR 3085, January 21, 1998.

At the request of Rossborough, a U.S. importer of the subject merchandise, Commerce initiated, on June 30, 1999, an administrative review for pure magnesium from China produced/exported by Taiyuan East-United Magnesium (64 FR 35124, June 30, 1999). Rossborough subsequently withdrew its request and Commerce terminated its review (65 FR 283, January 4, 2000). There have been no completed administrative reviews of the AD order on pure magnesium from China.

¹² *Response of Magcorp*, p. 32.

pure magnesium) that contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

Off-spec 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. It generally does 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.

Excluded from the scope are alloy primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classified under HTS subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2 mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the *Section Notes to Section XV*, the section of the HTS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1 mm. Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (i.e., length or diameter) of 1 inch or less.¹³

Commerce subsequently clarified the scope of the original AD order to include, but not be limited to, butt ends, stubs, crowns, and crystals.¹⁴ See 63 FR 3085, January 21, 1998 for the amended scope of the order, which reflects these subsequent scope revisions.¹⁵ Commerce's scope of the products subject to this review is specified in its "Final Results of Expedited Sunset Review," which, as indicated earlier, is provided in app. A. The products subject to the order are currently classified under the HTS subheadings

¹³ 60 FR 25691, May 12, 1995.

¹⁴ Specifically, effective November 14, 1997, Commerce ruled that magnesium crystal granules having a maximum dimension of less than one inch are included within the scope. 63 FR 6722, February 10, 1998. See May 22, 1997, instructions to Customs and November 14, 1997, *Final Scope Rule of Antidumping Duty Order on Pure Magnesium from the PRC*.

¹⁵ Also, effective July 22, 1999, it issued a ruling that AZ10A magnesium is off-spec pure magnesium within the scope. 65 FR 41957, July 7, 2000.

8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19, and 9817.00.90.¹⁶ The HTS subheadings are provided for convenience and for Customs purposes, but Commerce's written description of the merchandise is dispositive as to the scope of the product coverage.

Description, Uses, and Marketing¹⁷

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 that of aluminum, the principal metal with which it competes in the U.S. market. Magnesium is available in two principal forms, pure and alloy, with pure magnesium accounting for the majority of sales in the U.S. market during the original investigation (** percent, by quantity, in 1994); in 1999 it accounted for a *** percent share.¹⁸ As indicated earlier, only pure magnesium is subject to the AD order for China.¹⁹ The subject pure magnesium in unwrought form contains at least 99.8 percent magnesium by weight. Nonsubject alloy magnesium is an alloy consisting of magnesium and other metals, typically aluminum and zinc, containing less than 99.8 percent magnesium by weight, with magnesium the largest metallic element in the alloy by weight. Alloy magnesium is usually produced to improve certain properties such as strength, ductility, workability, corrosion resistance, density, or castability as compared with pure magnesium.

¹⁶ 63 FR 3085, January 21, 1998. The primary HTS subheading that applies is 8104.11.00 ("Unwrought magnesium containing at least 99.8 percent by weight of magnesium" or pure magnesium). (Throughout this report publicly-available statistics for HTS subheading 8104.11.00 are provided. It should be noted, however, that these data do not include any subject product not so classified (i.e., off-spec pure magnesium and magnesium crystal granules having a maximum dimension of less than one inch.)) The column 1-general rate of duty for HTS subheading 8104.11.00 is 8 percent *ad valorem*.

¹⁷ All of the discussion in this section is from the original investigation for China and from the recent 5-year reviews for Canada, unless otherwise noted. *Staff Report of April 20, 1995*, pp. I-6 through I-11, I-15, and I-51 through I-55; *Staff Report of June 26, 2000* (Canada), pp. I-13 through I-18, I-22, I-23, II-9, and II-13.

¹⁸ In addition, magnesium can be recovered by aluminum recyclers from secondary sources such as old and new scrap and recycled products. These recyclers do not, however, separate the magnesium from the aluminum and sell it on the open market; rather they reuse the magnesium with the aluminum to produce new two-piece beverage cans, or other aluminum alloy products. Secondary magnesium is not subject to this review. Further, in its earlier investigations for Canada and Norway, the Commission determined that secondary magnesium was not "like" imported primary magnesium. *Magnesium from Canada and Norway* (Preliminary), USITC Publication 2443, October 1991, p. I-7, n. 7.

¹⁹ In contrast, both pure magnesium and alloy magnesium were subject to the recent 5-year reviews for magnesium from Canada. ("Pure" magnesium as defined in the Canadian 5-year reviews did not, however, include the off-spec pure magnesium nor magnesium crystal granules having a maximum dimension of less than one inch that are subject to the instant review.) The Commission first found one like product in its original final investigation for magnesium from Canada. *Magnesium from Canada*, USITC Publication 2550, August 1992, p. 11. However, upon remand from the U.S.-Canada Binational Panel directing the Commission to provide separate injury analyses for at least two separate industries, the Commission found two like products—pure and alloy magnesium. *Magnesium from Canada* (Remand), USITC Publication 2696, November 1993, p. 3.

Information addressing like product issues for pure magnesium and the alloy product is provided in the original staff report for the China investigation as well as in the staff report for the recent 5-year reviews for Canada. See *Staff Report of April 20, 1995* for a discussion of the following topics: end-use markets (pp. I-8 and I-9); interchangeability (p. I-10); channels of distribution (pp. I-10 and I-11); customer perceptions (p. I-11); common manufacturing facilities and production employees (pp. I-11 through I-13); price (p. I-13); and marketing characteristics (pp. I-50 and I-51). Also see *Staff Report of June 26, 2000* (Canada) for current information on: end uses (p. I-14); manufacturing (pp. I-15 and I-16); and interchangeability, channels of distribution, and customer and producer perceptions (pp. I-17 and I-18).

Pure magnesium is widely used in commercial and industrial applications because it has special chemical and electrical properties that allow it to alloy well with such metals as aluminum. In contrast to the alloy product, pure magnesium is 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.²⁰ According to ***, there are no practical substitutes for pure magnesium with the exception of calcium carbide for desulfurization of iron and steel.

Differences of opinion existed during the original investigation with regard to the quality of the subject imports compared to the domestic product.²¹ Another difference involved ingot size: imported ingots from subject sources (including China) were smaller in size than domestically produced ingots, which were available in a variety of sizes (such as 16-, 25-, and 50-pound ingots).²² The Commission stated in its original views that “{a} number of producers, importers, and purchasers indicated that domestically produced pure magnesium and the subject imports of pure magnesium are generally comparable.” It added that there was a consensus “that the imports and the domestic product are used in the same range of uses.”²³

Both pure magnesium and alloy magnesium are typically sold directly to end users, although pure magnesium used for iron and steel desulfurization is subjected to further processing before being consumed by iron and steel mills. The majority of purchasers responding to questionnaires issued during the Canadian investigations indicated that they require their suppliers to become certified or prequalified. The qualification process can take anywhere from 1 to 6 months. The product is sold on both a spot and contract basis, with pricing quoted on a per-pound basis. Magcorp reported during the original investigation that *** were made by contract. Approximately *** percent of Northwest Alloys’ sales were on a contract basis. In contrast, the majority of responding importers indicated that most of their sales were on a spot basis. Contracts in the magnesium industry in 1995 varied in length from less than a year to five years, with the “typical” contract being one to two years in duration. The agreements contained volume requirements but did not generally fix price for the duration of the contract. Prices were usually negotiated at the onset of the agreement and took into account the overall competitive pricing levels of magnesium in the U.S. market. Most agreements allowed for price changes during the length of the contract as market prices changed. All three U.S. producers reported that the contracts contained meet-or-release clauses. Also, some U.S. suppliers maintained list prices for pure (and alloy)

²⁰ Alloy magnesium is principally used in structural applications, primarily in castings (die, permanent mold, and sand) and extrusions for the automotive industry. In contrast, pure magnesium is seldom used alone in structural applications because its specific tensile and yield strengths are low.

²¹ About one-half of the purchasers responding to Commission questionnaires issued in the original investigation indicated that the quality of the Chinese product was comparable to that of the domestic product; the remaining firms reported that the quality of the subject imports was inferior. Information from purchasers indicated that the quality differences were not usually in the basic chemistry of the magnesium but rather in other areas such as surface conditions, packaging, and sizing. *** reported that quality differences between domestic and imported magnesium were not a significant factor in their sales of magnesium. *** disagreed, indicating that some of its customers were unable to obtain certificates of analysis as to product quality from subject country producers.

²² Users indicated that there is some melt loss on the smaller-sized imported material.

²³ *Magnesium from China, Russia, and Ukraine*, p. 20.

magnesium; however these prices were reported to rarely, if ever, be adhered to. Rather, list prices were generally used as starting points for spot sales and contract price negotiations.^{24 25}

According to Magcorp's *Response*, ***. ***.²⁶ ***.²⁷ Magcorp indicated in its *Response* that there have been "****." Specifically, ***."²⁸

THE INDUSTRY IN THE UNITED STATES

U.S. Producers

At the time of the original investigation, there were three producers of pure magnesium: Magcorp, Northwest Alloys (a wholly owned subsidiary of Alcoa), and Dow. During 1994, Dow accounted for *** percent of net sales, by value, of pure magnesium by domestic producers, Northwest Alloys accounted for *** percent, and Magcorp accounted for *** percent. Magcorp produced both pure and alloy magnesium, ***.²⁹ Dow also produced both the pure and alloy products. Northwest, in contrast, manufactured only pure magnesium, ***.³⁰ Neither Magcorp nor Dow imported subject merchandise from China during the original investigation. ***.³¹

Magcorp and Northwest Alloys are the only known and currently operating U.S. producers of pure magnesium. Dow shut down its domestic pure magnesium operations in November 1998 after its 65,000-metric-ton facility in Texas suffered extensive damage from lightning strikes and flooding.³² In

²⁴ Published price series for magnesium are found in *American Metals Market*; these prices are based upon list prices and, thus, do not necessarily reflect current market transaction prices.

²⁵ The discussion of pricing practices in the original staff report did not differentiate between pure magnesium and the alloy product. Further, it was based, at least in part, on reports from Dow, a then-U.S. producer who is no longer manufacturing.

²⁶ ***. *Response* of Magcorp, p. 9. The original staff reported described ***. *Staff Report of April 20, 1995*, p. I-51.

²⁷ *Staff Report of June 26, 2000* (Canada), citing Magcorp's *posthearing brief*, app. A, p. 2.

²⁸ *Response* of Magcorp, p. 9. ***. See Magcorp's *posthearing brief* for invs. Nos. 701-TA-309-A-B and 731-TA-528 (Review).

²⁹ ***.

³⁰ *Staff Report of April 20, 1995*, pp. I-14 through I-17 and I-31. The Commission indicated in its 1995 determination that "{n}o party has argued for exclusion of captive production in these investigations, and we see no basis for exclusion of Northwest Alloys' internal shipments." *Magnesium from China, Russia, and Ukraine*, p. 10, n. 40.

³¹ *Staff Report of April 20, 1995*, pp. I-14 through I-17.

³² *Staff Report of June 26, 2000* (Canada), p. I-19. Magcorp states that "although a storm in September 1998 was the event that precipitated Dow's decision to exit the magnesium business, it was not the reason for this decision. Rather Dow's decision to exit the magnesium business was based primarily on its inability to compete with low-priced imports of pure magnesium." *Response* of Magcorp, p. 17. Also see exhibits 6 and 7 of the *Response*. Dow was reported to have been attempting to sell its magnesium facility for approximately one year prior to the closure. However, the magnesium plant was integrated with other production operations at the site, making it difficult to sell. *Minerals Yearbook (1998)*, U.S. Geological Survey, U.S. Department of the Interior (Magnesium).

Magcorp also pointed out that, on January 8, 1999, Labor certified the eligibility of workers manufacturing
(continued...)

1999, Magcorp produced *** percent of domestic production of pure magnesium and Northwest Alloys manufactured the other *** percent. The operations of the two producers remain quite different. Northwest Alloys transferred approximately *** percent of the pure magnesium that it produced in both 1998 and 1999 to its parent company Alcoa, while Magcorp internally consumed *** percent of its pure magnesium production during each of those years.³³ Magcorp states that neither it or Northwest Alloys is a related party as defined in 19 U.S.C. 1677(4)(B).³⁴

U.S. Production, Capacity, Shipments, Financial Experience, and Pricing

Data reported by U.S. producers of pure magnesium in the Commission’s original investigation and in its 5-year reviews of the Canadian orders for pure (and alloy) magnesium are presented in table I-1.³⁵ As shown, the trends for certain indicators (capacity, production, the quantity of U.S. shipments, capital expenditures, and R&D expenditures) were downward from 1992 to 1994, while other indicators (capacity utilization, and the value and unit value of U.S. shipments) rose during the period reviewed in the original investigation. ***.³⁶ The decrease in production capacity reported in 1994 was a result of Dow shutting down one of its two then-existing plants.³⁷ With the decrease in available production capacity, capacity utilization ratios rose from *** percent in 1993 to *** percent in 1994 (table I-1). Importers and purchasers indicated during the original investigation that there were supply problems in 1995 following the Dow plant shutdown.

Table I-1

Pure magnesium: U.S. producers’ capacity, production, U.S. shipments, and selected financial indicators, 1992-94 and 1998-99

* * * * *

³² (...continued)

pure magnesium at Northwest Alloys to apply for worker adjustment assistance. Northwest Alloys’ petition cited “the continued increase of foreign imports.” *Response of Magcorp*, p. 17. Also see exhibit 8 of the *Response*.

³³ *Staff Report of June 26, 2000 (Canada)*, p. I-20.

³⁴ *Response of Magcorp*, p. 29.

³⁵ Also see exhibit 16 of Magcorp’s *Response* for data on the U.S. primary magnesium industry in 1999. Since those data reflect, however, only Magcorp’s production, along with its estimate for Northwest Alloys, this report presents the more complete data gathered by the Commission in its Canadian reviews.

³⁶ The staff report indicated that “***.” *Staff Report of April 20, 1995*, p. I-28.

³⁷ *Id.*, p. I-18. The Commission stated in its 1995 determination that “{o}ne producer, Dow Chemical, reacted to the loss in market share to the LTFV imports, among other factors, by shutting down one of its plants in the first quarter of 1994, rather than replacing the facility as originally planned.” *Magnesium from China, Russia, and Ukraine*, p. 22.

Information on the performance of the U.S. industry for pure magnesium immediately following the imposition of the AD order is not available.³⁸ Total U.S. production of the subject product was down sharply in 1999 compared to 1994, presumably due, for the most part, to Dow's departure from the industry (table I-1). ***. Magcorp stated in its *Response* that the imposition of the AD order was "crucial" to the improvement in the U.S. pure magnesium industry. Specifically, "domestic prices recovered and key operational indicators of the U.S. producers' condition improved significantly after the order."³⁹

Table I-2 presents pricing data for pure magnesium gathered during the Commission's original investigation and, more recently, in its 5-year reviews for Canada. As discussed by the Commission in its original views, "{t}he pricing data indicate that prices for {domestic pure magnesium} began to rise in 1992 after the suspension of liquidation in the investigation of Canadian magnesium, and continued to rise through the middle of 1993. However, following the importation of lower-priced LTFV pure magnesium from the subject countries in the second and third quarters of 1993, prices for U.S.-produced pure magnesium ... fell in the fourth quarter of 1993 and remained low in the first half of 1994. In the second half of 1994, when the LTFV imports were withdrawn from the market, U.S. producers were again able to raise their prices for pure magnesium." As shown in table I-2, reported domestic prices in the first half of 1998 were well above those reported during the period reviewed during the original investigation. Prices have, however, been declining since 1998.⁴⁰ Further, the average unit value of domestic shipments by Magcorp and Northwest Alloys, in the aggregate, was \$*** per pound in 1999 compared to \$*** per pound in 1998 (table I-1).

Table I-2

Pure magnesium: Weighted-average delivered prices and total quantities of domestically produced magnesium sold to aluminum manufacturers, by quarters, January 1992-December 1994 and January 1998-March 2000

* * * * *

As shown in table I-1, declines in operating income from 1998 to 1999 were also reported by Magcorp and Northwest Alloys. Magcorp stated in its *Response* that its capital expenditures and R&D expenditures "are particularly vulnerable to the effects of financial deterioration." The firm is currently investing in new electrolytic cell production technology that will ensure compliance with environmental standards as well as reduce production costs and increasing cell efficiency. It stated that these

³⁸ Reported U.S. production of primary magnesium (including both the pure and alloy products) increased from 128,000 metric tons in 1994 to 142,000 metric tons in 1995 then decreased from 133,000 metric tons in 1996 to 125,000 metric tons in 1997 to 106,000 metric tons in 1998. *Minerals Yearbook (1998)*, U.S. Geological Survey, U.S. Department of the Interior (Magnesium, table 1 (Salient Magnesium Statistics)). As indicated earlier, pure magnesium accounts for the major portion of U.S. primary magnesium output; however, demand for the alloy product has been rising.

³⁹ *Response* of Magcorp, p. 14.

⁴⁰ Likewise, the *Metal Bulletin* free market price range for pure magnesium fell from \$2,425 to \$2,625 per metric ton at the beginning of 1998 to \$1,900 to \$2,150 per metric ton at the end of the year. There was, however, a small increase in December 1998 following Dow's announcement that it would be closing its last domestic manufacturing facility. *Minerals Yearbook (1998)*, U.S. Geological Survey, U.S. Department of the Interior (Magnesium).

investments are, however, in “jeopardy” since its “weakened financial condition has made it more difficult for Magcorp to finance these new investments, either from cash flow or new borrowings.”⁴¹

U.S. IMPORTS AND CONSUMPTION

U.S. Imports⁴²

During the original investigation, the Commission identified 20 possible importers of pure magnesium from the countries then subject to investigation (i.e., China, Russia, and Ukraine). ***⁴³ In its *Response* to the Commission’s notice of institution, Magcorp indicated that nine U.S. importers were listed in PIERS as having imported the subject merchandise during the period from 1998 to February 2000.⁴⁴

Figure I-1 and table I-3 present data gathered on imports of pure magnesium from China. As shown in both presentations (the data for which differ somewhat, as discussed in note 1 to table I-3), subject Chinese imports rose from 1992 to 1993, then declined in 1994 to a point somewhat greater than that reported in 1992. The Commission, in discussing import trends in its original views, pointed out that there were no imports from China in 1991 and stated that “{w}e attribute the 1994 declines, at least in part, to the ongoing antidumping investigation ...”⁴⁵

Following the imposition of the order in May 1995, Chinese imports of pure magnesium dropped to much lower levels for 1995⁴⁶ and 1996, then rose sharply in 1997 and 1998 to a level that exceeded that reported during the original period of investigation. However, Magcorp pointed out in its *Response* that beginning in 1996 imports from China began entering under the TIB provisions.⁴⁷ The firm argued that, based upon their assumption that the TIB imports of pure magnesium from China have been re-exported,

⁴¹ *Response* of Magcorp, p. 28.

⁴² As discussed earlier, the Commission determined in the 1995 investigation to cumulate the volume and effects of all subject imports (Chinese, Russian, and Ukrainian) of pure magnesium. In determining that it was not appropriate to apply the negligibility exception to any of the subject imports (including those from China), the Commission stated that “the pure magnesium market is fairly price sensitive. A number of purchasers indicated that price was a factor in adding or dropping suppliers. Even for contractual sales, producers change their prices, both upward and downward, in reaction to prices offered by competitors. Thus, even small quantities of the imports may cause adverse price effects.” Further, it indicated that it found “the imports from China were neither isolated nor sporadic, and entered the United States continuously from the latter half of 1992 through the first half of 1994.” *Magnesium from China, Russia, and Ukraine*, pp. 16-17.

⁴³ *Staff Report of April 20, 1995*, p. I-17.

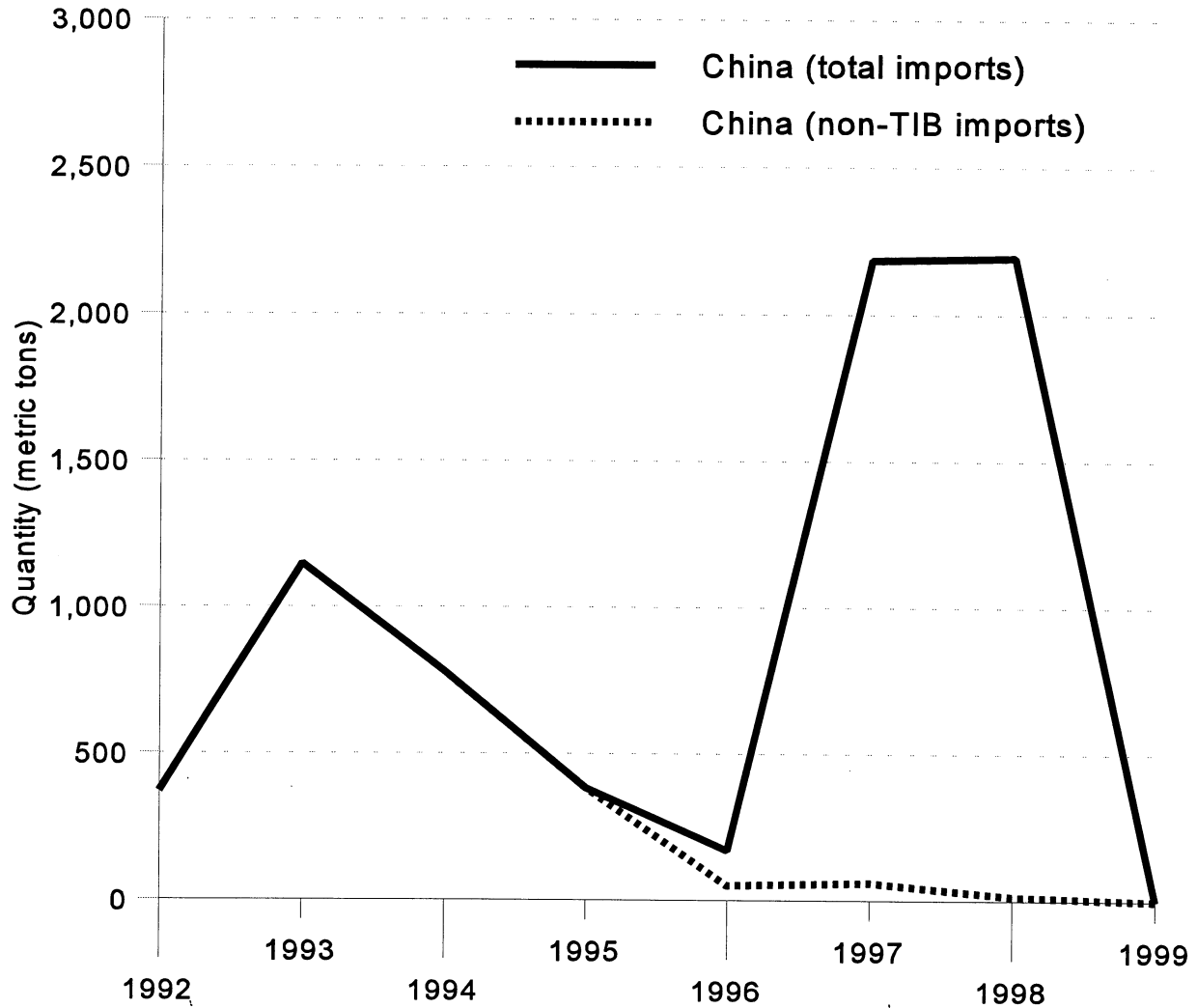
⁴⁴ *Response* of Magcorp, p. 29. See exhibit 13 of the *Response* for the names of the firms.

⁴⁵ *Magnesium from China, Russia, and Ukraine*, p. 16. In discussing the conditions of competition in the U.S. market it also noted that CVD and AD orders covering imports of pure magnesium from Canada were issued in August 1992, at which point Canadian imports of pure magnesium declined. It noted, “{s}hortly thereafter, subject imports from China, Russia, and the Ukraine began entering the United States.” *Id.*, p. 11.

⁴⁶ Magcorp states that “with the imposition of the {AD} order on pure magnesium from China on May 13, 1995 and its cash deposit rate of 108.26 percent, imports from China ceased entirely for the next six months. Imports from China did not appear again until December 1995, and the volume was only 19 tons.” *Response* of Magcorp, p. 15.

⁴⁷ *Id.* It indicated that “{t}he TIB provisions permit temporary entry of material subject to an antidumping order without deposit of antidumping duties so long as the material is re-exported within a specified period of time.”

Figure I-1
 Pure magnesium: U.S. imports from China, by quantity, 1992-99



Source: Official Commerce statistics for 1992-99 for the total imports figure (HTS subheading 8104.11.00 (for pure magnesium)). Note that any imports of off-spec pure magnesium are excluded. A more than minimal amount of off-spec pure magnesium appears to have been imported from China in 1993. Also excluded is any other subject product (including that found by Commerce to be within the scope subsequent to the imposition of the AD order) that is classified in HTS subheadings other than 8104.11.00. The quantity of such imports is not, however, believed to be significant. In its *Response*, Magcorp presented import data only for that product classified under HTS subheading 8104.11.00. See exhibit 1 of Magcorp's *Response*. Data for non-TIB imports from China are from the *Response* of Magcorp, exhibit 4.

Table I-3
Pure magnesium: U.S. imports, 1992-94 and 1998-99

Item	1992	1993	1994	1998	1999
Quantity (metric tons)					
China	410 ¹	2,071 ¹	800 ¹	2,194	0
Russia (LTFV)	***	***	***	(2)	(2)
Ukraine	692	4,223	1,283	0	0
Subtotal	***	***	***	(3)	(3)
Russia (fair value)	***	***	***	12,715 ⁴	9,998 ⁴
Canada	(5)	(5)	(5)	*** ⁶	*** ⁶
Other sources ⁷	1,251	2,226	2,000	***	***
Total	4,284	25,590	15,738	***	***
Landed duty-paid value (1,000 dollars)					
China	1,169 ¹	5,815 ¹	1,717 ¹	5,469	0
Russia (LTFV)	***	***	***	(2)	(2)
Ukraine	2,093	9,698	3,254	0	0
Subtotal	***	***	***	(3)	(3)
Russia (fair value)	***	***	***	37,098 ⁴	26,590 ⁴
Canada	(5)	(5)	(5)	*** ⁶	*** ⁶
Other sources ⁷	3,443	6,301	5,543	***	***
Total	12,408	62,332	38,243	***	***
Landed duty-paid unit value (dollars per pound)					
China	\$1.29 ¹	\$1.27 ¹	\$0.97 ¹	\$1.13	-
Russia (LTFV)	***	***	***	(2)	(2)
Ukraine	***	***	***	***	\$***
Subtotal	***	***	***	(3)	(3)
Russia (fair value)	***	***	***	1.32 ⁴	1.21 ⁴
Canada	(5)	(5)	(5)	*** ⁶	*** ⁶
Other sources ⁷	1.25	1.28	1.26	***	***
Total	1.31	1.10	1.10	***	***

Notes on next page.

Continuation.

¹ Data somewhat exceed those reported for HTS subheading 8104.11.00 (for pure magnesium) in that they include off-spec pure magnesium apparently reported as alloy magnesium in the HTS). See *Memorandum INV-S-056*, dated April 26, 1995. A more than minimal amount of off-spec pure magnesium appears to have been imported from China in 1993. (Note that figure I-1 shows a continuous data series composed only of pure magnesium entered under HTS subheading 8104.11.00.)

² Not available.

³ Not applicable.

⁴ Includes that pure magnesium imported from Russia that was subject to the AD order along with any fair-valued imports.

⁵ Data included with "other sources."

⁶ Consists only of LTFV imports from Canada subject to the 5-year reviews. Nonsubject imports from Canada are included with "other sources."

⁷ The primary other sources during 1992-94 were Brazil and Mexico. The primary other source during 1998-99 was Israel.

Note.--Customs' *Antidumping/Countervailing Duty Annual Report* shows no paid entries of the subject merchandise during FY 1997; the values of paid entries for FY 1995, FY 1996, and FY 1998 are business proprietary and not available to the Commission.

Source: *Staff Report of April 20, 1995*, table 23, for 1992-94 data (which were official Commerce statistics, except for Russia (LTFV), Russia (fair value), and, apparently, China); and *Staff Report of June 26, 2000*, table IV-1, for 1998-99 data (which are compiled from data submitted in response to Commission questionnaires and from official Commerce statistics). See the note to figure I-1 for a discussion of the completeness of the presented import data. Note that landed, duty-paid values do not include any antidumping duty.

such imports "should be excluded when examining the effectiveness or impact of the order."⁴⁸ The Customs' *Antidumping/Countervailing Duty Annual Report*, which, as indicated in a note to table I-3, shows no paid entries of the subject merchandise during FY 1997, supports their contention that the TIB imports were, in fact, re-exported and, thus, were not subject to the AD order.⁴⁹ Only 2.8 percent of total U.S. imports of pure magnesium from China were not subject to the TIB provision in 1997 and 0.6 percent were not subject in 1998.⁵⁰ In 1999, total U.S. imports of the subject product fell to zero.

As shown in table I-3, imports from sources other than China have risen considerably since the period reviewed in the 1995 investigation. Magcorp indicated in its *Response* that "there has been a significant increase in the volume of nonsubject imports from Russia and Israel entering the U.S. market at low prices." It stated that "{a}bsent the order, pure magnesium from China, Israel, and Russia would engage in price competition with each other, pursuing the same customers, and would thereby depress

⁴⁸ *Id.*, p. 15. and exhibit 4.

⁴⁹ According to official Commerce statistics, the landed duty-paid value of imports entered under HTS subheading 8104.1100 (pure magnesium) was \$5.5 million in CY 1997.

⁵⁰ See the trend for non-TIB imports in figure I-1, which was based on data presented in the *Response* of Magcorp, exhibit 4.

U.S. prices.”⁵¹ Magcorp attached import prices from *Platt’s Metals Week* “MW US Dealer Import” to its *Response* as exhibit 12, which show a decline in nonsubject pricing from \$1.38 per pound in April 1999 to \$1.19 per pound in May 2000. Magcorp furthered alleged that, should be AD order be revoked, there would be “intensified competition” from what it labeled a “huge” new supplier in Canada, namely, Magnola (Danville, Quebec). Pure magnesium production at Magnola was to have begun by July 2000; its output is reported by Magcorp to “be targeted primarily at the U.S. market ...”^{52 53}

The only subject pricing data provided by Magcorp were import unit values, based on landed duty-paid values of official Commerce statistics. They, along with delivered prices gathered during the Commission’s original investigation, are presented in table I-4. As shown, the unit values of Chinese imports of pure magnesium declined from 1992 to 1995, more than doubled in 1996, then declined again in 1997 and 1998. Magcorp stated in its *Response* that “absent the order, subject imports would enter at prices that would have a significant depressing or suppressing effect on prices of the domestic like product realized by domestic producers.”⁵⁴

Table I-4								
Pure magnesium: Unit values of imports for consumption and weighted-average delivered prices of magnesium imported from China and sold to aluminum manufacturers, 1992-99¹								
Item	1992	1993	1994	1995	1996	1997	1998	1999
	<i>(dollars per pound)</i>							
Unit value ²	\$1.29	\$1.25	\$0.97	\$0.67	\$1.35	\$1.14	\$1.13	-
Delivered price ³	***	***	***	(4)	(4)	(4)	(4)	-
<i>Notes on next page.</i>								

⁵¹ *Id.*, p. 8.

⁵² *Id.*, pp. 8-9. The plant’s rated capacity is 63,000 metric tons (pure magnesium and alloy magnesium). Reportedly, “about 3,000 {metric tons} per year will be used by {the owner,} Noranda Aluminum. For 90 percent of the rated output, Noranda set quotas for its 90 key customers and will negotiate annual contracts ...” The plant is anticipated to reach 100 percent of its production capacity toward the end of 2001. See articles submitted in exhibit 2 of the *Response* of Magcorp. Also see *Staff Report of June 26, 2000* (Canada), pp. IV-6 and IV-7, n. 4, and *Pure Magnesium from Canada*.

⁵³ Magcorp also argued in its *Response* that the domestic pure magnesium industry has been impacted by increased imports of nonsubject magnesium powder from China. As shown in exhibit 5 of the *Response*, such imports have increased from 1,649 metric tons in 1996 to 12,886 metric tons in 1999. The firm labels magnesium powder as an “important downstream market” for pure magnesium, indicating that imports of the product result in fewer sales of U.S.-made pure magnesium to the domestic magnesium powder industry. *Response* of Magcorp, pp. 16-17.

⁵⁴ *Id.*, p. 26.

Continuation.

¹ Note that the unit values of imports for consumption and the delivered prices of U.S. importers' sales represent different levels of trade.

² Imports entered under HTS subheading 8104.1110 (pure magnesium).

³ Reported prices are for commodity-grade pure magnesium containing at least 99.8 percent but less than 99.95 percent magnesium.

⁴ Not available.

Note.--The annual delivered prices presented for 1992-94 are weighted averages of the quarterly prices calculated during the original investigation (the domestic counterparts of which were presented earlier in table I-2). In its original views, the Commission indicated that “in 17 of the 21 possible quarterly comparisons between the domestic product and the LTFV imports from China, the imported product undersold the domestic product by margins ranging from 2.7 to 17.6 percent.” *Magnesium from China, Russia, and Ukraine*, p. 21.

Source: Official Commerce statistics and calculations derived from *Staff Report of April 20, 1995* (table 25).

Apparent U.S. Consumption

Demand for pure magnesium largely depends on the demand for aluminum sheet used in the production of beverage cans and other packaging. Apparent U.S. consumption of the product is shown as falling by *** percent from 1994 to 1999 in table I-5. Although Dow shut down its last domestic plant in late 1998, no corresponding increase in U.S. imports was seen in 1999. Likewise, U.S. shipments by Magcorp and Northwest Alloys actually fell *** percent from 1998 to 1999.⁵⁵ As indicated earlier, there are no practical substitutes for pure magnesium (with the exception of calcium carbide for desulfurization of iron and steel). In its *Response*, Magcorp stated that U.S. demand for pure magnesium has “generally grown” since the imposition of the AD order.⁵⁶ In its opinion for the recent Canadian 5-year reviews, the Commission indicated that demand for pure magnesium is expected to remain essentially flat for the next few years.⁵⁷

There were shortages of pure magnesium in the U.S. market during the original investigation; as indicated earlier, Dow closed the first of its then two existing plants in the first quarter of 1994.⁵⁸ Then, as now, no rise in U.S. imports of pure magnesium was immediately evident. In contrast, total U.S. imports fell from 24,236 metric tons in 1993 to 15,718 metric tons in 1994 to 6,479 metric tons in 1995,

⁵⁵ Further, Magcorp and Northwest Alloys reported a rise in their inventories of pure magnesium from *** metric tons in 1998 to *** metric tons in 1999. *Staff Report of June 26, 2000* (Canada), table III-4.

⁵⁶ *Response* of Magcorp, p. 31. In the Commission's report for the Canadian 5-year reviews, Magcorp is, however, reported as having indicated that since 1992 there has been little growth in demand for pure magnesium. *Staff Report of June 26, 2000* (Canada), p. II-7.

⁵⁷ *Magnesium from Canada*, USITC Publication 3324, July 2000.

⁵⁸ Purchasers confirmed that there had been supply shortages at times. The Commission stated in its 1995 determination that “any decrease in the supply of domestic pure magnesium resulted from the decrease in capacity caused by Dow's plant shutdown.” *Magnesium from China, Russia, and Ukraine*, p. 20.

Table I-5

Pure magnesium: U.S. producers' U.S. shipments, U.S. imports, and apparent U.S. consumption, on the basis of quantity, 1992-94 and 1998-99

Item	1992	1993	1994	1998	1999
	Quantity (metric tons)				
U.S. producers' U.S. shipments	***	***	***	***	***
U.S. imports: China (non-TIB)	410	2,071	800	14	0
All China	410	2,071	800	2,194	0
Other sources	3,874	23,519	14,938	***	***
Total	4,284	25,590	15,738	***	***
Apparent U.S. consumption	***	***	***	***	***
	Share of consumption (percent)				
U.S. producers' U.S. shipments	***	***	***	***	***
U.S. imports: China (non-TIB)	***	***	***	***	***
All China	***	***	***	***	***
Other sources	***	***	***	***	***
Total	***	***	***	***	***

Note.—See the note to table I-1 indicating that direct comparisons of 1994 figures to those for 1998 are misleading due to the omission of Dow's data for 1998. It is, however, appropriate to compare data for 1994 to that for 1999 since both sets of figures are based on total U.S. production.

Source: *Staff Report of April 20, 1995*, table 24, for 1992-94 data (of which import data were official Commerce statistics); and *Staff Report of June 26, 2000 (Canada)*, tables I-4 and I-6, for 1998-99 U.S. producers' U.S. shipments and official Commerce statistics and *Response of Magcorp*, exhibit 4, for 1998-99 import data.

presumably as LTFV imports were withdrawn from the U.S. market with the imposition of the May 1995 AD order. U.S. imports from all sources climbed again to 17,309 metric tons in 1996 as imports from Russia rose⁵⁹ and then rose further, to 26,855 metric tons by 1999, as pure magnesium from Israel began entering the United States.⁶⁰

During the original investigation, U.S. consumption of pure magnesium rose irregularly from *** metric tons to *** metric tons (table I-5). The Commission stated in its views that “{t}he domestic industry producing pure magnesium may be affected by the business cycles of the industries that consume pure magnesium. Users of the product include aluminum producers, steel desulfurizers, magnesium granule producers, and chemical and pharmaceutical manufacturers. The demand in the consuming industries appeared to have remained relatively steady, with a slight increase, during the period originally investigated.”⁶¹ The market shares, in terms of quantity, held by U.S. producers fell from *** percent in 1992 to *** percent in 1994 as the shares attributed to imports from other countries rose. Except for 1993, the market share for Chinese imports alone was less than *** percent.⁶² In 1999, U.S. producers’ domestic market share was reported to be *** percent, with the remainder of the market supplied by imports not subject to this review.

Magcorp reported during the Commission’s 5-year reviews for Canada that average growth in U.S. demand for pure magnesium is expected to be in the range of *** percent over the next few years.⁶³ According to the 1998 *Minerals Yearbook*, “{i}n aluminum alloying, most of the use of magnesium is in aluminum beverage cans, and with postconsumer can-recycling rates of more than 50 {percent} magnesium use in this area is not expected to grow significantly. The only large potential for growth in the use of magnesium for aluminum alloying is if automobile manufacturers make extensive use of aluminum sheet in auto bodies. Desulfurization use of primary magnesium has actually decreased in the past year, so growth in this application may be lower than average from 1990 to 1998.”⁶⁴ In its discussion of supply conditions in its *Response*, Magcorp also indicated that “worldwide capacity to produce pure and alloy magnesium has been increasing significantly, with substantial new capacity being constructed or planned in a number of countries.”⁶⁵ The 1998 *Minerals Yearbook* projects a “significant overcapacity” in the magnesium industry if all planned capacity expansions are completed.⁶⁶

⁵⁹ Product exported by certain Russian manufacturers/exporters was determined by Commerce to be sold at fair value.

⁶⁰ See official Commerce statistics for HTS subheading 8104.1100 (pure magnesium).

⁶¹ *Magnesium from China, Russia, and Ukraine*, p. 10.

⁶² As discussed earlier, the Commission cumulated Chinese imports with then-subject imports from Russia and the Ukraine. The market share of U.S. imports of pure magnesium from China, Russia (LTFV), and Ukraine, in terms of quantity, was *** percent in 1992, *** percent in 1993, and *** percent in 1994. See table 24 of the *Staff Report of April 20, 1995*.

⁶³ *Staff Report of June 26, 2000* (Canada), p. II-7, citing Magcorp’s *prehearing brief*, pp. 33-34.

⁶⁴ *Minerals Yearbook (1998)*, U.S. Geological Survey, U.S. Department of the Interior (Magnesium).

⁶⁵ *Response of Magcorp*, p. 31.

⁶⁶ *Minerals Yearbook (1998)*, U.S. Geological Survey, U.S. Department of the Interior (Magnesium).

THE FOREIGN INDUSTRY

During its original investigation, the Commission identified four producers of primary magnesium⁶⁷ in China: Fushon, Min He, NingXia, and Yin Chuan. At the time, only Yin Chuan did not export the magnesium it produced in China. According to estimates by the U.S. Bureau of Mines, China had an annual production capacity of 26,000 metric tons of primary magnesium in 1993, with reported production of 12,000 metric tons, resulting in a capacity utilization ratio of 46 percent. In 1993, 2,071 metric tons of magnesium from China were imported into the United States, accounting for 17 percent of total estimated Chinese production.⁶⁸

The number of magnesium plants in China is reported to have grown from one plant in 1987 to 300 plants in 1995 before a period of production adjustment and consolidation reduced the number of plants to 85 in 1999.⁶⁹ Further, in 1996, the Chinese government reportedly “issued regulations forbidding construction of new primary magnesium plants and reiterated the regulations {in 1999}.”⁷⁰ These regulations did not, however, appear to preclude continued investment in the Chinese magnesium industry. The CMA indicates that foreign companies are investing in magnesium manufacturing directly or in partnership with Chinese interests. Four Sino-Japanese joint ventures are currently in operation.^{71 72} In its *Response*, Magcorp also discusses the absorption of smaller magnesium producers by larger firms.⁷³ It indicates that “{e}stimates vary as to the number of significant commercial producers in China” and, among other sources, cited the *Metal Bulletin Research* estimate of 62 companies with estimated capacity in 1998 of 132,300 tons. Magcorp noted that this list does not, however, include those “numerous companies with production capacity of less than 1,000 tons.”⁷⁴

China’s current magnesium production capacity is estimated to be between 170,000 and 180,000 metric tons, a sharp increase over the 26,000 metric ton figure reported for 1993 in the original staff

⁶⁷ The data compiled for the original investigation included both subject pure magnesium and the nonsubject alloy product. Likewise, most current data sources for primary magnesium do not separate out the subject product. However, most primary magnesium production in China was of the pure product during the period reviewed in the original investigation. The same is true today, although the Chinese alloy magnesium industry is expanding.

⁶⁸ The original staff report indicated that these data were from various sources and that caution should be used in evaluating them. *Staff Report of April 20, 1995*, p. I-39. Also see table 19 in the original staff report for partial data on the operations of Min He, one of the Chinese manufacturers.

⁶⁹ “Chinese Magnesium is Surging,” *American Metal Market*, December 1, 1999, p. 5.

⁷⁰ “China Pushes Magnesium Exports,” *American Metal Market*, June 9, 1999.

⁷¹ The Japanese have made major investments in magnesium production in China to assure supplies of magnesium for Japan’s aluminum and automobile production. “Magnesium Smelters, Traders Entering Recycling,” *American Metal Market*, May 25, 1999, p. 8A.

⁷² Abundance of raw materials and low production costs in China are key factors in the continuing competitiveness of Chinese magnesium in world markets.

⁷³ For example, Wenxi Yinguang, which is one of China’s largest producers, purchased six small producers in 1997 and acquired five more magnesium plants in 1998. *Response* of Magcorp, p. 19, citing articles in *Metal Bulletin Research* and *Platt’s Metals Week*. The firm argues that, “{a}s consolidation continues and Chinese firms become larger and more efficient, they will continue to compete in the global magnesium market at low prices.” *Id.*, p. 21.

⁷⁴ *Response* of Magcorp, p. 19, citing *Metal Bulletin Research*, p. 90. The firm provided the names of 67 Chinese producers of pure magnesium in its *Response*. See exhibit 14.

report.⁷⁵ However, Chinese magnesium plants reportedly are not operating to full capacity. According to Dong Chungming, an official with the CMA, “actual annual output is below capacity as only 70 plants {of the 110 magnesium producers} are operating.” Further, “{s}ome plants have shut down on losses resulting from higher production costs.”⁷⁶ Also, according to an article in *American Metal Market*, the enforcement of existing AD orders “have resulted in reduced export earnings and the mothballing of some capacity ...”⁷⁷ According to the CMA, primary magnesium production in China will reach 140,000 metric tons in 1999, up 17 percent from the 120,000 metric tons produced in 1998.⁷⁸ Another source indicates that China manufactured 157,000 metric tons of magnesium in 1999, up 30 percent from 1998.⁷⁹ As indicated earlier, in 1993, 12,000 metric tons of magnesium were reported to be produced in China.

In addition to being the world’s largest producer of pure magnesium, China is also the largest world exporter of magnesium.⁸⁰ According to the CMA, Chinese exports of magnesium in 1998 amounted to just under 100,000 metric tons, up from 78,000 metric tons in 1997 and 16,000 metric tons in 1994.⁸¹ Chinese exports of magnesium to the EU accounted for 28 percent of total magnesium exports in 1998, with exports to Japan accounting for 24 percent and exports to the United States accounting for 19 percent of such exports.^{82 83} There is some domestic consumption of magnesium in China. According to Cai Xiao Hang, CMA council member from Minmetals Precious & Rare Minerals Import & Export Co (Beijing), domestic consumption of primary magnesium in China is expected to climb to 50,000 metric tons in 2001 from 21,500 metric tons in 1998 and 14,760 metric tons in 1994.⁸⁴ Cai further indicated that “{t}he annual output of Chinese primary magnesium will be kept stable, production costs will be reduced and the quality of primary magnesium will continuously improve.”⁸⁵ However, according to a statement made by Dong Chungming, an official of the CMA, when discussing the existing AD order in the EU, “{in} the long run, Chinese magnesium exports should grow.”⁸⁶

⁷⁵ “Chinese Magnesium is Surging,” *American Metal Market*, December 1, 1999, p. 5. Magcorp cites reports that China’s total pure {emphasis provided} magnesium capacity is between 160,000 metric tons and 200,000 metric tons. *Response* of Magcorp, p. 18, citing articles provided in exhibit 9. The articles appear to refer to primary magnesium as a whole and do not specifically address pure magnesium operations. However, as indicated earlier, most Chinese magnesium production is of the pure product.

⁷⁶ “Chinese Magnesium Makers Eye Long Term Despite EU Duty,” *Platt’s Metals Week*, May 22, 2000 (submitted as exhibit 9 to the *Response* of Magcorp).

⁷⁷ “China Pushes Magnesium Exports,” *American Metal Market*, June 9, 1999.

⁷⁸ As cited in “Chinese Magnesium is Surging,” *American Metal Market*, December 1, 1999, p. 5.

⁷⁹ “Chinese Magnesium Makers Eye Long Term Despite EU Duty,” *Platt’s Metals Week*, May 22, 2000 (submitted as exhibit 9 to the *Response* of Magcorp).

⁸⁰ *Response* of Magcorp, pp. 18 and 19.

⁸¹ “China Pushes Magnesium Exports,” *American Metal Market*, June 9, 1999.

⁸² *Id.*

⁸³ *The World Trade Atlas* shows total Chinese exports of subject pure magnesium rising from 60,726 metric tons in 1997 to 73,678 metric tons in 1998 to 91,664 metric tons in 1999. Japan and the Netherlands were, by far, the most significant export destinations. The unit values of pure magnesium from China have fallen from \$2,271 per metric ton in 1997 to \$2,108 per metric ton in 1998 to \$1,685 per metric ton in 1999.

⁸⁴ “China Pushes Magnesium Exports,” *American Metal Market*, June 9, 1999.

⁸⁵ *Id.*

⁸⁶ “Chinese Magnesium Makers Eye Long Term Despite EU Duty,” *Platt’s Metals Week*, May 22, 2000

(continued...)

Third country barriers to Chinese exports include an AD order for Chinese magnesium in the EU that sets minimum prices.⁸⁷ Magcorp indicates that “{t}he EU is currently considering tightening that order to deal with Chinese circumvention through duty absorption.”⁸⁸ According to a recent trade article, “{b}ecause of an expected decrease in orders due to the EU’s proposed higher antidumping duties, Chinese traders said they are developing other markets such as Japan, North America, Africa, South America and non-EU countries.”⁸⁹ India has also imposed an AD order on pure magnesium from China.⁹⁰

Magcorp also argued in its *Response* that the Chinese government “provides fiscal incentives for exports of magnesium” in that it raised the export tax rebate on magnesium to 15 percent in 1999.⁹¹ The firm states that “{t}his additional incentive to export will likely increase the volume of Chinese magnesium products coming to Western markets. Also, a larger export tax rebate will decrease the cost to export pure magnesium by Chinese firms, allowing them to lower prices without affecting their level of profit.”⁹² Magcorp, citing increased U.S. imports of alloy magnesium and magnesium powder from China, also argues that the potential exists for product shifting from these products to pure magnesium if the AD order were revoked. They state that “the striking growth in the imports of downstream products from China, clearly in response to the imposition of the order on pure magnesium, shows that Chinese producers cannot sell pure magnesium at non-dumped prices.”⁹³ Finally, Magcorp states that Chinese producers would have “a strong incentive” to direct exports to the United States if the AD order was revoked since the United States “is the world’s largest market for pure magnesium and because it has higher prices than other major markets.”⁹⁴

⁸⁶ (...continued)

(submitted as exhibit 9 to the *Response* of Magcorp).

⁸⁷ Effective May 15, 1998, the EC “imposed provisional antidumping duties on magnesium imported from China.” *Minerals Yearbook (1998)*, U.S. Geological Survey, U.S. Department of the Interior (Magnesium, table 1 (Salient Magnesium Statistics)).

⁸⁸ *Response* of Magcorp, p. 21. An EC decision to raise the effective AD duty to 63.4 percent “is expected to be published in the official *Journal of the European Union* any day, but as of late last week had not yet appeared.” “Chinese Magnesium Makers Eye Long Term Despite EU Duty,” *Platt’s Metals Week*, May 22, 2000 (submitted as exhibit 9 to *Response* of Magcorp).

⁸⁹ *Id.*

⁹⁰ *Response* of Magcorp, p. 21, citing *The Gazette of India*, New Delhi, July 14, 1998.

⁹¹ *Response* of Magcorp, citing “Pechiney Seeks Further Review of EU Magnesium Imports,” *Platt’s Metals Week*, October 18, 1999.

⁹² *Response* of Magcorp, p. 22.

⁹³ *Id.*, pp. 22-23. See also exhibits 5 and 11 of the *Response* of Magcorp, which provide data on U.S. imports of (1) magnesium raspings and powder and (2) alloy magnesium, respectively, from China for 1996-99.

⁹⁴ *Id.*, p. 24.

APPENDIX A
***FEDERAL REGISTER* NOTICES**

**INTERNATIONAL TRADE
COMMISSION**

[Investigation No. 731-TA-696 (Review)]

Pure Magnesium From China

AGENCY: 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).

EFFECTIVE DATE: July 6, 2000.

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>).

SUPPLEMENTARY INFORMATION:

Background.—On July 6, 2000, the Commission determined that the domestic interested party group response to its notice of institution (65 FR 17531, April 3, 2000) was adequate and the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.¹ Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on August 1, 2000, 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,² 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 August 4, 2000, 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 August 4, 2000. However, should 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.

In accordance with sections 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: July 14, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00-18317 Filed 7-19-00; 8:45 am]

BILLING CODE 7020-02-P

¹ 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.

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

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-832]

Pure Magnesium From the People's Republic of China; Final Results of Antidumping Duty Sunset Review

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

ACTION: Notice of final results of antidumping duty sunset review; Pure magnesium from the People's Republic of China.

SUMMARY: On April 3, 2000, the Department of Commerce ("the Department") published the notice of initiation of sunset review of the antidumping duty order on pure magnesium from the People's Republic of China ("China") (65 FR 17484) 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 (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels listed below in the "Final Results of Review" section of this notice.

EFFECTIVE DATE: August 3, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, Washington, D.C. 20230; telephone: (202) 482-5050.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the

effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin* 63 FR 18871 (April 16, 1998) (*Sunset Policy Bulletin*).

Background

On April 3, 2000, the Department initiated a sunset review of the antidumping duty order on pure magnesium from China (65 FR 17484), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On April 18, 2000, the Department received a notice of intent to participate on behalf of Magnesium Corporation of America ("Magcorp"), within the applicable deadline in accordance with 19 CFR 351.218(d)(1)(i). On May 3, 2000, the Department received a complete substantive response from Magcorp within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). In its substantive response, Magcorp claimed interested party status under section 771(9)(C) of the Act, as a U.S. manufacturer of the domestic like product. Magcorp states that it was the petitioner in the original antidumping duty investigation that led to the order and has been diligent in maintaining the order. See Magcorp's, May 3, 2000, Substantive Response at 4. On June 7, 2000, we informed the International Trade Commission ("Commission") that, on the basis of inadequate responses from respondent interested parties, we were conducting an expedited sunset review of this order consistent with 19 CFR 351.218(e)(1)(ii)(C)(2). See Letter to Lynn Featherstone, Director, Office of Investigations from Jeffrey A. May, Director, Office of Policy.

Scope of Review

The product covered by this review is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this order. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying,

desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy. Pure primary magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents. Since the antidumping duty order was issued, we have clarified that the scope of the original order includes, but is not limited to, butt ends, stubs, crowns and crystals. See May 22, 1997, instructions in U.S. customs and November 14, 1997, Final Scope Rule of Antidumping Duty Order on Pure Magnesium from China: (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); and (3) Products (generally referred to as "off-specification pure" magnesium) that contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, and that do not conform to ASTM specifications for alloy 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. It generally does 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.

Excluded from the scope of this order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder), having a maximum physical dimension (*i.e.*, length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50 percent by weight), and remelted magnesium whose pure primary magnesium content is less than 50 percent by weight. Pure magnesium products covered by this order are currently classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes,

our written description of the scope is dispositive.

Analysis of Comments Received

All issues raised in the case by the domestic interested party to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H.V. Cribb, Acting Assistant Secretary for Import Administration, dated August 1, 2000, which is adopted by this notice. The issues discussed in the Department's Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order 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 Central Records Unit, room B-099, of the Department's main building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading ("China"). The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
Country Wide rate	108.26

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(c), 752, and 771(i) of the Act.

Dated: July 28, 2000.
Troy H. Cribb,
Acting Assistant Secretary for Import Administration.

APPENDIX B
STATEMENT ON ADEQUACY

EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY
in
Pure Magnesium from China, Inv. No. 731-TA-696 (Review)

On July 6, 2000, the Commission determined that it should proceed to an expedited review in the subject five-year review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675(c)(3)(B).¹ Regarding domestic interested parties, the Commission received a response to the notice of institution from Magnesium Corporation of America (“Magcorp”), one of two domestic producers of pure magnesium. The Commission determined that Magcorp accounted for a significant share of domestic production of pure magnesium and that the domestic interested party group response was adequate.^{2 3 4} The Commission did not receive a response from any respondent interested party. Consequently, the Commission determined that the respondent interested party group response was inadequate. The Commission did not find any circumstances that would warrant conducting a full review. The Commission, therefore, determined to conduct an expedited review. A record of the Commissioners’ votes is available from the Office of the Secretary and at the Commission’s website.

¹ The record from the full five-year review of Magnesium from Canada, Inv. Nos. 701-TA-309 A-B (Review) and 731-TA-528 (Review) has been incorporated into the record in this expedited review.

² Commissioner Bragg notes that the other producer of pure magnesium, Northwest Alloys, Inc. (“Northwest”), internally transferred a large portion of its 1999 production to its parent company, Alcoa. Excluding Northwest’s internal transfers, Magcorp accounted for an even higher share of domestic production of pure magnesium. Commissioner Bragg found that the domestic interested party group response was adequate whether based on total domestic production or only on production for the open market.

³ Commissioners Miller and Hillman took note of the fact that the other domestic producer of pure magnesium, Northwest Alloys, Inc., internally transfers large portions of its production to its parent company.

⁴ Commissioner Askey finds that the domestic interested party group response was adequate because the sole responding producer accounted for a significant share of domestic production. She notes that the other domestic producer of pure magnesium, Northwest Alloys, Inc., internally transfers large portions of its production to its parent company. However, in the preamble to its final regulations adopting the “group interested party” approach to adequacy, the Commission stated that it would assess the adequacy of the domestic group responses by examining the “responding [domestic] parties’ share of domestic production,” not by examining their share of domestic open market shipments. 63 Fed. Reg. 30603. Moreover, the Commission has not used an “open market production” analysis in any of its previous adequacy determinations. For a discussion of her approach to the group adequacy analysis, see Electrolytic Manganese Dioxide from Greece and Japan, Invs. Nos. 731-TA-406 & 408 (Review).

