

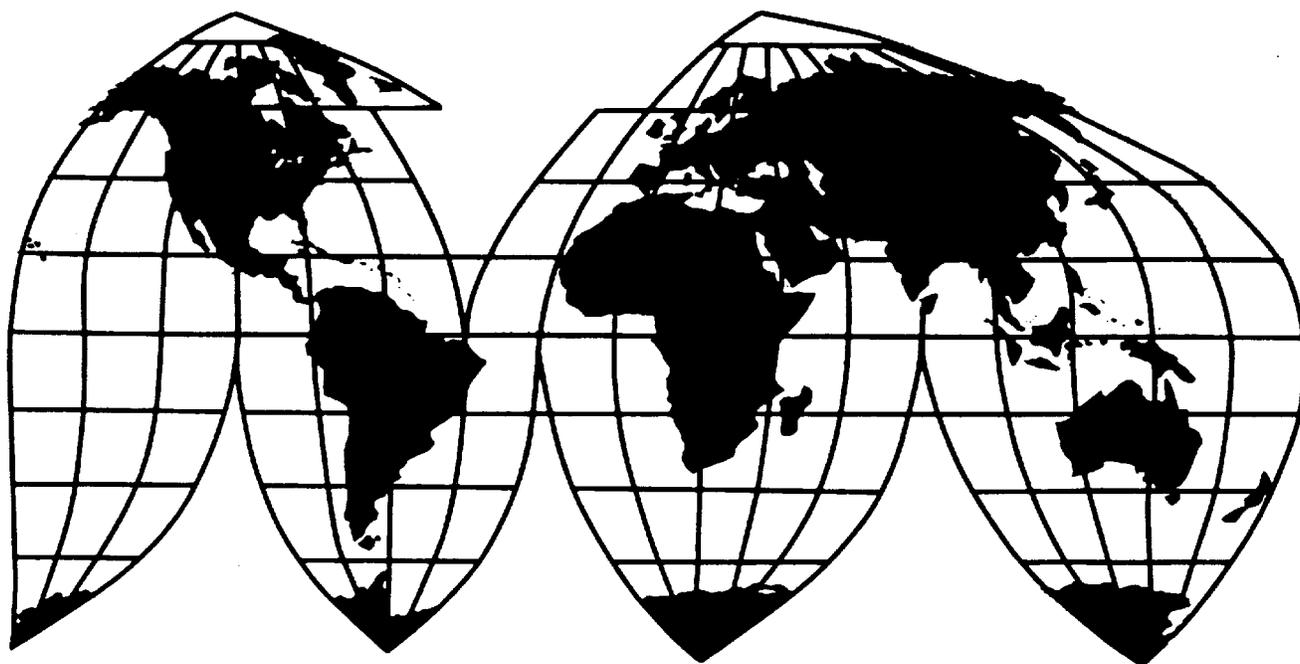
Pure and Alloy Magnesium From Canada and Pure Magnesium From China

Investigation Nos. 701-TA-309-A-B and 731-TA-696 (Second Review)

Publication 3859

July 2006

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 701-TA-309-A-B and 731-TA-696 (Second Review)

PURE AND ALLOY MAGNESIUM FROM CANADA AND PURE MAGNESIUM FROM CHINA

DETERMINATIONS

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the countervailing duty orders on pure and alloy magnesium from Canada would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

With respect to China, revocation of the antidumping duty order on pure magnesium 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

With respect to Canada, the Commission instituted the reviews on July 1, 2005 (70 F.R. 38199) and determined on October 4, 2005 that it would conduct full reviews (70 F.R. 60108, October 14, 2005). With respect to China, the Commission instituted the review on September 1, 2005 (70 F.R. 52122) and determined on December 5, 2005 that it would conduct a full review (70 FR 75483, December 20, 2005). Notice of the scheduling of the Commission’s reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on January 12, 2006 (71 F.R. 2065). The hearing was held in Washington, DC, on April 25, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the countervailing duty orders covering pure magnesium and alloy magnesium from Canada would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. We further determine that revocation of the antidumping duty order covering 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.

I. BACKGROUND

These five-year reviews of the countervailing duty orders on pure and alloy magnesium from Canada, and of the antidumping duty order on pure magnesium from China, were conducted simultaneously for administrative convenience and efficiency. The Commission is not permitted to cumulate likely imports subject to the Canada orders and the China order, as these reviews were not initiated on the same day.¹

A. Canada

In August 1992, the Commission determined that an industry in the United States producing primary magnesium was being materially injured by reason of imports of dumped and subsidized imports of magnesium from Canada.² On August 31, 1992, Commerce issued an antidumping duty order on imports of pure magnesium from Canada and countervailing duty orders on imports of pure magnesium and alloy magnesium from Canada.³

The respondents subsequently challenged the Commission’s final determinations before a United States-Canada Binational Panel,⁴ and in August 1993, the Panel remanded the Commission’s determinations concluding that the record lacked substantial evidence to support the Commission’s finding of one like product.⁵ Pursuant to the Panel’s instructions, the Commission issued remand determinations based on the existence of two separate industries – one producing pure magnesium and the second producing alloy magnesium.⁶ The Commission determined that an industry in the United States was materially injured by reason of dumped imports of pure magnesium from Canada, and that industries in the United States were materially injured by reason of subsidized imports of pure magnesium and alloy

¹ 19 U.S.C. § 1675a(a)(7).

² Magnesium from Canada, Inv. Nos. 701-TA-309 and 731-TA-528 (Final), USITC Pub. 2550 (August 1992) (“Canada Original Final Determination”).

³ 64 Fed. Reg. 39390 (antidumping duty order) and 39392 (countervailing duty orders) (Aug. 31, 1992).

⁴ See Article 1904 of the United States-Canada Free-Trade Agreement (FTA). Respondents also challenged Commerce’s determinations, which were upheld after remand.

⁵ In the Matter of Magnesium from Canada, Case Nos. USA-92-1904-05 and USA 92-1904-06 (Aug. 27, 1993) (Remand).

⁶ Magnesium from Canada, Inv. Nos. 701-TA-309 and 731-TA-528 (Final), USITC Pub. 2696 (Oct., 1993) (“Canada Original Remand Determination”).

magnesium from Canada. On January 24, 1994, the Panel affirmed the Commission's remand determination.⁷

In July 2000, the Commission made affirmative determinations in the first five-year reviews of these orders.⁸ In August 2000, Commerce published a notice of continuation of the orders.⁹ The Government of Quebec ("GOQ") subsequently challenged the Commission's final determinations in the first five-year reviews before a NAFTA Chapter 19 Binational Panel. This litigation is ongoing.

The GOQ also challenged the Department of Commerce's final determinations in the first five-year reviews before a NAFTA Chapter 19 Binational Panel. In 2004, the antidumping duty order on pure magnesium was revoked (retroactively effective August 1, 2000) by Commerce, following a decision by a NAFTA panel that Commerce's affirmative sunset review determination was unsupported by substantial evidence, and a decision by an Extraordinary Challenge Committee affirming the panel decision.¹⁰

On July 1, 2005, the Commission instituted these second five-year reviews of the countervailing duty orders on pure and alloy magnesium from Canada.¹¹ The Commission received a response to the notice of institution filed by US Magnesium (formerly known as Magcorp), which is a domestic producer of pure and alloy magnesium. The Commission also received a response to the notice of institution from the GOQ, but did not receive any response from any Canadian producer or exporter, or any U.S. importer from Canada. On October 4, 2005, the Commission determined that the domestic interested party group response to its notice of institution was adequate, and that the respondent group response was inadequate, but that circumstances warranted full reviews.¹²

On April 25, 2006, the Commission held a hearing in these reviews. US Magnesium filed briefs and appeared at the hearing in support of continuation of the orders. GOQ and Norsk Hydro Canada Inc. ("NHCI") filed briefs and appeared at the hearing in support of revocation of the orders. The only two subject producers, NHCI and Magnola, completed the Commission's foreign producer questionnaire.¹³

B. China

In March 1994, Magcorp and two unions filed a petition alleging material injury and threat by reason of dumped imports of primary magnesium (both pure and alloy) from China, Russia, and Ukraine. In June 1994, domestic producer Dow Chemical Company ("Dow") joined the petition. The Commission issued its final determination in May 1995.¹⁴ The Commission found that there were two separate like products – pure magnesium and alloy magnesium – coextensive with the two classes or kinds of merchandise defined by Commerce. 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

⁷ In the Matter of Magnesium from Canada, Case Nos. USA-92-1904-05 and USA 92-1904-06 (Jan 27, 1994) (Final Decision of the Panel).

⁸ Magnesium from Canada, Inv. Nos. 701-TA-309-A-B- and 731-TA-528 (Review), USITC Pub. 3324 (July 2000) ("Canada First Review Determination").

⁹ 65 Fed. Reg. 49964 (Aug. 16, 2000).

¹⁰ 69 Fed. Reg. 70649 (Dec. 7, 2004).

¹¹ 70 Fed. Reg. 38199 (July 1, 2005).

¹² 70 Fed. Reg. 60108 (Oct. 14, 2005).

¹³ NHCI is the only current producer of subject merchandise. Another magnesium producer in Canada, Timminco Ltd., was never subject to the orders, and Magnola, which started producing magnesium in 2000, is currently not producing.

¹⁴ Magnesium from China, Russia, and Ukraine, Inv. Nos. 731-TA-696-698 (Final), USITC Pub. 2885 (May 1995) ("China Original Determination").

industry producing pure magnesium was materially injured by reason of the cumulated imports.¹⁵ The Commission made final negative determinations with respect to imports of alloy magnesium from China and Russia. On May 12, 1995, Commerce published antidumping duty orders covering pure magnesium.¹⁶

In July 2000, the Commission, in an expedited review, made an affirmative determination in the first five-year review of the antidumping duty order on pure magnesium from China.¹⁷ In October 2000, Commerce published a notice of continuation of the order.¹⁸

On September 1, 2005, the Commission instituted its second five-year review of the antidumping duty order on pure magnesium from China. The Commission received one response to the notice of institution filed by US Magnesium, which, as noted above, is a domestic producer of pure magnesium and was one of the petitioners in the original investigations. The Commission received no response to the notice of institution from any foreign producer, exporter, importer, or other respondent interested party. On December 5, 2005, the Commission determined that the domestic interested party group response to its notice of institution was adequate, and that the respondent group response was inadequate, but that circumstances warranted a full review.¹⁹

On April 25, 2006, the Commission held a hearing in this review. US Magnesium filed briefs and appeared at the hearing in support of continuation of the orders. No respondent appeared at the hearing or filed briefs in support of revocation of the orders. Only one magnesium producer in China completed the foreign producers' questionnaire.

¹⁵ China Original Determination at 15-16, 22.

¹⁶ 60 Fed. Reg. 25691 (May 12, 1995). Commerce later revoked the antidumping duty order on pure magnesium from Ukraine, following litigation challenging the Commission's final injury determination. 63 Fed. Reg. 67854-55 (Dec. 9, 1998).

¹⁷ Pure Magnesium from China, Inv. No. 731-TA-696 (Review), USITC Pub. 3346 (Sept. 2000) ("China First Review Determination"). The Notice of Institution covering this review also covered the order on Russia. Commerce revoked the order covering Russia. 65 Fed. Reg. 41944 (July 7, 2000). The Commission accordingly terminated its review of pure magnesium from Russia effective on July 7, 2000.

¹⁸ 65 Fed. Reg. 64422 (Oct. 27, 2000).

¹⁹ 70 Fed. Reg. 75483 (Dec. 20, 2005).

VIEWS OF CHAIRMAN PEARSON AND COMMISSIONERS OKUN AND LANE

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.”²⁰ 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.”²¹ In a section 751(c) review, the Commission also must take into account “its prior injury determinations.”²²

In its final expedited sunset reviews Commerce defined the subject merchandise as follows:

Canada

The product covered by these orders are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes . . . Secondary and granular magnesium are not included in the scope of these orders.²³

People’s Republic of China

The product covered by this review is pure primary 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 “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 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 (generally referred to as “off-specification pure” magnesium). “Off-specification pure” magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium, or impurities

²⁰ 19 U.S.C. § 1677(4)(A).

²¹ 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).

²² 19 U.S.C. § 1675a(a)(1)(a).

²³ Final Results of Expedited Sunset Reviews of the Countervailing Duty Orders: Pure Magnesium and Alloy Magnesium from Canada, 70 Fed. Reg. 67140 (Nov. 4, 2005).

(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.

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 to U.S. Customs and November 14, 1997, Final Scope Ruling of Antidumping Duty Order on Pure Magnesium from China.

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.²⁴

Magnesium is the eighth most abundant element in the earth's crust and the third most plentiful element dissolved in seawater.²⁵ It is the lightest of all structural metals and is characterized by high vibrational-dampening properties.²⁶

Pure magnesium has special metallurgical and chemical properties that allow it to alloy well with metals such as aluminum. Typically, it is 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, and in magnesium anodes for the protection of iron and steel in underground pipe and water tanks and various marine applications.²⁷

Alloy magnesium is usually used in end products to improve certain properties, such as strength, ductility, workability, corrosion resistance, density, or castability. It is used principally in structural applications, primarily in die, mold, and sand castings and in extrusions for the automotive industry.²⁸

The Commission generally considers a number of factors in its like product analysis, including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price.

1. Like Product in Canada Reviews

The like product question in the reviews of the countervailing duty orders on pure and alloy magnesium from Canada involves three issues: (i) whether to treat pure and alloy magnesium as a single like product; (ii) whether to expand the like product beyond the scope, to encompass secondary magnesium; and (iii) whether to expand the like product beyond the scope, to encompass granular magnesium. Each of these issues is discussed in turn below.

The starting point of the Commission's like product analysis in a five-year review is the like product definition in the Commission's original determination. In its first investigation involving

²⁴ Pure Magnesium from the People's Republic of China; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order, 71 Fed. Reg. 580-581 (Jan. 5, 2006). As described, the scope of this review investigation is somewhat broader than that of the review investigation covering pure magnesium from Canada, which did not include off-specification ("off-spec") pure magnesium.

²⁵ Confidential Report ("CR") at I-28, Public Report ("PR") at I-16.

²⁶ CR at I-28, PR at I-16.

²⁷ CR at I-30, PR at I-18.

²⁸ CR at I-30, PR at I-18.

imported pure and alloy magnesium the Commission found pure and alloy magnesium to constitute a single like product.²⁹ Although the Commission found that pure and alloy magnesium were not generally employed for common uses, and were not generally interchangeable, which in turn led to differing customer perceptions, the Commission found that other factors, including that the fact that alloy and pure magnesium shared a number of physical characteristics, shared common manufacturing facilities, had similar channels of distribution, and price supported a finding that pure and alloy magnesium were part of the same like product. A U.S.-Canada binational panel found the Commission's like product determination not supported by substantial evidence. The Panel found that the only factor supporting the ITC's finding that all primary magnesium constitutes a single like product is that pure and alloy magnesium are produced in the same facilities, using much of the same equipment and often the same workers. The Panel found that the mere coincidence of facilities, equipment, and employees used to produce pure and alloy magnesium is not, by itself, sufficient evidence to support the Commission's single like product finding.³⁰ On remand the Commission found that pure and alloy magnesium were separate like products, corresponding respectively to the two classes or kinds of subject imports found by Commerce. Performing its six-factor analysis consistent with the Panel's findings, the Commission found that, although pure and alloy magnesium are produced with the same machinery and employees,³¹ and share certain physical characteristics (but not others), they have different principal uses, are targeted for distinct markets, are generally not interchangeable, are perceived differently by customers due to their different end uses, and have different price trends as a result of their different markets.³² After this remand determination, in investigations involving both pure and alloy magnesium the Commission found pure and alloy magnesium to be separate like products until 2005.³³ In addition, in 1995, the Commission declined to expand the like product in an investigation limited to pure magnesium to encompass alloy magnesium.³⁴

However, in its 2005 investigations of alloy magnesium from China, and pure and alloy magnesium from Russia, the Commission found pure and alloy magnesium to be a single like product.³⁵ In doing so, the Commission first noted that, whereas in prior cases involving both pure and alloy magnesium Commerce had defined two classes or kinds of merchandise, in the 2005 investigations Commerce had defined the scope with respect to Russia as a single class or kind of merchandise encompassing both pure and alloy magnesium. The Commission then explained that the record in those investigations showed that circumstances had changed sufficiently so as to blur the dividing line between pure and alloy magnesium, and to warrant treating the two as a single domestic like product. The Commission focused on changes in end uses, and in interchangeability and customer and producer perceptions. In considering physical characteristics and uses, the Commission noted that in the past, pure magnesium was used principally in the production of aluminum alloys and as a reagent in iron and steel desulfurization, while alloy magnesium was used principally in structural applications, mostly in castings and extrusions for the automotive industry. The record evidence in the 2005 investigations, however,

²⁹ Canada Original Final Determination at 8-11.

³⁰ In the Matter of Magnesium from Canada, USA-1904-05 and USA 1904-06, (August 27, 1993) at 22.

³¹ This was true because prior investigations did not involve secondary alloy magnesium, which is not produced with the same machinery and employees as pure magnesium.

³² Canada Original Remand Determination at 3-4.

³³ Magnesium from China, Russia, and Ukraine, Inv. Nos. 731-TA-696-698 (Final), USITC Pub. 2885 (May 1995) ("the 1995 Investigation") at 7-9; Canada First Review Determination at 5-6.

³⁴ Pure Magnesium from China, Israel and Russia, Inv. Nos. 701-TA-403 (Preliminary) and 731-TA-895-897 (Preliminary), USITC Pub. 3376 (Dec. 2000) at 7.

³⁵ Magnesium from China and Russia, Inv. Nos. 731-TA-1071 and 1072 (Final), USITC Pub. 3763 (April 2005) at 6-11.

demonstrated that domestically produced alloy magnesium had increasingly been used in the same principal applications as pure magnesium: in aluminum production and in iron and steel desulfurization. In considering interchangeability, the Commission also found that the record indicated that significant amounts of the subject imports of alloy magnesium were used in aluminum production.³⁶ With respect to producer perceptions, the Commission stated that although aluminum producers may have a preference for using pure magnesium in aluminum production, the record showed that they were using significant quantities of alloy magnesium. A representative of a major aluminum producer described “the development of new technology that permits the domestic production of high-quality magnesium from scrap material” as the “biggest change in the magnesium industry.”³⁷ He forecast that the proportion of his firm’s magnesium needs that would be met by recycled alloy magnesium would continue to grow dramatically over the next few years and would surpass the quantity of magnesium obtained from other sources.³⁸

a. Expanding the Domestic Like Product to Encompass Alloy Magnesium

Based on the record in these reviews, and consistent with our like product determination in Magnesium from China and Russia, we conclude that circumstances have changed sufficiently since the original determination so as to blur the dividing line between pure and alloy magnesium, and to warrant treating pure and alloy magnesium as a single domestic like product. While we recognize that record evidence in this investigation with respect to the degree of interchangeability between pure and alloy magnesium differs from the record in Magnesium from China and Russia, this record still supports our finding that interchangeability and overlapping uses between pure and alloy magnesium have increased since the original investigations. We note also that Commerce found that alloy and pure magnesium were two separate classes or kinds in these investigations. However, while the scope provides the starting point for our domestic like product determination, we are not bound by Commerce’s definition in making our like product determination.³⁹ For the reasons set forth below, we find that pure and alloy magnesium constitute a single like product.

Manufacturing Facilities and Employees. Primary production of pure and alloy magnesium generally occurs in the same facilities and by the same employees, except that additional equipment and labor is involved for the additional step of adding alloying elements.⁴⁰ The amount of value added to the magnesium in the alloying phase is not substantial.⁴¹ Where alloy magnesium is made in secondary production (i.e., by recyclers), the manufacturing facilities and employees involved are different from those involved in the production of pure magnesium (which is made only in primary production).⁴²

Physical Characteristics and Uses. Pure and alloy magnesium share the basic physical characteristics of being lightweight and strong and having low density. Both products consist mostly of magnesium: pure magnesium contains at least 99.8 percent magnesium by weight, and alloy magnesium usually contains at least 90 percent. The two products differ from each other in that alloy magnesium has

³⁶ US Magnesium’s Prehearing Brief at 7, citing USITC Pub. 3763 at 8-10.

³⁷ USITC Pub. 3763 at 10 n.41.

³⁸ USITC Pub. 3763 at 10.

³⁹ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996).

⁴⁰ CR at I-46, PR at I-28.

⁴¹ Canada Original Final Determination at 9.

⁴² CR at I-46, PR at I-28.

certain properties that improve its strength, ductility, workability, corrosion resistance, density, and castability, as compared with pure magnesium.⁴³

As noted above, the record in the original investigation indicated that pure magnesium was used principally in the production of aluminum alloys and, to a lesser extent, as a reagent in iron and steel desulfurization, while alloy magnesium was used principally in structural applications, mostly in castings and extrusions for the automotive industry.^{44 45} The record in these reviews generally supports petitioner's contention that alloy magnesium is now used in significant quantities in the same principal application as pure magnesium, that is, in aluminum production.⁴⁶ The percentages of U.S. producers' commercial shipments to aluminum manufacturers that consisted of alloy magnesium were *** percent in 2003, *** percent in 2004, and *** percent in 2005.⁴⁷ We recognize that the amount of domestically-produced alloy magnesium being used in aluminum production declined over the 2003-2005 period, but we attribute this decline to the decreasing availability of such alloy magnesium as a result of the closure of two of the three major secondary alloy magnesium producers,⁴⁸ and to a realignment in the relative prices of pure and alloy magnesium,⁴⁹ rather than to any fundamental impediment to using alloy magnesium in aluminum production. In sum, although aluminum producers may have a preference for using pure magnesium in aluminum production, the record shows that they are using significant quantities of alloy magnesium when it is available at relatively attractive prices.

Interchangeability and Customer and Producer Perceptions. The record shows a significant degree of interchangeability of alloy magnesium for pure magnesium in aluminum production, the market segment that accounted for most of U.S. magnesium producers' commercial shipments in 2005. Traditionally, there were two distinct end-use markets, one for pure magnesium and another for alloy magnesium. However, as discussed above, the Commission found that these conditions had changed significantly in its investigations of Magnesium from Russia and China. In those investigations, the Commission found that conventional users of pure magnesium were turning to the alloy market. This was particularly true for aluminum manufacturers who had developed new technology that permitted the use of alloy magnesium in aluminum production. Respondents in the current five-year reviews argued that the imports of alloy magnesium from China upset the previous market conditions but the exit of Chinese alloy from the U.S. market caused the market to return to its normal operating condition and therefore pure and alloy magnesium are separate like products. While the increase in the use of alloy magnesium by aluminum manufacturers may have been at least in part fueled by the existence of lower priced

⁴³ CR at I-30, PR at I-18.

⁴⁴ Canada Original Final Determination at 10 n. 28.

⁴⁵ The principal end uses for magnesium and the percentage of U.S. producers' total commercial shipments to each of these end uses in 2005 were as follows: (i) aluminum manufacturing – *** percent; (ii) granule/reagent production – *** percent; (iii) diecasting – *** percent; (iv) other uses – *** percent. See CR/PR at Table III-5.

⁴⁶ In the course of these reviews the Commission staff discovered that the amount of alloy magnesium sold to granule and reagent producers in 2003 had been overstated in the 2005 China/Russia investigations, as the result of a data posting error. CR at III-9, PR at III-3. We note, however, that the interchangeability between pure and alloy magnesium to aluminum producers, the largest magnesium purchasers, is unaffected by this reporting error.

⁴⁷ See CR/PR at Table III-5.

⁴⁸ Of the three major secondary alloy magnesium producers, Amacor, Garfield, and Halaco, only Amacor was still in production in 2005. Garfield shut down in 2004 because of a plant fire, and Halaco went out of business in 2004. The combined alloy magnesium production of those three producers fell from *** metric tons in 2003 to *** metric tons in 2004, and to *** metric tons in 2005. CR/PR at Tables III-1 and III-3.

⁴⁹ As a representative from US Magnesium explained at the hearing, “[a]luminum producers and others use alloy magnesium instead of pure magnesium when on a per pound of magnesium basis the magnesium content is available at comparable or lower prices.” Hearing Transcript at 27 (Tissington, US Magnesium). See also Hearing Transcript at 94, 97, and 98-99 (Tissington, US Magnesium).

imported alloy magnesium in the market, the presence or absence of low priced imports does not detract from the fact that the two types of magnesium are indeed interchangeable. While the current record does not reflect the degree of actual usage by aluminum manufacturers that was evidenced in the China and Russia investigations, which may be due in part to the exit of low priced Chinese alloy magnesium from the domestic market and the closure of several domestic secondary alloy producers, it is clear even on the current record that alloy and pure magnesium are actually interchangeable for some aluminum manufacturers.⁵⁰

Channels of Distribution. Both pure and alloy magnesium are sold to end users. The use of alloy magnesium by aluminum producers, in lieu of pure magnesium, has led to a greater overlap in the classes of end users that use both types of magnesium.⁵¹

Price. The information on the record generally supports petitioner's claim that the prices for pure and alloy magnesium have converged. This convergence can be seen in U.S. producers' prices for the two pricing products for which the Commission gathered information.⁵²

Conclusion. In sum, based on the shared essential physical characteristics; the overlap in the uses of pure and alloy magnesium in aluminum production (the single largest use for magnesium); the recognition by some industry participants of increased competition between pure and alloy magnesium; the general similarities in channels of distribution for pure and alloy magnesium; and the convergence in prices for the two types of magnesium, we find pure and alloy magnesium to be part of the same like product.

b. Expanding Like Product to Encompass Secondary Magnesium

Secondary magnesium is produced by recycling magnesium-based scrap.⁵³ Secondary magnesium is not included in the scope of the countervailing duty orders on pure and alloy magnesium from Canada. The 2005 China/Russia investigations were the first Title VII cases to include secondary magnesium in their scope. The Commission included secondary magnesium in the single like product in those investigations. It explained its decision in its preliminary determinations as follows:

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

⁵⁰ ***. CR at II-2-3, n. 9, 12, PR at II-2.

⁵¹ CR at I-21-I-22, PR at I-17.

⁵² At the beginning of this period of review, in 2001, prices for alloy magnesium sold to aluminum producers were *** than those for pure magnesium sold to aluminum producers. Then, in the 2002-mid 2004 period, as prices for pure magnesium fell ***, prices for alloy magnesium rose ***. At the end of the period, from mid-2004 through 2005, prices for both pure and alloy magnesium rose ***. By the end of this period, the spread between prices for pure and alloy magnesium had ***. CR/PR at Tables V-1 and V-3.

⁵³ CR at I-39, PR at I-24.

domestic like product. For purposes of these preliminary investigations, we note that the secondary magnesium is part of the domestic like product consisting of alloy magnesium.⁵⁴

There is no indication in the record of these reviews that the circumstances which led the Commission to include secondary and primary magnesium in the same like product in the 2005 China/Russia investigations have changed.⁵⁵ While they are produced in separate facilities, most primary and secondary magnesium is similar physically and chemically.⁵⁶ They can be used interchangeably in automotive diecasting applications if appropriate methods are utilized to assure the purity of the secondary magnesium by removing impurities. Both primary and secondary alloy magnesium are generally sold directly to end users through common channels of distribution. Because primary and higher purity secondary alloy magnesium are largely identical products and are interchangeable for the same purposes, principally automotive diecastings, neither customers nor producers perceive them to be significantly different products.⁵⁷ Lower-purity secondary alloy magnesium, while not interchangeable with primary magnesium in automotive structural applications, is interchangeable with primary magnesium in many other non-structural magnesium applications.⁵⁸

In view of the foregoing, we find that primary and secondary alloy magnesium are very similar in terms of physical characteristics and uses, interchangeability, customer and producer perceptions, channels of distribution, and price and therefore include secondary magnesium in the domestic like product.

c. Expanding the Domestic Like Product to Encompass Granular Magnesium

In the most recent China and Russia investigations, the Commission found that cast and granular magnesium were part of the same like product. The Commission noted that, in a prior investigation, it had found that granular and ingot (cast) magnesium are produced in a continuum of forms and sizes, without any clear dividing line; share the same chemical properties; are sold through similar channels of distribution; are interchangeable at least for significant end uses (particularly in desulfurization), and use the same manufacturing facilities and employees up to the grinding stages.⁵⁹ There is limited information on the current record with respect to granular magnesium. We note, however that there is no evidence that the product or its characteristics have changed since the prior investigations where it was included in the like product. Therefore, we include granular magnesium in the domestic like product, but note that it makes no difference in our analysis as we did not receive any industry data from manufacturers of granular magnesium.

⁵⁴ Magnesium from China and Russia, Inv. Nos. 731-TA-1071 and 1072 (Preliminary), USITC Pub. 3685 (April 2004) at 10. The Commission did not explore this issue any further in its final determinations, in which it found pure and alloy magnesium to constitute a single like product. Magnesium from China and Russia, Inv. Nos. 731-TA-1071 and 1072 (Final), USITC Pub. 3763 (April 2005) at 6.

⁵⁵ See CR at I-49-50, PR at I-30-31.

⁵⁶ CR at I-50, PR at I-30.

⁵⁷ CR at I-50, PR at I-31.

⁵⁸ CR at I-50, PR at I-31.

⁵⁹ Magnesium from China and Russia, Inv. Nos. 731-TA-107101072 (Preliminary) USITC Pub. 3678 (April 2004) p. 10-11.

d. Conclusion

For the reasons discussed above, in connection with the reviews of the antidumping duty orders on pure magnesium and alloy magnesium from Canada, we find one domestic like product encompassing pure and alloy magnesium, including primary and secondary magnesium, and magnesium in ingot and granular form.

2. Domestic Like Product in China Reviews

The domestic like product question in the review of the antidumping duty order on pure magnesium from China involves three issues: (i) whether to expand the domestic like product beyond the scope to encompass alloy magnesium; (ii) whether to expand the domestic like product beyond the scope, to encompass secondary magnesium; and (iii) whether to expand the domestic like product beyond the scope to encompass granular magnesium. Each of these issues is discussed in turn below.

a. Expanding the Domestic Like Product to Encompass Alloy Magnesium

For the same reasons that we have determined to treat pure and alloy magnesium as a single domestic like product in the Canada reviews, we are expanding the domestic like product in the review of the antidumping duty order on pure magnesium from China to include alloy magnesium.

b. Expanding the Domestic Like Product to Encompass Secondary Magnesium

For the same reasons that we have determined to include secondary magnesium in the single domestic like product consisting of all magnesium in the Canada reviews, we are expanding the domestic like product in the review of the antidumping duty order on pure magnesium from China to include secondary magnesium.

c. Expanding the Domestic Like Product to Encompass Granular Magnesium

For the same reasons that we have determined to include granular magnesium in the single domestic like product consisting of all magnesium in the Canada reviews, we are expanding the domestic like product in the review of the antidumping order on pure magnesium from China to include granular magnesium.

d. Conclusion

For the reasons discussed above, in connection with the reviews of the antidumping duty orders on pure magnesium and alloy magnesium from Canada, we find one domestic like product encompassing pure and alloy, including primary and secondary magnesium, and magnesium in ingot and granular form.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the domestic “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product

constitutes a major proportion of the total domestic production of the product.”⁶⁰ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.⁶¹ In accordance with our domestic like product determination, we determine that there is one domestic industry composed respectively of the domestic producers of pure and alloy magnesium, including primary and secondary magnesium, and magnesium in ingot and granular form.

We have considered whether to include grinders in the domestic industry producing magnesium. We note that there is limited information in this record on whether or not to include the grinders of magnesium in the domestic industry. However, in Pure Magnesium from China and Israel the Commission considered the inclusion of grinders in the domestic industry.⁶² While recognizing that the evidence was mixed, on balance, the Commission found that grinding operations constituted sufficient production-related activity to qualify as domestic producers. The Commission found that the capital investment for grinding operations was not insignificant, nor were the capital expenditures during that period of investigation. While acknowledging that grinding was not a particularly complex process, the Commission recognized that there was some degree of technical expertise involved in handling granular magnesium. We have limited information in this investigation relating to the production-related activities of grinders, and no evidence that the industry has changed since the prior investigation. We therefore include them in the domestic industry producing magnesium, but note that we did not obtain any industry data from granular producers.

We have also considered whether to include in the domestic magnesium industry two magnesium diecasters that produce secondary alloy magnesium by recycling scrap generated in their diecasting operations. This recycled magnesium is internally consumed by these diecasters. In contrast, the other secondary alloy magnesium producers sell the product on the open market. Based on the limited information in the record, we have determined that these diecasters are not part of the domestic industry producing secondary magnesium.

In deciding whether a firm qualifies as a domestic producer, the Commission generally has analyzed the overall nature of a firm’s production-related activities in the United States. The Commission generally considers six factors:

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

No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation or review.⁶³

⁶⁰ 19 U.S.C. § 1677(4)(A).

⁶¹ See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

⁶² Pure Magnesium from China and Israel, Inv. Nos. 701-TA-403 and 731-TA-895-96 (Final), USITC Pub. 3467 (November 2001) at 9-11.

⁶³ See, e.g., Internal Combustion Industrial Forklift Trucks from Japan, Inv. No. T31-TA-377 (Second Review), USITC Pub. 3831 (December 2005) at 10-14; and Sebacic Acid from China, Inv. No. 731-TA-653 (Second Review), (continued...)

There is only limited information on the record with respect to the six factors described above.⁶⁴ However, on the basis of the available information, we have determined not to include the diecasters in the domestic alloy magnesium industry. There is no information in the record as to the first factor, the source and extent of the diecasters' capital investment in their scrap recycling operations. As to the second factor, it appears, although nothing on the record directly demonstrates, that the technical expertise involved in the diecasters' scrap recycling production activities is comparable to the technical expertise involved in secondary magnesium production. However, we note that the diecasters' "production" is basically a constantly recycled stream of input to, and output from, their true business, producing castings (not ingots of alloy magnesium). As to the third factor, the value added in scrap recycling operations at the one diecaster for which we have information ***.⁶⁵ As to the fourth factor, the employment levels in scrap recycling at the one diecaster for which we have information *** than those at secondary alloy magnesium producers.⁶⁶ The fifth factor, the quantity and type of parts sourced in the United States, is not relevant to alloy magnesium recycling, because such recycling merely involves remelting scrap. Finally, there is no information in the record as to the sixth factor, any other costs and activities in the United States directly leading to production of the like product. In addition, supporters of continuation advocate exclusion of the diecasters from the definition of the domestic industry.⁶⁷ Opponents of continuation did not express a view on the issue.

On balance, we conclude that diecasters do not engage in sufficient production-related activities in their scrap recycling operations to be included in the domestic industry producing alloy magnesium.

III. LEGAL STANDARD IN A FIVE-YEAR REVIEWS

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that subsidization 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."⁶⁸ The SAA states that "under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports."⁶⁹ Thus, the likelihood standard is prospective in nature.⁷⁰ The U.S.

⁶³ (...continued)

USITC Pub. 3775 (May 2005) at 12-14.

⁶⁴ This issue was not addressed by the parties in their comments on the Commission's draft questionnaires or in their prehearing briefs. At the Commission's hearing, parties were asked to comment on this issue; however, only limited arguments and information were offered at the hearing and in the posthearing briefs and final comments. See Hearing Tr. at 63, Petitioner's Final Comments at 9-12.

⁶⁵ CR at III-36, PR at III-9.

⁶⁶ See Producer Questionnaire Response of *** at p.12, Question II-8e.

⁶⁷ Petitioner's Final Comments (May 31, 2006) at 9-12; Hearing Tr. at 101-102.

⁶⁸ 19 U.S.C. § 1675a(a).

⁶⁹ SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that "[t]he likelihood of injury standard applies regardless of the nature of the Commission's original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed." SAA at 883.

⁷⁰ 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

(continued...)

Court of International Trade has found that “likely,” as used in the sunset review provisions of the Act, means “probable,” and the Commission applies that standard in five-year reviews.^{71 72 73}

The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”⁷⁴ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ timeframe applicable in a threat of injury analysis in original investigations.”⁷⁵

Although the standard in a five-year review is not the same as the standard applied in an original countervailing duty investigation, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the orders are revoked or the suspended investigation is terminated.”⁷⁶ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, and whether the industry is vulnerable to material injury if the orders are revoked or the suspension agreement is terminated.⁷⁷

⁷⁰ (...continued)

making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

⁷¹ See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (Ct. Int’l Trade 2003) (“‘likely’ means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)”), *aff’d without opinion*, 05-1019 (Fed. Cir. August 3, 2005); Nippon Steel Corp. v. United States, Slip Op. 02-153 at 7-8 (Ct. Int’l Trade Dec. 24, 2002) (same); Usinor Industeel, S.A. v. United States, Slip Op. 02-152 at 4 n.3 & 5-6 n.6 (Ct. Int’l Trade Dec. 20, 2002) (“more likely than not” standard is “consistent with the court’s opinion”; “the court has not interpreted ‘likely’ to imply any particular degree of ‘certainty’”); Indorama Chemicals (Thailand) Ltd. v. United States, Slip Op. 02-105 at 20 (Ct. Int’l Trade Sept. 4, 2002) (“standard is based on a likelihood of continuation or recurrence of injury, not a certainty”); Usinor v. United States, Slip Op. 02-70 at 43-44 (Ct. Int’l Trade July 19, 2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

⁷² Commissioner Okun notes that, consistent with her dissenting views in Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004) at 15-17, she does not concur with the U.S. Court of International Trade’s interpretation of “likely” to mean “probable.” See Usinor Industeel, S.A. et. al. v. United States, No. 01-00006, Slip Op. 02-39 at 13 (Ct. Int’l Trade April 29, 2002). However, she will apply the Court’s standard in these reviews and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses the issue. See also Additional Views of Vice Chairman Deanna Tanner Okun Concerning the “Likely” Standard in Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Argentina, Brazil, Germany, and Italy, Inv. Nos. 701-TA-362 (Review) and 731-TA-707-710 (Review)(Remand), USITC Pub. 3754 (Feb. 2005).

⁷³ Commissioner Lane notes that, consistent with her views in Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004) at 15-17, she does not concur with the U.S. Court of International Trade’s interpretation of “likely” but she will apply the Court’s standard in these reviews and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses the issue.

⁷⁴ 19 U.S.C. § 1675a(a)(5).

⁷⁵ 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.*

⁷⁶ 19 U.S.C. § 1675a(a)(1).

⁷⁷ 19 U.S.C. § 1675a(a)(1).

In evaluating the likely volume of imports of subject merchandise if the orders are 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.⁷⁸ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁷⁹

In evaluating the likely price effects of subject imports if the orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to the domestic like product and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of the domestic like product.⁸⁰

In evaluating the likely impact of imports of subject merchandise if the orders are 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.⁸¹ 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.⁸² As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the order at issue and whether the industry is vulnerable to material injury if the orders are revoked.⁸³

⁷⁸ 19 U.S.C. § 1675a(a)(2).

⁷⁹ 19 U.S.C. § 1675a(a)(2)(A-D).

⁸⁰ 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.

⁸¹ 19 U.S.C. § 1675a(a)(4).

⁸² 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the . . . net countervailable subsidy” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). In its expedited sunset review of the countervailing duty order on pure magnesium from Canada, Commerce found a likely net countervailable subsidy rate of 6.34 percent *ad valorem* for “all other” manufacturers and exporters, except Timminco Canada (which was excluded from the order) and NHCI, for which Commerce had “no basis” for reporting a rate. In its expedited sunset review of the countervailing duty order on alloy magnesium from Canada, Commerce found a likely net countervailable subsidy rate of 1.84 percent *ad valorem* for Magnola, and 8.18 percent *ad valorem* for “all other” manufacturers and exporters, except Timminco Canada (which was excluded from the order) and NHCI, for which Commerce had “no basis” for reporting a rate. 70 Fed. Reg. 67140 (Nov. 4, 2005). Commerce also concluded that the two countervailable subsidies involved in these reviews were not export subsidies described in Article 3 of the WTO Agreement on Subsidies and Countervailing Measures. See Memorandum from Stephen J. Claeys to Joseph A. Spetrini (Oct. 31, 2005).

⁸³ 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 (continued...)

IV. REVOCATION OF THE COUNTERVAILING DUTY ORDER ON PURE AND ALLOY MAGNESIUM FROM CANADA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Conditions of Competition and the Business Cycle

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.”⁸⁴ The following conditions of competition inform our determinations with respect to both the countervailing duty orders on pure magnesium and alloy magnesium from Canada.

Apparent U.S. consumption of pure and alloy magnesium increased overall from *** metric tons in 2000 to *** metric tons in 2004, before declining to *** metric tons in 2005.⁸⁵ Demand for magnesium is dictated largely by the demand in its end-use markets. Pure magnesium is sold mainly to aluminum producers, to magnesium granule producers for steel desulfurization, and to chemical and pharmaceutical manufacturers, as was the case in the original investigation and first sunset reviews.⁸⁶ Demand for pure magnesium largely depends on the demand for aluminum sheet used in the production of beverage cans and other packaging.⁸⁷ From 2000 to 2005, apparent U.S. consumption (by quantity) of pure magnesium declined by *** percent.⁸⁸ In the 2000 five-year reviews of pure and alloy magnesium from Canada, the Commission observed that between the original investigation and those reviews, apparent U.S. consumption by quantity of alloy magnesium grew from *** metric tons in 1991 to *** metric tons in 1999.⁸⁹ Apparent U.S. consumption of alloy magnesium continued to grow between 2000 to 2005, increasing overall by *** percent. Apparent consumption of alloy magnesium increased from *** metric tons in 2000 to *** metric tons in 2004, before falling back to *** metric tons in 2005.⁹⁰

*** purchasers predict a *** increase in demand for pure magnesium in the next few years.⁹¹ US Magnesium stated that it expects demand to *** in 2006 and 2007 due to ***.⁹² With respect to projected demand for alloy magnesium in the next few years, alloy magnesium producers and purchasers reported a mixed picture.⁹³ US Magnesium stated that it expects demand for alloy magnesium to *** in 2006 and 2007 due to ***.⁹⁴ Many purchasers, ***, reported that they expected the use of alloy magnesium in

⁸³ (...continued)

885.

⁸⁴ 19 U.S.C. § 1675a(a)(4).

⁸⁵ CR/PR at Table C-8.

⁸⁶ CR at II-1, PR at II-1.

⁸⁷ CR at I-12, PR at I-8.

⁸⁸ CR/PR at Table C-4.

⁸⁹ Canada First Review Determination at 18-19.

⁹⁰ CR/PR at Table C-6.

⁹¹ CR at II-11, PR at II-6.

⁹² CR at II-11, PR at II-6.

⁹³ CR at II-11, PR at II-6.

⁹⁴ CR at II-11, PR at II-6.

automotive applications to increase, while expressing concern that the relatively less competitive U.S. market for alloy magnesium may lead to a shift of production of magnesium-containing parts offshore.⁹⁵

The market for magnesium is price competitive.⁹⁶ A majority of responding *** importers reported that differences other than price were not significant for pure magnesium. For alloy magnesium, most producers reported that there are sometimes significant differences, while most importers reported that such differences were sometimes or never important.⁹⁷

As in the original investigation and first review, most producers, importers, and purchasers in this review agreed that domestically-produced magnesium and magnesium from Canada could be used in the same range of uses and could always or frequently be used interchangeably.⁹⁸ As in the first five-year review, most purchasers noted that they require their suppliers of magnesium from Canada to become certified or prequalified, and many buy magnesium exclusively from qualified suppliers. Most purchasers also reported that domestic pure and alloy magnesium from Canada are substitutable with one another and with imports from third countries.⁹⁹

Although some U.S. market conditions discussed above have not changed significantly since the original investigation and the first sunset review, there have been some significant changes in the domestic industry. With respect to domestic production, Northwest Alloys, *** domestic producer of primary pure and alloy magnesium during the original investigation, exited the market in 2001.¹⁰⁰ As a result, the magnesium industry has further consolidated and now consists of only one producer of primary magnesium, US Magnesium.¹⁰¹ With the departure of Northwest Alloys, total U.S. producers' U.S. shipments of magnesium dropped from *** metric tons in 2000 to *** metric tons in 2005.¹⁰² In this period, U.S. producers' U.S. shipments of pure magnesium dropped from *** metric tons in 2000 to *** metric tons,¹⁰³ and U.S. producers' U.S. shipments of alloy magnesium, including secondary magnesium production, fell from *** metric tons in 2000 to *** metric tons.¹⁰⁴ U.S. producer shipments of alloy magnesium to diecasters represented *** percent of U.S. commercial shipments of alloy magnesium in 2005, followed by shipments to aluminum producers at *** percent.¹⁰⁵ U.S. producers' commercial shipments of alloy magnesium to the aluminum industry decreased *** percent between 2003 and 2005,

⁹⁵ CR at II-12, PR at II-6. The production processes for primary alloy magnesium and pure magnesium are very similar and are typically performed at common manufacturing facilities using the same employees and basic equipment. From a production standpoint, a domestic or foreign primary producer can easily switch between production of pure magnesium and alloy magnesium. See, Magnesium from Canada, Invs. Nos. 701-TA-309-A-B (Review) and 731-TA-528 (Review), USITC Pub. 3324 at I-9, III-1.

⁹⁶ See CR at II-14, PR at II-8 and CR/PR at Table II-1.

⁹⁷ CR at II-23, PR at II-13.

⁹⁸ Canada Original Remand Determination at 5 and 7; Canada First Review Determination at 10 and 19; CR at II-23, PR at II-13.

⁹⁹ CR at II-15 and II-23, PR at II-8 and II-13.

¹⁰⁰ CR at II-4, PR at II-3.

¹⁰¹ Dow Magnesium, a subsidiary of Dow Chemical Corp., Midland, MI, ceased magnesium production in November 1998 after sustaining damage from lightning strikes and flooding. CR at III-1, PR at III-1.

¹⁰² CR/PR at Table C-8.

¹⁰³ CR/PR at Table C-4.

¹⁰⁴ CR/PR at Table C-6.

¹⁰⁵ CR/PR at Figure III-3.

reflecting the exit from the market of two of the three principal domestic alloy magnesium suppliers to the aluminum industry, ***, ***.¹⁰⁶

Non-subject imports play a role in the U.S. market. From 2000 to 2004, the quantity and market share of imports of pure and alloy magnesium from nonsubject sources increased from *** metric tons to *** metric tons, representing *** percent of U.S. apparent consumption in 2000 and *** percent in 2004. Between 2004 and 2005, the quantity and market share of nonsubject imports dropped *** to *** metric tons, representing *** percent of domestic consumption.¹⁰⁷ A majority of purchasers reported that U.S. magnesium was comparable to magnesium from nonsubject sources, and that nonsubject magnesium was comparable to magnesium from Canada.¹⁰⁸

During the period, US Magnesium *** upgraded its manufacturing facility, ***. This modernization effort has led, in addition to ***,¹⁰⁹ US Magnesium has ***,¹¹⁰

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.

B. Likely Volume of Subject Imports

In the original investigation, with respect to pure magnesium, the Commission found that the volume of dumped and subsidized imports of pure magnesium, measured by both quantity and value, was significant, and increased substantially during the period of investigation.¹¹¹ The Commission further found that market penetration of subject imports of pure magnesium, by both quantity and value, increased dramatically during the period of the investigation.¹¹²

With respect to alloy magnesium, the Commission found that the volume of subsidized imports of alloy magnesium was *** and increased *** during the period of investigation.¹¹³ The Commission also found that the market penetration of subject imports increased *** during the period of investigation.¹¹⁴ Even with the order in place, NHCI has shipped a *** and increasing volume of subject alloy magnesium into the U.S. market since the original investigation, capturing an increasing market share; it now holds *** of the U.S. market share for alloy magnesium.¹¹⁵

In the first five-year reviews the Commission found that subject import volume of pure magnesium would likely be significant if the antidumping and countervailing duty orders on pure magnesium were revoked, based on the significant market share increase that NHCI was able to attain

¹⁰⁶ CR at III-9, PR at III-3.

¹⁰⁷ CR/PR at Table C-8.

¹⁰⁸ CR/PR at Tables II-3 and II-4.

¹⁰⁹ CR at I-37 and II-4, PR at I-23 and II-2.

¹¹⁰ CR at II-5, fn. 16, PR at II-3.

¹¹¹ Canada Original Remand Determination at 15. From 1989 to 1990, the quantity of U.S. shipments of subject pure magnesium imports increased from *** metric tons to *** metric tons. In 1991, these subject imports increased another *** percent, to *** metric tons. See CR and PR at Table I-4.

¹¹² Canada Original Remand Determination at 15. From 1989 to 1991, subject import shipments' market share increased from *** percent to *** percent. See CR/ PR at Tables I-4 and I-6.

¹¹³ Canada Original Remand Determination at 22. U.S. shipments of imports of NHCI's alloy magnesium increased from *** in 1989 to *** metric tons in 1991. See CR/PR at Table I-5.

¹¹⁴ Canada Original Remand Determination at 22. Imports of subject alloy magnesium accounted for *** share of domestic consumption in 1989, but captured approximately *** of the market in 1991. See CR/PR at Tables I-5 and I-6.

¹¹⁵ See CR and PR at Figure I-2 and Table I-5.

quite quickly prior to the imposition of the antidumping and countervailing duty orders on pure magnesium, the substantial additional capacity expected to be added by Magnola and NHCI, their ability to shift production from alloy magnesium to pure magnesium, and their ability to significantly increase exports to the U.S. market given its size and proximate location. The imminent entry of a major new supplier was an important factor in the Commission's evaluation of likely volume.¹¹⁶

The Commission also found that subject import volume would likely be significant if the countervailing duty order on alloy magnesium were revoked, based on the increasing market share that NHCI was able to capture since the original investigation, the substantial additional capacity expected to be added as Magnola entered the market and NHCI expanded its production capacity, their ability to shift from pure magnesium to alloy magnesium production, and their ability to significantly increase exports to the U.S. market given its size and proximate location.

Since the period of the first five-year reviews, the volume and market share of U.S. shipments of subject imports of pure and alloy magnesium from Canada have fluctuated considerably, ranging from a low of *** metric tons accounting for *** percent of U.S. magnesium consumption and *** percent of U.S. production in ***, to a high of *** metric tons accounting for *** percent of U.S. magnesium consumption and *** percent of U.S. production in **. The volume and market share of these shipments of imports in ** were *** metric tons accounting for *** percent of U.S. pure and alloy magnesium consumption and *** percent of U.S. production of pure and alloy magnesium.¹¹⁷

We recognize that there have been substantial imports of pure and alloy magnesium from Canada during the period of review.¹¹⁸ However, we find that it is not likely that subject imports will increase significantly if the countervailing duty orders on pure and alloy magnesium from Canada are revoked. The countervailing duty orders do not appear to have any significant effect on the level of imports from NHCI. (NHCI is currently the only producer of pure and alloy magnesium in Canada that is covered by the countervailing duty orders, and, as explained below, we find that it is not likely that any other producer would enter the market within a reasonable period of time.) Commerce found that it had no basis to report a likely subsidy rate for NHCI, whose subsidy rate it found to be *de minimis*.¹¹⁹ We note also that the countervailable subsidy that NHCI received has since been fully amortized as of the end of 2004.¹²⁰

While it is true that the volume of subject imports increased *** between 2004 and 2005,¹²¹ and that this coincides with the revocation of the antidumping duty order on pure magnesium from Canada in December 2004, we do not view this increase as indicative of a likely increase in imports if the countervailing duty orders were to be revoked. The increase in imports in 2005 represents only one year of data, and the amount of the increase is consistent with other year-to-year fluctuations during the period

¹¹⁶ Canada First Review Determination at 12-15.

¹¹⁷ CR/PR at Table C-8.

¹¹⁸ CR/PR at Table C-8.

¹¹⁹ 70 Fed. Reg. 67140 (Nov. 4, 2005).

¹²⁰ Issues and Decision Memorandum for the Final Results of the Expedited Sunset Reviews of the Countervailing Duty Orders on Pure Magnesium and Alloy Magnesium from Canada, U.S. Department of Commerce (Oct. 31, 2005) (“Issues and Decision Memorandum”) at 10. (“With respect to the SDI Article 7 grant, we acknowledge that the “benefit tail” has expired as of the end of 2004. Accordingly, NHCI will not benefit from the 1991 SDI Article 7 grant examined in the Final Determinations.”)

¹²¹ The volume of U.S. shipments of subject imports was *** metric tons in 2004, and *** metric tons in 2005. CR/PR at Table C-8.

of review.¹²² Moreover, *** the subject imports in 2005 were pursuant to long-term contracts that were negotiated prior to the revocation of the antidumping duty order.¹²³

We do not agree with GOQ's assertion that Commerce found that NHCI is not likely to be subsidized in the reasonably foreseeable future.¹²⁴ Commerce did not make a negative determination in its five-year review; rather, it found that it had no basis to report a subsidy rate for NHCI, whose subsidy rate it found to be *de minimis* in the last administrative review.¹²⁵ Commerce's final affirmative determination with respect to NHCI was based on the fact that the program still existed.

On the other hand, we also disagree with petitioner's contention that the level of subsidization would increase if the countervailing duty order was revoked.¹²⁶ Petitioner's arguments supporting this contention are purely speculative. Commerce has not indicated that subsidization of the Canadian industry would be likely to grow within a reasonably foreseeable time.

We also find that subject Canadian producers do not have the capability to increase significantly their shipments to the United States within the reasonably foreseeable future. While NHCI's magnesium capacity utilization rate declined overall during the period of review, it maintained *** capacity utilization rates throughout the period.¹²⁷

Furthermore, we are not persuaded by petitioner's argument that NCHI would likely carry out capacity expansion plans that it announced in 1997 if the countervailing duty order were revoked. These capacity expansion plans are now nearly ten years old, and there is no indication that NHCI has taken further steps to implement them. We recognize that in 2005 NHCI announced plans to expand total magnesium capacity by *** metric tons.¹²⁸ We do not view this expansion to be significant, when considered in the context of overall U.S. consumption of magnesium. Even if the expansion plan were to be carried out in its entirety, and the full *** metric tons of capacity were to be devoted to the production of pure magnesium, and this were all to be exported to the United States – assumptions that collectively are unlikely – these additional *** metric tons of capacity would amount to only *** percent of U.S. consumption of pure and alloy magnesium in 2005.¹²⁹

We are not persuaded by petitioner's argument that the Magnola plant is likely to resume production within a reasonably foreseeable time if the countervailing duty order is revoked. On balance, the information in the record indicates that ***.¹³⁰ Moreover, *** for the plant to be refurbished and employees to be hired, before production could even resume.^{131 132} We further note that the revocation of

¹²² For example, U.S. shipments of subject imports increased from *** metric tons in 2001, to *** metric tons in 2002, and then declined to *** metric tons in 2003. CR/PR at Table C-8.

¹²³ See Hearing Tr. at 110 (Tissington, US Magnesium).

¹²⁴ GOQ Posthearing Brief at 3-5.

¹²⁵ 70 Fed. Reg. 67140 (Nov. 4, 2005).

¹²⁶ Petitioner's Posthearing Brief at 3-5.

¹²⁷ NHCI's capacity utilization rates were *** percent in 2003, *** percent in 2004, and *** percent in 2005. CR/PR at Table IV-10.

¹²⁸ CR at IV-20, PR at IV-4.

¹²⁹ See CR/PR at Table C-8.

¹³⁰ See ***.

¹³¹ Id.

¹³² We further note that petitioner estimates that, based on its experience, the cost for Magnola to recommission its plant to a capacity of 65,000 metric tons would be about \$50 to \$60 million. Petitioner's Posthearing Brief, Responses to Commissioners' Questions at 36.

the antidumping duty order on pure magnesium from Canada, which imposed a substantially higher duty than the countervailing duty orders, did not prompt Magnola to take steps to re-open.¹³³

We also find that the Cogburn Magnesium Project in British Columbia is not likely to result in any additional production capacity in Canada within a reasonably foreseeable time. This project is only at the early planning stage,¹³⁴ and *** will likely also affect this project.

We have also examined the other factors the statute sets forth as pertinent to an analysis of likely subject import volume. NHCI maintained *** inventories toward the end of the period of review, but these were *** likely to lead to a significant increase in imports.¹³⁵ There is no evidence that pure and alloy magnesium from Canada is subject to import barriers in any other market.¹³⁶

Consequently, we conclude that, should the countervailing duty orders on pure and alloy magnesium from Canada be revoked, the volume of subject imports of magnesium from Canada would not likely increase to a significant level, either in absolute terms or relative to production or consumption in the United States.

C. Likely Price Effects of Subject Imports

In the original investigation, the Commission found that, at the same time that volume and market share of subject imports increased ***, prices for both U.S.- and Canadian-produced commodity-grade pure magnesium steadily declined.¹³⁷ The Commission further noted the significance of the high degree of substitutability between U.S. and Canadian pure magnesium.

With respect to alloy magnesium, the Commission found that, at the same time that volume and market share of subject imports increased, prices for both U.S.- and Canadian-produced alloy magnesium steadily declined.¹³⁸ The Commission noted that Canadian and U.S. producers' prices for contract sales of alloy magnesium declined as did the unit value of alloy magnesium from Canada. The Commission further noted the high degree of substitutability between U.S. and Canadian alloy magnesium. Prior to the imposition of the antidumping and countervailing duty orders, the U.S. and Canadian products sold at similar prices, with price changes by one firm often followed by equivalent changes by other producers. Accordingly, the Commission found that the effect of subject import prices on U.S. prices was significant.

With respect to pure magnesium, in the first five-year reviews the Commission determined that revocation of the antidumping and countervailing duty orders on pure magnesium would be likely to lead to significant underselling of the domestic like product by subject imports, as well as significant price depression and suppression. The Commission explained that it was likely that Magnola would offer pure

¹³³ The current countervailing duty deposit rate for pure and alloy magnesium from Magnola is 5.4 percent ad valorem. CR/PR at Table I-7. The antidumping duty deposit rate for pure magnesium in effect for Magnola before that order was revoked in December 2004 was 21 percent ad valorem. Pure Magnesium From Canada: Amendment of Final Determination of Sales at Less Than Fair Value and Order in Accordance With Decision on Remand, 58 Fed. Reg. 62642, 62644 (Nov. 29, 1993).

¹³⁴ CR at IV-22-23, PR at IV-6.

¹³⁵ Subject Canadian producers had end-of-period inventories of pure and alloy magnesium of *** metric tons, representing *** percent of annual production in 2005. This compares with end-of-period inventories of *** metric tons, representing *** percent of annual production in 2000. CR/PR at Tables IV-8 and IV-9.

¹³⁶ CR at IV-30, PR at IV-9.

¹³⁷ Canada Original Remand Determination at 12. The Commission found that quarterly price comparisons were not particularly useful to determine whether any underselling was significant, in light of the frequency of price changes, the high degree of substitutability, and the tendency of all producers to match price reductions, including through the use of "meet or release" clauses. Id. at n.90. Likewise, we do not find the limited quarterly price comparisons obtained during this review to be particularly probative of current or likely future price effects.

¹³⁸ Canadian Original Remand Determination at 16.

magnesium at low prices in order to enter the U.S. market, and that this would likely spur NHCI to lower its prices in the U.S. market as well. The Commission concluded that, without the discipline of the antidumping and countervailing duty orders, NHCI and Magnola would likely decrease prices in order to gain market share in a market in which demand was projected to remain flat.¹³⁹

With respect to alloy magnesium, in the first five-year review the Commission determined that revocation of the countervailing duty order on alloy magnesium would be likely to lead to significant underselling of the domestic like product by subject imports, as well as significant price depression and suppression. The Commission explained that it was likely that Magnola would offer alloy magnesium at low prices in order to enter the U.S. market, and that this would likely spur NHCI to lower its prices in the U.S. market as well. It noted that the likelihood of price depression was heightened by the prevalence of certain *** in alloy magnesium contracts. The Commission concluded that, without the discipline of the countervailing duty order, NHCI and Magnola would likely decrease prices in order to gain market share, thereby likely recreating the degree of price depression that occurred during the period of the original investigation.¹⁴⁰

In these reviews, the Commission obtained pricing data for subject imports of pure magnesium and domestically produced pure magnesium for sales to aluminum producers and other purchasers, and for sales of subject imports of alloy magnesium and domestic alloy magnesium to diecasters. Pure magnesium sales to aluminum producers were ***. Out of 24 quarterly observations for sales to aluminum producers, the subject imports undersold the domestic product in only four quarters, ***. In the other 20 quarters, the subject imports oversold the domestic product, in some cases by substantial margins.¹⁴¹ Out of 11 quarterly observations for sales to other purchasers, the subject imports undersold the domestic product in 7 quarters, in some cases by substantial margins. We view the pricing data for sales to aluminum producers to be much more significant than the data on sales to other purchasers because the quantities of subject imports sold to the latter category were uniformly small.¹⁴²

Out of 24 quarterly observations available for alloy magnesium, the subject imports undersold the domestic product in only four quarters, ***. In the other 20 quarters, the subject imports oversold the domestic product, in *** cases by substantial margins.¹⁴³ US Magnesium argues that the overselling is due to NHCI's long-term supply contract with GM, which was negotiated at a time of high prices.¹⁴⁴ However, the pricing data indicate that, in 2005, NHCI's average prices to all U.S. customers ranged between *** and ***, whereas its prices to GM were between *** and ***.¹⁴⁵ Moreover, GM accounted for *** percent of NHCI's reported sales in that year. US Magnesium also argues that expiration of this long-term contract at the end of 2007 will lead to adverse price effects because the contract sets prices that are higher than current market prices.¹⁴⁶ However, the record shows that ***.¹⁴⁷

¹³⁹ Canada First Review Determination at 15-16.

¹⁴⁰ Canada First Review Determination at 22-23.

¹⁴¹ CR/PR at Table V-1.

¹⁴² We do not agree with petitioner's assertion that this pricing data is not probative of pricing practices because sales were not made in commercial volumes. Petitioner's Posthearing Brief, Answers to Commissioners' Questions, at pp. 27-29. Commerce's determination does not require the Commission to disregard its own, separately gathered data and we find no reason to do so in these reviews.

¹⁴³ CR/PR at Table V-2.

¹⁴⁴ Petitioner's Posthearing Brief, Answers to Commission Questions at 51.

¹⁴⁵ Supplemental Price Data Submitted by NHCI In Response to Staff Request At Hearing.

¹⁴⁶ E.g., Petitioner's Posthearing Brief at 7.

¹⁴⁷ In its remand determination in the original investigations and in the first reviews of these countervailing duty orders, the Commission noted that quarterly price comparisons were not particularly useful due to the frequency of
(continued...)

We note also, that the disappearance of Magnola from the market, and our finding that it is not likely to start up in the reasonably foreseeable future, indicates that it will not have a likely impact on domestic pricing for pure or alloy magnesium in the reasonably foreseeable future, a factor different than during the last five-year review.

There is nothing in the record to suggest that pricing patterns of subject imports are likely to differ significantly from those prevailing during the period of review, if the countervailing duty orders on pure and alloy magnesium from Canada are revoked. As explained above, revocation of the orders and the likely subsidization found by Commerce are not likely to lead to a significant increase in the volume of subject imports. We consequently find that the subject imports of pure and alloy magnesium from Canada will not be likely to have significant price effects on the domestic industry producing magnesium in the event of revocation.

D. Likely Impact of Subject Imports

With respect to pure magnesium, in the original investigation the Commission found that the substantial increases in NHCI's share of a *** declining pure magnesium market resulted in increased domestic inventories and placed significant pressure on the domestic producers to lower their prices.¹⁴⁸ Noting that the U.S. plants producing pure magnesium are dedicated to primary magnesium production, with little flexibility to produce other products, the Commission further found that industry-wide price declines caused a direct reduction in revenues, as reflected in the financial data collected in the investigations. The Commission determined that the *** increase in Canadian market share and concurrent decrease in prices of subject imports significantly depressed domestic prices, and led to a decline in domestic producers' U.S. shipments, causing an *** decline in revenues. In turn, the decline in revenue contributed directly to a *** decline in profitability for the domestic industry.

With respect to alloy magnesium, the Commission found that the *** increases in NHCI's share of a stable market resulted in increased domestic inventories and placed *** pressure on the domestic producers to lower their prices.¹⁴⁹ Noting that the U.S. plants producing alloy magnesium are dedicated to primary magnesium production, with little flexibility to produce products other than magnesium, the Commission further found that industry-wide price declines caused a direct reduction in revenues, as reflected in the financial data collected in the investigation.

In the first five-year reviews the Commission found that the domestic industries producing pure and alloy magnesium were not vulnerable, but that the industries showed several important signs of ***. The Commission found that the imminent entry into the market of a major new supplier, Magnola, and likely increased capacity of an existing supplier, NHCI, were likely to push the domestic industry into a further decline and jeopardize its investment in new electrolytic cell technology. It concluded that in light of the likely significant increases in the volume of subject imports at prices that would undersell the

¹⁴⁷ (...continued)

price changes, the use of meet-or-release clauses, and the limited number of comparisons available. Canada Original Remand Determination at 17 n.90, and Canada First Review Determination at 15 n. 108. The circumstances which led us to discount quarterly price comparisons are not present in these reviews. In these reviews, most purchasers reported that prices for magnesium change once a year (see purchaser questionnaire responses, section III-32). In addition, while US Magnesium reported that ***, Norsk Hydro reported that ***. CR at V-4 to V-5, PR at V-3. In the original investigation, there were a total of 25 instances where prices could be compared (for imports of pure and alloy magnesium), and in the first reviews, there were a total of 14 such instances. In these reviews, by contrast, there were 58 quarters in which prices could be compared. CR/PR at Tables V-1 to V-3. Therefore, based on the information obtained in these reviews, we find that the quarterly price comparisons are useful.

¹⁴⁸ Canada Original Determination at 19.

¹⁴⁹ Canada Original Remand Determination at 26.

domestic like product and significantly depress U.S. prices, revocation of the orders would likely have a significant adverse impact on the domestic industry.¹⁵⁰

The domestic industry's trade and financial indicators were *** over the period of review. The quantity of domestic shipments of magnesium declined unevenly over the review period, falling from *** metric tons in 2000 to *** metric tons in 2005, as did the ***.¹⁵¹ The number of production workers declined *** over the review period, falling from *** in 2000 to *** in 2005, and wages also fell. These declines in production and employment are attributable, at least in part, to the closure of Northwest Alloys in 2001, and of Garfield and Halaco in 2003 and 2004, respectively. The magnesium industry was ***.¹⁵² The industry's declining production and employment indicators and its *** during much of the 2000-2005 review period supports a finding that the industry is vulnerable at the present.

Notwithstanding this vulnerability, we find that subject imports would not be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time if the countervailing duty order is revoked. Because we have found that revocation of the countervailing duty order will not likely result in an increase in subject import volume to a significant level, or in significant price effects, we find that significant declines in the domestic industry's output, market share, profits, productivity, return on investment, and capacity utilization are not likely to result from revocation of the order. Nor will revocation result in significant likely effects on the domestic industry's cash flow, inventories, employment, wages, growth, ability to raise capital, investment, or development or production efforts.

E. Conclusion

Accordingly, we conclude that, if the countervailing duty orders on pure and alloy magnesium from Canada are revoked, subject imports of pure and alloy magnesium from Canada would not be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

¹⁵⁰ Canada First Review Determination at 17-18, and 23-25.

¹⁵¹ CR/PR at Table C-8.

¹⁵² The industry's operating income ratio was *** percent in 2000, negative *** percent in 2001, negative *** percent in 2002, negative *** percent in 2003, negative *** percent in 2004, and *** percent in 2005. CR/PR at Table C-8.

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

A. 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.”¹⁵³

Apparent U.S. consumption of pure and alloy magnesium decreased overall from *** metric tons in 2000 to *** metric tons in 2004, and declined further to *** metric tons in 2005.¹⁵⁴ Demand for magnesium is dictated largely by the demand in its end-use markets. Pure magnesium is sold mainly to aluminum producers, to magnesium granule producers for steel desulfurization, and to chemical and pharmaceutical manufacturers, as was the case in the original investigation and first sunset reviews.¹⁵⁵ Demand for pure magnesium largely depends on the demand for aluminum sheet used in the production of beverage cans and other packaging.¹⁵⁶ From 2000 to 2005, apparent U.S. consumption (by quantity) of pure magnesium declined by *** percent.¹⁵⁷ Apparent consumption of alloy magnesium grew by *** percent between 2000 to 2005, increasing from *** metric tons in 2000 to *** metric tons in 2004, before falling back to *** metric tons in 2005.¹⁵⁸

*** purchasers predict a *** increase in demand for pure magnesium in the next few years.¹⁵⁹ US Magnesium stated that it expects demand to *** in 2006 and 2007 due to ***.¹⁶⁰ With respect to projected demand for alloy magnesium in the next few years, alloy magnesium producers and purchasers reported a mixed picture.¹⁶¹ US Magnesium stated that it expects demand for alloy magnesium to *** in 2006 and 2007 due to ***.¹⁶² Many purchasers, ***, reported that they expected the use of alloy magnesium in automotive applications to increase, while expressing concern that the relatively less competitive U.S. market for alloy magnesium may lead to a shift of production of magnesium-containing parts offshore.¹⁶³

In the original investigation, the Commission noted that the subject imports and the domestic product competed directly in the market.¹⁶⁴ The market for pure and alloy magnesium continues to be

¹⁵³ 19 U.S.C. § 1675a(a)(4).

¹⁵⁴ CR/PR at Table C-8.

¹⁵⁵ CR at II-1, PR at II-1.

¹⁵⁶ CR at I-12, PR at I-8.

¹⁵⁷ CR/PR at Table C-4.

¹⁵⁸ CR/PR at Table C-6.

¹⁵⁹ CR at II-11, PR at II-6.

¹⁶⁰ CR at II-11, PR at II-6.

¹⁶¹ CR at II-11, PR at II-6.

¹⁶² CR at II-11, PR at II-6.

¹⁶³ CR at II-12, PR at II-7. The production processes for primary alloy magnesium and pure magnesium are very similar and are typically performed at common manufacturing facilities using the same employees and basic equipment. From a production standpoint, a domestic or foreign producer can easily switch between production of pure magnesium and alloy magnesium. See, Magnesium from Canada, Invs. Nos. 701-TA-309 A-B (Review) and 731-TA-528 (Review), USITC Pub. 3324 at I-9, III-1.

¹⁶⁴ China Original Determination at 20.

price competitive.¹⁶⁵ A majority of responding *** importers reported that differences other than price were not significant for pure magnesium. For alloy magnesium, most producers reported that there are sometimes significant differences, while most importers reported that such differences were sometimes or never important.¹⁶⁶ All pure magnesium purchasers reported that Chinese pure magnesium was less expensive than U.S. produced magnesium.¹⁶⁷ The one importer that reported information on sales methods for pure magnesium from China reported selling entirely on the basis of short-term contracts.¹⁶⁸

As in the original investigation and first review, most producers, importers, and purchasers in this review agreed that domestically-produced pure magnesium and pure magnesium from China could be used in the same range of uses and could always or frequently be used interchangeably.¹⁶⁹ As in the first five-year review, most purchasers noted that they require their suppliers of pure magnesium from China to become certified or prequalified and many buy pure magnesium exclusively from qualified suppliers, and that although not perfect substitutes, domestic pure magnesium and subject imports from China generally are substitutable with one another and with imports from third countries.¹⁷⁰ Most purchasers reported some differences between U.S.-produced and subject Chinese pure magnesium, finding U.S. suppliers to provide superior technical support, service, packaging and delivery time, lower transportation costs, more reliable supply, greater availability, and better product consistency. All purchasers reported, however, that Chinese imports of pure magnesium meet industry quality standards, with half of all purchasers reporting that Chinese merchandise exceeds industry standards.¹⁷¹ Purchasers of alloy magnesium generally do not buy pure magnesium, although there is some overlap in the use of pure and alloy magnesium in the aluminum manufacturing industry.¹⁷²

Although some U.S. market conditions discussed above have not changed significantly since the original investigation and the first sunset review, there have been some significant changes in the domestic industry. With respect to domestic production, Northwest Alloys, *** domestic producer of primary pure and alloy magnesium during the original investigation, exited the market in 2001.¹⁷³ As a result, the magnesium industry has further consolidated and now consists of only one producer of primary magnesium, US Magnesium.¹⁷⁴ With the departure of Northwest Alloys, total U.S. producers' U.S. shipments of magnesium dropped from *** metric tons in 2000 to *** metric tons in 2005.¹⁷⁵ In this period, U.S. producers' U.S. shipments of pure magnesium dropped from *** metric tons in 2000 to *** metric tons,¹⁷⁶ and U.S. producers' U.S. shipments of alloy magnesium, including secondary magnesium production, fell from *** metric tons in 2000 to *** metric tons.¹⁷⁷ U.S. producer shipments of alloy magnesium to diecasters represented *** percent of U.S. commercial shipments of alloy magnesium in

¹⁶⁵ See CR at II-14, PR at II-8 and CR/PR at Table II-1.

¹⁶⁶ CR at II-23, PR at II-13.

¹⁶⁷ CR at II-18, PR at II-10.

¹⁶⁸ CR at V-3, PR at V-3.

¹⁶⁹ China Original Determination 16, 20; CR at II-23, PR at II-13.

¹⁷⁰ China First Review Determination at 9; CR at II-15, PR at II-9.

¹⁷¹ CR/PR at Table II-3.

¹⁷² CR at II-1, PR at II-1.

¹⁷³ CR at II-4, PR at II-3.

¹⁷⁴ Dow Magnesium, a subsidiary of Dow Chemical Corp., Midland, MI, ceased magnesium production in November 1998 after sustaining damage from lightning strikes and flooding. CR at III-1, PR at III-1.

¹⁷⁵ CR/PR at Table C-8.

¹⁷⁶ CR/PR at Table C-4.

¹⁷⁷ CR/PR at Table C-6.

2005, followed by shipments to aluminum producers at *** percent.¹⁷⁸ U.S. producers' commercial shipments of alloy magnesium to the aluminum industry decreased *** percent between 2003 and 2005, reflecting the exit from the market of two of the three principal domestic alloy magnesium suppliers to the aluminum industry, ***. ***.¹⁷⁹

Non-subject imports play a role in the U.S. market. From 2000 to 2004, the quantity and market share of imports of pure and alloy magnesium from nonsubject sources increased from *** metric tons to *** metric tons in 2004, representing *** percent of U.S. apparent consumption in 2000 and *** percent in 2004. Between 2004 and 2005, the quantity and market share of nonsubject imports declined somewhat to *** metric tons, representing *** percent of domestic consumption.¹⁸⁰

During the period, US Magnesium substantially upgraded its manufacturing facility, ***. This modernization effort has led, in addition to ***,¹⁸¹ The company has ***.¹⁸²

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.

B. 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.¹⁸³ In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.¹⁸⁴

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 1994.¹⁸⁵ 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.¹⁸⁶

In the first five-year review the Commission found that subject import volume would likely be significant if the antidumping duty order on pure magnesium was revoked, based on the rapid growth and substantial capacity of the Chinese magnesium industry, that industry's significant dependence on export markets, the presence of imports barriers against pure magnesium from China in third country markets, the surge in U.S. imports of subject merchandise under temporary importations bonds since the

¹⁷⁸ CR/PR at Figure III-3.

¹⁷⁹ CR at III-9, PR at III-3.

¹⁸⁰ CR/PR at Table C-8.

¹⁸¹ CR at I-37, II-4, PR at I-23.

¹⁸² CR at II-5, fn. 16, PR at II-3.

¹⁸³ 19 U.S.C. § 1675a(a)(2).

¹⁸⁴ 19 U.S.C. § 1675a(a)(2)(A)-(D).

¹⁸⁵ China First Review Determination at 11.

¹⁸⁶ China First Review Determination at 11.

imposition of the order, and the ability of Chinese producers to switch production from alloy magnesium to pure magnesium if the order on pure magnesium was revoked.¹⁸⁷

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 1996.¹⁸⁸ Only 19 metric tons of pure magnesium from China subject to the antidumping duty order entered the United States in 2005, and no more than 240 metric tons have entered the United States in any year since 2000.¹⁸⁹ 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 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, with production of 426,000 metric tons accounting for *** percent of global production in 2004.¹⁹⁰ China's current magnesium production capacity is estimated to be approximately 527,000 metric tons, a considerable increase over the 170,000 to 180,000 metric ton figure reported for 1999.¹⁹¹ The evidence also indicates that the Chinese industry has increased its efficiency and competitiveness from 2000 to 2005, with some consolidation of smaller Chinese magnesium producers under way.¹⁹²

Absent the antidumping duty order, it is likely that significant volumes of Chinese producers' production will be targeted at the U.S. magnesium market. Total excess Chinese capacity appears to be approximately 60,000 metric tons. Available industry data estimated Chinese home market consumption of primary magnesium to be relatively *** in 1999, and there is no evidence on this record to suggest that there has been a material change in Chinese domestic consumption.¹⁹³ Chinese magnesium producers appear to continue to rely heavily on exports, and the available evidence indicates they have continued to do so as they have increased capacity.¹⁹⁴

India reportedly imposed antidumping orders on imports of magnesium from China from 1998 through 2003, at which time the duties were withdrawn at the request of the domestic industry.¹⁹⁵ The European Union antidumping order on pure magnesium from China, imposed in 1999, expired in 2003. Brazil imposed antidumping duties on pure magnesium from China in 2004, which it expanded in 2005 to include alloy magnesium.¹⁹⁶ Actual and potential import barriers further suggest that Chinese producers will look to the U.S. market if the order is lifted.

Chinese producers can easily switch production from alloy magnesium to pure magnesium. Until the imposition of antidumping measures on alloy magnesium from China in 2004, Chinese producers exported substantial quantities of alloy magnesium to the United States. Given the existing antidumping orders now in place against Chinese alloy and granular magnesium, which have drastically reduced Chinese participation in the U.S. magnesium market for both of these products, and the relative ease with which Chinese producers can change of production from alloy magnesium to pure magnesium, Chinese

¹⁸⁷ China First Review Determination at 11-12.

¹⁸⁸ China First Review Determination at 11.

¹⁸⁹ CR/PR at Table C-4.

¹⁹⁰ CR at IV-23, PR at IV-6.

¹⁹¹ CR at IV-27, PR at IV-7; China First Review Determination at 11.

¹⁹² CR at IV-27-28, PR at IV-7-8.

¹⁹³ China First Review Determination at 11.

¹⁹⁴ CR at IV-23, PR at IV-6.

¹⁹⁵ CR at IV-30, PR at IV-9.

¹⁹⁶ CR at IV-30, PR at IV-9.

magnesium producers would have a powerful incentive to switch production and to export large volumes of pure magnesium to the United States if this order were revoked. Indeed, an increase in Chinese imports of alloy magnesium was observed after the duties were imposed on pure magnesium from China.¹⁹⁷

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.

C. 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 United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like products.¹⁹⁸

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.¹⁹⁹ 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.²⁰⁰ Additionally, the cumulated subject imports undersold domestically-produced pure magnesium in the vast majority of pricing comparisons.²⁰¹ 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.²⁰²

In the first five-year reviews the Commission determined that revocation of the antidumping duty order on pure magnesium would be likely to lead to significant underselling of the domestic like product by subject imports, as well as significant price depression and suppression. The Commission relied on pricing patterns for subject imports both during the original period of investigation and since then, to conclude that subject imports would likely be priced aggressively if the order was revoked.²⁰³

The current pricing data on this record for subject imports are limited to data on average unit values (“AUVs”). Very limited volumes of pure magnesium entered in 2005 from China, at very low AUVs of \$0.83 per pound, compared with AUVs of \$*** per pound for subject pure magnesium from Canada and AUVs of \$1.33 per pound for pure magnesium from all other sources.²⁰⁴ The pricing patterns for imports of pure magnesium from China, both currently and during the original period of investigation and first review, 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

¹⁹⁷ Hearing Tr. at 53 (J. Lutz, Economic Consulting Services).

¹⁹⁸ 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.

¹⁹⁹ China Original Determination at 20.

²⁰⁰ China Original Determination at 21.

²⁰¹ China Original Determination at 21.

²⁰² China First Review Determination at 13.

²⁰³ China First Review Determination, USITC Pub. 3346 at 12-14.

²⁰⁴ CR/PR at Table C-4.

and nonsubject imports. As noted, the original record and the evidence available in this review indicate that the domestic pure magnesium and subject imports are fairly good substitutes. In light of the importance of price in purchasing decisions for pure magnesium and falling demand for pure magnesium during the period of review in this case, 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.

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.

D. 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.²⁰⁵ 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.²⁰⁶ 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.²⁰⁷

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 domestic pure magnesium industry.²⁰⁸ The entry of these imports resulted in increased domestic inventories and placed significant pressure on the domestic producers to lower their prices.²⁰⁹ The Commission determined that the losses in market share and price pressures resulted in reductions in industry-wide capacity to produce pure magnesium, and declines in employment of workers producing pure magnesium.²¹⁰ In the first sunset review, the Commission found that the pure magnesium industry's operating performance was not consistent with a finding of vulnerability.²¹¹

In the first five-year review the Commission found that the domestic industry was not vulnerable, but that the industry showed several important signs of ***. The Commission found that, given the vast amounts of Chinese production capacity and increasing worldwide magnesium capacity, the likely return

²⁰⁵ 19 U.S.C. § 1675a(a)(4).

²⁰⁶ 19 U.S.C. § 1675a(a)(4).

²⁰⁷ The SAA states that in assessing whether the domestic industry is vulnerable of 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.

²⁰⁸ China Original Determination at 22.

²⁰⁹ China Original Determination at 22.

²¹⁰ China Original Determination at 22.

²¹¹ China First Sunset Determination at 15.

of significant volumes of pure magnesium from China upon revocation of the order, would likely send the domestic industry into further decline. It concluded that in light of the likely significant increases in the volume of subject imports at prices that would undersell the domestic like product and significantly depress U.S. prices, revocation of the order would likely have a significant adverse impact on the domestic industry.²¹²

The domestic industry's trade and financial indicators were mixed during the 2000 to 2005 period of review. The quantity of U.S. producers' shipments of pure and alloy magnesium declined by *** percent from 2000 to 2005, from *** metric tons to *** metric tons.²¹³ The number of production workers fell *** from *** workers in 2000 to *** in 2005. The company was ***.²¹⁴ However, the industry's *** appears to be attributable to *** in 2004 and 2005 compared to previous years.²¹⁵ Nevertheless, the magnesium industry's *** operating performance during most of the review period supports a finding that the industry is vulnerable at the present, given the *** of its recent financial improvement.

Given the vast amounts of Chinese production capacity, the return of significant volumes of pure magnesium from China into the U.S. market likely would push the domestic industry back into decline and prevent the industry from further 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. An 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 the U.S. industry to stabilize its financial condition.

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 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. However, given the U.S. industry's vulnerability, the loss of sales volume and price depression that are likely to result if the antidumping duty order is revoked likely would prevent the industry from reaping the benefits of its significant investment in technology and recent improvements in productivity.

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.

²¹² China First Review Determination at 14-16.

²¹³ CR/PR at Table C-8.

²¹⁴ CR/PR at Table C-8.

²¹⁵ CR/PR at Table C-8.

VIEWS OF VICE CHAIRMAN ARANOFF AND COMMISSIONERS HILLMAN AND KOPLAN

II. DOMESTIC LIKE PRODUCTS AND INDUSTRIES

A. Domestic Like Products

In making its determination under section 751(c), the Commission defines “the domestic like product” and the “industry.”²¹⁶ 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.”²¹⁷ In a section 751(c) review, the Commission also must take into account “its prior injury determinations.”²¹⁸

In its final expedited sunset reviews Commerce defined the subject merchandise as follows:

Canada

pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. . . . Secondary and granular magnesium are not included in the scope of these orders.²¹⁹

People’s Republic of China

pure primary 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 “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

²¹⁶ 19 U.S.C. § 1677(4)(A).

²¹⁷ 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).

²¹⁸ 19 U.S.C. § 1675a(a)(1)(a).

²¹⁹ Final Results of Expedited Sunset Reviews of the Countervailing Duty Orders: Pure Magnesium and Alloy Magnesium from Canada, 70 Fed. Reg. 67140 (Nov. 4, 2005).

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.

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 to U.S. Customs and November 14, 1997, Final Scope Ruling of Antidumping Duty Order on Pure Magnesium from China.

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.²²⁰

Magnesium is the eighth most abundant element in the earth’s crust and the third most plentiful element dissolved in seawater. It is the lightest of all structural metals and is characterized by high vibrational-dampening properties.²²¹

Pure magnesium has special metallurgical and chemical properties that allow it to alloy well with metals such as aluminum. Typically, it is 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, and in magnesium anodes for the protection of iron and steel in underground pipe and water tanks and various marine applications.²²²

Alloy magnesium is usually used in end products to improve certain properties, such as strength, ductility, workability, corrosion resistance, density, or castability. It is used principally in structural applications, primarily in die, mold, and sand castings and in extrusions for the automotive industry.²²³

The Commission generally considers a number of factors in its like product analysis, including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price.

1. Like Products in Canada Reviews

The reviews of the countervailing duty orders on pure and alloy magnesium from Canada present three like product issues: (i) whether to define pure and alloy magnesium as a single like product; (ii) whether to expand the like product beyond the scope, to encompass secondary magnesium; and (iii) whether to expand the like product beyond the scope, to encompass granular magnesium.

²²⁰ Pure Magnesium from the People’s Republic of China; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order, 71 Fed. Reg. 580-581 (Jan. 5, 2006). The scope of this review investigation is somewhat broader than that of the review investigation covering pure magnesium from Canada, which did not include off-specification (“off-spec”) pure magnesium.

²²¹ CR at I-28, PR at I-16.

²²² CR at I-30, PR at I-18.

²²³ CR at I-30, PR at I-18.

US Magnesium contends that there is a single like product encompassing all forms of magnesium (pure and alloy, primary and secondary, and all cast and granular forms, shapes, and sizes). It argues that the proposed single like product encompasses a broad continuum of chemistries, raw material sources and combinations, and forms, shapes and sizes; and that there are no clear dividing lines within this continuum.²²⁴

NHCI argues that pure and alloy magnesium should be treated as separate domestic like products. It maintains that pure and alloy magnesium have different physical characteristics and uses, channels of distribution, manufacturing processes, and pricing; and that there is only limited interchangeability between the two. NHCI argues that temporary and unusual circumstances led the Commission to find that pure and alloy magnesium constituted a single like product in the 2005 investigations of pure and alloy magnesium from Russia and alloy magnesium from China.²²⁵ NHCI did not take a position on the issues of secondary magnesium and granular magnesium.

As discussed below, we determine (i) to define separate like products for pure and alloy magnesium, (ii) to include secondary magnesium in the alloy magnesium domestic like product, and (iii) not to include granular magnesium in the domestic like products.²²⁶

The starting point of the Commission's like product analysis in a five-year review is the like product definition in the Commission's original determination. In the original investigation, the Commission, on remand from the NAFTA Binational Panel, found two separate like products--pure magnesium and alloy magnesium. The Commission defined the like products in the same way in the first five-year reviews of these countervailing duty orders.²²⁷

a. Pure Magnesium and Alloy Magnesium

Background. In its first investigation involving imported pure and alloy magnesium the Commission found pure and alloy magnesium to constitute a single like product.²²⁸ The Commission was reversed on this point by a U.S.-Canada binational panel,²²⁹ and on remand the Commission found that pure and alloy magnesium were separate like products, corresponding respectively to the two classes or kinds of subject imports found by Commerce. The Commission found that, although pure and alloy magnesium are produced with the same machinery and employees,²³⁰ and share certain physical characteristics (but not others), they have different principal uses, are targeted for distinct markets, are generally not interchangeable, are perceived differently by customers due to their different end uses, and have different price trends as a result of their different markets.²³¹ In subsequent investigations of both types of magnesium from other countries (China, Russia and Ukraine) and in its five-year reviews of the

²²⁴ US Magnesium Prehearing Brief at 15-18, and Posthearing Brief at Appdx. 1 at 1-2 and 6-8.

²²⁵ NHCI Prehearing Brief at 2-13, and Posthearing Brief at 2-5.

²²⁶ As explained below, Commissioner Koplán find that the pure magnesium like product includes both cast and granular pure magnesium.

²²⁷ Canada First Review Determination at 5-6.

²²⁸ Canada Original Final Determination at 8-11.

²²⁹ In the Matter of Magnesium from Canada, Case Nos. USA-92-1904-05 and USA 92-1904-06 (Aug. 27, 1993) (Remand).

²³⁰ As discussed below, this was true because prior investigations did not involve secondary alloy magnesium, which is not produced with the same machinery and employees as pure magnesium.

²³¹ Canada Original Remand Determination at 3-4.

orders on Canada, the Commission again found pure and alloy magnesium to be separate like products.²³² Also, in subsequent investigations involving pure magnesium only, the Commission declined to expand the like product to encompass alloy magnesium.²³³

However, in its 2005 investigations of alloy magnesium from China, and pure and alloy magnesium from Russia, the Commission found pure and alloy magnesium to be a single like product based on the record in those reviews.²³⁴ In doing so, the Commission first noted that, whereas in prior cases involving both pure and alloy magnesium Commerce had defined two classes or kinds of merchandise, in the 2005 investigations Commerce had defined the scope with respect to Russia as a single class or kind of merchandise encompassing both pure and alloy magnesium. The Commission then explained that the record in those investigations showed that circumstances had changed sufficiently so as to blur the dividing line between pure and alloy magnesium, and to warrant treating the two as a single domestic like product. The Commission focused on changes in uses, and in interchangeability and customer and producer perceptions.

Physical characteristics. No information has been developed in these reviews that suggests that the physical characteristics of pure and alloy magnesium have changed since the original investigations and first five-year reviews. Pure and alloy magnesium share the basic physical characteristics of being lightweight and strong and having low density. The two products also differ from each other in certain respects: pure magnesium contains at least 99.8 percent magnesium by weight, and alloy magnesium usually contains at least 90 percent. Alloy magnesium has certain properties that improve its strength, ductility, workability, corrosion resistance, density, or castability, as compared with pure magnesium.²³⁵

Uses. In the original investigations and first five-year reviews, the record indicated different end uses for the two products. Pure magnesium was used principally in the production of aluminum alloys and as a reagent in iron and steel desulfurization, while alloy magnesium was used principally in structural applications, mostly in castings and extrusions for the automotive industry.²³⁶ Similarly, the record in the present reviews indicates only minimal overlap in end uses between the two, and the record indicates that the properties of the two types of magnesium make each most suited to a particular end use.²³⁷ In 2005, U.S. producers' commercial U.S. shipments to aluminum manufacturers accounted for *** percent of their total U.S. shipments of pure magnesium, and their shipments to granule/reagent producers accounted for *** percent of total pure magnesium shipments. In the same year, U.S. producers' commercial U.S. shipments to diecasters accounted for *** percent of their total U.S. shipments of alloy magnesium.²³⁸ Only *** percent of shipments to aluminum manufacturers in 2005

²³² Magnesium from China, Russia, and Ukraine, Inv. Nos. 731-TA-696-698 (Final), USITC Pub. 2885 (May 1995) ("the 1995 Investigation") at 7-9; Canada First Review Determination at 5-6 (in which the Commission adopted its like product determination from the underlying investigation, and did not reevaluate the issue).

²³³ Pure Magnesium from China, Israel and Russia, Inv. Nos. 701-TA-403 (Preliminary) and 731-TA-895-897 (Preliminary), USITC Pub. 3376 (Dec. 2000) at 7.

²³⁴ Magnesium from China and Russia, Inv. Nos. 731-TA-1071 and 1072 (Final), USITC Pub. 3763 (April 2005) at 6-11.

²³⁵ CR at I-30, PR at I-18.

²³⁶ Canada Original Final Determination at 10 and Canada First Review Determination at 5-6.

²³⁷ CR/PR at Table III-5 (showing pure magnesium being used primarily by aluminum manufacturers and granule/reagent producers, while alloy magnesium was used primarily by diecasters).

²³⁸ See CR/PR at Table III-5.

was of alloy magnesium, and there was no overlap for the other specific end uses, shipments to granular/reagent producers and shipments to diecasters.²³⁹

We recognize that, from 2003 through 2005, there was a greater overlap with respect to aluminum manufacturers; this overlap was an important factor leading the Commission, in the 2005 China/Russia investigations, to find a single like product. The level of overlap, which peaked in 2003, appears to be a function of a large volume of LTFV imports of alloy magnesium from China; such imports are now under an antidumping duty order and are effectively not present in the U.S. market.²⁴⁰ However, the record in the present reviews indicates that this overlap was limited and anomalous. Through 2005, U.S. producers' commercial shipments of alloy magnesium to aluminum manufacturers declined steadily from its peak in 2003.²⁴¹ Shipments of alloy magnesium to granule and reagent producers were *** in this period.²⁴²

Manufacturing Facilities and Employees. Since the 2001 shutdown of Northwest Alloys, US Magnesium has been the only producer of primary magnesium. Primary production of pure and alloy magnesium generally occur in the same facilities and by the same employees, except that additional equipment and labor is involved for the additional step of adding alloying elements.²⁴³ Also, switching from alloy to pure production involves an interruption while the steel furnace is cleaned.²⁴⁴ However, as discussed below, secondary producers, which recycle magnesium-based scrap, produce only alloy magnesium, and those producers account for *** U.S. alloy magnesium production.²⁴⁵ Thus, for the substantial share of alloy magnesium produced in the United States by secondary producers, the manufacturing facilities and employees involved are different from those involved in the production of primary pure and alloy magnesium.²⁴⁶

Interchangeability and Customer and Producer Perceptions. The record indicates limited one-way substitutability of alloy magnesium for pure magnesium in aluminum production and, to an even lesser extent, in iron and steel desulfurization.²⁴⁷ Most purchasers reported that pure and alloy magnesium are not interchangeable. Sixteen of 22 responding purchasers reported that alloy magnesium and pure magnesium are not interchangeable. Four of the 22 responding purchasers reported that the two can sometimes be used interchangeably; however, they also mentioned that it is either extremely expensive to invest in new technology and equipment or it is extremely difficult to substitute the two products. Only

²³⁹ CR/PR at Table III-5. The remaining category for which data were collected, "shipments to others", consists of shipments to distributors and is therefore not a specific end use.

²⁴⁰ CR/PR at Table IV-2. In 2005, imports of alloy magnesium from China were only 36 metric tons, accounting for only *** percent of apparent domestic consumption.

²⁴¹ U.S. producers' commercial shipments of alloy magnesium to aluminum manufacturers as a ratio of all magnesium shipments to aluminum producers fell from *** percent in 2003 to *** percent in 2004 and *** percent in 2005. CR/PR at Table III-5.

²⁴² U.S. producers' commercial shipments of alloy magnesium to granule and reagent producers as a ratio to all magnesium shipments to such producers was *** percent in 2003, *** percent in 2004, and *** percent in 2005. CR/PR at Table III-5. In the course of these reviews the Commission staff discovered that the amount of alloy magnesium sold to granule and reagent producers in 2003 had been overstated in the 2005 China/Russia investigations, as the result of a data posting error. CR at III-9, PR at III-3.

²⁴³ CR at I-46, PR at I-28.

²⁴⁴ Hearing Tr. at 102-103 (Tissington, US Magnesium).

²⁴⁵ CR/PR at Table III-13.

²⁴⁶ CR at I-39, PR at I-24.

²⁴⁷ CR/PR at Table III-5.

two purchasers reported that it is possible and they can do it in all or certain applications.²⁴⁸ *** reported that almost all alloy magnesium includes beryllium, and that it cannot use materials containing beryllium.²⁴⁹

Channels of Distribution. Both pure and alloy magnesium are sold directly to end users, albeit to different classes of end users. Pure magnesium is mostly sold to aluminum producers, and to producers of granules and reagents for iron and steel desulfurization, while alloy magnesium is mostly sold to diecasters.²⁵⁰

Price. The record indicates some differences with respect to price between pure and alloy magnesium. Average unit values for U.S. producers' commercial U.S. shipments show *** values for alloy magnesium.²⁵¹ The AUV for alloy magnesium ranged between *** percent and *** percent *** that for pure magnesium; the gap ***.²⁵²

The product-specific pricing data collected by the Commission allows for some direct comparisons for sales by domestic producers to the one end-use market with any appreciable overlap, sales to aluminum producers. From 2001 through the first two quarters of 2003, alloy magnesium sold to aluminum producers was *** than pure magnesium sold to these purchasers. Prices were *** in the last two quarters of 2003 and the first two quarters of 2004, but then alloy magnesium prices *** than pure magnesium prices for the last two quarters of 2004.²⁵³ The prices *** in 2005, but over this period the volume of alloy magnesium sold to these purchasers was *** that of pure magnesium.²⁵⁴ We note that the pricing data indicate that appreciable overlap in end uses occurred only when prices for alloy magnesium were anomalously low, earlier in the period of review, which corresponded with the surge in LTFV imports of alloy magnesium from China. After the imposition of the antidumping duty order on alloy magnesium from China, those imports are almost entirely absent from the U.S. market.

Conclusion. On balance, the analysis of the record under the Commission's six-factor test supports continuing to find pure and alloy magnesium to be separate like products, as we did in the Original Remand Determination and the first five-year reviews.

Although pure and alloy magnesium share essential physical characteristics as a lightweight, low density metal with a high strength-to-weight ratio, this commonality of physical characteristics is limited in that the alloying additives give the alloy product certain additional properties that improve its strength, ductility, workability, corrosion resistance, density, and castability. As a result of these different properties, pure and alloy magnesium generally have different principal uses. Pure magnesium is typically sold to end users (mostly aluminum alloyers) who combine it with other elements (typically aluminum) for use in a final product. Alloy magnesium, on the other hand, is used principally in structural applications (mostly in castings and extrusions for the automotive industry).²⁵⁵ We recognize that at least some types of alloy magnesium can be used in aluminum production, and that alloy

²⁴⁸ CR at II-2-3, PR at II-1-2.

²⁴⁹ CR at II-2, n. 9, PR at II-2 n.9.

²⁵⁰ CR/PR at Table III-5.

²⁵¹ CR/PR at Table III-4.

²⁵² The gap was *** percent in 2000, *** percent in 2001, *** percent in 2002, *** percent in 2003, *** percent in 2004, and *** percent in 2005.

²⁵³ From the first quarter of 2001 through the fourth quarter of 2002, the quarterly average unit value of alloy sales to aluminum producers was *** percent to *** percent *** the quarterly average unit value for sales of pure magnesium. Compare CR/PR at Tables V-1 and V-3.

²⁵⁴ Compare CR/PR at Tables V-1 and V-3. For the four quarters of 2005, the pricing data for purchases by aluminum producers show alloy magnesium ranging between *** percent and *** percent of total magnesium purchases, and alloy prices were *** percent to *** percent *** pure magnesium prices to these purchasers.

²⁵⁵ CR at I-46, PR at I-28.

magnesium is occasionally used by granule and reagent producers.²⁵⁶ However, pure magnesium cannot be used for diecasting. The record indicates that the limited one-way substitutability of alloy magnesium for pure magnesium was anomalous and has been waning,²⁵⁷ and appears to have been heavily driven by the presence of very low-priced alloy magnesium from China in the U.S. market, before the imposition of antidumping duties on such imports in 2005. The evidence as to manufacturing facilities and employees is mixed. Primary production of pure and alloy magnesium generally occurs in the same facilities and by the same employees, except that additional equipment and labor is involved for the additional step of adding alloying elements.²⁵⁸ However, in secondary production, which accounts for *** of alloy magnesium production, the manufacturing facilities and employees involved are different from those involved in the production of pure magnesium (which is made only in primary production), as the producers are different companies. There is only limited one-way substitutability of alloy magnesium for pure magnesium in some applications, and purchasers generally do not view the two types of magnesium to be interchangeable. The AUV and pricing data show significant price differences through much of the period of review, and also show some differences in changes in price levels.

In sum, we find that based on the record in these reviews, a departure from the Commission's decisions in the 1993 remand determination and in the 2000 first sunset reviews that pure and alloy magnesium are separate like products is not warranted. Although Petitioner argues that this is a case involving a continuum of products, in our view there is a clear dividing line between pure and alloy magnesium which is most evident in the different predominant uses for the two products and the lack of substantial interchangeability between them under normal market conditions.

b. Expanding the Alloy Magnesium Like Product to Encompass Secondary Magnesium

Secondary magnesium is produced by recycling magnesium-based scrap.²⁵⁹ Because virtually all secondary magnesium is alloy magnesium,²⁶⁰ we treat the question of whether to include secondary magnesium in the like product as affecting only the alloy magnesium like product. Secondary magnesium is not included in the scope of the countervailing duty orders on pure and alloy magnesium from Canada. Only primary magnesium producers participated in the original investigations and first five-year reviews; and no parties argued that the domestic like product should be expanded to include secondary magnesium in those proceedings. The 2005 China/Russia investigations were the first Title VII cases to include secondary magnesium in their scope. The Commission included secondary magnesium in the single like product in those investigations. It explained its decision in its preliminary determinations as follows:

If secondary magnesium is compared with primary alloy magnesium, it is clear that the products are similar in terms of physical characteristics and uses, interchangeability, customer and producer perceptions, channels of distribution, and price, for the reasons that petitioners give. The products are not like each other in terms of manufacturing facilities and employees, because primary magnesium is made by US Magnesium through the primary production process (i.e., by decomposing raw materials into

²⁵⁶ CR/PR at Table III-5.

²⁵⁷ The percentage of U.S. producers' total commercial shipments to aluminum manufacturers that consisted of alloy magnesium fell from *** percent in 2003 to *** percent in 2004 and to *** percent in 2005. See CR/PR at Table III-5.

²⁵⁸ CR at I-45, PR at I-28.

²⁵⁹ CR at I-39, PR at I-24.

²⁶⁰ CR at I-49, PR at I-30.

magnesium metal) whereas secondary magnesium is made, largely by firms other than US Magnesium, through a recycling process. If secondary magnesium is compared with all primary magnesium (i.e., pure and alloy primary magnesium) the similarities between the primary and secondary products become more attenuated because of the differences between pure and alloy magnesium, which are described above. Based on the limited data in the record, we find that primary and secondary magnesium are part of the same domestic like product. For purposes of these preliminary investigations, we note that the secondary magnesium is part of the domestic like product consisting of alloy magnesium.²⁶¹

Unlike the issue discussed earlier (whether pure and alloy magnesium are one or two like products), there is no indication in the record of these reviews that the circumstances that led the Commission to include secondary and primary magnesium in the same like product in the 2005 China/Russia investigations have changed.²⁶² While they are produced in separate facilities, most primary and secondary magnesium is similar physically and chemically.²⁶³ They can be used interchangeably in automotive diecasting applications if appropriate methods are utilized to assure the purity of the secondary magnesium by removing impurities. Both primary and secondary alloy magnesium are generally sold directly to end users through common channels of distribution. Because primary and higher purity secondary alloy magnesium are largely identical products and are interchangeable for the same purposes, principally automotive diecastings, neither customers nor producers perceive them to be significantly different products.²⁶⁴ Lower-purity secondary alloy magnesium, while not interchangeable with primary magnesium in automotive structural applications, is interchangeable with primary magnesium in many other non-structural magnesium applications.²⁶⁵

Thus, the record indicates that primary and secondary alloy magnesium are nearly identical in terms of physical characteristics and uses, interchangeability, customer and producer perceptions, channels of distribution, and price. In light of these similarities, we include secondary magnesium in the domestic like product consisting of alloy magnesium.

c. Expanding Like Product to Encompass Granular Magnesium

Granular magnesium consists of all physical forms of unwrought magnesium other than ingots; it includes raspings, turnings, granules, and powders. It may be either pure or alloy magnesium, but it is usually pure.²⁶⁶ Granular magnesium is not included in the scope of the countervailing duty orders on pure and alloy magnesium from Canada.

²⁶¹ Magnesium from China and Russia, Inv. Nos. 731-TA-1071 and 1072 (Preliminary), USITC Pub. 3685 (April 2004) at 10. The Commission did not explore this issue any further in its final determinations, in which it found pure and alloy magnesium to constitute a single like product. Magnesium from China and Russia, Inv. Nos. 731-TA-1071 and 1072 (Final), USITC Pub. 3763 (April 2005) at 6.

²⁶² CR at I-50, PR at I-30.

²⁶³ CR at I-50, PR at I-30.

²⁶⁴ CR at I-50, PR at I-30.

²⁶⁵ CR at I-50, PR at I-30.

²⁶⁶ CR at I-52. PR at I-31-32.

In both the 2001 and 2005 investigations, Commissioner Hillman found granular magnesium to be a separate like product from ingot magnesium.²⁶⁷ Commissioner Hillman reaches the same finding in these reviews, for the same reasons articulated in those previous investigations. Commissioner Hillman notes that the record on this issue was better developed in those prior investigations, and does not find anything in the limited record in these reviews on this issue that calls into question her past finding.

In particular, while ingot (cast) and granular magnesium share some basic properties, they differ in size, dimensions, shape, and other physical characteristics, such as volatility; granular magnesium has a different end-use, namely steel desulfurization. There is no meaningful overlap in manufacturing facilities and employees, with granular magnesium for commercial sale being produced exclusively by grinders, which do not produce ingot magnesium. Ingot and granular magnesium are not interchangeable since ingot magnesium cannot be used for steel desulfurization without being converted to granular form; because of the differences in end uses, producer and customer perceptions differ, as do channels of distribution. Granular magnesium appears to command a price premium over ingot magnesium.²⁶⁸

Thus, we do not expand the domestic like product to include granular magnesium.²⁶⁹

d. Conclusion

For the reasons discussed above, in connection with the reviews of the countervailing duty orders on pure and alloy magnesium from Canada, we find two domestic like products: one encompassing pure magnesium coextensive with the scope of these reviews (*i.e.*, not including granular magnesium); and the other encompassing primary and secondary alloy magnesium, but not including granular magnesium.²⁷⁰

2. Like Product in China Review

The review of the antidumping duty order on pure magnesium from China presents three like product issues: (i) whether to expand the like product beyond the scope to encompass alloy magnesium; (ii) whether to expand the like product beyond the scope to encompass secondary magnesium; and (iii) whether to expand the like product beyond the scope to encompass granular magnesium.

As discussed below, we determine not to expand the like product beyond the scope in any of the three ways described above.

²⁶⁷ Pure Magnesium from China and Israel, Inv. Nos. 701-TA-403 and 731-TA-895-96 (Final), USITC Pub. 3467 (Dissenting Views of Commissioners Miller and Hillman) (November 2001) at 34-37; and Magnesium from China and Russia, Inv. Nos. 731-TA-1071 and 1072 (Final), USITC Pub. 3763 (April 2005) at 6, n.17.

²⁶⁸ See USITC Pub. 3467 at 34-37 (Dissenting Views of Commissioners Miller and Hillman). Based on the record in these reviews, Vice Chairman Aranoff determines not to expand the domestic like product to include granular magnesium.

²⁶⁹ Consistent with the Commission's like product determination in the 2001 China/Israel investigations (Inv. Nos. 701-TA-403 and 731-TA-895-896 (Final)) and the 2005 China/Russia investigations (Inv. Nos. 731-TA-1071 and 1072 (Final)), Commissioner Koplan finds that pure magnesium includes both cast and granular pure magnesium. Petitioner has argued that cast and granular magnesium are part of the same like product. No other party in these reviews has argued that cast and granular magnesium constitute separate like products. As the Commission received no useful data from domestic grinders, this determination has no impact on the data presented concerning the domestic industry.

²⁷⁰ As explained above, Commissioner Koplan finds that the pure magnesium like product includes both cast and granular pure magnesium.

a. Expanding Like Product to Encompass Alloy Magnesium

For the same reasons that we have determined not to treat pure and alloy magnesium as a single like product in the Canada reviews, we determine not to expand the domestic like product in the review of the antidumping duty order on pure magnesium from China beyond the scope definition to include alloy magnesium.

b. Expanding Like Product to Encompass Secondary Magnesium

Because we do not expand the definition of the like product beyond the scope of the China pure magnesium order to encompass alloy magnesium, and because virtually all secondary magnesium is alloy product, we determine not to include secondary magnesium in the definition of the like product.

c. Expanding Like Product to Encompass Granular Magnesium

For the same reasons that we have determined not to expand the like product to encompass granular magnesium in the Canada reviews, we determine not to expand the domestic like product in the review of the antidumping duty order on pure magnesium from China beyond the scope definition to include granular magnesium.

d. Conclusion

For the reasons discussed above, in connection with the review of the antidumping duty order on pure magnesium from China, we find one domestic like product encompassing pure magnesium coextensive with the scope of this review.²⁷¹

B. Domestic Industries

Section 771(4)(A) of the Act defines the relevant industry as the domestic “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”²⁷² In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.²⁷³ In accordance with our domestic like product determination, we determine that for the reviews regarding Canada, there are two domestic industries composed respectively of the domestic producer of pure magnesium, US Magnesium, and the domestic producers of alloy magnesium, US Magnesium and the secondary producers.²⁷⁴ For the review regarding China, we determine that there is one domestic industry composed of the domestic producer of pure magnesium, US Magnesium.

We have considered whether to include in the domestic alloy magnesium industry two magnesium diecasters that produce secondary alloy magnesium by recycling scrap generated in their

²⁷¹ As explained above, Commissioner Koplan finds that the pure magnesium like product includes both cast and granular pure magnesium.

²⁷² 19 U.S.C. § 1677(4)(A).

²⁷³ See, e.g., *United States Steel Group v. United States*, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

²⁷⁴ As noted below, Commissioner Koplan determines that diecasters with secondary scrap recycling operations are part of the domestic industry producing alloy magnesium.

diecasting operations. This recycled magnesium is internally consumed by these diecasters. In contrast, the other secondary alloy magnesium producers sell the product in the open market.

In deciding whether a firm qualifies as a domestic producer, the Commission generally has analyzed the overall nature of a firm's production-related activities in the United States. The Commission generally considers six factors:

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

No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation or review.²⁷⁵

There is only limited information on the record with respect to the six factors described above.²⁷⁶ However, on the basis of the available information, we have determined not to include the diecasters in the domestic alloy magnesium industry.²⁷⁷ There is no information in the record as to the first factor, the source and extent of the diecasters' capital investment in their scrap recycling operations. As to the second factor, it appears, although nothing on the record directly demonstrates, that the technical expertise involved in the diecasters' scrap recycling production activities is comparable to the technical expertise involved in secondary magnesium production. However, we note that the diecasters' "production" is basically a constantly recycled stream of input to, and output from, their true business, producing castings (not ingots of alloy magnesium). As to the third factor, the value added in scrap recycling operations at the one diecaster for which we have information ***,²⁷⁸ As to the fourth factor, the employment levels in scrap recycling at the one diecaster for which we have information *** than those at secondary alloy magnesium producers.²⁷⁹ The fifth factor, the quantity and type of parts sourced in the United States, is not relevant to alloy magnesium scrap recycling, because such recycling merely involves remelting scrap. Finally, there is no information in the record as to the sixth factor, any other costs and activities in the United States directly leading to production of the like product. In addition,

²⁷⁵ See, e.g., Internal Combustion Industrial Forklift Trucks from Japan, Inv. No. T31-TA-377 (Second Review), USITC Pub. 3831 (December 2005) at 10-14; and Sebacic Acid from China, Inv. No. 731-TA-653 (Second Review), USITC Pub. 3775 (May 2005) at 12-14.

²⁷⁶ This issue was not addressed by the parties in their comments on the Commission's draft questionnaires or in their prehearing briefs. At the Commission's hearing, parties were asked to comment on this issue; however, only limited arguments and information were offered at the hearing and in the posthearing briefs and final comments. See Hearing Tr. at 101-102, Petitioner's Final Comments at 9-12.

²⁷⁷ Commissioner Koplan notes that the process of producing secondary alloy magnesium is a process of scrap recycling, regardless of the source of the scrap. The one diecaster for which we have information was able to supply the Commission with data on its secondary magnesium production separate from its diecasting operation. ***. Consequently, he determines that diecasters with secondary scrap recycling operations are part of the industry producing the domestic like product.

²⁷⁸ CR at III-36, PR at III-9.

²⁷⁹ See Producer Questionnaire Responses of *** at p.12, Question II-8e.

supporters of continuation advocate exclusion of the diecasters from the definition of the domestic industry.²⁸⁰ Opponents of continuation did not express a view on the issue.

On balance, we conclude that diecasters do not engage in sufficient production-related activities in their scrap recycling operations to be included in the domestic industry producing alloy magnesium.

III. LEGAL STANDARD IN A FIVE-YEAR REVIEW

We adopt the discussion of the legal standard applicable in five-year reviews in the Views of Chairman Pearson, and Commissioners Lane and Okun.²⁸¹

IV. REVOCATION OF THE COUNTERVAILING DUTY ORDER ON PURE MAGNESIUM FROM CANADA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. 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."²⁸²

Now, as in the original investigation and first five-year reviews, pure magnesium is sold mainly to aluminum producers, to magnesium granule producers for steel desulfurization, and to chemical and pharmaceutical manufacturers.²⁸³ Demand for pure magnesium is dictated largely by the demand in these end-use markets. Demand for pure magnesium is particularly sensitive to the demand for aluminum sheet used in the production of beverage cans and other packaging.²⁸⁴ In the 2000 five-year review of pure magnesium from Canada, the Commission observed that apparent U.S. consumption of pure magnesium declined between the original investigation and the first five-year reviews.²⁸⁵ This decline continued from 2000 to 2005. From 2000 to 2005, apparent U.S. consumption of pure magnesium (by quantity) declined by *** percent.²⁸⁶

*** purchasers predict a *** increase in demand for pure magnesium in the next few years.²⁸⁷ US Magnesium stated that it expects demand to *** in 2006 and 2007 due to ***.

²⁸⁰ Petitioner's Final Comments (May 31, 2006) at 9-12; Hearing Tr. at 101-102.

²⁸¹ In analyzing what constitutes a reasonably foreseeable time, Chairman Koplán 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 or termination. 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.

²⁸² 19 U.S.C. § 1675a(a)(4).

²⁸³ CR at II-1, PR at II-1.

²⁸⁴ CR at II-11-12, PR at II-6.

²⁸⁵ Canada First Review Determination at 9-10.

²⁸⁶ CR/PR at Table C-1.

²⁸⁷ CR at II-11, PR at II-6.

As in the original investigation, imports of pure magnesium and the domestic like product continue to be close substitutes.²⁸⁸ Nearly all responding purchasers of pure magnesium require their suppliers to become certified or prequalified and most buy pure magnesium exclusively from qualified suppliers.²⁸⁹ The qualification process takes from 1 to 6 months.²⁹⁰ These certification requirements limit the differences between subject imports and the domestic product. Most purchasers reported few differences between U.S.-produced and subject Canadian pure magnesium, and all purchasers rated both products comparable in terms of availability of technical support and service, reliability of supply, discounts offered, product range, product consistency, packaging, minimum quantity requirements, and quality meeting or exceeding industry standards.²⁹¹

The market for pure magnesium continues to be price competitive.²⁹² The Commission asked purchasers to identify the three major factors that they consider when deciding from whom to purchase magnesium. Price was the second-most-frequently listed number one factor (after quality), and the most-frequently-cited number two factor.²⁹³ With respect to sales methods, *** reported using short- and long-term contracts in selling its pure magnesium; in 2005, it sold *** percent of its pure magnesium using short-term contracts, *** percent using long-term contracts, and *** percent on the spot market.²⁹⁴ Two importers from Canada reported their sales terms for pure magnesium from Canada; one sold *** its product on the basis of short-term contracts; the other sold *** percent based on short-term contracts and the remainder on the spot market.²⁹⁵ *** reported that *** percent of its sales of pure magnesium to U.S. customers in 2005 were made on the basis of *** contracts, with the remainder sold ***.²⁹⁶

Primary magnesium producers that use the electrolytic process (*i.e.*, US Magnesium) have a strong incentive to maintain a continuous level of production because the electrolytic cells used to make primary magnesium must be kept in constant operation to avoid their deterioration and significant rebuilding costs.²⁹⁷ Therefore, when faced with price competition, primary magnesium producers will tend to cut prices to maintain production volume.

Although some U.S. market conditions have not changed significantly since the original investigation and the first sunset reviews, there have been some significant changes in the domestic industry. With respect to domestic production, Northwest Alloys, *** domestic producer of primary magnesium during the original investigation, exited the market in 2001.²⁹⁸ As a result, the pure magnesium industry has further consolidated and now consists of only one producer, US Magnesium.²⁹⁹

²⁸⁸ See Canada Original Remand Determination at 6.

²⁸⁹ CR at II-15, PR at II-8. Factors considered by pure magnesium producers in their qualification process include quality, price, reliability, delivery, size and shape of the ingot, and commitment to the market. *Id.*

²⁹⁰ CR at II-15, PR at II-8.

²⁹¹ CR/PR at Figure II-2.

²⁹² CR/PR at Table II-1.

²⁹³ CR/PR at Table II-1.

²⁹⁴ CR at V-3, PR at V-2

²⁹⁵ CR at V-3, PR at V-2.

²⁹⁶ CR at V-4-5, PR at V-3.

²⁹⁷ CR at I-17 n.50, PR at I-14 n.50.

²⁹⁸ CR at II-11, PR at II-6.

²⁹⁹ Dow Magnesium, a subsidiary of Dow Chemical Corp., Midland, MI, ceased magnesium production in November 1998 after sustaining damage from lightning strikes and flooding. CR at III-1, PR at III-1.

With the departure of Northwest Alloys, total U.S. producer shipments of pure magnesium dropped from *** metric tons in 2000 to *** metric tons in 2005.³⁰⁰

During the period, US Magnesium *** upgraded its manufacturing facility, ***.³⁰¹ The company is ***.³⁰²

Another significant change since the last reviews is the increasing presence of nonsubject imports in the U.S. market.³⁰³ From 2000 to 2004, the quantity and market share of nonsubject imports of pure magnesium, which are primarily from Israel and Russia, increased from *** metric tons to *** metric tons, representing *** percent of U.S. apparent consumption in 2004 compared to *** percent in 2000. Between 2004 and 2005, the quantity and market share of nonsubject imports dropped *** to *** metric tons, representing *** percent of domestic consumption.³⁰⁴ A majority of purchasers reported that U.S. pure magnesium was comparable to pure magnesium from nonsubject sources, and that nonsubject pure magnesium was comparable to pure magnesium from Canada.³⁰⁵

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.

B. Likely Volume of Subject Imports

In the original investigation, the Commission found that the volume of dumped and subsidized imports, measured by both quantity and value, was significant, and increased substantially during the period of investigation.³⁰⁶ The Commission further found that market penetration of subject imports of pure magnesium, by both quantity and value, increased dramatically during the period of the investigation.³⁰⁷

In the first five-year reviews the Commission found that subject import volume would likely be significant if the antidumping and countervailing duty orders on pure magnesium were revoked, based on the significant market share increase that NHCI was able to attain quite quickly prior to the imposition of the antidumping and countervailing duty orders on pure magnesium, the substantial additional capacity expected to be added by Magnola and NHCI, their ability to shift production from alloy magnesium to pure magnesium, and their ability to significantly increase exports to the U.S. market given its size and proximate location.³⁰⁸

Since the period of the first five-year reviews, the volume and market share of U.S. shipments of subject imports of pure magnesium from Canada have fluctuated considerably, ranging from a low of *** metric tons (accounting for *** percent of U.S. consumption and equivalent to *** percent of U.S. production) in *** to a high of *** metric tons (accounting for *** percent of U.S. consumption and

³⁰⁰ CR/PR at Table C-1.

³⁰¹ CR at I-37, II-4, PR at I-23, II-2-3.

³⁰² CR at II-5, n.16, PR at II-3 n.16.

³⁰³ For these reviews, pure magnesium imports from China are treated as non-subject imports.

³⁰⁴ CR/PR at Table C-1.

³⁰⁵ CR at II-26, PR at II-15; CR/PR at Table II-3.

³⁰⁶ Canada Original Remand Determination at 15. From 1989 to 1990, the quantity of U.S. shipments of subject pure magnesium imports increased from *** metric tons to *** metric tons. In 1991, these U.S. shipments of subject imports increased another *** percent, to *** metric tons. See id. and CR/PR at Table I-4.

³⁰⁷ Canada Original Remand Determination at 15. From 1989 to 1991, subject import market share increased from *** percent to *** percent. See CR/PR at Table I-4.

³⁰⁸ Canada First Review Determination at 12-15.

equivalent to *** percent of U.S. production) in ***. In 2005, subject import volume was *** metric tons, accounting for *** percent of U.S. consumption and equivalent to *** percent of U.S. production.³⁰⁹

The record does not indicate that the countervailing duty order is currently having any significant restraining effect on subject imports from Canada.³¹⁰ Subject imports have been at significant levels throughout the period of review, despite the existence of the order. NHCI is currently the only producer of pure magnesium in Canada that is covered by the countervailing duty order (and, as explained below, we find that it is not likely that any other producer would enter the market within the reasonably foreseeable future). NHCI's deposit rate has been below 2 percent since 2000, and the current deposit rate on NHCI is only 1.21 percent.³¹¹ We do not find that revocation of a countervailing duty order with such a low deposit rate would likely lead to a significant increase in the volume of subject imports. Unlike an antidumping duty order, for which the deposit rate can change significantly from year to year based on relative pricing, the countervailing duty deposit rate is based on the level of subsidization determined by Commerce. The only countervailable program found used by NHCI over the period of review was the Article 7 grants from the Quebec Industrial Development Corporation, and Commerce found that NHCI's benefits from this program were fully amortized as of the end of 2004.³¹² As a result, in its expedited second five-year reviews, Commerce found that it had no basis to report a likely subsidy rate for NHCI.³¹³

In five-year reviews, Commerce has the responsibility to determine likely future subsidization,³¹⁴ and the Commission must accept Commerce's determination on this issue. We do not agree with GOQ's assertion that Commerce found that NHCI is not likely to be subsidized in the reasonably foreseeable future.³¹⁵ Commerce did not make a negative determination in its five-reviews; rather, it found that it had no basis to report a likely subsidy rate for NHCI.³¹⁶ On the other hand, Commerce's final affirmative determination with respect to NHCI was based solely on the fact that the Article 7 program still existed. We disagree with petitioner's contentions that it is likely that NHCI would obtain a significant level of subsidization if the countervailing duty order were revoked.³¹⁷ Petitioner's arguments on this score are

³⁰⁹ CR/PR at Tables IV-1 and C-1.

³¹⁰ The antidumping duty order on pure magnesium from Canada was revoked on December 1, 2004, retroactively effective as of August 1, 2000. 69 Fed. Reg. 70649 (Dec. 7, 2004).

³¹¹ In administrative reviews conducted since 2000, Commerce has found the following subsidy rates for NHCI: 1.38 percent for the January 1, 1998 - December 31, 1998 review period; 1.21 percent for the January 1, 1999 - December 31, 1999 review period; 1.59 percent for the January 1, 2000 - December 31, 2000 review period; 1.68 percent for the January 1, 2001 - December 31, 2001 review period; 1.07 percent for the January 1, 2002 - December 31, 2002 review period; and 1.21 percent for the January 1, 2003 - December 31, 2003 review period. CR/PR at Table I-7.

³¹² Issues and Decision Memorandum for the Final Results of the Expedited Sunset Reviews of the Countervailing Duty Orders on Pure Magnesium and Alloy Magnesium from Canada, U.S. Department of Commerce (Oct. 31, 2005) ("Issues and Decision Memorandum") at 10. ("With respect to the SDI Article 7 grant, we acknowledge that the "benefit tail" has expired as of the end of 2004. Accordingly, NHCI will not benefit from the 1991 SDI Article 7 grant examined in the Final Determinations.")

³¹³ Commerce found a likely net countervailable subsidy rate of 6.34 percent *ad valorem* for "all other" manufacturers and exporters, except Timminco Canada (which was excluded from the order) and NHCI, for which Commerce had "no basis" for reporting a rate. 70 Fed. Reg. 67140 (Nov. 4, 2005). See also, Commerce Issues and Decision Memorandum at 10.

³¹⁴ 19 U.S.C. § 1675(c)(1).

³¹⁵ GOQ Posthearing Brief at 9.

³¹⁶ 70 Fed. Reg. 67140 (Nov. 4, 2005). See also, Commerce *Issues and Decision Memorandum* at 10.

³¹⁷ Petitioner's Posthearing Brief at 3-5.

purely speculative, and Commerce did not indicate that, upon revocation of the order, subsidization of the Canadian industry would be likely to grow.

While there was also an antidumping duty order in place on subject imports during part of the period of review, that order was revoked on December 7, 2004, retroactively effective as of August 1, 2000. It is true that the volume of subject imports increased *** between 2004 and 2005,³¹⁸ but we do not view this increase as indicative of a likely further increase in imports if the countervailing duty order were to be revoked. The increase in imports in 2005 represents only one year of data, and the amount of the increase is consistent with other year-to-year fluctuations during the period of review.³¹⁹ Moreover, *** the subject imports in 2005 were pursuant to contracts that were negotiated prior to the revocation of the antidumping duty order.³²⁰

We also note that, while NHCI's pure magnesium capacity utilization rate ***.³²¹ We are not persuaded by petitioner's argument that NCHI would likely carry out capacity expansion plans that it announced in 1997 if the countervailing duty order were revoked. These capacity expansion plans are now nearly ten years old, and there is no indication that NHCI has taken further steps to implement them. We recognize that in 2005 NHCI announced plans to expand total magnesium capacity by *** metric tons.³²² However, in light of our finding regarding the lack of significant restraining effects of the order, we do not find that revocation is likely to lead to a significant increase in the volume of imports, even if NHCI undertakes some capacity expansion.

We are not persuaded that the Magnola plant is likely to resume production within a reasonably foreseeable time if the countervailing duty order is revoked. On balance, the information in the record indicates that ***.³²³ Moreover, *** for the plant to be refurbished and employees to be hired, before production could even resume.³²⁴ We note in this regard that the revocation of the antidumping duty order on pure magnesium from Canada did not prompt Magnola to take steps to re-open.

We also find that the Cogburn Magnesium Project in British Columbia is not likely to result in any additional production capacity in Canada within a reasonably foreseeable time. Although first proposed as early as 2002, this project is only at the early planning stage,³²⁵ and the same *** will likely also affect this project.

We have also examined the other factors the statute sets forth as pertinent to an analysis of likely subject import volume. NHCI maintained *** inventories toward the end of the period of review, but these were *** likely to lead to a significant increase in imports.³²⁶ There is no evidence that pure magnesium from Canada is subject to import barriers in any other market.³²⁷ Finally, although NHCI has the ability to shift production from alloy magnesium to pure magnesium, this factor is insufficient, in the

³¹⁸ The volume of U.S. shipments of subject imports was *** metric tons in 2004 and *** metric tons in 2005. CR/PR at Table IV-1.

³¹⁹ For example, U.S. shipments of subject imports increased from *** metric tons in 2001, to *** metric tons in 2002, and then declined to *** metric tons in 2003. CR/PR at Table IV-8.

³²⁰ See Hearing Tr. at 110 (Tissington, US Magnesium).

³²¹ NHCI's capacity utilization rates were *** percent in 2003, *** percent in 2004, and *** percent in 2005. CR/PR at Table IV-8.

³²² CR at IV-20, PR at IV-4.

³²³ See ***.

³²⁴ Id.

³²⁵ CR at IV-22-23, PR at IV-6.

³²⁶ Subject Canadian producers had end-of-period inventories of *** metric tons, representing *** percent of their annual production in 2005. This compares with end-of-period inventories of *** metric tons, representing *** percent of annual production in 2000. CR/PR at Table IV-8.

³²⁷ CR at IV-30, PR at IV-9.

absence of any incentive to shift, to support a finding that the volume of imports would be significant if the order on pure magnesium were revoked.³²⁸

Consequently, we conclude that, should the countervailing duty order on pure magnesium from Canada be revoked, the volume of subject imports would not likely increase to a significant level, either in absolute terms or relative to production or consumption in the United States.

C. Likely Price Effects of Subject Imports

In the original investigation, the Commission found that, at the same time that volume and market share of subject imports increased, prices for both U.S.- and Canadian-produced commodity-grade pure magnesium steadily declined. The Commission further noted the significance of the high degree of substitutability between U.S. and Canadian pure magnesium.

In the first five-year reviews the Commission determined that revocation of the antidumping and countervailing duty orders on pure magnesium would be likely to lead to significant underselling of the domestic like product by subject imports, as well as significant price depression and suppression. The Commission explained that it was likely that Magnola would offer pure magnesium at low prices in order to enter the U.S. market, and that this would likely spur NHCI to lower its prices in the U.S. market as well. The Commission concluded that, without the discipline of the antidumping and countervailing duty orders, NHCI and Magnola would likely decrease prices in order to gain market share in a market in which demand was projected to remain flat.

In these reviews, the Commission obtained pricing data for subject imports and the domestic like product for sales of pure magnesium to aluminum producers and for sales to other purchasers. (Sales to aluminum producers were at considerably greater volumes than sales to other purchasers.) Out of 24 quarterly observations for sales to aluminum producers, the subject imports undersold the domestic product in only four quarters, ***. In the other 20 quarters, the subject imports oversold the domestic product, in some cases by substantial margins.³²⁹ Out of 11 quarterly observations for sales to other purchasers, the subject imports undersold the domestic product in 7 quarters, in some cases by substantial margins. We view the pricing data for sales to aluminum producers to be much more significant than the data on sales to other purchasers because the quantities of subject imports sold to the latter category were uniformly small.^{330 331}

³²⁸ We note that the absence of any incentive for NHCI to shift production from one type of magnesium to the other stands in contrast to the incentives for Chinese magnesium producers to engage in such product shifting, and to their history of doing so (as discussed below in our views in the review of the antidumping duty order on pure magnesium from China).

³²⁹ CR/PR at Table V-1.

³³⁰ We do not agree with US Magnesium's assertion that those pricing data are not probative of pricing practices because Commerce found that NHCI was unable to sell in "commercial quantities". Petitioner's Posthearing Brief, Answers to Commissioners' Questions, at pp. 27-29. Commerce's determination does not require the Commission to disregard its own, separately gathered data and we find no reason to do so in these reviews.

³³¹ In its remand determination in the original investigation and in the first reviews of these countervailing duty orders, the Commission noted that quarterly price comparisons were not particularly useful due to the frequency of price changes, the use of meet-or-release clauses, and the limited number of comparisons available. Canada Original Remand Determination at 17 n.90, and Canada First Review Determination at 15 n. 108. The circumstances which led us to discount quarterly price comparisons are not present in these reviews. In these reviews, most purchasers reported that prices for magnesium change once a year (see purchaser questionnaire responses, section III-32). In addition, while US Magnesium reported that ***, NHCI reported that ***. CR at V-4 to V-5, PR at V-3. In the original investigation, there were a total of 25 instances where prices could be compared (for imports of pure and alloy magnesium), and in the first reviews, there were a total of 14 such instances. In these reviews, by contrast,

(continued...)

As explained above, we find that revocation of the order is not likely to lead to a significant increase in the volume of subject imports. There is nothing in the record to suggest that pricing patterns of subject imports are likely to differ significantly from those prevailing during the period of review if the countervailing duty order on pure magnesium from Canada, with its low and diminishing deposit rates, is revoked. In addition, as discussed above, we do not find it likely that Magnola or the Cogburn Magnesium Project will produce pure magnesium in the reasonably foreseeable future. We consequently find that the subject imports will not be likely to have significant price effects in the event of revocation.

D. Likely Impact

In the original investigation, the Commission found that the substantial increases in NHCI's share of a slightly declining market resulted in increased domestic inventories and placed significant pressure on the domestic producers to lower their prices.³³² Noting that the U.S. plants producing pure magnesium are dedicated to primary magnesium production, with little flexibility to produce other products, the Commission further found that industry-wide price declines caused a direct reduction in revenues, as reflected in the financial data collected in the investigations. The Commission determined that the rapid increase in Canadian market share and concurrent decrease in prices of subject imports significantly depressed domestic prices, and led to a decline in domestic producers' U.S. shipments, causing an even sharper decline in revenues. In turn, the decline in revenue contributed directly to a rapid decline in profitability for the domestic industry.

In the first five-year reviews the Commission found that the domestic industry was not vulnerable, but that the industry showed several important signs of ***. The Commission found that the imminent entry into the market of a major new supplier (Magnola) and likely increased capacity of an existing supplier (NHCI) were likely to push the domestic industry into a further decline and jeopardize its investment in new electrolytic cell technology. It concluded that in light of the likely significant increases in the volume of subject imports at prices that would undersell the domestic like product and significantly depress U.S. prices, revocation of the order would likely have a significant adverse impact on the domestic industry.³³³

The domestic industry's trade and financial indicators were mixed during the period of these second reviews. The quantity of domestic shipments of pure magnesium by US Magnesium, the sole remaining domestic producer after 2001, increased steadily from *** metric tons in 2003 to *** metric tons in 2005, as did the unit values of those shipments.³³⁴ The number of production workers remained stable, while wages increased. The company was ***. US Magnesium's improvement in operating performance appears to be attributable to the substantial upgrades in technology discussed earlier, as reflected in the *** in 2005 compared to previous years. Nevertheless, the industry's *** operating performance during much of the 2000-2005 review period supports a finding that the industry is vulnerable at the present, given the very recent and tentative nature of its ***, and recent downwards trends in pricing for pure magnesium. The apparent vulnerability of the domestic industry finds support in the ***, ***.³³⁵

Notwithstanding this vulnerability, we find that subject imports would not be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time if the

³³¹ (...continued)

there were 58 quarters in which prices could be compared. CR/PR at Tables V-1 to V-3. Therefore, based on the information obtained in these reviews, we find that the quarterly price comparisons are useful.

³³² Canada Original Determination at 19.

³³³ Canada First Review Determination at 17-18.

³³⁴ CR/PR at Table C-1.

³³⁵ ***.

countervailing duty order is revoked. Because we have found that revocation of the countervailing duty order will not likely result in a significant increase in subject import volume, or in significant price effects, we find that significant declines in the domestic industry's output, market share, profits, productivity, return on investment, and capacity utilization are not likely to result from revocation of the order. Nor will revocation result in significant likely effects on the domestic industry's cash flow, inventories, employment, wages, growth, ability to raise capital, investment, or development or production efforts.

Accordingly, we conclude that, if the countervailing duty order on pure magnesium from Canada is revoked, subject imports of pure magnesium from Canada would not be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

E. Conclusion

For the foregoing reasons, we determine that revocation of the countervailing duty order on imports of pure magnesium from Canada would not be likely to lead to continuation or recurrence of material injury to the domestic pure magnesium industry within a reasonably foreseeable time.

V. REVOCATION OF THE COUNTERVAILING DUTY ORDER ON ALLOY MAGNESIUM FROM CANADA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. 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."³³⁶ Now, as in the original investigation and first sunset reviews, alloy magnesium is sold mainly to diecasters.³³⁷ Demand for alloy magnesium is dictated largely by the demand in this end-use market.³³⁸ In the 2000 five-year reviews of pure and alloy magnesium from Canada, the Commission observed that between the original investigation and those reviews, U.S. apparent consumption of alloy magnesium by quantity grew from *** metric tons in 1991 to *** metric tons in 1998. Consumption rose to *** metric tons in 1999.³³⁹ Apparent consumption of alloy magnesium continued to grow between 2000 to 2005, increasing from *** metric tons in 2000 to *** metric tons in 2005, an increase of *** percent.^{340 341}

With respect to projected demand for alloy magnesium in the next few years, alloy magnesium producers and purchasers reported a mixed picture.³⁴² US Magnesium stated that it expects demand to *** in 2006 and 2007 due to ***.³⁴³ Many purchasers, ***, reported that they expected the use of magnesium in automotive applications to increase, while expressing concern that the relatively less

³³⁶ 19 U.S.C. § 1675a(a)(4).

³³⁷ CR at I-30, PR at I-18.

³³⁸ CR at II-11-12, PR at II-6.

³³⁹ Canada First Review Determination at 18-19. Historical data are also presented on Table I-5.

³⁴⁰ CR/PR at Table C-6.

³⁴¹ Including production of secondary magnesium by diecasters, U.S. consumption increased from *** metric tons in 2000 to *** metric tons in 2005, an increase of *** percent. CR/PR at Table C-2.

³⁴² CR at II-11, PR at II-6.

³⁴³ CR at II-11, PR at II-6.

competitive U.S. market for alloy magnesium may lead to a shift of production of magnesium-containing parts offshore.³⁴⁴

As in the original investigation and first reviews, imports of alloy magnesium from Canada and the domestic like product continue to be close substitutes.³⁴⁵ Nearly all responding purchasers of alloy magnesium require their suppliers to become certified or prequalified and most buy alloy magnesium exclusively from qualified suppliers.³⁴⁶ The qualification process takes from 1 to 6 months.³⁴⁷ These certification requirements limit the differences between subject imports and the domestic product. The majority of responding purchasers reported that alloy magnesium from Canada and the United States were comparable.³⁴⁸ Most purchasers reported few differences between U.S.-produced and subject Canadian alloy magnesium, and all purchasers rated both products comparable in terms of reliability of supply, product consistency, packaging, and minimum quantity requirements.³⁴⁹

The market for alloy magnesium continues to be price competitive.³⁵⁰ The Commission asked purchasers to identify the three major factors that they consider when deciding from whom to purchase magnesium. Price was the second-most-frequently listed number one factor (after quality), and the most-frequently-cited number two factor.³⁵¹ With respect to sales methods, *** reported that *** percent of its sales of alloy magnesium to U.S. customers in 2005 were made on the basis of *** contracts, with *** percent sold on the basis of ***.³⁵² Two U.S. producers of alloy magnesium reported selling *** of their production on the basis of short-term contracts, while a third sold *** on the spot market.³⁵³

Primary magnesium producers that use the electrolytic process (*i.e.*, US Magnesium) have a strong incentive to maintain a continuous level of production because the electrolytic cells used to make primary magnesium must be kept in constant operation to avoid their deterioration and significant rebuilding costs.³⁵⁴ Therefore, when faced with price competition, primary magnesium producers will tend to cut prices to maintain production volume.

Although some U.S. market conditions have not changed significantly since the original investigation and the first sunset reviews, there have been some significant changes in the domestic industry. With respect to domestic production, Northwest Alloys, *** domestic producer of primary magnesium during the original investigation, exited the market in 2001.³⁵⁵ As a result, the primary alloy magnesium industry has further consolidated and now consists of only one producer, US Magnesium.³⁵⁶ Overall U.S. producer shipments of alloy magnesium, including secondary magnesium production, fell

³⁴⁴ CR at II-12, PR at II-7.

³⁴⁵ CR at II-14, PR at II-7.

³⁴⁶ CR at II-15., PR at II-8. Factors considered by pure magnesium producers in their qualification process include quality, price, reliability, delivery, size and shape of the ingot, and commitment to the market. Id.

³⁴⁷ CR at II-15, PR at II-8.

³⁴⁸ CR at II-18, PR at II-10, CR/PR at Table II-4.

³⁴⁹ CR/PR at Figure II-2.

³⁵⁰ See CR at II-14, PR at II-7, and CR/PR at Table II-1.

³⁵¹ CR/PR at Table II-1.

³⁵² CR at V-4-5, PR at I-3.

³⁵³ CR at V-3, PR at V-2.

³⁵⁴ CR at I-35 n.78, PR at I-22 n.78.

³⁵⁵ CR at III-1, PR at III-1.

³⁵⁶ Dow Magnesium, a subsidiary of Dow Chemical Corp., Midland, MI, ceased magnesium production in November 1998 after sustaining damage from lightning strikes and flooding. CR at III-1, PR at III-1.

from *** metric tons in 2000 to *** metric tons in 2005.³⁵⁷ U.S. producer shipments of alloy magnesium to diecasters represented *** percent of U.S. commercial shipments of alloy magnesium in 2005, followed by shipments to aluminum producers at *** percent.³⁵⁸ U.S. producers' commercial shipments of alloy magnesium to the aluminum industry decreased by *** percent between 2003 and 2005, reflecting exit from the market of two of the three principal domestic alloy magnesium suppliers to the aluminum industry, ***. ***.³⁵⁹

During the period, US Magnesium *** upgraded its manufacturing facility, ***.³⁶⁰ The company has ***.³⁶¹

The presence in the U.S. market of nonsubject imports of alloy magnesium remained relatively stable during the period of review. From 2000 to 2005, the quantity and market share of nonsubject imports of alloy magnesium, which have been primarily from Canada (from Timminco Canada, which is not subject to the order), China, and Israel, increased *** from *** metric tons to *** metric tons,³⁶² and these imports represented approximately *** percent of U.S. apparent consumption in 2000 and *** percent in 2005.³⁶³ A majority of purchasers reported that U.S. alloy magnesium was comparable to alloy magnesium from nonsubject sources, and that nonsubject alloy magnesium was comparable to alloy magnesium from Canada for most factors.³⁶⁴

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.

B. Likely Volume of Subject Imports

In the original investigation, the Commission found that the volume of subsidized imports of alloy magnesium was significant and increased manyfold during the period of investigation.³⁶⁵ The Commission also found that the market penetration of subject imports increased dramatically during the period of investigation.³⁶⁶

In the first five-year reviews the Commission found that subject import volume would likely be significant if the countervailing duty order on alloy magnesium were revoked, based on the increasing market share that NHCI was able to capture since the original investigation, the substantial additional capacity expected to be added as Magnola entered the market and NHCI expanded its production capacity, their ability to shift from pure magnesium to alloy magnesium production, and their ability to significantly increase exports to the U.S. market given its size and proximate location.

³⁵⁷ CR at Table C-6. Including production of secondary magnesium by diecasters, such shipments increased from *** metric tons in 2000, to *** metric tons in 2005. CR/PR at Table C-2.

³⁵⁸ CR/PR at Figure III-3.

³⁵⁹ CR at III-9, PR at III-3.

³⁶⁰ CR at I-37, and II-4, PR at I-33 and II-2-3.

³⁶¹ CR at II-5, n. 16, PR at II-3 n.16.

³⁶² Nonsubject imports of alloy magnesium from China essentially left the market in 2005, after imposition of the antidumping duty order on such imports. CR/PR at Tables I-3 and IV-2.

³⁶³ CR/PR at Table C-6. Including production of secondary magnesium by diecasters, these non-subject imports represented approximately *** percent of U.S. apparent consumption in both 2000 and 2005. CR/PR at Table C-2.

³⁶⁴ CR at II-26-27, PR at II-10, and CR/PR at Table II-6.

³⁶⁵ Canada Original Remand Determination at 14. Imports of NHCI's alloy magnesium increased from *** in 1989 to to *** metric tons in 1991. See CR and PR at Table I-5.

³⁶⁶ Canada Original Remand Determination at 22. Imports of subject alloy magnesium were *** in 1989, but captured approximately *** percent of the market in 1991. See CR and PR at Table I-5.

There have been significant imports of alloy magnesium from Canada during the period of review.³⁶⁷ The volume and market share of the U.S. shipments of these imports ranged from a low of *** metric tons, accounting for *** percent of U.S. consumption and equivalent to *** percent of U.S. production, in *** to a high of *** metric tons, accounting for *** percent of U.S. consumption and equivalent to *** percent of U.S. production, in ***.^{368 369}

The record does not indicate that the countervailing duty order is currently having any significant restraining effect on subject imports from Canada. Subject imports have been at significant levels throughout the period of review, despite the existence of the order. NHCI is currently the only producer of alloy magnesium in Canada that is covered by the countervailing duty order (and, as explained below, we find that it is not likely that any other producer would enter the market within the reasonably foreseeable future). NHCI's deposit rate has been below 2 percent since 2000, and the current deposit rate on NHCI is only 1.21 percent.³⁷⁰ We do not find that revocation of a countervailing duty order with such a low deposit rate would likely lead to a significant increase in the volume of subject imports. Unlike an antidumping duty order, for which the deposit rate can change significantly from year to year based on relative pricing, the countervailing duty deposit rate is based on the level of subsidization determined by Commerce. The only countervailable program found used by NHCI over the period of review was the Article 7 grants from the Quebec Industrial Development Corporation, and Commerce found that NHCI's benefits from this program were fully amortized as of the end of 2004.³⁷¹ As a result, in its expedited second five-year reviews, Commerce found that it had no basis to report a likely subsidy rate for NHCI.³⁷²

In five-year reviews, Commerce has the responsibility to determine likely future subsidization,³⁷³ and the Commission must accept Commerce's determination on this issue. We do not agree with GOQ's assertion that Commerce found that NHCI is not likely to be subsidized in the reasonably foreseeable future.³⁷⁴ Commerce did not make a negative determination in its five-year reviews; rather, it found that it

³⁶⁷ CR/PR at Table IV-1 and C-6.

³⁶⁸ CR/PR at Table C-6.

³⁶⁹ Commissioner Koplan includes diecasters in the domestic industry producing alloy magnesium. According to this definition, imports accounted for *** percent of U.S. consumption in ***, equivalent to *** percent of domestic production, and *** percent of U.S. consumption in ***, equivalent to *** percent of domestic production. CR/PR at Table C-2.

³⁷⁰ In administrative reviews since 2000, Commerce has found the following subsidy rates for NHCI: 1.38 percent for the January 1, 1998 - December 31, 1998 review period; 1.21 percent for the January 1, 1999 - December 31, 1999 review period; 1.59 percent for the January 1, 2000 - December 31, 2000 review period; 1.68 percent for the January 1, 2001 - December 31, 2001 review period; 1.07 percent for the January 1, 2002 - December 31, 2002 review period; and 1.21 percent for the January 1, 2003 - December 31, 2003 review period. CR/PR at Table I-7.

³⁷¹ Issues and Decision Memorandum for the Final Results of the Expedited Sunset Reviews of the Countervailing Duty Orders on Pure Magnesium and Alloy Magnesium from Canada, U.S. Department of Commerce (Oct. 31, 2005) ("Issues and Decision Memorandum") at 10. ("With respect to the SDI Article 7 grant, we acknowledge that the "benefit tail" has expired as of the end of 2004. Accordingly, NHCI will not benefit from the 1991 SDI Article 7 grant examined in the Final Determinations.")

³⁷² Commerce found a likely net countervailable subsidy rate of 6.34 percent ad valorem for "all other" manufacturers and exporters, except Timminco Canada (which was excluded from the order) and NHCI, for which Commerce had "no basis" for reporting a rate. 70 Fed. Reg. 67140 (Nov. 4, 2005). See also, Commerce Issues and Decision Memorandum at 10.

³⁷³ 19 U.S.C. § 1675(c)(1).

³⁷⁴ GOQ Posthearing Brief at 9.

had no basis to report a likely subsidy rate for NHCI.³⁷⁵ On the other hand, Commerce's final affirmative determination with respect to NHCI was based solely on the fact that the Article 7 program still existed. We disagree with petitioner's contentions that it is likely that NHCI would obtain a significant level of subsidization if the countervailing duty order were revoked.³⁷⁶ Petitioner's arguments on this score are purely speculative, and Commerce did not indicate that, upon revocation of the order, subsidization of the Canadian industry would be likely to grow.

We are not persuaded by petitioner's argument that NCHI would likely carry out capacity expansion plans that it announced in 1997 if the countervailing duty order were revoked. These capacity expansion plans are now nearly ten years old, and there is no indication that NHCI has taken further steps to implement them. We recognize that in 2005 NHCI announced plans to expand total magnesium capacity by *** metric tons.³⁷⁷ However, in light of our finding regarding the lack of significant restraining effects of the order, we do not find that revocation is likely to lead to a significant increase in the volume of imports even if NHCI undertakes some capacity expansion. Similarly, while we recognize that NHCI's alloy magnesium capacity utilization rate dropped from *** percent in 2004 to *** percent in 2005, we do not find this will likely lead to a significant increase in import volume upon revocation of the order, which is having no restraining effect.³⁷⁸

We are not persuaded that the Magnola plant is likely to resume production within a reasonably foreseeable time if the countervailing duty order is revoked. On balance, the information in the record indicates that ***.³⁷⁹ Moreover, *** for the plant to be refurbished and employees to be hired, before production could even resume.³⁸⁰ We note in this regard that the revocation of the antidumping duty order on pure magnesium from Canada did not prompt Magnola to take steps to re-open.

We also find that the Cogburn Magnesium Project in British Columbia is not likely to result in any additional production capacity in Canada within a reasonably foreseeable time. Although first proposed in 2003, this project is only at the early planning stage,³⁸¹ and the same *** will likely also affect this project.

We have also examined the other factors the statute sets forth as pertinent to an analysis of likely subject import volume. NHCI *** inventories toward the end of the period of review, but *** likely to lead to a significant increase in imports.³⁸² There is no evidence that alloy magnesium from Canada is subject to import barriers in any other market.³⁸³ Finally, although NHCI has the ability to shift production from pure magnesium to alloy magnesium, this factor is insufficient, in the absence of any incentive to shift, to support a finding that the volume of imports would be significant if the order on alloy magnesium were revoked.³⁸⁴

³⁷⁵ 70 Fed. Reg. 67140 (Nov. 4, 2005). See also, *Commerce Issues and Decision Memorandum* at 10.

³⁷⁶ Petitioner's Posthearing Brief at 3-5.

³⁷⁷ CR at IV-20, PR at IV-4.

³⁷⁸ CR/PR at Table IV-9.

³⁷⁹ See ***.

³⁸⁰ Id.

³⁸¹ CR at IV-22-23, PR at IV-6.

³⁸² Subject Canadian producers had end-of-period inventories of *** metric tons, representing *** percent of their annual production in 2005. This compares with end-of-period inventories of *** metric tons, representing *** percent of their annual production in 2001. CR/PR at Table IV-9.

³⁸³ CR at IV-30, PR at IV-9.

³⁸⁴ We note that the absence of any incentive for NHCI to shift production from one type of magnesium to the other stands in contrast to the incentives for Chinese magnesium producers to engage in such product shifting, and to their history of doing so (as discussed below in our views in the review of the antidumping duty order on pure magnesium from China).

Consequently, we conclude that, should the countervailing duty order on alloy magnesium from Canada be revoked, the volume of subject imports would not likely increase to a significant level, either in absolute terms or relative to production or consumption in the United States.

C. Likely Price Effects of Subject Imports

In the original investigation, the Commission found that, at the same time that volume and market share of subject imports increased, prices for both U.S.- and Canadian-produced alloy magnesium steadily declined.³⁸⁵ The Commission noted that Canadian and U.S. producers' prices for contract sales of alloy magnesium declined as did the unit value of alloy magnesium from Canada. The Commission further noted the high degree of substitutability between U.S. and Canadian alloy magnesium. Prior to the imposition of the antidumping and countervailing duty orders, the U.S. and Canadian products sold at similar prices, with price changes by one firm often followed by equivalent changes by other producers. Accordingly, the Commission found that the effect of subject import prices on U.S. prices was significant.

In the first five-year reviews the Commission determined that revocation of the countervailing duty order on alloy magnesium would be likely to lead to significant underselling of the domestic like product by subject imports, as well as significant price depression and suppression. The Commission explained that it was likely that Magnola would offer alloy magnesium at low prices in order to enter the U.S. market, and that this would likely spur NHCI to lower its prices in the U.S. market as well. It noted that the likelihood of price depression was heightened by the prevalence of certain *** in alloy magnesium contracts. The Commission concluded that, without the discipline of the countervailing duty order, NHCI and Magnola would likely decrease prices in order to gain market share, thereby likely recreating the sort of price depression that occurred during the period of the original investigation.

The Commission obtained pricing data for subject imports and the domestic like product for sales of alloy magnesium to diecasters. Out of 24 quarterly observations, the subject imports undersold the domestic product in only four quarters, and ***. In the other 20 quarters, the subject imports oversold the domestic product, in *** cases by substantial margins.³⁸⁶ US Magnesium argues that the overselling is due to NHCI's long-term supply contract with GM, which was negotiated at a time of high prices.³⁸⁷ However, the pricing data indicate that, in 2005, NHCI's average prices to all U.S. customers ranged between \$*** and \$***, whereas its prices to GM were between \$*** and \$***.³⁸⁸ Moreover, GM accounted for *** percent of NHCI's reported sales in that year. Thus, we find no reason to disregard or discount the pricing data.³⁸⁹

³⁸⁵ Canada Original Remand Determination at 25.

³⁸⁶ CR/PR at Table V-2.

³⁸⁷ Petitioner's Posthearing Brief, Answers to Commission Questions at 31.

³⁸⁸ Supplemental Price Data Submitted by NHCI In Response to Staff Request At Hearing. US Magnesium also argues that expiration of this long-term contract at the end of 2007 will lead to adverse price effects because the contract sets prices that are higher than current market prices. E.g., Petitioner's Posthearing Brief at 7. However, the record shows that ***.

³⁸⁹ In its remand determination in the original investigation and in the first reviews of these countervailing duty orders, the Commission noted that quarterly price comparisons were not particularly useful due to the frequency of price changes, the use of meet-or-release clauses, and the limited number of comparisons available. Canada Original Remand Determination at 17 n.90, and Canada First Review Determination at 15 n. 108. The circumstances which led us to discount quarterly price comparisons are not present in these reviews. In these reviews, most purchasers reported that prices for magnesium change once a year (see purchaser questionnaire responses, section III-32). In addition, while US Magnesium reported that ***, NHCI reported that ***. CR at V-4 to V-5, PR at V-3. In the original investigation, there were a total of 25 instances where prices could be compared (for imports of pure and alloy magnesium), and in the first reviews, there were a total of 14 such instances. In these reviews, by contrast,

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As explained above, we find that revocation of the order is not likely to lead to a significant increase in the volume of subject imports. There is nothing in the record to suggest that pricing patterns of subject imports are likely to differ significantly from those prevailing during the period of review if the countervailing duty order on alloy magnesium from Canada, with its low and diminishing deposit rates, is revoked. In addition, as discussed above, we do not find it likely that Magnola or the Cogburn Magnesium Project will produce alloy magnesium in the reasonably foreseeable future. We consequently find that the subject imports will not be likely to have significant price effects in the event of revocation.

D. Likely Impact

In the original investigation, the Commission found that the substantial increases in NHCI's share of a stable market resulted in increased domestic inventories and placed significant pressure on the domestic producers to lower their prices.³⁹⁰ Noting that the U.S. plants producing alloy magnesium are dedicated to primary magnesium production, with little flexibility to produce products other than magnesium, the Commission further found that industry-wide price declines caused a direct reduction in revenues, as reflected in the financial data collected in the investigations.

In the first five-year reviews the Commission found that the domestic industry was not vulnerable, but that the industry showed several important signs of ***. The Commission found that the imminent entry into the market of a major new supplier (Magnola) and likely increased capacity of an existing supplier (NHCI) were likely to push the domestic industry into a further decline and jeopardize its investment in new electrolytic cell technology.³⁹¹ It concluded that, in light of the likely significant increases in the volume of subject imports at prices that would undersell the domestic like product and significantly depress U.S. prices, revocation of the order would likely have a significant adverse impact on the domestic industry.

The domestic industry's trade and financial indicators were mixed during the 2000 to 2005 period of review. The quantity of total domestic shipments of alloy magnesium declined by *** percent from 2000 to 2005, from *** metric tons to *** metric tons.³⁹² The number of production workers fell *** from *** workers in 2000 to *** in 2005. Although the industry had ***, these *** by 2005.³⁹³ Overall, the alloy magnesium industry's *** operating performance throughout the review period supports a finding that the industry is currently vulnerable.

Notwithstanding this vulnerability, we find that subject imports would not be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time if the countervailing duty order is revoked. Because we have found that revocation of the countervailing duty order will not likely result in a significant increase in subject import volume, or in significant price effects, we find that significant declines in the domestic industry's output, market share, profits, productivity, return on investment, and capacity utilization are not likely to result from revocation of the order. Nor will revocation result in significant likely effects on the domestic industry's cash flow, inventories, employment, wages, growth, ability to raise capital, investment, or development or production efforts.

³⁸⁹ (...continued)

there were 58 quarters in which prices could be compared. CR/PR at Tables V-1 to V-3. Therefore, based on the information obtained in these reviews, we find that the quarterly price comparisons are useful.

³⁹⁰ Canada Original Remand Determination at 26.

³⁹¹ Canada First Review Determination at 23-25.

³⁹² CR/PR at Table C-6.

³⁹³ CR/PR at Table C-6.

Accordingly, we conclude that, if the countervailing duty order on alloy magnesium from Canada is revoked, subject imports of alloy magnesium from Canada would not be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

E. Conclusion

For the foregoing reasons, we determine that revocation of the countervailing duty order on imports of alloy magnesium from Canada would not be likely to lead to continuation or recurrence of material injury to the domestic alloy magnesium industry within a reasonably foreseeable time.

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

A. 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.”³⁹⁴

Now, as in the original investigation and first sunset review, pure magnesium is sold mainly to aluminum producers, to magnesium granule producers for steel desulfurization, and to chemical and pharmaceutical manufacturers.³⁹⁵ 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.³⁹⁶ In the 2000 sunset review of pure magnesium from China, the Commission observed that apparent U.S. consumption of pure magnesium declined between the original investigation and the first sunset review. From 2000 to 2005, apparent U.S. consumption (by quantity) of pure magnesium further declined by *** percent.³⁹⁷

*** purchasers predict a *** increase in demand for pure magnesium in the next few years.³⁹⁸ US Magnesium stated that it expects demand to *** in 2006 and 2007 due to ***.

In the original investigation, the Commission noted that the subject imports and the domestic product competed directly in the market.³⁹⁹ The market for pure magnesium continues to be price competitive.⁴⁰⁰ The Commission asked purchasers to identify the three major factors that they consider when deciding from whom to purchase magnesium. Price was the second-most-frequently listed number one factor (after quality) listed number one factor (after quality) and the most frequently-cited number two factor.⁴⁰¹ A majority of purchasers characterized differences other than price in the sale of pure magnesium as only sometimes or never significant.⁴⁰² All pure magnesium purchasers reported that

³⁹⁴ 19 U.S.C. § 1675a(a)(4).

³⁹⁵ CR at II-1, PR at II-1.

³⁹⁶ CR at II-11-12, PR at II-6.

³⁹⁷ CR at I-59, PR at I-34.

³⁹⁸ CR at II-11, PR at II-6.

³⁹⁹ China Original Determination at 20.

⁴⁰⁰ See CR at II-14 and Table II-1.

⁴⁰¹ CR/PR at Table II-1.

⁴⁰² CR at II-23, PR at II-13.

Chinese pure magnesium was less expensive than U.S.-produced magnesium.⁴⁰³ With respect to sales methods, *** reported using short- and long-term contracts in selling its pure magnesium; in 2005, it sold *** percent of its pure magnesium using short-term contracts, *** percent using long-term contracts, and *** percent on the spot market.⁴⁰⁴ One importer that reported information on sales methods for pure magnesium from China reported selling *** on the basis of short-term contracts.⁴⁰⁵

As in the original investigation and first review, most producers, importers, and purchasers in this review agreed that domestically-produced pure magnesium and pure magnesium from China could be used in the same range of uses and could always or frequently be used interchangeably.⁴⁰⁶ Most purchasers noted that they require their suppliers to become certified or prequalified and many buy pure magnesium exclusively from qualified suppliers and that although not perfect substitutes, domestic pure magnesium and subject imports from China generally are substitutable with one another and with imports from third countries.⁴⁰⁷ Most purchasers reported some differences between U.S.-produced and subject Chinese pure magnesium, finding U.S. suppliers to provide superior technical support, more reliable supply, and greater product consistency. All purchasers reported, however, that Chinese imports of pure magnesium meet industry quality standards, with half of all purchasers reporting that Chinese merchandise exceeds industry standards.⁴⁰⁸

Primary magnesium producers that use the electrolytic process (i.e., US Magnesium) have a strong incentive to maintain a continuous level of production because the electrolytic cells used to make primary magnesium must be kept in constant operation to avoid their deterioration and significant rebuilding costs.⁴⁰⁹ Therefore, when faced with price competition, primary magnesium producers will tend to cut prices to maintain production volume.

Although some U.S. market conditions have not changed significantly since the original investigation and the first sunset review, there have been some significant changes in the domestic industry. With respect to domestic production, Northwest Alloys, the *** domestic producer of primary magnesium during the original investigation, exited the market in 2001.⁴¹⁰ As a result, the pure magnesium industry has further consolidated and now consists of only one producer, US Magnesium.⁴¹¹ With the departure of Northwest Alloys, total U.S. producer shipments of pure magnesium dropped from *** metric tons in 2000 to *** metric tons in 2005.⁴¹²

During the period, US Magnesium *** upgraded its manufacturing facility, ***.⁴¹³ The company has ***.⁴¹⁴

A significant change since the last review is the increasingly significant presence of nonsubject imports in the U.S. market.⁴¹⁵ From 2000 to 2004, the quantity and market share of imports of pure magnesium from nonsubject countries increased from *** metric tons to *** metric tons, representing

⁴⁰³ CR at II-18, PR at II-10.

⁴⁰⁴ CR at V-3, PR at V-1.

⁴⁰⁵ CR at V-3, PR at V-1.

⁴⁰⁶ China Original Determination at 16, 20; CR at II-23, PR at II-13.

⁴⁰⁷ China First Review Determination at 9; CR at II-15, PR at II-8.

⁴⁰⁸ CR/PR at Table II-3.

⁴⁰⁹ CR at I-35 n.78, PR at I-22 n.78.

⁴¹⁰ CR at II-4., PR at I-2.

⁴¹¹ Dow Magnesium, a subsidiary of Dow Chemical Corp., Midland, MI, ceased magnesium production in November 1998 after sustaining damage from lightning strikes and flooding. CR at III-1, PR at III-1.

⁴¹² CR /PR at Table C-1.

⁴¹³ CR at II-4, PR at II-2.

⁴¹⁴ CR at II-5, n.16, PR at II-3 n.16.

⁴¹⁵ For this review, pure magnesium imports from Canada are treated as non-subject imports.

*** percent of U.S. apparent consumption in 2004 compared to *** percent of consumption in 2000. Between 2004 and 2005, the quantity and market share of nonsubject imports dropped somewhat to *** metric tons, representing *** percent of domestic consumption.⁴¹⁶ A majority of purchasers reported that U.S. pure magnesium was comparable to pure magnesium from non-subject sources, and that nonsubject pure magnesium was comparable to pure magnesium from China.⁴¹⁷

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.

B. Likely Volume of Subject Imports

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 1994.⁴¹⁸ 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.⁴¹⁹

In the first five-year review the Commission found that subject import volume would likely be significant if the antidumping duty order on pure magnesium were revoked, based on the rapid growth and substantial capacity of the Chinese magnesium industry, that industry's significant dependence on export markets, the presence of import barriers against pure magnesium from China in third country markets, the surge in U.S. imports of subject merchandise under temporary importation bonds since the imposition of the order, and the ability of Chinese producers to switch production from alloy magnesium to pure magnesium if the order on pure magnesium were revoked.⁴²⁰

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 1996.⁴²¹ Only 19 metric tons of pure magnesium from China subject to the antidumping duty order entered the United States in 2005, and no more than 240 metric tons have entered the United States in any year since 2000.⁴²² The record indicates, therefore, that the antidumping duty order has had a substantial restraining effect on the volume of subject imports.

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, with production of 426,000 metric tons that accounts for *** percent of global production in 2004.⁴²³ China's current magnesium production capacity is estimated to be approximately 527,000 metric tons, a considerable increase over the 170,000 to 180,000 metric ton figure reported for 1999.⁴²⁴ The evidence also indicates that the Chinese industry

⁴¹⁶ CR/PR at Table C-1

⁴¹⁷ CR at II-26, PR at II-15, CR/PR at Table II-3.

⁴¹⁸ China First Review Determination at 11.

⁴¹⁹ China First Review Determination at 11.

⁴²⁰ China First Review determination at 11-12.

⁴²¹ China First Review Determination at 11.

⁴²² CR/PR at Table C-1.

⁴²³ CR at IV-23, PR at IV-6.

⁴²⁴ CR at IV-27, PR at IV-7, China First Review Determination at 11.

has increased its efficiency and competitiveness from 2000 to 2005, with some consolidation of smaller Chinese magnesium producers under way.⁴²⁵

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. Total excess Chinese capacity appears to be approximately 60,000 metric tons.⁴²⁶ Available industry data in 1999 estimated Chinese home market consumption of primary magnesium to be ***, and there is no evidence on this record to suggest that there has been a material change in Chinese domestic consumption.⁴²⁷ Chinese magnesium producers appear to rely heavily on exports, and the available evidence indicates they have continued to do so as they have increased capacity.⁴²⁸

India reportedly applied antidumping orders on imports of magnesium from China from 1998 through 2003, at which time the duties were withdrawn at the request of the domestic industry.⁴²⁹ The European Union antidumping order on pure magnesium from China, imposed in 1999, expired in 2003.⁴³⁰ Brazil imposed antidumping duties on pure magnesium from China in 2004, which it expanded in 2005 to include alloy magnesium.⁴³¹

Chinese producers have shown a strong interest in supplying magnesium to the U.S. market. With the order on pure magnesium ingots in place, imports from China of granular pure magnesium increased substantially until an antidumping order was placed on such imports in 2001. Subsequently, imports from China of alloy magnesium increased substantially until an antidumping order was placed on such imports in 2005. Given the existing antidumping orders now in place against Chinese alloy and granular magnesium, which have drastically reduced Chinese presence in the U.S. magnesium market for both of these products, Chinese magnesium producers would have a strong incentive to export large volumes of pure magnesium to the United States if this order were 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.

C. Likely Price Effects of Subject Imports

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.⁴³² 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.⁴³³ Additionally, the cumulated subject imports undersold domestically-produced pure magnesium in the vast majority of pricing comparisons.⁴³⁴ 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.⁴³⁵

⁴²⁵ CR at IV-27-8, PR at IV-7-8.

⁴²⁶ CR at IV-27, PR at IV-7.

⁴²⁷ China First Review Determination at 11.

⁴²⁸ CR at IV-29, PR at IV-7-8.

⁴²⁹ CR at IV-30, PR at IV-9.

⁴³⁰ Id.

⁴³¹ CR at IV-30, PR at IV-9.

⁴³² China Original Determination at 20.

⁴³³ China Original Determination at 21.

⁴³⁴ China Original Determination at 21.

⁴³⁵ China First Review Determination at 13.

In the first five-year reviews the Commission determined that revocation of the antidumping duty order on pure magnesium would be likely to lead to significant underselling of the domestic like product by subject imports, as well as significant price depression and suppression. The Commission relied on pricing patterns for subject imports both during the original period of investigation and since then, to conclude that subject imports would likely be aggressively priced if the order were revoked.⁴³⁶

The current pricing data on this record for subject imports are limited to data on average unit values (“AUVs”). Very limited volumes of pure magnesium entered in 2005 from China, at very low AUVs of \$0.83 per pound, compared with AUVs of \$*** per pound for subject pure magnesium from Canada and AUVs of \$1.33 per pound for pure magnesium from all other country sources.⁴³⁷ The pricing patterns for imports of pure magnesium from China, both currently and during the original period of investigation and first review, 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. As noted, the original record and the evidence available in this review indicate that the domestic like product and subject imports are reasonably good substitutes. In light of the importance of price in purchasing decisions for pure magnesium and falling demand for pure magnesium during the period of review in this case, increases in subject import volumes will likely drive down pure magnesium prices by forcing domestic producers and importers of non-subject 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.

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.

D. 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.⁴³⁸ 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.⁴³⁹ 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.⁴⁴⁰

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

⁴³⁶ China First Review Determination at 12-14.

⁴³⁷ CR/PR at Table C-1.

⁴³⁸ 19 U.S.C. § 1675a(a)(4).

⁴³⁹ 19 U.S.C. § 1675a(a)(4).

⁴⁴⁰ The SAA states that in assessing whether the domestic industry is vulnerable of 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.⁴⁴¹ The entry of these imports resulted in increased domestic inventories and placed significant pressure on the domestic producers to lower their prices.⁴⁴² The Commission determined that the losses in market share and price pressures resulted in reductions in industrywide capacity to produce pure magnesium, and declines in employment of workers producing pure magnesium.⁴⁴³

In the first five-year review the Commission found that the domestic industry was not vulnerable, but that the industry showed several important signs of ***. The Commission found that, given the vast amounts of Chinese production capacity and increasing worldwide magnesium capacity, the return of significant volumes of pure magnesium from China upon revocation of the order, would likely send the domestic industry into further decline. It concluded that in light of the likely significant increases in the volume of subject imports at prices that would undersell the domestic like product and significantly depress U.S. prices, revocation of the order would likely have a significant adverse impact on the domestic industry.⁴⁴⁴

The domestic industry's trade and financial indicators were mixed during the period of review. The quantity of domestic shipments of pure magnesium by US Magnesium, the sole remaining domestic producer after 2001, increased steadily from *** metric tons in 2003 to *** metric tons in 2005, as did the unit values of those shipments.⁴⁴⁵ The number of production workers remained stable, while wages increased. The company was ***. US Magnesium's improvement in operating performance appears to be attributable to the *** upgrades in technology discussed earlier, as reflected in the *** improvement in the company's COGS/sales ratio in 2005 compared to previous years. Nevertheless, the industry's *** operating performance during much of the 2000-2005 review period supports a finding that the industry is vulnerable at the present, given the ***, and recent downwards trends in pricing for pure magnesium. The apparent vulnerability of the domestic industry ***, in which the ***.⁴⁴⁶

The return of significant volumes of low-priced pure magnesium from China into the U.S. market likely would push the domestic industry back into decline and prevent the industry from improving its financial condition and consolidating the benefits of its recent modernization and capacity expansion. 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 projected to rise only incrementally, 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 US Magnesium to continue to finance its planned improvements and continue to meet its large interest expenses.

Thus, the price and volume effects 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 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, US Magnesium has undertaken cost reductions and invested in new electrolytic cell technology to increase its efficiency and production capacity and improve its financial performance. However, given US Magnesium's vulnerability, the loss of sales volume and price depression that are

⁴⁴¹ China Original Determination at 22.

⁴⁴² China Original Determination at 22.

⁴⁴³ China Original Determination at 22.

⁴⁴⁴ China First Review Determination at 14-16.

⁴⁴⁵ CR/PR at Table C-1.

⁴⁴⁶ ***.

likely to result if the antidumping duty order is revoked likely would prevent US Magnesium from reaping the benefits of its significant investment in 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.

E. 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.

PART I: INTRODUCTION AND OVERVIEW

BACKGROUND

Pure and Alloy Magnesium From Canada (Second Review)

On July 1, 2005, the U.S. International Trade Commission (“Commission”) gave notice,¹ pursuant to section 751(c) of the Tariff Act of 1930 (“the Act”),² as amended, that it had instituted five-year (“sunset”) reviews to determine whether revocation of the countervailing duty (“CVD”) orders on pure and alloy magnesium from Canada would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.³ On October 4, 2005, the Commission determined that the domestic interested party group response to its notice of institution was adequate⁴ and that the respondent group response was inadequate,⁵ but that circumstances warranted full reviews.^{6 7} Effective October 4, 2005, the Commission determined that it would conduct full reviews pursuant to section 751(c)(5) of the Act.⁸ Information relating to the background of these reviews is presented in table I-1.⁹

¹ 70 FR 38199, July 1, 2005.

² 19 U.S.C. § 1675(c).

³ In accordance with section 751(c) of the Act, the U.S. Department of Commerce (“Commerce”) published a notice of initiation of five-year reviews of the subject countervailing duty orders concurrently with the Commission’s notice of institution. 70 FR 38101, July 1, 2005.

⁴ The Commission received a domestic interested party response to the notice of institution from US Magnesium LLC (“domestic interested party”), a domestic producer of pure and alloy magnesium. *See* response of domestic interested party, August 22, 2005.

⁵ The Commission received a response to the notice of institution only from the Gouvernement du Québec (“response of the GOQ”). *See* response of the GOQ, August 22, 2005. The Commission determined that the GOQ’s response was individually adequate. However, the Commission did not receive any responses from Canadian producers or exporters or U.S. importers and nothing in GOQ’s response indicated that it would be able to provide the type of information collected in a full review. Accordingly, the Commission determined that the respondent interested party group response was inadequate.

⁶ Commissioner Jennifer A. Hillman dissenting, voting for an expedited review in the absence of an adequate respondent interested party group response to the Commission’s notice of institution.

⁷ The Commission determined to conduct full reviews in light of several changes in the conditions of competition, including that Magnola, a large Canadian producer, reportedly ceased production of magnesium in 2003. Conducting full reviews will also enable the Commission to consider the definition of the domestic like product for the purposes of these reviews. While the Commission found that pure magnesium and alloy magnesium were separate domestic like products in the first five-year reviews, in investigations conducted in 2004-05 the Commission found a single domestic like product encompassing both pure and alloy magnesium. *See Magnesium from China and Russia*, Inv. Nos. 731-TA-1071 and 1072 (Final), USITC Publication 3763 (April 2005).

⁸ 70 FR 60108, October 14, 2005.

⁹ The Commission’s notice of institution, notice to conduct full reviews, scheduling notice, and statement on adequacy appear in app. A and may also be found at the Commission’s web site (internet address www.usitc.gov). Commissioners’ votes on whether to conduct expedited or full reviews may also be found at the web site.

Pure Magnesium From China (Second Review)

On September 1, 2005, the Commission gave notice,¹⁰ pursuant to section 751(c) of the Act,¹¹ as amended, that it had instituted a five-year review to determine whether revocation of the antidumping duty order on pure magnesium from China would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.¹² On December 5, 2005, the Commission determined that the domestic interested party group response to its notice of institution was adequate¹³ and that the respondent group response was inadequate,¹⁴ but that circumstances warranted a full review.¹⁵ ¹⁶ Effective December 5, 2005, the Commission determined that it would conduct a full review pursuant to section 751(c)(5) of the Act.¹⁷ Information relating to the background of this review is presented in table I-2.¹⁸

¹⁰ 70 FR 52122, September 1, 2005.

¹¹ 19 U.S.C. § 1675(c).

¹² In accordance with section 751(c) of the Act, Commerce published a notice of initiation of a five-year review of the subject antidumping duty order concurrently with the Commission's notice of institution. 70 FR 52074, September 1, 2005.

¹³ The Commission received a domestic interested party response to the notice of institution from US Magnesium LLC, a domestic producer of pure and alloy magnesium. *See* response of domestic interested party, October 21, 2005.

¹⁴ The Commission received no response from any respondent interested party.

¹⁵ Chairman Stephen Koplman and Commissioner Jennifer A. Hillman dissenting, voting for an expedited review in the absence of an adequate respondent interested party group response to the Commission's notice of institution.

¹⁶ In light of a desire to further examine the definition of the domestic like product in this review, the Commission found that circumstances warranted conducting a full review.

¹⁷ 70 FR 75483, December 20, 2005.

¹⁸ The Commission's notice of institution, notice to conduct a full review, scheduling notice, and statement on adequacy appear in app. A and may also be found at the Commission's web site (internet address www.usitc.gov). Commissioners' votes on whether to conduct an expedited or full review may also be found at the web site.

Table I-1
Chronology of investigation Nos. 701-TA-309-A-B (Second Review), Pure and Alloy Magnesium from Canada

Date	Action	Applicable <i>Federal Register</i> citations
08/31/1992	Commerce issues countervailing duty orders	57 FR 39390
08/02/1999	Commerce's initiation of initial five-year reviews	64 FR 41915
08/02/1999	Commission's institution of initial five-year reviews	64 FR 41961
07/05/2000	Commerce issues final results of initial five-year reviews	65 FR 41444
08/02/2000	Commission issues determinations in initial five-year reviews	65 FR 47517
08/16/2000	Commerce issues continuation of the CVD orders	65 FR 49964
07/01/2005	Commerce's initiation of second five-year reviews	70 FR 38101
07/01/2005	Commission's institution of second five-year reviews	70 FR 38199
10/04/2005	Commission's vote to conduct full five-year reviews	70 FR 60108 (October 14, 2005)
11/04/2005	Commerce issues final results of expedited reviews	70 FR 67140
01/12/2006	Commission schedules full five-year reviews	71 FR 2065
04/25/2006	Date of the Commission's hearing	(¹)
06/07/2006	Date of the Commission's vote	(¹)
06/20/2006	Date of the Commission's transmittal of determinations and views to Commerce	(¹)
¹ Not applicable. Source: Cited <i>Federal Register</i> notices.		

Table I-2
Chronology of investigation No. 731-TA-696 (Second Review), Pure Magnesium from China

Date	Action	Applicable <i>Federal Register</i> citations
05/12/1995	Commerce issues antidumping duty order	60 FR 25691
04/03/2000	Commerce's initiation of initial five-year review	65 FR 17484
04/03/2000	Commission's institution of initial five-year review	65 FR 17531
08/03/2000	Commerce issues final results of initial five-year review	65 FR 47713
09/12/2000	Commission issues determination in initial five-year review	65 FR 55047
10/27/2000	Commerce issues continuation of the order	65 FR 64422
09/01/2005	Commerce's initiation of second five-year review	70 FR 52074
09/01/2005	Commission's institution of second five-year review	70 FR 52122
12/05/2005	Commission's vote to conduct full five-year review	70 FR 75483 (December 20, 2005)
01/05/2006	Commerce issues final results of expedited review	71 FR 580
01/12/2006	Commission schedules full five-year review	71 FR 2065
04/25/2006	Date of the Commission's hearing	(¹)
06/07/2006	Date of the Commission's vote	(¹)
06/20/2006	Date of the Commission's transmittal of determination and views to Commerce	(¹)
¹ Not applicable. Source: Cited <i>Federal Register</i> notices.		

The Original Investigations

Pure and Alloy Magnesium From Canada

On September 5, 1991, a petition was filed¹⁹ with Commerce and the Commission alleging that an industry in the United States was materially injured by reason of less-than-fair value (“LTFV”) and subsidized imports of pure and alloy magnesium from Canada and Norway.²⁰ On July 6, 1992, Commerce made a final affirmative LTFV determination, finding an antidumping duty margin of 31.33 percent *ad valorem* for pure magnesium,²¹ except for entries from Timminco Ltd. (“Timminco Canada”). On July 13, 1992, Commerce published its final affirmative countervailing duty determinations, finding countervailing duty margins of 21.61 percent *ad valorem* for pure and alloy magnesium, except for entries from Timminco Canada.²² The Commission published its final affirmative injury determinations on August 26, 1992,²³ and Commerce issued an antidumping duty order on pure magnesium and countervailing duty orders on pure and alloy magnesium on August 31, 1992;²⁴ entries from Timminco Canada were exempted from the orders.^{25 26}

Pure Magnesium From China

On March 31, 1994, a petition was filed with Commerce and the Commission alleging that an industry in the United States was materially injured by reason of LTFV imports of primary magnesium (both pure and alloy) from China, Russia, and Ukraine.²⁷ On March 30, 1995, Commerce published its final affirmative LTFV determinations, finding an antidumping duty margin of 108.26 percent *ad valorem* for imports of pure magnesium and 79.38 percent *ad valorem* for imports of alloy magnesium

¹⁹ The petition was filed by Magnesium Corp. of America (Magcorp), Salt Lake City, UT. US Magnesium is the successor company to Magcorp. On August 3, 2001, Magcorp filed for protection under Chapter 11 of the U.S. Bankruptcy Code. The bankruptcy court authorized the sale of substantially all of Magcorp’s assets to US Magnesium. The sale was completed in June 2002. For additional information on the bankruptcy proceedings, see *Financial Experience of U.S. Producers* in Part III of this report.

²⁰ See Commission’s notice of institution of preliminary investigations (56 FR 46443, September 12, 1991). On October 1, 1991, Commerce dismissed the CVD petition with respect to Norway and terminated its proceeding (56 FR 49748). Subsequently, on October 23, 1991, the Commission terminated its CVD investigation (inv. No. 701-TA-310 (Preliminary)) concerning Norway (56 FR 54887). See also *Magnesium From Canada and Norway*, Inv. Nos. 701-TA-309 and 731-TA-528-529 (Preliminary), USITC Publication 2443 (October 1991).

²¹ On November 29, 1993, Commerce amended the antidumping duty margin on pure magnesium to 21.0 percent *ad valorem* (58 FR 62643). Commerce, having determined that pure and alloy magnesium constitute two separate classes or kinds of merchandise, rescinded the portion of the antidumping duty investigation dealing with alloy magnesium on the basis that the evidence provided by the petitioner was insufficient to support its allegation.

²² 57 FR 30946.

²³ 57 FR 38696. See also *Magnesium From Canada*, Inv. Nos. 701-TA-309 and 731-TA-528 (Final), USITC Publication 2550 (August 1992).

²⁴ 57 FR 39392.

²⁵ On December 7, 2004, the antidumping duty order on pure magnesium was revoked retroactively effective August 1, 2000.

²⁶ 69 FR 70649.

²⁷ The petition was filed by Magcorp, Salt Lake City, UT; the United Steelworkers of America, Local 8319, Salt Lake City, UT; and the International Union of Operating Engineers, Local 564, Freeport, TX. In June 1994, Dow Chemical Co. joined the petitioners. The Commission made a negative preliminary determination with respect to imports of alloy magnesium from Ukraine (59 FR 27297, May 26, 1994).

from China.²⁸ The Commission published its final affirmative injury determinations on May 17, 1995,²⁹ and Commerce issued antidumping duty orders on pure magnesium from China, Russia, and Ukraine on May 12, 1995, but the orders on Russia and Ukraine were revoked effective May 12, 2000, and August 24, 1999, respectively.³⁰

The Initial Five-Year Reviews

Pure and Alloy Magnesium From Canada

On August 2, 1999, the Commission instituted five-year transition reviews concerning the antidumping duty order on pure magnesium from Canada and the countervailing duty orders on pure and alloy magnesium from Canada.³¹ On November 4, 1999, the Commission determined that it would conduct full reviews pursuant to section 751(c)(5) of the Act.³² On July 25, 2000, the Commission issued affirmative determinations in the initial five-year reviews,³³ and on August 16, 2000, Commerce published notice of the continuation of the orders.³⁴

The Commission's five-year review determinations were the subject of a GOQ challenge and a binational panel review convened under Chapter 19 of the North American Free Trade Agreement ("NAFTA"). On July 16, 2002, the NAFTA Panel issued its first decision, in which it affirmed in part and remanded in part the Commission's determinations. In response to this order the Commission submitted its first remand determinations on October 15, 2002. In those determinations the Commission again found that revocation of the antidumping duty order on pure magnesium from Canada and the countervailing duty orders covering pure and alloy magnesium from Canada would be likely to lead to continuation or recurrence of material injury to an industry in the United States with a reasonably foreseeable time.^{35 36}

In a second decision, on January 17, 2006, the NAFTA Panel affirmed the Commission's determinations with respect to the antidumping and countervailing duty orders covering pure magnesium. However, the Panel remanded the Commission's determination as to the countervailing duty order covering alloy magnesium. The Panel instructed the Commission to "analyze the price, volume and impact of revocation of the countervailing duty order on alloy magnesium," and to focus in particular on

²⁸ 60 FR 16437.

²⁹ 60 FR 26456. See also *Magnesium From China, Russia, and Ukraine*, Inv. Nos. 731-TA-696-698 (Final), USITC Publication 2885 (May 1995). The Commission made final affirmative determinations with respect to pure magnesium from China, Russia, and Ukraine, and final negative determinations with respect to imports of alloy magnesium from China and Russia.

³⁰ 60 FR 25691. Commerce's antidumping duty order notice was published in the *Federal Register* five days prior to the publication of the Commission's final determination.

³¹ 64 FR 41961.

³² 64 FR 62690, November 17, 1999.

³³ 65 FR 47517. See *Magnesium from Canada*, investigation Nos. 701-TA-309 A-B and 731-TA-528 (Review), USITC Publication 3324 (July 2000).

³⁴ 65 FR 49964.

³⁵ *Magnesium from Canada*, investigation Nos. 701-TA-309-A-B and 731-TA-528 (Review) (Remand), USITC Publication 3542 (October 2002).

³⁶ In December 2004, the antidumping duty order on pure magnesium was revoked (retroactively effective August 1, 2000) by Commerce, following a decision by a NAFTA panel that Commerce's affirmative sunset review determination was unsupported by substantial evidence, and a decision by an Extraordinary Challenge Committee affirming the panel decision.

the question of likely underselling by Canadian producer Magnola.³⁷ In a determination reported to the Panel on March 31, 2006, the Commission again found that revocation of the countervailing duty order on alloy magnesium from Canada would be likely to lead to continuation or recurrence of material injury to an industry in the United States with a reasonably foreseeable time.

Pure Magnesium From China

On April 3, 2000, the Commission instituted a five-year review concerning the antidumping order on pure magnesium from China.³⁸ On July 6, 2000, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.³⁹ On September 12, 2000, the Commission issued an affirmative determination in the initial five-year review,⁴⁰ and on October 27, 2000, Commerce published notice of the continuation of the order.⁴¹

Other Title VII Investigations

The Commission has conducted countervailing duty and/or antidumping investigations on magnesium concerning five countries: Canada, China, Israel, Russia, and Ukraine. Table I-3 presents actions taken by the Commission and Commerce with respect to all previous magnesium investigations.

Section 332 Investigations

On December 17, 1999, the Commission received a request from the United States Trade Representative (“USTR”) for an investigation under section 332(g) of the Act for the purpose of providing advice concerning possible modifications to the U.S. Generalized System of Preferences (“GSP”) for several products including alloy and granular magnesium. Subsequently, on December 23, 1999, the Commission instituted investigation No. 332-410.⁴² The Commission held a public hearing on February 2, 2000, and presented its advice to the USTR on March 16, 2000.⁴³ In a Presidential Proclamation of June 29, 2000, the President added granular magnesium to the list of GSP-eligible articles.⁴⁴

³⁷ NAFTA Panel Decision (January 17, 2006), p. 6.

³⁸ 65 FR 17531.

³⁹ 65 FR 45105, July 20, 2000.

⁴⁰ 65 FR 55047. *See Pure Magnesium from China*, investigation No. 731-TA-696 (Review), USITC Publication 3346 (September 2000).

⁴¹ 65 FR 64422.

⁴² 64 FR 73574, December 30, 1999.

⁴³ *See Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences*, Inv. No. 332-410, USITC Publication 3288 (March 2000).

⁴⁴ *Proclamation 7325 of June 29, 2000 to Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes*, 65 FR 41315, July 3, 2000.

Table I-3

Magnesium: Actions taken by the Commission and Commerce in Title VII investigations, by source

Action	Date of action	Federal Register citation
Canada:		
Commission's affirmative determinations in Inv. Nos. 701-TA-309 and 731-TA-528 (Final)	08/26/1992	57 FR 38696
Countervailing duty orders issued (C-122-814) (<i>pure and alloy ingot</i>)	08/31/1992	57 FR 39390
Antidumping duty order issued (A-122-814) (<i>pure ingot</i>)	08/31/1992	57 FR 39392
Institution of five-year reviews (full)	08/02/1999	64 FR 41961
Commission's affirmative determinations in five-year reviews	08/02/2000	65 FR 47517
Continuation of countervailing and antidumping duty orders ^{1,2} (<i>pure and alloy ingot</i>)	08/16/2000	65 FR 49964
Revocation of the antidumping duty order ³	12/07/2004	69 FR 70649
China:		
Commission's affirmative determination in Inv. No. 731-TA-696 (Final) (<i>pure ingot</i>) ⁴	05/17/1995	60 FR 26456
Antidumping duty order issued ⁵ (A-570-832) (<i>pure ingot</i>)	05/12/1995	60 FR 25691
Institution of five-year sunset review (expedited)	04/03/2000	65 FR 17531
Commission's affirmative determination in five-year review	09/12/2000	65 FR 55047
Continuation of antidumping duty order ⁶ (<i>pure ingot</i>)	10/27/2000	65 FR 64422
Commission's affirmative determination in Inv. No. 731-TA-895 (Final) (<i>pure granular</i>)	11/20/2001	66 FR 58162
Antidumping duty order issued ⁷ (A-570-864) (<i>pure granular</i>)	11/19/2001	66 FR 57936
Commission's affirmative determination in Inv. No. 731-TA-1071 (Final) (<i>alloy</i>)	04/15/2005	70 FR 19969
Antidumping duty order issued (A-570-896) ⁸ (<i>alloy</i>)	04/15/2005	70 FR 19928
Israel:		
Institution of Inv. Nos. 701-TA-403 and 731-TA-896 (Preliminary)	10/25/2000	65 FR 63888
Commission's negative determinations in Inv. Nos. 701-TA-403 and 731-TA-896 (Final)	11/20/2001	66 FR 58162
Russia:		
Commission's affirmative determination in Inv. No. 731-TA-697 (Final) (<i>pure ingot</i>) ⁴	05/17/1995	60 FR 26456
Antidumping duty order issued (A-821-805) (<i>pure ingot</i>)	05/12/1995	60 FR 25691
Institution of five-year sunset review (expedited)	04/03/2000	65 FR 17531
Revocation of antidumping duty order ⁹	07/07/2000	65 FR 41944
Termination of five-year review	07/17/2000	65 FR 44076
Institution of Inv. No. 731-TA-897 (Preliminary) (<i>pure ingot and granules</i>)	10/25/2000	65 FR 63888
Commerce's negative final antidumping determination (A-821-813)	09/27/2001	66 FR 49347
Commission terminates Inv. No. 731-TA-897 (Final)	10/04/2001	66 FR 50680
Commission's affirmative determination in Inv. No. 731-TA-1072 (Final) (<i>pure and alloy</i>)	04/15/2005	70 FR 19969
Antidumping duty order issued (A-821-819) ¹⁰ (<i>pure and alloy</i>)	04/15/2005	70 FR 19930
Ukraine:		
Commission's affirmative determination in Inv. No. 731-TA-698 (Final) (<i>pure ingot</i>) ⁴	05/17/1995	60 FR 26456
Antidumping duty order issued (A-823-806) (<i>pure ingot</i>)	05/12/1995	60 FR 25691
Upon reconsideration Commission made a negative determination	June 1998	(¹¹)
Revocation of the antidumping duty order	08/24/1999	64 FR 46182
<p>¹ Based on its initial five-year review, Commerce found the following weighted-average countervailing duty margins: Norsk Hydro, 1.84 percent <i>ad valorem</i>; and all others, 4.48 percent <i>ad valorem</i> (65 FR 41444, July 5, 2000). Excluded from the order was Timminco Canada.</p> <p>² In its initial five-year review, Commerce found the following weighted-average antidumping duty margins: Norsk Hydro, 21.00 percent <i>ad valorem</i>; and all others, 21.00 percent <i>ad valorem</i> (65 FR 41436, July 5, 2000). Excluded from the order was Timminco Canada.</p> <p>³ On October 7, 2004, an Extraordinary Challenge Committee issued a determination which affirmed the final remand opinion of the Binational Panel concerning alloy magnesium from Canada (69 FR 67703, November 19, 2004). Subsequently, Commerce revoked the antidumping duty order on pure magnesium from Canada retroactively effective August 1, 2000 after a NAFTA Binational Panel's final decision.</p> <p>⁴ The Commission made a negative determination with respect to alloy magnesium.</p> <p>⁵ Commerce found the weighted-average antidumping duty margin to be 108.26 percent <i>ad valorem</i> (65 FR 47713, August 3, 2000).</p> <p>⁶ In its five-year review, Commerce found the weighted-average antidumping duty margin to be 108.26 percent <i>ad valorem</i> (65 FR 47713, August 2, 2000).</p> <p>⁷ Commerce found a weighted-average antidumping duty margin of 49.66 percent <i>ad valorem</i> for Tianjin and Guangling, and a country-wide rate of 141.49 percent <i>ad valorem</i>.</p> <p>⁸ Commerce found a weighted-average antidumping duty margin of 24.67 percent <i>ad valorem</i> for Minmetals and 305.56 percent <i>ad valorem</i> for all other manufacturers and exporters in China (66 FR 49345, September 27, 2001).</p> <p>⁹ On September 5, 2000, Commerce issued a correction to the revocation order making the effective date of revocation May 12, 2000, the fifth anniversary of the date of publication of the original order (65 FR 53700, September 5, 2000).</p> <p>¹⁰ Commerce found a weighted-average antidumping duty margin of 21.71 percent <i>ad valorem</i> for JCS ALISMA Titanium-Magnesium Works, 18.65 percent <i>ad valorem</i> for Solikamsk Magnesium Works, and 21.01 percent <i>ad valorem</i> for all others.</p> <p>¹¹ No corresponding <i>Federal Register</i> citation.</p>		
Source: Various <i>Federal Register</i> notices.		

Summary Data From the Original Investigations and Reviews

Table I-4 presents a summary of data for pure magnesium from the original investigations, the initial five-year reviews, and these second five-year reviews. Table I-5 presents a summary of data for alloy magnesium from the original investigations, the initial reviews, and these second reviews. Table I-6 presents a summary of data for pure and alloy magnesium combined from the original investigations, the initial reviews, and these second reviews. A summary of data collected in these reviews is presented in appendix C.⁴⁵

Table I-4

Pure magnesium: Comparative data of the U.S. market and industry from the original investigations and current reviews, 1989-1994 and 1998-2005

* * * * *

Table I-5

Alloy magnesium: Comparative data of the U.S. market and industry from the original investigations and current reviews, 1989-1994 and 1998-2005

* * * * *

Table I-6

Pure and alloy magnesium: Comparative data of the U.S. market and industry from the original investigations and current reviews, 1989-1994 and 1998-2005

* * * * *

For these second five-year reviews, U.S. industry data are based on the questionnaire responses of two U.S. producers of primary magnesium believed to account for all known U.S. production of primary magnesium during 2000-05,⁴⁶ and six U.S. producers of secondary magnesium believed to account for most U.S. production of secondary magnesium in 2005.⁴⁷ U.S. import data for Canada are based on responses to the Commission's importers' questionnaire,⁴⁸ while import data for China and all other sources are based on official Commerce statistics. U.S. purchaser data are based on the responses of 25 firms.

Responses by U.S. producers, importers, and purchasers of magnesium to a series of questions concerning the significance of the existing countervailing duty and antidumping duty orders and the likely effects of revocation are presented in appendix D.

⁴⁵ Table C-1 presents summary data for pure magnesium. Table C-2 presents summary data for alloy magnesium. Table C-3 presents summary data for pure and alloy magnesium. Tables C-4 and C-5 include granular magnesium.

⁴⁶ The two responding U.S. producers of primary magnesium are US Magnesium and Northwest Alloys.

⁴⁷ Several U.S. diecasters and all U.S. grinders did not supply data in response to the Commission's producers' questionnaire. For diecaster ***, only capacity, production, and shipments data were available.

⁴⁸ Data on imports of subject merchandise from Canada exclude the imports of Timminco Canada, whose imports are excluded from the countervailing duty orders on pure and alloy magnesium from Canada.

Statutory Criteria and Organization of the Report

Section 751(c) of the Act requires Commerce and the Commission to conduct a review no later than five years after the issuance of an antidumping or countervailing duty order or the suspension of an investigation to determine whether revocation of the order or termination of the suspended investigation “would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.”

Section 752(a) of the Act provides that in making its determination of likelihood of continuation or recurrence of material injury—

- (1) *IN GENERAL.*— . . . the Commission shall determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission shall consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated. The Commission shall take into account—
 - (A) its prior injury determinations, including the volume, price effect, and impact of imports of the subject merchandise on the industry before the order was issued or the suspension agreement was accepted,
 - (B) whether any improvement in the state of the industry is related to the order or the suspension agreement,
 - (C) whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and
 - (D) in an antidumping proceeding . . . , (Commerce’s findings) regarding duty absorption . . .
- (2) *VOLUME.*—In evaluating the likely volume of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether the likely volume of imports of the subject merchandise would be significant if the order is revoked or the suspended investigation is terminated, either in absolute terms or relative to production or consumption in the United States. In so doing, the Commission shall consider all relevant economic factors, including—
 - (A) any likely increase in production capacity or existing unused production capacity in the exporting country,
 - (B) existing inventories of the subject merchandise, or likely increases in inventories,
 - (C) the existence of barriers to the importation of such merchandise into countries other than the United States, and
 - (D) 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.
- (3) *PRICE.*—In evaluating the likely price effects of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether—
 - (A) there is likely to be significant price underselling by imports of the subject merchandise as compared to domestic like products, and
 - (B) imports of the subject merchandise are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.

- (4) *IMPACT ON THE INDUSTRY.*—*In evaluating the likely impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated, the Commission shall consider all relevant economic factors which are likely to have a bearing on the state of the industry in the United States, including, but not limited to—*
- (A) *likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,*
 - (B) *likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and*
 - (C) *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.*

The Commission shall evaluate all such relevant economic factors . . . within the context of the business cycle and the conditions of competition that are distinctive to the affected industry.

Section 752(a)(6) of the Act states further that in making its determination, “the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy.”

Information relating to the original investigations and the first five-year reviews is presented in Part I. Information on conditions of competition and other relevant economic factors is presented in Part II. Part III contains information on the condition of the U.S. industry, including the financial experience of U.S. producers. Information on the likely volume and price effects of imports is presented in Parts IV and V, respectively.

COMMERCE’S SECOND FIVE-YEAR REVIEWS

Pure and Alloy Magnesium From Canada

On November 4, 2005, Commerce published the final results of its expedited reviews of the countervailing duty orders on pure and alloy magnesium from Canada.⁴⁹ Commerce determined that revocation of the countervailing duty order on pure magnesium from Canada would likely lead to continuation or recurrence of countervailable subsidies at a weighted-average margin of 6.34 percent *ad valorem* for “all other” manufacturers and exporters of pure magnesium in Canada, except Timminco Canada, which was excluded from the order, and Norsk Hydro, for which Commerce had “no basis” for reporting a rate.⁵⁰

⁴⁹ 70 FR 67140. A copy of the notice is presented in app. A.

⁵⁰ ***. Furthermore, Commerce’s Issues and Decision Memorandum indicates that “the presence of programs that have not been used, but have also not been terminated, is . . . probative of the likelihood of continuation or recurrence of a countervailable subsidy. Thus, absent evidence to the contrary, {Commerce} find{s} that countervailable programs continue to exist.” (Decision Memo C-122-815: “Issues and Decision Memorandum for the Final Results of the Expedited Sunset Reviews of the Countervailing Duty Orders on Pure Magnesium and Alloy Magnesium from Canada,” October 21, 2005.) The decision memo goes on to “acknowledge that the benefit tail has expired as of the end of 2004. Accordingly, {Norsk Hydro} is no longer receiving benefits from {the} Article 7 grant;” however, the memo states that “it is the Department’s position that, although the Article 7 grant received by {Norsk Hydro} has been fully allocated prior to the effective date of this sunset finding, the {countervailable} program . . . continues. Therefore, on the basis of the information on the record . . . {Commerce} continue{s} to find that revocation of these orders would likely lead to a continuation or recurrence of countervailable subsidy for respondent interested parties.” (Decision Memo C-122-815.)

Commerce also determined that revocation of the countervailing duty order on alloy magnesium from Canada would likely lead to continuation or recurrence of countervailable subsidies at weighted-average margins of 1.84 percent *ad valorem* for Magnola and 8.18 percent *ad valorem* for “all other” manufacturers and exporters of alloy magnesium in Canada, except Timminco Canada, which was excluded from the order. Again, Commerce had “no basis” for reporting a rate for Norsk Hydro.

Pure Magnesium From China

On January 5, 2006, Commerce published the final results of its expedited review of the antidumping duty order on pure magnesium from China.⁵¹ Commerce determined that revocation of the antidumping duty order on pure magnesium from China would likely lead to continuation or recurrence of dumping at a weighted-average margin of 108.26 percent *ad valorem* for all manufacturers and exporters of pure magnesium in China.

COMMERCE’S INITIAL FIVE-YEAR REVIEWS

Pure and Alloy Magnesium From Canada

On July 5, 2000, Commerce published the final results of its full reviews of the countervailing duty orders on pure and alloy magnesium from Canada.⁵² Commerce determined that revocation of the countervailing duty orders on pure and alloy magnesium from Canada would likely lead to continuation or recurrence of subsidies at weighted-average margins of 1.84 percent *ad valorem* for Norsk Hydro, and 4.48 percent *ad valorem* for “all other” manufacturers and exporters of pure magnesium in Canada, except Timminco Canada, which was excluded from the orders. Following affirmative determinations by the Commission in its five-year reviews, Commerce published a notice of continuation of the countervailing duty orders on August 16, 2000.⁵³

Pure Magnesium From China

On August 3, 2000, Commerce published the final results of its expedited review of the antidumping duty order on pure magnesium from China.⁵⁴ Commerce determined that revocation of the antidumping duty order on pure magnesium from China would likely lead to continuation or recurrence of dumping at a weighted-average margin of 108.26 percent *ad valorem* for all manufacturers and exporters of pure magnesium in China. Following an affirmative determination by the Commission in its five-year review, Commerce published a notice of continuation of the antidumping duty order on October 27, 2000.⁵⁵

⁵¹ 71 FR 580. A copy of the notice is presented in app. A.

⁵² 65 FR 41444.

⁵³ 65 FR 49964.

⁵⁴ 65 FR 47713.

⁵⁵ 65 FR 64422.

COMMERCE'S ADMINISTRATIVE AND NEW SHIPPER REVIEWS

Pure and Alloy Magnesium From Canada

Since the imposition of the countervailing duty orders on pure and alloy magnesium from Canada in August 1992, Commerce has conducted 12 administrative reviews and one new shipper review. Information regarding Commerce's administrative and new shipper reviews of the countervailing duty orders on pure and alloy magnesium from Canada is presented in table I-7.

Table I-7
Magnesium from Canada: Commerce's countervailing duty administrative and new shipper reviews

Date of action	Type of review	Federal Register citation	Period of review	Weighted-average margins	
				Norsk Hydro	Magnola
				Percent <i>ad valorem</i>	
03/24/1997	Administrative	62 FR 13857	12/06/1991-12/31/1992	9.86	(¹)
04/17/1997	Administrative	62 FR 18749	01/01/1994-12/31/1994	4.48	(¹)
09/16/1997	Administrative	62 FR 48607	01/01/1993-12/31/1993	7.34	(¹)
09/17/1997	Administrative	62 FR 48812	01/01/1995-12/31/1995	3.18	(¹)
08/24/1998	Administrative	63 FR 45045	01/01/1996-12/31/1996	2.78	(¹)
09/08/1999	Administrative	64 FR 48805	01/01/1997-12/31/1997	2.02	(¹)
09/08/2000	Administrative	65 FR 54498	01/01/1998-12/31/1998	1.38	(¹)
09/10/2001	Administrative	66 FR 47007	01/01/1999-12/31/1999	1.21	(¹)
09/10/2002	Administrative	67 FR 57394	01/01/2000-12/31/2000	1.59	(¹)
04/28/2003	New shipper ²	68 FR 22359	01/01/2001-12/31/2001	(¹)	7.00
09/15/2003	Administrative	68 FR 53962	01/01/2001-12/31/2001	1.68	(¹)
09/14/2004	Administrative	69 FR 55412	01/01/2002-12/31/2002	1.07	1.84
09/14/2005	Administrative	70 FR 54367	01/01/2003-12/31/2003	1.21	5.40
¹ Not applicable. ² Alloy magnesium only. Source: Cited <i>Federal Register</i> notices.					

Pure Magnesium From China

Since the imposition of the antidumping duty order on pure magnesium from China in May 1995, Commerce has conducted one new shipper review⁵⁶ and no annual administrative reviews.⁵⁷ Commerce is currently conducting an administrative review on Tianjin Magnesium International, Ltd. ("TMI") and

⁵⁶ 63 FR 3085, January 21, 1998. The new shipper review was requested by Taiyuan Heavy Machinery Import and Export Corp. Commerce found a weighted-average margin of 69.53 percent *ad valorem*. The period of review was May 1, 1996-October 31, 1996.

⁵⁷ On June 30, 1999, Commerce initiated an administrative review at the request of U.S. importer Rossborough Manufacturing Co. concerning pure magnesium produced/exported by Taiyuan East-United Magnesium Co., for the period May 1, 1998, through April 30, 1999 (64 FR 35124); however, on January 4, 2000, Commerce rescinded the administrative review following Rossborough's withdrawal of its request for an administrative review (65 FR 283).

on April 10, 2006 published its preliminary results of a weighted-average dumping margin for TMI of 89.05 percent *ad valorem*.⁵⁸

DISTRIBUTION OF CONTINUED DUMPING AND SUBSIDY OFFSET ACT FUNDS TO AFFECTED DOMESTIC PRODUCERS

The Continued Dumping and Subsidy Offset Act of 2000 (“CDSOA”) (also known as the Byrd Amendment) provides that assessed duties received pursuant to antidumping or countervailing duty orders must be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such orders.⁵⁹

Since Federal fiscal year 2001 (October 1-September 30), US Magnesium was the only U.S. producer that applied for and received disbursements from U.S. Customs and Border Protection (“Customs”) under CDSOA for the countervailing duty orders on imports of pure and alloy magnesium from Canada⁶⁰ and the antidumping duty order on imports of pure magnesium from China.⁶¹ Through fiscal year 2005, US Magnesium has collected disbursements of \$4.0 million from the countervailing duty orders on imports of pure and alloy magnesium from Canada and \$208,285 from the antidumping duty order on imports of pure magnesium from China. Table I-8 presents additional information on US Magnesium’s CDSOA claims and disbursements for Federal fiscal years 2001-05.

⁵⁸ 71 FR 18067, April 10, 2006.

⁵⁹ Section 754 of the Act (19 U.S.C. § 1675(c)).

⁶⁰ Countervailing duty order number C-122-815.

⁶¹ Antidumping duty order number A-570-832.

Table I-8

Magnesium: US Magnesium's CDSOA claims and disbursements, Federal fiscal years 2001-05¹

Order/fiscal year ²	Claim number	Share of yearly allocation ³	Certification amount ⁴	Amount disbursed ⁵
		<i>Percent</i>	<i>Dollars</i>	
Canada, countervailing duty orders (C-122-815):				
Pure:				
2001	110794	100.0	11,936,000	2,750,865
2002	121143	81.1	38,757,000	942,778
2003	132084	81.0	37,649,478	6,290
2004	141350	80.8	37,647,980	51,217
2005	250784	80.8	37,596,763	20,564
Subtotal				3,771,713
Alloy:				
2001	110795	0.0	0	0
2002	121144	18.9	9,020,391	219,424
2003	132085	19.2	8,965,711	1,498
2004	141351	19.2	8,959,422	12,189
2005	250785	19.2	8,947,233	4,894
Subtotal				238,004
All:				
2001		100.0	11,936,000	2,750,865
2002		100.0	47,777,391	1,162,202
2003		100.0	46,615,189	7,788
2004		100.0	46,607,402	63,406
2005		100.0	46,543,996	25,457
Total				4,009,717
China, antidumping duty order (A-570-832):				
2001	110796	100.0	11,936,000	164,745
2002	121145	100.0	38,757,000	0
2003	132086	100.0	37,649,478	0
2004	141352	100.0	37,647,980	0
2005	250781	100.0	37,596,763	43,541
Total				208,285

¹ US Magnesium was the only U.S. producer eligible for disbursements of CDSOA funds under the respective CVD and AD orders.

² The Federal fiscal year is October 1-September 30.

³ The countervailing duty orders cover both pure and alloy magnesium under one Commerce order number; therefore, Customs allocated by type of magnesium in its annual report.

⁴ Qualifying expenditures incurred by domestic producers since the issuance of an order, as presented in Section I of the *CDSOA Annual Reports*.

⁵ As presented in Section I of Customs' *CDSOA Annual Reports*.

Source: U.S. Customs and Border Protection's *CDSOA Annual Reports*.

THE SUBJECT PRODUCTS

Canada

Commerce has defined the imported product from Canada subject to the countervailing duty orders as—

The products covered by these orders are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. The pure and alloy magnesium subject to the orders is currently classifiable under items 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheadings are provided for convenience and customs purposes, the written descriptions of the merchandise subject to the orders are dispositive. Secondary and granular magnesium are not included in the scope of these orders.⁶²

China

Commerce has defined the imported product from China subject to the antidumping duty order as—

The product covered by this review is pure primary 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 “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.

⁶² 70 FR 67140, November 4, 2005 (Commerce’s Notice of Final Results of Expedited Sunset Reviews of the Countervailing Duty Orders).

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 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.^{63 64}

U.S. Tariff Treatment

Table I-9 presents current tariff rates for imports of pure and alloy magnesium. The subject merchandise is generally classified under HTS subheadings 8104.11.00 (pure magnesium) and 8104.19.00 (alloy magnesium); however, the pure magnesium products covered by the China antidumping duty order also include the following HTS subheadings: 8104.20.00 (magnesium waste and scrap); 8104.30.00 (magnesium raspings, turnings, and powders); 8104.90.00 (other magnesium shapes); 3824.90.11 and 3824.90.19 (chemical products and preparations . . . not elsewhere specified or included); and 9817.00.90 (remelt scrap ingot). The HTS does not specify the chemistry of the magnesium (i.e., pure or alloy) under the latter HTS subheadings; however, most of the product imported under HTS subheadings 8104.20.00, 8104.30.00, and 9817.00.90 is believed to be alloy magnesium, that is not subject to the current review on China. Additionally, HTS subheadings 3824.90.11 and 3824.90.19 refer to magnesium-containing products (possibly desulfurizing agents) that are not subject to the current review on China. Therefore, data on imports of subject pure magnesium from China presented throughout this report are based on HTS subheading 8104.11.00 only. To the extent that some subject merchandise enters the United States under the other identified HTS subheadings, the subject import data for China presented in this report may be slightly understated.

Description and Uses⁶⁵

Magnesium, the eighth most abundant element in the earth's crust and the third most plentiful element dissolved in seawater, is a silver-white metallic element. It is the lightest of all structural metals with a density approximately 63 percent of that of aluminum, the principal metal with which it competes in the U.S. market. Magnesium's light weight and high vibrational-dampening properties have encouraged research to develop magnesium-based alloys with improved physical and mechanical properties for use as a structural metal in applications where minimizing weight is an important design consideration.

⁶³ See Commerce's January 5, 2006, *Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order* (71 FR 580).

⁶⁴ Since the antidumping duty order was issued, Commerce has clarified that the scope of the original order includes, but is not limited to, butt ends, stubs, crowns, and crystals. See Commerce's May 22, 1997, instructions to U.S. Customs, and November 14, 1997 *Final Scope Ruling of Antidumping Duty Order on Pure Magnesium from China*.

⁶⁵ Information on the description and uses of magnesium was previously presented in *Magnesium From China and Russia*, Inv. Nos. 731-TA-1071-1072 (Final), USITC Publication 3763 (April 2005), and has been updated for these reviews.

**Table I-9
Magnesium:¹ Tariff rates, 2006**

HTS subheading ²	Article description ³	General ⁴	Special ⁵	Column 2 ⁶
		Rates (percent <i>ad valorem</i>)		
8104.11.00	Magnesium and articles thereof, including waste and scrap: Unwrought magnesium: Containing at least 99.8 percent by weight of magnesium	8.0	Free ⁷	100.0
8104.19.00	Magnesium and articles thereof, including waste and scrap: Unwrought magnesium: Other	6.5	Free ⁸	60.5
8104.20.00	Magnesium and articles thereof, including waste and scrap: Waste and scrap	Free	(⁹)	Free
8104.30.00	Magnesium and articles thereof, including waste and scrap: Raspings, turnings and granules, graded according to size; powders	4.4	Free	60.5
8104.90.00	Magnesium and articles thereof, including waste and scrap: Other	14.8¢/kg on magnesium content + 3.5 percent	Free ¹⁰	88¢/kg on magnesium content + 20 percent

¹ The pure magnesium products covered by the China antidumping duty order also include the following HTS subheadings: 8104.20.00 (magnesium waste and scrap); 8104.30.00 (magnesium raspings, turnings, and powders); 8104.90.00 (other magnesium shapes); 3824.90.11 and 3824.90.19 (prepared binders for foundry molds and cores); and 9817.00.90 (remelt scrap ingot).

² While HTS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

³ An abridged description is provided for convenience; however, an unabridged description may be obtained from the respective headings, subheadings, and legal notes of the HTS.

⁴ Normal trade relations rates, formerly known as the most-favored-nation duty rate. Imports from China enter under the general rate.

⁵ For eligible goods under the Generalized System of Preferences, Australia Free Trade Agreement, Caribbean Basin Economic Recovery Act, Andean Trade Preference Act, Israel Free Trade Agreement, Central American Free Trade Agreement, Jordan Free Trade Agreement, Chile Free Trade Agreement, Morocco Free Trade Agreement, Singapore Free Trade Agreement, and NAFTA-originating goods of Canada and Mexico. Imports from Canada are eligible to enter duty-free.

⁶ Applies to imports from a small number of countries that do not enjoy normal trade relations duty status.

⁷ Imports from Singapore enter at a rate of 2.0 percent *ad valorem*.

⁸ Imports from Chile enter at a rate of 4.0 percent *ad valorem*; imports from Singapore enter at a rate of 1.6 percent *ad valorem*.

⁹ Not applicable.

¹⁰ Imports from Singapore enter at a rate of 9.2¢/kg on magnesium content plus 2.1 percent *ad valorem*.

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

Pure magnesium in unwrought form⁶⁶ contains at least 99.8 percent magnesium by weight.⁶⁷ Alloy magnesium (or magnesium alloy) consists of magnesium and other metals, typically aluminum and zinc, containing less than 99.8 percent magnesium by weight but more than 50 percent magnesium by weight, with magnesium the largest metallic element in the alloy by weight. Alloy magnesium is typically produced to meet various industry-recognized American Society for Testing and Materials (“ASTM”) specifications for alloy magnesium such as AM50A, AM60B, and AZ91D.⁶⁸ “Off-specification pure” magnesium is magnesium that contains 50 percent or greater, but less than 99.8 percent, magnesium by weight, that does not conform to an ASTM specification for alloy magnesium.⁶⁹

Pure magnesium is widely used in commercial and industrial applications because it is easily machined and lightweight, has a high strength-to-weight ratio, and has special chemical and electrical properties. Pure magnesium also has special metallurgical and chemical properties that allow it to alloy well with metals such as aluminum. 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.

Alloy magnesium is principally used in structural applications, primarily in castings (die, permanent mold, and sand) and extrusions for the automotive industry. Alloy magnesium has certain properties that improve its strength, ductility, workability, corrosion resistance, density, or castability compared to pure magnesium. Pure magnesium is seldom used in structural applications, because its tensile and yield strengths are low.

Primary magnesium is magnesium produced by decomposing raw materials into magnesium metal. Secondary magnesium is magnesium produced by recycling magnesium-based scrap, containing less than 50 percent of primary magnesium.

Granular magnesium consists of all physical forms of unwrought magnesium other than ingots, such as raspings, turnings, granules, and powders.⁷⁰ Granular magnesium is typically used in the production of magnesium-based desulfurizing reagent mixtures that are used in the steelmaking process

⁶⁶ “Unwrought” magnesium is pure magnesium that has not been worked in any way. “Wrought” magnesium is magnesium that has been worked into a desired shape, for example the working of the magnesium to produce extrusions, rolled product, forgings, etc. Wrought magnesium is not within the scope of these reviews.

⁶⁷ Ultra-high purity (“UHP”) magnesium is unwrought magnesium containing at least 99.95 percent magnesium by weight and is used as a reagent in the pharmaceutical and chemical industries. Commodity-grade magnesium is unwrought magnesium containing at least 99.8 percent magnesium but less than 99.95 percent magnesium by weight and is most commonly used in the aluminum alloying industry.

⁶⁸ The ASTM specifications designate the chemical composition of the alloy. The first two letters designate the two alloying elements most prevalent in the alloy (e.g., “A” for aluminum, “M” for manganese, or “Z” for zinc), while the numbers represent the percent of other elements contained in the alloy, by weight. For example, AZ91D contains 9 percent aluminum, 1 percent zinc, and 90 percent magnesium.

⁶⁹ For purposes of these reviews on Canada, “off-specification pure” magnesium is classified as alloy magnesium since, by definition, it contains less than 99.8 percent magnesium by weight. However, for purposes of the review on China, “off-specification pure” magnesium is classified as pure magnesium by the definition of Commerce’s scope.

⁷⁰ Granular magnesium may be either pure or alloy magnesium. However, based on information obtained in the previous investigation on granular magnesium from China, granular magnesium is typically pure magnesium or “off-specification pure” magnesium (alloy magnesium not meeting ASTM specifications for alloy magnesium).

to reduce the sulfur content of steel.⁷¹ Lesser amounts of granular magnesium are used in defense applications, such as military ordnance and flares.

Figure I-1 presents examples of pure and alloy magnesium ingots. Figure I-2 presents shapes and specifications of selected US Magnesium's pure magnesium ingots. Figure I-3 presents shapes and specifications of selected US Magnesium's alloy magnesium ingots.

Figure I-1
Magnesium: Examples of magnesium ingots



Alloy magnesium ingots

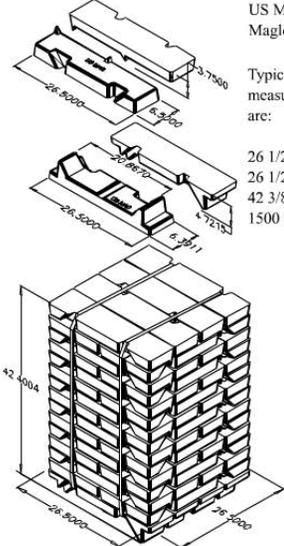
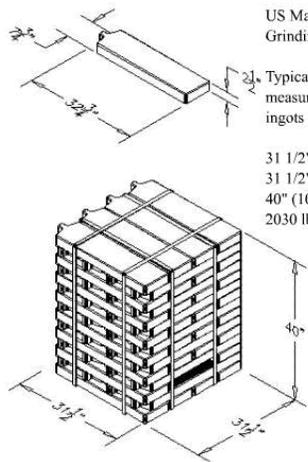
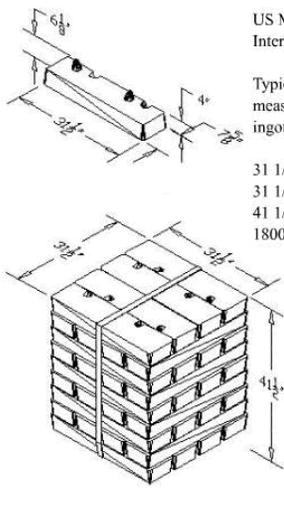
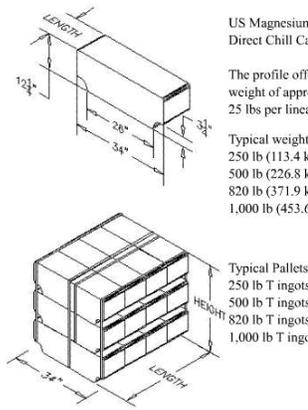


Pure magnesium T-Bar

Source: US Magnesium, retrieved at www.usmagnesium.com.

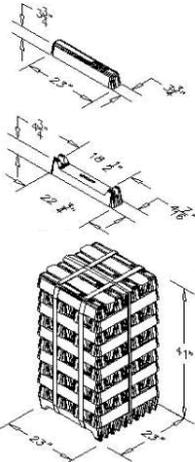
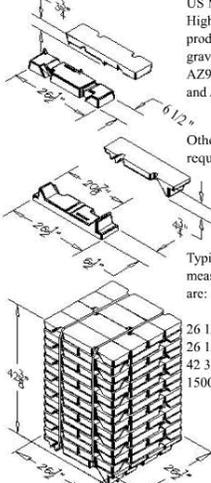
⁷¹ U.S. grinders typically sell three different steel desulfurization blends: (1) containing 90 percent pure magnesium powder and 10 percent lime; (2) containing 25 percent magnesium and 75 percent lime; and (3) containing 8-10 percent magnesium with the remainder lime and calcium carbonate. Fluorspar and a fluidizer are also incorporated in these products.

Figure I-2
Shapes and specifications of selected US Magnesium's pure magnesium ingots

Pure ingots (25 pounds)	Pure grinding slab (35 pounds)
 <p>US Magnesium® 25 lb. Maglock®</p> <p>Typical pallet measurements of 60 ingots are:</p> <p>26 1/2" (673 mm) long 26 1/2" (673 mm) width 42 3/8" (1076.3 mm) height 1500 lbs (680.4 kgs) weight</p>	 <p>US Magnesium® 35 lb. Grinding Slab</p> <p>Typical pallet measurements of 58 ingots are:</p> <p>31 1/2" (800 mm) long 31 1/2" (800 mm) width 40" (1016 mm) height 2030 lbs (921 kgs) weight</p>
<p>25 pound (11.3 kg) ingots are produced for situations where small ingots are preferred.</p>	<p>35 pound (15.8 kg) grinding slab ingots represent a specialty ingot shape designed for efficiency in grinding operations or where close packing of an alloying charge is required.</p>
Pure ingots (50 pounds)	Pure direct chill cast ingots
 <p>US Magnesium® 50 lb. Interlock</p> <p>Typical pallet measurements of 36 ingots are:</p> <p>31 1/2" (800 mm) long 31 1/2" (800 mm) width 41 1/2" (1054 mm) height 1800 lbs (816 kgs) weight</p>	 <p>US Magnesium® Direct Chill Cast</p> <p>The profile offers a weight of approximately 25 lbs per lineal inch.</p> <p>Typical weight and lengths are:</p> <p>250 lb (113.4 kg) - 10 1/4" long 500 lb (226.8 kg) - 20 1/2" long 820 lb (371.9 kg) - 33 1/4" long 1,000 lb (453.6 kg) - 41" long</p> <p>Typical Pallets:</p> <p>250 lb T ingots, 12 per pallet (shown) 500 lb T ingots, 6 per pallet 820 lb T ingots, 3 per pallet 1,000 lb T ingots, 3 per pallet</p>
<p>50 pound (22.6 kg) interlocking ingots make a tight, stable package and is generally used for processes requiring significant additions of magnesium.</p>	<p>Direct Chill Cast ingot is produced for situations where large additions of magnesium are required. Benefits include a low surface to volume ratio increases alloying efficiency, and low oxide contents maximize alloying efficiency and aluminum quality.</p>

Source: US Magnesium, retrieved at www.usmagnesium.com.

Figure I-3
Shapes and specifications of selected US Magnesium's alloy magnesium ingots

Alloy ingots (15 pounds)	Alloy ingots (25 pounds)
 <p>US Magnesium® 15 lb. Alloy Ingots are produced in high quality die and sand casting alloys such as AZ91D, AZ91E, AM50A, AM60B, AND AZ81A.</p> <p>Other alloys are available on request.</p> <p>Typical pallet measurements of 75 ingots are: 23" (584 mm) long 23" (584 mm) width 41" (1041 mm) height 1130 lbs (513 kgs) weight</p>	 <p>US Magnesium® Maglock® 25 lb. High Purity Alloy Ingots are produced in high quality die and gravity casting alloys such as AZ91D, AM50A, AM60B, AM20 and AZ91E.</p> <p>Other alloys are available on request.</p> <p>Typical pallet measurements of 60 ingots are: 26 1/2" (673 mm) long 26 1/2" (673 mm) width 42 3/8" (1076.3 mm) height 1500 lbs (680.4 kgs) weight</p>
<p>15 pound (6.8 kg) alloy ingots are produced in high quality die and sand casting alloys such as AZ91D, AZ91E, AM50A, AM60B, and AZ81A.</p>	<p>25 pound high purity alloy ingots are produced in high quality die and gravity casting alloys such as AZ91D, AM50A, AM60B, AM20 and AZ91E.</p>

Source: US Magnesium, retrieved at www.usmagnesium.com.

Manufacturing Process⁷²

Primary Magnesium

Worldwide, most magnesium is derived from magnesium-bearing ores (dolomite, magnesite, brucite, and olivine) or seawater and well and lake brines.⁷³ Large deposits of dolomite are widely distributed throughout the world, and dolomite is the principal magnesium-bearing ore found in the United States. Magnesium-bearing ores are mined the by the open-pit method. In the United States, the production of primary magnesium is currently solely from the extraction of magnesium from brines of the surface waters of the Great Salt Lake in Utah by US Magnesium, while former U.S. producer Northwest Alloys used dolomite in its process.^{74 75}

Magnesium metal is normally produced by either an *electrolytic process* or a *silicothermic process*, with the electrolytic process dominating in terms of the volume of United States and world

⁷² Information on the manufacturing process of magnesium was previously presented in *Magnesium From China and Russia*, Inv. Nos. 731-TA-1071-1072 (Final), USITC Publication 3763 (April 2005), and has been updated for these reviews.

⁷³ The magnesium content of magnesium-bearing ores typically ranges from nearly 22 percent for dolomite to 69 percent for brucite. The magnesium content of seawater is 0.13 percent, which is much lower than that of the lowest grade of magnesium ore deposits; however, seawater has the advantage of being abundant, accessible, and extremely uniform in its magnesium content, allowing for easier standardization of the refining process.

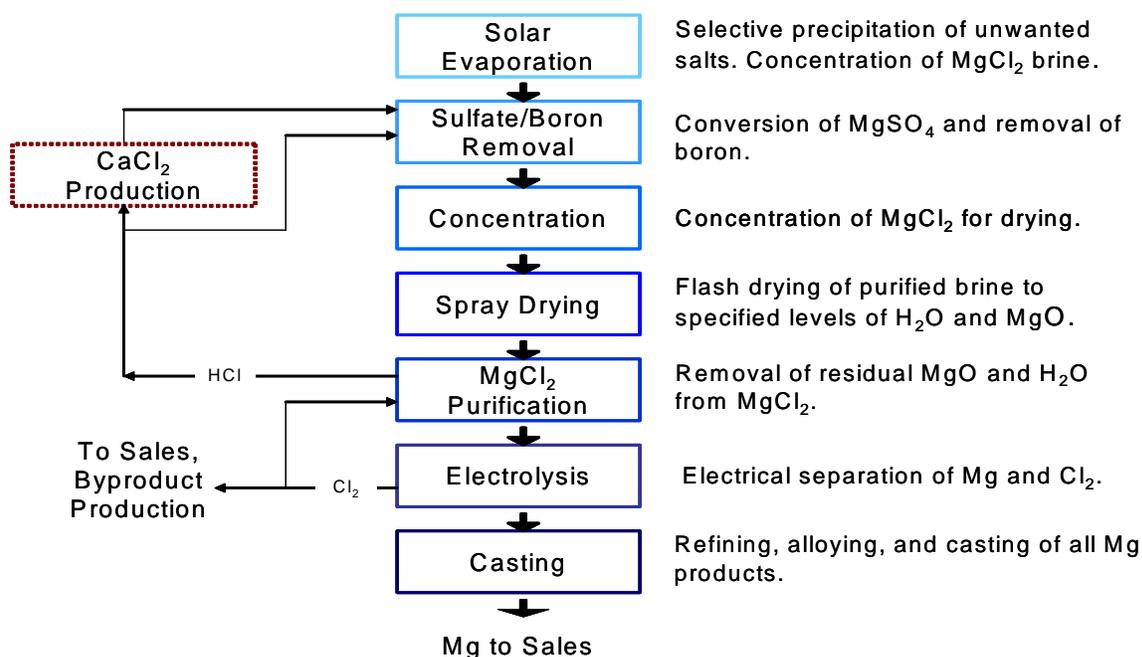
⁷⁴ Northwest Alloys ceased production of magnesium in October 2001.

⁷⁵ In Canada, a new process to recover magnesium from asbestos tailings was commercialized in 2000 by Noranda Magnesium (Deborah A. Kramer, *Magnesium, Its Alloys and Compounds*, U.S. Geological Survey Open-File Report 01-341, p. 23). However, in March 2003, Noranda announced the idling of its Métallurgie Magnola plant in Danville, Quebec for an indefinite duration. See company press release of Métallurgie Magnola, Inc., March 24, 2003. At present, it has not announced the reopening of this facility.

production. The silicothermic process (also known as the Pidgeon process) is used by a majority of the largest producers in China.⁷⁶ The silicothermic process is said to be less cost-effective than the electrolytic process for production of magnesium.⁷⁷

US Magnesium uses the electrolytic method to produce magnesium. A schematic diagram of US Magnesium's production process is presented in figure I-4. In the electrolytic process, seawater or brine is evaporated and treated to produce a concentrated solution of magnesium chloride, which is further concentrated and dried to yield magnesium chloride powder. The powder is then melted, further purified, and fed into electrolytic cells operating at 700° Celsius. Direct electrical current is sent through the cells to break down the magnesium chloride into chlorine gas and molten magnesium metal.⁷⁸ The metal rises to the surface where it is guided into storage wells and cast into ingots.

Figure I-4
Schematic diagram of US Magnesium's production process flow chart



Source: *Mining Best Practices Case Study*, Office of Industrial Technologies, Energy Efficiency and Renewable Energy, U.S. Department of Energy, August 2001, and *Modernization of the US Magnesium Electrolysis System*, US Magnesium handout during plant tour, March 16, 2006.

⁷⁶ The raw material source for silicothermic production in China is dolomite (MgCO₃•CaCO₃). Deborah Kramer, *Magnesium, Its Alloys and Compounds*, U.S. Geological Survey Open-File Report 01-341, pp. 11-12.

⁷⁷ See testimony of Mr. Ozzie Wilkinson, Manager, Public Affairs, Northwest Alloys, Inc., transcript of hearing in *Magnesium From China and Russia*, Inv. Nos. 701-TA-403 and 731-TA-895-896 (Final), pp. 148 and 174.

⁷⁸ The electrolytic cells must be kept in constant operation. If they are shut down, a "refractory lining" requires rebuilding which is costly and time consuming.

As part of a \$50 million effort begun in 1998 to modernize its magnesium-making capacity,⁷⁹ US Magnesium began in 2000 to replace its older cell technology with newer third-generation “M-cell”⁸⁰ technology developed by the company. The company replaced ***.⁸¹ ***.⁸² ***.⁸³

According to US Magnesium, cell improvements have permitted the firm to achieve the following cost reductions:

- **Electrical power:** ***;
- **Manpower:** ***;
- **Maintenance:** ***; and
- **Chlorine emissions:** ***.⁸⁴

In the silicothermic process, magnesium-bearing ores, typically dolomite, are the primary feed material. Calcined dolomite, ferrosilicon, and alumina are ground, heated, and briquetted. The briquets are subsequently reduced in a heated vacuum, producing magnesium vapor. The vapor is crystallized in a condensing chamber, melted, and ladled into casting forms. Northwest Alloys produced magnesium metal using the silicothermic process.

Once the electrolytic or silicothermic reduction of magnesium is completed, the manufacturing processes used for the production of both pure and alloy magnesium ingot are very similar. In the U.S.

⁷⁹ In addition to the installation of more energy efficient and environmentally friendly electrolytic “M-cell” technology, the modernization efforts included installation of a melt purification system, the addition of new and larger transport vehicles, and installation of a direct chill caster. (Robert E. Brown, “M-Cell Modernization Improves US Magnesium Process and Environmental Performance,” *Light Metal Age*, June 2003, p. 2.) According to US Magnesium, implementation of its modernization plan has resulted in a ***-percent reduction in overall production costs.

⁸⁰ M-cell technology uses large, specially-treated electrodes, a reduced inter-electrode distance, and channeled magnesium collection to optimize magnesium production. US Magnesium believes the operating characteristics of its M-cells rival the most advanced designs currently available in the industry. (Robert E. Brown, *M-Cell Modernization Improves US Magnesium Process and Environmental Performance*, *Light Metal Age*, June 2003, p. 5.)

⁸¹ ***.

⁸² US Magnesium’s prehearing brief, p. 37.

⁸³ ***. US Magnesium’s response to the Commission’s producers’ questionnaire, attachment A. *See also* domestic interested party response to the Canada notice of institution, August 22, 2005, p. 13, and US Magnesium’s prehearing brief, p. 4.

“Startup of the new cells . . . has been delayed . . . if prices return to fair market levels {US Magnesium} would be able to complete the ongoing expansion to . . . 73,000 metric tons.” (Hearing transcript, p. 22 (Legge).) “The purpose of the capacity expansion is to improve US Magnesium’s efficiency on a per-unit basis, spreading fixed costs over a larger volume of production . . . revocation of the orders would prevent {US Magnesium} from being able to complete the modernization project and stymie its ability to improve its cost efficiency.” (US Magnesium’s posthearing brief, p. 10 and hearing transcript, pp. 19-22 (Legge).)

⁸⁴ According to US Magnesium, chlorine releases have been reduced by more than 90 percent as a result of its modernization efforts. *See* conference transcript (Legge), *Magnesium From China and Russia*, Inv. Nos. 731-TA-1071-1072 (Preliminary), pp. 19-20.

facility that produces both pure magnesium and alloy magnesium (US Magnesium's facility), the same production workers tend to work on both lines.⁸⁵

Primary magnesium is typically cast into ingots or slabs. Aluminum producers typically purchase larger pure cast shapes such as rounds, billets, peg-lock ingots, or T-shapes. Producers of magnesium powder for steel desulfurization applications typically purchase smaller ingots or magnesium "chips" that are then ground into powder⁸⁶ and used internally to produce magnesium-based reagent mixtures or, to a lesser extent, pyrotechnic products. Diecasters can purchase ingots and granular primary alloy magnesium for use in magnesium alloy castings, and/or recycle scrap magnesium generated in their diecasting operations into secondary alloy magnesium.

Secondary Magnesium⁸⁷

Secondary magnesium is produced from recycling magnesium-based "scrap."⁸⁸ Magnesium scrap arrives at the recycler either in a loose form or contained in boxes. After the magnesium is separated from other alloys by the recycler, the sorted magnesium is heated in a steel crucible to nearly 675 degrees Celsius. Alloying elements such as aluminum, manganese, or zinc can then be added to the liquid magnesium and the alloyed magnesium can then be transferred to ingot molds by hand ladling, pumping, or tilt pouring. Magnesium scrap can also be generated by the direct grinding of scrap into powder for iron and steel desulfurization applications. Finally, recycled aluminum alloys that contain magnesium such as used aluminum beverage cans typically remain with the recycled can since virtually all aluminum beverage can scrap is melted and converted into body stock and then converted into new aluminum beverage cans.⁸⁹

"Off-Specification Pure" Magnesium

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium, or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8 percent by weight. "Off-specification pure" magnesium products contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, do not conform to ASTM specifications for alloy magnesium, and generally do not contain individually or in combination, 1.5 percent or more, by weight, of the following alloying elements:

⁸⁵ In its petition of February 27, 2004, in *Magnesium From China and Russia*, Inv. Nos. 731-TA-1071-1072 (Final), US Magnesium noted that "{t}he core production process of pure and alloy magnesium is the same, up to the point when alloys are added to pure magnesium to make alloy magnesium, an additional step that adds relatively little value. The companies that make both pure and alloy magnesium do so using the same machinery, equipment, and workers for both" (p. 19).

⁸⁶ Magnesium chips are ground into powder using a particle reduction process. Magnesium powder can also be produced by atomization of molten pure magnesium; however, this technique is less frequently used than grinding.

⁸⁷ Information from this section is drawn from Deborah A. Kramer, *Magnesium Recycling in the United States in 1998*, Flow Studies for Recycling Metal Commodities in the United States, pp. E5-E6.

⁸⁸ Magnesium-based scrap is typically divided into one of two categories. Old magnesium-based scrap consists of postconsumer scrap such as automotive parts, helicopter parts, lawnmower decks, and used tools. Old magnesium-base scrap is sold to scrap processors. New magnesium-based scrap typically falls into one of four types. Type I is high-grade scrap recovered from diecasting operations and uncontaminated with oils. Types II, III, and IV are lower-grade scraps, typically either oil-contaminated scrap, dross from magnesium-processing operations, and chips and fines. Type I scrap is either reprocessed at the diecasting facility or sold to a scrap processor. The other types of scrap are either used directly in steel desulfurization applications (chips and fines) or sold to scrap processors.

⁸⁹ Aluminum beverage can manufacturers are sensitive to the presence of beryllium in melted scrap. Therefore, these firms generally do not purchase recycled alloy magnesium produced from scrap.

aluminum, manganese, zinc, silicon, thorium, zirconium, and rare earths.⁹⁰ No U.S. producers reported producing “off-specification pure” magnesium.⁹¹

DOMESTIC LIKE PRODUCT ISSUES

In making determinations under section 751(c) of the Act, the Commission defines the “domestic like product” and the “industry.”⁹² The Act defines the “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”⁹³ The Commission’s practice in five-year reviews is to look to the like product definition from the original determinations and any previous reviews and consider whether the record indicates any reason to revisit that definition.

The Commission’s Previous Like Product Determinations Concerning Magnesium From Canada

In the original investigations, the Commission found a single domestic like product consisting of pure and alloy magnesium,⁹⁴ and a single domestic industry composed of producers of pure and alloy magnesium.⁹⁵ The respondents to the investigations subsequently challenged the Commission’s final determinations before a United States-Canada Binational Panel.⁹⁶ In August 1993, the Panel remanded the Commission’s determinations,⁹⁷ instructing the Commission to provide, on remand—

*. . . a detailed explanation as to (1) whether the U.S. industry producing pure magnesium is materially injured or threatened with material injury by reason of dumped or subsidized imports of pure magnesium from Canada and (2) whether the U.S. industry producing alloy magnesium is materially injured or threatened with material injury by reason of subsidized imports of alloy magnesium from Canada.*⁹⁸

⁹⁰ See Commerce’s China scope definition (71 FR 580, January 5, 2006).

⁹¹ Typically, producers do not set out to produce “off-specification pure” magnesium. Rather, its production results from starting or re-starting the primary magnesium production process, or is the result of some malfunction in the production process.

⁹² 19 U.S.C. § 1677(4)(A).

⁹³ 19 U.S.C. § 1677(10). The Commission’s decision regarding the appropriate domestic products that are “like” the subject imported products is based on a number of factors including (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price. No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations.

⁹⁴ Commerce divided the subject merchandise into two different classes or kinds of merchandise, pure magnesium and alloy magnesium (57 FR 30946, July 13, 1992).

⁹⁵ *Magnesium From Canada*, Inv. Nos. 701-TA-309 and 731-TA-528 (Final), USITC Publication 2550 (August 1992), p. 11.

⁹⁶ See Article 1904 of the United States-Canada Free-Trade Agreement (FTA).

⁹⁷ *In the Matter of Magnesium from Canada*, Case Nos. USA-92-1904-05 and USA 92-1904-06 (August 27, 1993) (Remand).

⁹⁸ Panel Decision at 29.

Pursuant to the Panel's instructions, the Commission issued remand determinations based on the existence of two separate industries—one producing pure magnesium and the second producing alloy magnesium.⁹⁹ In January 1994, the Panel affirmed the Commission's remand determinations.¹⁰⁰

In the initial five-year reviews in 2000, the Commission concluded that there had been no significant changes in the characteristics and uses for pure and alloy magnesium since the original investigations and reaffirmed its remand findings of two separate like products—pure magnesium and alloy magnesium—and accordingly defined two domestic industries composed respectively of the domestic producers of pure magnesium and the domestic producers of alloy magnesium.¹⁰¹

In the initial five-year reviews, no party challenged the Commission's earlier domestic like product or domestic industry determinations.¹⁰² Likewise, in these second five-year reviews, no party challenged the Commission's earlier domestic like product or domestic industry determinations in their responses to the notice of institution.¹⁰³ However, in its determination to conduct full reviews in these second five-year reviews, the Commission stated that conducting full reviews would enable it to consider the definition of the domestic like product in light of the fact that in April 2005, the Commission found a single domestic like product encompassing both pure and alloy magnesium in its determinations concerning imports of alloy magnesium from China and pure and alloy magnesium from Russia, and found one domestic industry consisting of all producers of magnesium.¹⁰⁴

The Commission's Previous Like Product Determinations Concerning Magnesium From China

The subject merchandise in the original investigation consisted of pure and alloy magnesium. In its preliminary determinations, the Commission found that pure and alloy magnesium constituted a single like product. However, in its final determinations, the Commission found two separate domestic like products—pure magnesium and alloy magnesium—corresponding to each class or kind defined by Commerce,¹⁰⁵ and accordingly defined two domestic industries composed respectively of the domestic producers of pure magnesium and the domestic producers of alloy magnesium.¹⁰⁶ The Commission also found the domestic product like the imported pure magnesium to include “off-specification pure”

⁹⁹ *Magnesium from Canada*, Inv. Nos. 701-TA-309 and 731-TA-528 (Final) (Remand), USITC Publication 2696 (October 1993), p. 1.

¹⁰⁰ *In the Matter of Magnesium from Canada*, Case Nos. USA-92-1904-05 and USA 92-1904-06 (January 27, 1994).

¹⁰¹ *Magnesium From Canada*, Inv. Nos. 701-TA-309-A-B and 731-TA-528 (Review), USITC Publication 3324 (July 2000), pp. 8-9.

¹⁰² *See Magnesium from China and Russia*, Inv. Nos. 731-TA-1071 and 1072 (Final), USITC Publication 3346 (August 2000), p. 5.

¹⁰³ *See* response of domestic interested party, August 22, 2005. *See also*, response of the GOQ, August 22, 2005.

¹⁰⁴ *See Magnesium from China and Russia*, Inv. Nos. 731-TA-1071 and 1072 (Final), USITC Publication 3763 (April 2005), p. 11. Commissioners Marcia E. Miller and Jennifer A. Hillman found granular magnesium to be a separate domestic like product. *Ibid.*, pp. 3, 6-7.

¹⁰⁵ *Magnesium From China, Russia, and Ukraine*, Inv. Nos. 731-TA-696-698 (Final), USITC Publication 2885 (May 1995), pp. 7-8.

¹⁰⁶ *Ibid.*, p. 10.

magnesium.^{107 108} The Commission made affirmative final determinations with respect to imports of pure magnesium from China, Russia, and Ukraine, and negative final determinations with respect to imports of alloy magnesium from China and Russia.¹⁰⁹

In the initial expedited five-year review, which concerned pure magnesium only, the Commission defined the domestic like product as pure magnesium, including “off-specification pure” magnesium, coextensive with Commerce’s scope definition, and found the domestic industry to consist of all domestic producers of pure magnesium.¹¹⁰ No party challenged the Commission’s original domestic like product or domestic industry determinations.¹¹¹

In this second five-year review, US Magnesium contends that U.S. producers of secondary magnesium should be included in the U.S. industry. Respondent Norsk Hydro contends that pure magnesium and alloy magnesium are separate domestic like products.

Pure vs. Alloy Magnesium¹¹²

In the original Canada, China, Russia, and Ukraine investigations concerning imports of pure and alloy magnesium, the Commission addressed the issue of whether pure magnesium and alloy magnesium represent a single domestic like product or separate domestic like products.

In previous investigations and sunset reviews involving both pure and alloy magnesium, and in the Commission’s determinations in the preliminary antidumping duty investigations concerning magnesium from China and Russia in April 2004, the Commission generally found pure and alloy magnesium to be separate domestic like products.¹¹³ In these prior cases, Commerce found two classes or kinds of merchandise.¹¹⁴ The Commission found that although the companies that produced both pure and alloy magnesium did so with the same machinery and employees, and pure and alloy magnesium shared certain physical characteristics, the two products in the past had different principal end uses, were targeted for distinct markets, were generally not interchangeable, were perceived differently by

¹⁰⁷ *Ibid.*, p. 9.

¹⁰⁸ “Off-specification pure” magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium, or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8 percent by weight. “Off-specification pure” magnesium products contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, do not conform to ASTM specifications for alloy magnesium, and generally do not contain individually or in combination, 1.5 percent or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium, and rare earths (61 FR 16437, March 30, 1995).

¹⁰⁹ *Magnesium From China, Russia, and Ukraine*, Inv. Nos. 731-TA-696-698 (Final), USITC Publication 2885 (May 1995), p. 3.

¹¹⁰ *Magnesium From China*, Inv. No. 731-TA-696 (Review), USITC Publication 3346 (August 2000), pp. 4-5.

¹¹¹ *Ibid.* There was no respondent group response to the Commission’s notice of institution in the initial five-year review.

¹¹² Information on the domestic like product issue of pure vs. alloy magnesium was previously presented in *Magnesium From China and Russia*, Inv. Nos. 731-TA-1071-1072 (Final), USITC Publication 3763 (April 2005) and has been updated for these reviews.

¹¹³ See *Magnesium from Canada*, Inv. Nos. 701-TA-309 and 731-TA-528 (Final), USITC Publication 1992 (Aug. 1992) at 8-11; *Magnesium from China, Russia, and Ukraine*, Inv. Nos. 731-TA-696-698 (Final), USITC Publication 2885 (May 1995) at 7-9; *Magnesium from Canada*, Inv. Nos. 701-TA-309-A-B and 731-TA-528 (Review), USITC Publication 3324 (July 2000) at 5-6; and *Pure Magnesium from China*, Inv. No. 731-TA-696 (Review), USITC Publication 3346 (August 2000) at 4-5.

¹¹⁴ In the original magnesium from Canada investigations, the Commission initially found a single like product but on remand from a binational panel found pure and alloy magnesium to be separate like products.

customers due to their different end uses, and had different price trends as a result of their different markets.¹¹⁵ However, Commerce defined the scope of subject merchandise in the 2005 Russia investigation as a single class or kind of merchandise encompassing both pure and alloy magnesium.¹¹⁶ Based on the record in that investigation, and in the concurrent investigation on alloy magnesium from China, the Commission concluded that circumstances had changed sufficiently so as to blur the dividing line between pure and alloy magnesium, and to warrant treating pure and alloy magnesium as a single domestic like product.

The Commission found that circumstances warranted conducting full second reviews for Canada and China in part to consider the definition of the domestic like product for the purposes of these reviews. The following discussion of domestic like product factors focuses on the issue of pure vs. alloy magnesium.

Physical Characteristics and Uses

Pure magnesium contains not less than 99.8 percent magnesium by weight. It is typically sold to end users who then combine it with other elements, typically aluminum, for use in a final product. A magnesium ingot in its pure state generally has little direct commercial application except when alloyed.¹¹⁷

Alloy magnesium consists of chemical combinations of magnesium and other materials in which the magnesium content is 50 percent or greater but less than 99.8 percent by weight, whether or not conforming to an ASTM specification for magnesium alloy. Alloy magnesium has a high strength-to-weight ratio and is easily machined, making it ideal for use in a number of structural components; for example, the alloying elements contained in alloy magnesium are critical in imparting to the product the structural characteristics necessary for use in diecasting applications.

Common Manufacturing Facilities and Production Employees

For US Magnesium, the only current U.S. producer of pure magnesium, the production process for pure and alloy magnesium is identical to the point when alloys are added to the pure magnesium to make alloy magnesium. US Magnesium makes both pure and alloy magnesium using the same machinery, equipment, and workers.¹¹⁸ Producers of secondary magnesium produce only alloy magnesium, and thus their production facilities are only for alloy magnesium.¹¹⁹

¹¹⁵ E.g., *Magnesium from China, Russia, and Ukraine*, inv. Nos. 731-TA-696-698 (Final), USITC Publication 2885 (May 1995), pp. 8-9.

¹¹⁶ As noted, alloy magnesium from China is already under order and is not subject merchandise here.

¹¹⁷ Norsk Hydro in its prehearing brief argued that “Although pure magnesium has ‘special chemical properties’ that allow it to alloy well . . . it is important to note that pure magnesium’s use as an alloying agent is wholly distinct from its use as the primary input in alloy magnesium . . . thus the use of the word ‘alloy’ . . . should not lead {to the conclusion} . . . that magnesium alloy and pure magnesium share common characteristics” (Norsk Hydro’s prehearing brief, p. 3).

¹¹⁸ US Magnesium indicated that a switch of production from alloy to pure would require a 12-hour shift to “flush” the alloying elements out of the system in order to produce pure magnesium. It also stated that switching from pure to alloy takes considerably less time. Hearing transcript (Legge), *Magnesium From China and Russia*, Inv. Nos. 731-TA-1071-1072 (Final), pp. 93-94.

¹¹⁹ Norsk Hydro in its prehearing brief analyzed the entire production stream for pure and alloy to include secondary alloy magnesium. In doing so it indicated that because *** of alloy production occurs at *** and their employees and facilities are distinctly different from *** that there is no overlap in the production process between alloy and pure magnesium (Norsk Hydro’s prehearing brief, p. 4).

Interchangeability

Pure magnesium and alloy magnesium generally have different end uses, but there is an overlap in that both pure magnesium and alloy magnesium produced in the United States have been used by aluminum producers.¹²⁰ Pure magnesium is generally used in aluminum alloys and in certain other applications because of its special metallurgical and chemical properties.¹²¹ At the same time, pure magnesium's lack of structural integrity excludes it from structural applications served by alloy magnesium, which is primarily used in diecasting of various structural parts for automobiles. Because of the need for structural integrity, automotive manufacturers must certify that suppliers possess both the physical equipment and the technical ability to produce automotive-grade alloy magnesium.

Customer and Producer Perceptions

Historically, customers of domestically produced pure magnesium were largely distinct from customers of domestically produced alloy magnesium. However, aluminum alloyers, which historically purchased solely pure magnesium for its metallurgical properties as it alloys well with aluminum, have also purchased alloy magnesium. Other firms, such as pharmaceutical manufacturers and nuclear fuel producers, purchase pure magnesium for its chemical properties. On the other hand, customers, principally automotive diecasters, purchase alloy magnesium because of its structural and mechanical properties.

Channels of Distribution

The vast majority of pure and alloy magnesium is transported directly from a magnesium production facility (in the case of U.S. producers) and from a distribution or warehouse center (in the case of the imported product) to end users in full truckload lots by either contract or common carriers, with lesser amounts transported by rail. Most pure magnesium ingots are shipped in standard 12-, 25-, 50-, 250-, and 500-pound bar sizes; most alloy magnesium ingots are shipped in standard 12-, 25-, and 50-pound bar sizes. Alloy ingots may vary somewhat in dimension as some diecasters require bar of a certain dimension to fit the specific configuration of their furnace. In 2005, domestically produced pure

¹²⁰ See table III-5 in Part III of this report presenting U.S. producers' domestic commercial shipments of pure and alloy magnesium by end user.

¹²¹ US Magnesium indicated that the substitutability of alloy magnesium by aluminum manufacturers is a relatively new practice that accelerated during the period examined as antidumping duties were recently (in 1995 and 2001) imposed on pure magnesium from China. Petitioners' posthearing brief, *Magnesium From China and Russia*, Inv. Nos. 731-TA-1071-1072 (Final), p. 5.

US Magnesium testified at the hearing that pure and alloy magnesium are interchangeable and that because price is the determining factor "when" they are interchangeable does not change the fact that they "are" interchangeable (hearing transcript, p. 30 (Tissington)). US Magnesium further testified that large aluminum producers use pure and alloy magnesium interchangeably, based on price. "Alcoa, which is the largest aluminum producer in the {United States}, stated at a hearing before the Department of Commerce in the recent investigation of imports from China and Russia that it was using AM50A alloy magnesium to produce aluminum alloys. Alcoa began using it because it was 'cheaper than pure' (hearing transcript, p. 28 (Tissington)). Alcan was also highlighted as "stat{ing} explicitly that Alcan was using secondary alloy magnesium" (hearing transcript, p. 29 (Tissington)).

magnesium was *** sold to aluminum producers, whereas a *** of U.S. producers' alloy magnesium was sold to diecasters (*see* figure III-2 in Part III of this report).¹²²

Price

Prices for pure magnesium and alloy magnesium obtained in these reviews are presented in Part V of this report. Price data were requested for two products: (1) pure magnesium ingot containing at least 99.8 percent magnesium by weight but less than 99.95 percent magnesium by weight; and (2) alloy magnesium ingot containing no more than 9 percent aluminum and 1 percent zinc by weight. U.S. producers and importers were asked to provide quarterly data by product and by end user (aluminum producers, magnesium granule producers, diecasters, and others).

Primary vs. Secondary Magnesium¹²³

In the most recent China and Russia investigations, the Commission addressed the domestic like product issue concerning primary vs. secondary alloy magnesium.¹²⁴ The Commission noted that “virtually all secondary production is of alloy magnesium . . . if secondary magnesium is compared with primary alloy magnesium, it is clear that the products are similar in terms of physical characteristics and uses, interchangeability, customer and producer perceptions, channels of distribution, and price.” The Commission further noted, however, that “the products are not like each other in terms of manufacturing facilities and employees, because primary magnesium is made by US Magnesium through the primary production process (i.e., by decomposing raw materials into magnesium metal) whereas secondary magnesium is made, largely by firms other than US Magnesium, through a recycling process.” The Commission also noted that “if secondary magnesium is compared with all primary magnesium (i.e., pure and alloy magnesium) the similarities between primary and secondary products become more attenuated because of the differences between pure and alloy magnesium.” The Commission ultimately found that primary and secondary magnesium are part of the same domestic like product and that secondary magnesium is part of the domestic like product consisting of alloy magnesium.¹²⁵ The following discussion of domestic like product factors focuses on the issue of primary magnesium vs. secondary magnesium.

Physical Characteristics and Uses

Most primary and secondary alloy magnesium is similar physically and chemically. However, higher purity secondary alloy magnesium, typically produced from scrap recovered from used automotive parts, is acceptable for use in automotive diecasting applications.

¹²² Norsk Hydro in its prehearing brief contends that end uses should determine when distribution channels overlap, and that *** (Norsk Hydro's prehearing brief, p. 4).

¹²³ Information on the domestic like product issue of primary vs. secondary magnesium was previously presented in *Magnesium From China and Russia*, Inv. Nos. 731-TA-1071-1072 (Final), USITC Publication 3763 (April 2005), and has been updated for these reviews.

¹²⁴ *Magnesium From China and Russia*, Invs. Nos. 731-TA-1071-1072 (Preliminary), USITC Publication 3685 (April 2004), p. 10. Petitioners contended that primary and secondary magnesium are a single domestic like product. Petitioners' prehearing brief, pp. 32-38. Respondents did not comment on primary magnesium versus secondary magnesium.

¹²⁵ *Ibid.*

Common Manufacturing Facilities and Production Employees

Primary and secondary alloy magnesium are normally produced in separate facilities using separate production processes and employees. Only US Magnesium currently produces primary magnesium in the United States, using magnesium-bearing brine from the Great Salt Lake in Utah as the raw material. Secondary alloy magnesium is produced by recyclers from delivered scrap which is melted in a steel crucible.

Interchangeability and Channels of Distribution

Primary and secondary alloy magnesium can be used interchangeably in automotive diecasting applications if appropriate methods are utilized to assure the purity of the secondary magnesium by removing impurities such as copper. Primary and secondary alloy magnesium are generally sold directly to end users through common channels of distribution.

Customer and Producer Perceptions

Because primary and higher-purity secondary alloy magnesium are largely identical products and are interchangeable for the same purposes, principally automotive diecastings, neither consumers nor producers perceive them to be significantly different products. Lower-purity secondary alloy magnesium, which does not meet ASTM specifications, is not interchangeable with primary magnesium for use in automotive (structural) applications because of potential contamination problems. For many other non-structural magnesium applications, low-purity secondary alloy magnesium is interchangeable with primary magnesium. Aluminum beverage can manufacturers can elect not to purchase secondary alloy magnesium because of the presence of beryllium in the scrap used to produce the secondary alloy magnesium.

Cast vs. Granular Magnesium¹²⁶

In the most recent China and Russia investigations, the Commission also addressed the domestic like product issue concerning cast versus granular magnesium.¹²⁷ The Commission noted that in a prior investigation on magnesium it had found that granular and ingot (cast) magnesium are produced in a continuum of forms and sizes, without any clear dividing line, that they share the same chemical properties, are sold through similar channels of distribution, are interchangeable at least for significant end uses (particularly in desulfurization), and use the same manufacturing facilities and employees up to the grinding stage.^{128 129} Citing a lack of evidence that the domestic like product analysis had changed in

¹²⁶ Information on the domestic like product issue of cast vs. granular magnesium was previously presented in *Magnesium From China and Russia*, Inv. Nos. 731-TA-1071-1072 (Final), USITC Publication 3763 (April 2005), and has been updated for these reviews.

¹²⁷ *Magnesium From China and Russia*, Invs. Nos. 731-TA-1071-1072 (Preliminary), USITC Publication 3685 (April 2004), p. 10. Petitioners contend that cast and granular magnesium are a single domestic like product. Petitioners' prehearing brief, pp. 38-40. Respondents did not comment on cast magnesium versus granular magnesium.

¹²⁸ *Magnesium From China and Israel*, Invs. Nos. 701-TA-404 and 731-TA-895-896 (Final), USITC Publication 3467 (November 2001), pp. 8-9.

¹²⁹ Grinder *** argued that grinders are not part of the domestic magnesium production industry. It further emphasized that grinders simply change the form of ingot magnesium into powdered magnesium, providing a service to end users, and do not produce primary pure magnesium.

any way since the prior magnesium investigation, the Commission again found that cast and granular magnesium are part of the same domestic like product.¹³⁰ The following discussion of domestic like product factors focuses on the issue of cast magnesium versus granular magnesium.

Physical Characteristics and Uses

The chemical compositions of cast and granular magnesium are identical since granular magnesium is typically ground from cast magnesium.

Common Manufacturing Facilities and Production Employees

The production facilities, processes, and employees of cast and granular magnesium do not overlap. Granular production facilities (firms known as “grinders”) purchase cast ingot pure magnesium, transform the physical shape by grinding it, and then sell powdered/granule magnesium to end users. Conversely, casters of magnesium extract magnesium from raw materials and cast it into primary pure magnesium ingots.

Interchangeability

Cast and granular magnesium are not considered to be interchangeable as inputs for ultimate use in the iron and steel desulfurization market. Cast or granular pure magnesium must first be shipped to grinders, ground into powder per customer specifications, and then sold to the iron and steel industry. Iron and steel desulfurization customers do not have the capability to grind cast magnesium.

Customer and Producer Perceptions

Producers of reagents, also known as grinders for iron and steel desulfurization customers, perceive both granular and cast magnesium as potentially usable in the production of these reagents because they are able to grind cast magnesium to the appropriate size requirements. Iron and steel desulfurization customers do not perceive cast and granular magnesium to be the same product.¹³¹

U.S. MARKET PARTICIPANTS

U.S. Producers

During 2000-05, there were two U.S. producers of primary magnesium (pure and alloy magnesium), US Magnesium and Northwest Alloys.¹³² In 2001, Northwest Alloys ceased production of magnesium, leaving US Magnesium as the sole remaining U.S. producer of primary magnesium. The Commission received questionnaire responses from both firms.

There were four known U.S. producers of secondary alloy magnesium (remelted from scrap) during 2000-05 that sold magnesium commercially, namely Advanced Magnesium Alloys Corp.

¹³⁰ *Magnesium From China and Russia*, Invs. Nos. 731-TA-1071-1072 (Preliminary), USITC Publication 3685 (April 2004), p. 11.

¹³¹ Staff telephone conversation with ***, April 20, 2006.

¹³² Northwest Alloys, a subsidiary of Alcoa Inc., Pittsburgh, PA, produced *** for its aluminum operations, while captively consuming *** of its annual production.

("Amacor"); Garfield Alloys, Inc.; Halaco Engineering, Inc.; and MagReTech, Inc. Of these firms, only Amacor and MagReTech currently produce secondary magnesium, as Garfield Alloys' production facility was destroyed in a fire on December 29, 2003 and Halaco Engineering filed for chapter 11 bankruptcy protection on July 24, 2002 and ceased production of magnesium on September 23, 2004. MagReTech ***. *** provided responses to the Commission's questionnaire; ***.

In addition to firms such as Amacor and MagReTech that sell secondary alloy magnesium commercially, several diecasters have produced secondary alloy magnesium from scrap for use in their own diecasting operations, namely Gibbs Die Casting, Inc.;¹³³ Meridian Technologies, Inc.; Spartan Light Metal Products, Inc.; and possibly others.¹³⁴ Of these, only Spartan provided a full response to the Commission's questionnaire, despite staff efforts to obtain full responses from the other firms.¹³⁵ The Commission considered diecasters to be domestic producers of secondary magnesium in its views in the 2004-05 investigations on alloy magnesium from China and pure and alloy magnesium from Russia.¹³⁶

There are also several magnesium grinders in the United States (e.g., Hart Metals, Inc.; Magnesium Technologies, Inc., and Reade Manufacturing, Inc.) that purchase magnesium ingot, slab, or granules (typically pure magnesium), and grind magnesium for use in the production of reagents or other magnesium-containing products. No grinders provided data in response to the Commission's questionnaire,¹³⁷ *** and *** returned the first page of the Commission's questionnaire and indicated that they are not producers of magnesium. The Commission considered grinders to be domestic producers of magnesium in its views in the 2004-05 investigations on alloy magnesium from China and pure and alloy magnesium from Russia.¹³⁸

U.S. Importers

The Commission sent importers' questionnaires to 35 firms believed to import pure or alloy magnesium from Canada. Nine of 16 responding firms reported importing magnesium from Canada. *** imports from Canada were from ***.

¹³³ Gibbs ***.

¹³⁴ In recent investigations on alloy magnesium from China and pure and alloy magnesium from Russia, the Commission considered diecasters to be domestic producers of magnesium. *See Magnesium from China and Russia*, investigation Nos. 731-TA-1071-1072 (Final), USITC Publication 3763 (April 2005), p. 12, fn. 62.

¹³⁵ Questionnaires were mailed to diecasting companies; most returned a "no" response, indicating that they do not produce magnesium. Based on last year's finding that diecasters are U.S. producers of magnesium, staff contacted diecasting companies both directly and through their counsel to obtain additional information on their operations. To date, Spartan is the only company that provided full information. *** provided information on its internal consumption of magnesium ingot derived by it from scrap.

¹³⁶ *See Magnesium from China and Russia*, Inv. Nos. 731-TA-1071 and 1072 (Final), USITC Publication 3763 (April 2005), p. 12, fn. 62.

¹³⁷ Questionnaires were mailed to grinders; most returned a "no" response, indicating that they do not produce magnesium but rather provide a service to end users by transforming cast pure magnesium into powdered magnesium. Based on last year's finding, staff contacted grinders both directly and through their counsel to get additional information on their operations. *** is the only company that has provided information, but not actual data.

¹³⁸ *See Magnesium from China and Russia*, Inv. Nos. 731-TA-1071 and 1072 (Final), USITC Publication 3763 (April 2005), pp. 11-12. Commissioners Jennifer A. Hillman and Marcia E. Miller found that although grinders engage in sufficient production-related activity to be considered domestic producers, grinders were a separate industry from the industry producing pure and alloy magnesium because granular magnesium was found to be a separate domestic like product by those two Commissioners. *See Magnesium from China and Russia*, investigation Nos. 731-TA-1071-1072 (Final), USITC Publication 3763 (April 2005), pp. 11-12 and fn. 58. Granular magnesium is excluded from the scopes of the antidumping duty and countervailing duty orders in the current second reviews.

The Commission sent importers' questionnaires to 40 firms believed to import pure or alloy magnesium from China.¹³⁹ No responding importer reported importing pure magnesium from China.¹⁴⁰ According to Customs, ***.

U.S. Purchasers

The Commission sent purchasers' questionnaires to approximately 60 firms believed to have purchased pure or alloy magnesium during the period 2000-05. Responses were received from 25 firms that purchased pure or alloy magnesium during this period. Based on questionnaire responses, the three largest reporting U.S. purchasers of pure magnesium in 2005 were ***. The three largest reporting U.S. purchasers of alloy magnesium in 2005 were ***. No responding U.S. purchasers reported purchasing pure magnesium from China in 2005.

APPARENT U.S. CONSUMPTION AND MARKET SHARES

Information on apparent U.S. consumption and market shares for pure magnesium is presented in table I-10. Information on apparent U.S. consumption and market shares for alloy magnesium is presented in table I-11. Information on apparent U.S. consumption and market shares for pure and alloy magnesium combined is presented in table I-12.

Table I-10

Pure magnesium: U.S. shipments of domestic product, U.S. imports, apparent U.S. consumption, and market shares, by sources, 2000-05

* * * * *

Table I-11

Alloy magnesium: U.S. shipments of domestic product, U.S. imports, apparent U.S. consumption, and market shares, by sources, 2000-05

* * * * *

Table I-12

Pure and alloy magnesium: U.S. shipments of domestic product, U.S. imports, apparent U.S. consumption, and market shares, by sources, 2000-05

* * * * *

From 2000 to 2005, apparent U.S. consumption (based on quantity) of pure magnesium decreased by *** percent. During this same period, apparent U.S. consumption (based on value) of pure magnesium decreased by *** percent.

From 2000 to 2005, apparent U.S. consumption (based on quantity) of alloy magnesium increased by *** percent. During this same period, apparent U.S. consumption (based on value) of alloy magnesium increased by *** percent.

¹³⁹ The mailing list was developed from previous investigations concerning pure and alloy magnesium from China and from Customs.

¹⁴⁰ There were virtually no imports of pure magnesium from China during the period 2000-05, with imports of only 19 metric tons in 2005.

From 2000 to 2005, apparent U.S. consumption (based on quantity) of pure and alloy magnesium combined increased by *** percent. During this same period, apparent U.S. consumption (based on value) of pure and alloy magnesium combined increased by *** percent.

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET¹

U.S. MARKET SEGMENTS AND CHANNELS OF DISTRIBUTION

The principal industrial uses of magnesium are aluminum alloying, structural uses (including diecasting, thixomolding, sand casting, and magnesium wrought products), iron and steel desulfurization, and electrochemical and other.² Traditionally, there have been two distinct end-user markets for magnesium—one for pure magnesium and another for alloy magnesium. End users who purchase pure magnesium generally do not purchase alloy magnesium and those who buy alloy magnesium do not generally buy pure magnesium; however, there is some overlap in the use of pure and alloy magnesium in aluminum manufacturing. Pure magnesium is mainly sold to aluminum producers, magnesium granule producers for steel desulfurization, and chemical and pharmaceutical manufacturers; alloy magnesium is mainly sold to diecasters. Questionnaire data indicate that *** percent of the magnesium shipped to aluminum manufacturers from U.S. producers in 2005 was pure magnesium; in that year, *** percent of the magnesium that was shipped to diecasters from U.S. producers was alloy magnesium.

Pure vs. Alloy Magnesium

According to US Magnesium, *** used alloy magnesium instead of pure magnesium. US Magnesium noted that this shift was particularly noticeable for ***.³ According to US Magnesium, ***. According to US Magnesium, U.S. producers of aluminum alloys and producers of desulfurization reagents for the iron and steel industry used pure magnesium, but they increasingly used alloy magnesium because alloy magnesium products became available at low prices, from China especially.⁴ US Magnesium also noted that prices for pure magnesium and alloy magnesium have tended to converge over time.

Norsk Hydro states that pure and alloy magnesium (1) have different physical characteristics and uses; (2) do not always use common manufacturing facilities and production employees; (3) are not highly interchangeable; (4) involve different customer and producer perceptions; (5) are not always sold through the same channels of distribution; and (6) are priced differently.⁵ Norsk Hydro noted that imports of alloy magnesium from China upset the previous market conditions but “with the exit of Chinese alloy from the U.S. market . . . the U.S. magnesium market has returned to its normal operating condition and . . . pure and alloy magnesium are separate like products.”^{6 7}

Magnesium purchasers were asked to indicate whether alloy magnesium is interchangeable with pure magnesium (other than off-specification pure magnesium) and whether the firms have substituted between these products. Sixteen of the 22 responding purchasers reported that alloy magnesium and pure

¹ The Commission received usable questionnaire responses from 6 producers and 16 importers. However, two producers (***) are related, and their answers are counted once in this chapter. Likewise, two importers (***) are related, and their answers are counted once. Finally, ***.

² Questionnaire response of *** and webpage of the International Magnesium Association (“IMA”), www.intlmag.org/faq.aspx.

³ In its questionnaire response, ***.

⁴ ***. See also, hearing transcript, pp. 27-30 (Tissington).

⁵ Norsk Hydro’s posthearing brief, p. 2.

⁶ Ibid., p. 2.

⁷ Norsk Hydro notes that the Chinese imports “wreaked such havoc on U.S. prices that it actually became advantageous to use alloy magnesium, with all the attendant additional processing costs” (Ibid., p. 4).

magnesium are not interchangeable.^{8 9} Four of the 22 responding purchasers reported that the two can sometimes be used interchangeably; however, they also mentioned that it is either extremely expensive to invest in new technology and equipment or it is extremely difficult to substitute the two products.¹⁰ Two purchasers reported that it is possible and they can do it in all/certain applications.¹¹ When asked if they have ever substituted the two products for one another, thirteen purchasers reported that they have never substituted; six stated they had substituted but that magnesium is a small percentage of their business; and only one firm, ***, mentioned that “since it is necessary to participate in ***. We purchase *** based on price availability.” One firm, ***, reported that it experimented with substituting alloy for pure magnesium but this was a rare instance and only involved a small percentage of alloy magnesium.¹²

Off-spec vs. Pure and/or Alloy Magnesium

Purchasers were also asked how difficult it would be to use off-spec magnesium and other magnesium interchangeably. Purchasers were somewhat divided on this issue, with some responding firms indicating that they did not believe that off-spec pure magnesium is interchangeable with either pure or alloy magnesium and some reporting that it was. In general, more purchasers reported that off-spec pure magnesium could possibly be interchangeable with pure magnesium but only one firm reported that it could be used interchangeably with alloy magnesium.

Geographic Markets

Two producers and four importers described their market for magnesium as being a national market or encompassing more than one region of the United States. Three producers and two importers described only one U.S. region as their market.¹³

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on available information, U.S. magnesium producers are likely to respond to changes in demand with moderate-to-large changes in the quantity of shipments of U.S.-produced magnesium to the U.S. market. The main contributing factor to this degree of responsiveness of supply is the existence of excess capacity, particularly for alloy magnesium.

⁸ One firm, ***, reported “not really” and stated that it believes that ***; this response is counted as a “no”.

⁹ ***, ***, ***. See ***.

¹⁰ ***.

¹¹ One of these firms, ***, reported that it ***. The other firm, ***.

¹² ***.

¹³ US Magnesium reported that *** percent of its sales were to customers more than 1,000 miles from its plant. *** reported that most of their sales were 100-1,000 miles from their plants. Two out of six responding importers reported that a majority of their sales were between 100 and 1,000 miles from their shipping points, with one reporting that a majority of its sales was further than 1,000 miles; two importers reported that the majority of their sales was within 100 miles; and one importer reported that half of its sales was between 101 and 1,000 miles, and the remaining half was shipped further than 1,000 miles.

U.S. magnesium production is divided between US Magnesium, a producer of primary pure and alloy magnesium, and secondary alloy magnesium producers. ***.

U.S. production of primary pure magnesium has been dropping since 1998, with Dow Magnesium exiting the market in 1998 and Northwest Alloys ceasing production in 2001. US Magnesium characterized these exits as reducing the supply of U.S.-produced primary magnesium by two-thirds.¹⁴ However, Alcoa noted that its Northwest Alloys plant, while shuttered, is still intact.¹⁵

Industry capacity

Data on total U.S. capacity to produce pure magnesium indicate a decline from *** metric tons in 2000 to *** metric tons in 2005.¹⁶ During this period, U.S. producers' capacity utilization for pure magnesium fluctuated and ranged between *** percent (***) and *** percent (***) and was at *** percent in 2005. U.S. producers' capacity utilization for alloy magnesium fluctuated but showed a downward trend during the review period. Capacity utilization was highest in *** at *** percent and at its lowest in *** at *** percent. These data indicate that U.S. producers have some unused capacity for both pure and alloy magnesium which could be used to increase production in the event of a price increase.

Inventories

Inventories of pure magnesium, as a share of total shipments of pure magnesium, fluctuated between *** and *** percent during this review period. Inventories of pure magnesium were at their highest percentage level in *** (***) percent) and at their lowest in *** (***) percent); in 2005, inventories of pure magnesium accounted for *** percent of total shipments of pure magnesium. Inventories of alloy magnesium accounted for between *** and *** percent of total shipments of alloy magnesium during the review period; in 2005, such inventories accounted for *** percent. These data indicate that U.S. producers of pure and alloy magnesium have some ability to use inventories to increase shipments of both pure and alloy magnesium in the event of price increases.

Alternative markets

During this review period, exports of U.S.-produced pure magnesium varied and accounted for as little as *** percent of total shipments of pure magnesium (***) or as much as *** percent (***). Exports of alloy magnesium, as a share of total shipments of alloy magnesium, showed less fluctuation but still ranged between *** and *** percent. These data indicate that U.S. producers have some flexibility in their ability to shift shipments between the United States and other markets in response to price changes; however, the most recent data for 2005 may indicate that this flexibility is constrained.

¹⁴ See testimony of Mike Legge, President of US Magnesium, conference transcript, *Magnesium From China and Russia*, Investigation Nos. 731-TA-1071-1072 (Preliminary), p. 13. Alcoa described the closing of Northwest Alloys as being due to its status as a "high-cost" producer, and characterized the closing as unrelated to imports of Chinese or Russian magnesium. See testimony of Lewis Leibowitz, counsel for Alcoa, conference transcript, *Magnesium From China and Russia*, Investigation Nos. 731-TA-1071-1072 (Preliminary), pp. 102-103.

¹⁵ See testimony of Lewis Leibowitz, counsel for respondents, conference transcript, *Magnesium From China and Russia*, Investigation Nos. 731-TA-1071-1072 (Preliminary), p. 156.

¹⁶ ***.

Production alternatives

All five U.S. producers reported that they cannot easily switch between production of magnesium and production of other products using the same equipment.¹⁷

Subject Imports

Based on available information, Canadian producers are likely to respond to changes in demand with moderate changes in the quantity of shipments of magnesium to the U.S. market. The main contributing factors to the moderate degree of responsiveness of supply are the existence of excess capacity for both pure and alloy magnesium and the existence of alternate markets for both.

Canada

Industry capacity.—Data reported by Canadian producers for total capacity to produce pure magnesium indicate an increase from *** metric tons in 2000 to *** metric tons in 2003. During this period, capacity utilization for Canadian pure magnesium fluctuated and ranged between *** percent (***) and *** percent (***) and was at *** percent in 2005.¹⁸

Total capacity to produce alloy magnesium increased from *** metric tons in 2000 to *** metric tons in 2003; total capacity then decreased to *** metric tons from 2003 to 2005. Capacity utilization for Canadian alloy magnesium fluctuated during the review period. Capacity utilization was highest in *** at *** percent and at its lowest in *** at *** percent.¹⁹

These data indicate that Canadian producers have unused capacity for both pure and alloy magnesium, which could be used to increase production in the event of a price increase.

Inventories.—Data on inventories of Canadian pure magnesium, as a ratio to total shipments of pure magnesium, fluctuated *** between *** and *** percent during this review period. Ratios of inventories to total shipments of pure magnesium were at their highest level in *** (***) percent) and their lowest level in *** (***) percent); in 2005, inventories of pure magnesium were equivalent to *** percent of total shipments of pure magnesium.

Inventories of Canadian alloy magnesium were equivalent to between *** and *** percent of total shipments of alloy magnesium during the review period; in 2005, such inventories were equivalent to *** percent.

These data indicate that Canadian producers have some ability to use inventories to increase shipments of both pure and alloy magnesium in the event of price increases.

Alternative markets.—*** Canadian producers' shipments of pure magnesium went to the Canadian home market during 2000; however, since 2001, *** of Canadian producers' shipments have been exports. Shipments to the Canadian home market accounted for *** percent in 2000 but then ranged between *** and *** percent during 2001-05. Exports of pure magnesium to the United States accounted for between *** and *** percent of Canadian producers' total shipments over the period of review. While exports to non-U.S. markets accounted for *** percent in 2000, they have accounted for over *** percent in every year since, except for 2005 when they accounted for *** percent. Based on

¹⁷ However, primary magnesium producers have the ability to shift production between pure and alloy magnesium if prices for either of these products change.

¹⁸ The ***-percent capacity utilization for pure magnesium in 2005 is Norsk Hydro's capacity utilization.

¹⁹ Capacity utilization for alloy magnesium was *** percent in 2005, which is Norsk Hydro's *** capacity utilization, as Magnola's plant was idle.

these data, it is likely that Canadian magnesium producers have the ability to shift shipments of pure magnesium from their home market and other non-U.S. export markets to the United States in the event of a price change in the U.S. market.²⁰

With respect to alloy magnesium, internal consumption and transfers to related companies accounted for between *** and *** percent of total shipments for Canadian producers. Shipments to the Canadian home market accounted for between *** and *** percent of total shipments during 2000-05. Canadian alloy magnesium producers also reported substantial exports of alloy magnesium to the United States, with these shipments accounting for between *** and *** percent of total shipments during 2000-05. These data indicate that Canadian alloy magnesium producers have the ability to shift shipments of alloy magnesium from their home market and other non-U.S. export markets to the United States in the event of a price change in the U.S. market. However, while ***, *** reported that *** percent of its sales of alloy magnesium are made on the basis of long-term contracts. According to ***.

Production alternatives.—Canadian producer Norsk Hydro reported that ***.²¹

China

Data on the Chinese magnesium industry have been submitted by only one Chinese producer. This firm reported that its capacity to produce pure magnesium has *** over the period of review. Capacity utilization for this Chinese producer ranged between *** and *** percent. This firm reported that *** shipments in 2000 and 2001 were ***; however, this firm did ship pure magnesium to non-U.S. export markets (i.e., EU, Asia, other). Based on the data for this one firm, this Chinese supplier has excess capacity which could be used to increase production and alternate markets from which it could shift product.

Nonsubject Imports

Magnesium capacity has been diminishing in many nonsubject countries. Since 2000, Noranda in Canada has shut down *** metric tons of magnesium capacity. In addition, French magnesium production capacity has been reduced by 17,000 metric tons and Norwegian capacity has been reduced by 42,000 metric tons.²² *** described China and Russia as now supplying 65 percent of the European and North American magnesium markets.

*** reported that since 2000, nonsubject imports have increased; in particular, imports of pure and alloy magnesium from Israel have increased substantially. *** also reported that there have been sharp increases in volumes of imports of alloy magnesium from new sources, such as the Czech Republic, Mexico, and Taiwan.

U.S. Demand

Demand Characteristics

Magnesium demand consists of three major segments—aluminum alloying, diecasting, and iron and steel desulfurization—plus miscellaneous other uses. Demand for all of these end uses generally

²⁰ In its questionnaire response, ***.

²¹ However, ***.

²² See testimony of Derek Roberts, Vice President, VSMPO-Tirus US, conference transcript, *Magnesium From China and Russia*, Investigation Nos. 731-TA-1071-1072 (Preliminary), p. 121.

tracks overall economic activity, and has increased over at least the last two years, but may be showing some signs of easing, especially in automobiles.

Questionnaire responses describe numerous end uses for magnesium: steering wheel - airbags, back plates, steering wheel frames, manufacturing nuclear zirconium metal, silicone products, and aluminum alloying. *** identified 11 distinct end uses for magnesium: aluminum alloying, making of desulfurization reagents, nodular iron (magnesium ferrosilicon and/or nodular iron bar), metal reduction (metal sponge), electro-chemical (sacrificial anodes), chemical (specialized magnesium granules), wrought products (magnesium mill products), and other (miscellaneous uses predominantly making use of pure magnesium), diecasting (die cast parts), gravity casting (gravity cast parts), and wrought products (magnesium mill products).²³

Demand Trends

Producers, importers, and purchasers were asked to discuss trends in demand in the United States during the period 1999 to 2004. *** reported that demand in the United States for magnesium was mixed during the period of review.²⁴ According to ***, demand for pure magnesium declined during 2000-03 but then was strong in 2004 due to ***. *** stated that demand for pure magnesium in 2005 continued to be strong and that ***. With regard to alloy magnesium, *** reported that demand increased from 2000-04 because ***.

Of the responding importers, most reported that demand had decreased, with three of the five responding importers noting a decline. One of the two remaining importers noted that demand was unchanged, and the other noted "other."²⁵

Of the 20 purchasers responding to the question on demand trends, 9 reported that demand for magnesium increased from 2000 to 2005 while 8 stated that demand has remained unchanged in that period. The remaining three purchasers reported that demand for magnesium had decreased. Purchasers that reported that demand had increased cited reasons such as growth in diecasting applications, particularly in the automotive industry, to achieve lighter weight in automobiles.

When asked whether or not they anticipate any future changes in magnesium demand in the United States and, if known, the rest of the world, *** three importers, and nine (of 22) purchasers reported "Yes." US Magnesium reported that it expects the demand for pure magnesium to *** during 2006 and 2007 due to ***. US Magnesium further noted that it believes that the demand for alloy magnesium in the United States will *** during 2006-07 due to ***. US Magnesium reported that it believes global demand for alloy magnesium will *** based on ***. Many purchasers that reported anticipated demand changes noted that they believed that the use of magnesium in automotive applications would increase. However, several purchasers noted that pricing in the U.S. market is not as competitive as in other markets and as such, production of magnesium-containing parts may move offshore.²⁶

In response to questions on any changes in demand for final products which use magnesium, 8 of 16 responding purchasers reported that demand for these final products increased since 2000, while 5 reported that demand was unchanged, and 3 reported that it decreased. *** mentioned that demand for its final products incorporating magnesium increased; it stated that "Magnesium demand is based on design requirements and business sales requirements." *** cited as a reason for an increase in demand

²³ ***.

²⁴ *** noted that demand for magnesium increased and that demand tends to be related to the general condition of the economy.

²⁵ Canadian producer Norsk Hydro reported that ***.

²⁶ See purchaser questionnaire responses of ***.

the fact that “demand for magnesium used in auto applications has increased due to lower cost of magnesium alloy.”

Substitute Products

Producers and importers generally reported that there were few, if any, regular substitutes for magnesium. Three producers and six importers stated that aluminum, steel, titanium, calcium carbide, and/or plastics can at least occasionally substitute for magnesium. *** stated that there are no substitutes for magnesium, but that in diecasting there can be other downstream products made from aluminum, steel, or plastic instead of magnesium. It added that calcium carbide can substitute for magnesium in steel desulfurization and aluminum and zinc can substitute for magnesium in electrochemical end uses. *** reported that aluminum is a good substitute for diecasting parts for the automotive and electronic industries and that titanium is a good substitute for components for the air and space industry.

Purchasers were mixed in their view of the existence of substitute products. While five of the responding purchasers reported that there were no substitutes for magnesium, 11 purchasers listed some products. Purchasers that listed potential substitute products named products such as plastics, aluminum, steel, and calcium carbide (for steel desulfurization). When asked if prices of substitute products have affected the price of magnesium, 12 of the 14 responding firms stated “No.”

Purchasers were also asked if there have been any changes in the number or types of products that can be substituted for magnesium since 2000. The majority of responding purchasers (19 of 21) reported that there had not been any such change, while the remaining two firms reported that there had been. One purchaser, ***, reported that there have been technology developments which have facilitated the use of lower-class scrap. One other purchaser, ***, stated that “new aluminum alloys, and denser hi-temp plastics are being developed all the time.”

Cost Share

In their questionnaire responses, neither producers nor importers expressed detailed knowledge of the cost share that magnesium accounts for in their customers’ products. *** described the cost of magnesium as an input is approximately less than 2 percent of aluminum alloying operations. The cost of magnesium in the making of desulfurization reagents is approximately 70-80 percent of that operation.

Purchasers, however, were able to provide information on the cost share of magnesium relative to the total cost of the final product. For aluminum alloying and aluminum can production, the cost share of magnesium was reported to be very small; responding purchasers estimated that magnesium accounts for less than one percent to about 3 percent. However, the cost share of magnesium for diecasting applications is higher and estimates ranged from about 3 percent (for gear cases) to 57 percent (for transfer cases). In steel desulfurization applications, questionnaire respondents indicated that magnesium can account for about 90 percent of the total cost of the end product.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported magnesium depends upon such factors as relative prices, quality (e.g., grade standards, defect rates, etc.) and conditions of sale (e.g., lead times between order and delivery, availability of product, product services, etc.). Based on available data, staff believes that there is a moderately high degree of substitution between domestically produced magnesium and magnesium imported from Canada and China.

Factors Affecting Purchasing Decisions

In order to assess which factors are important in purchasing decisions, questionnaire recipients were asked to identify the three major factors considered by their firm in deciding from whom to purchase magnesium (table II-1). Quality was reported by the largest number of purchasers (10 firms) as the number one factor that they consider when choosing a supplier of magnesium. Price was the second-most-frequently listed number one factor, with six firms ranking it first. Price was also the most-frequently-cited number two factor considered; 10 firms listed price as the second-most-important factor in deciding from whom to purchase magnesium. Availability was also listed frequently as the first- or second-most-important factor, with four firms ranking it first and three firms ranking it second. Other factors reported by at least one firm were delivery, terms/credit/payment, size/shape, reliability, service, and qualified supplier.

Table II-1
Magnesium: Most important factors in selecting a supplier, as reported by purchasers

Factor	First	Second	Third
Price/cost	6	10	5
Quality ¹	10	4	4
Availability	4	3	2
Prearranged contracts	3	0	0
Delivery	0	3	2
Terms/credit/payment	0	2	3
Size/shape	0	0	2
Reliability/reliability of supply/dependability	0	1	2
Service	0	0	2
Qualified supplier	1	0	0

¹ Quality includes "consistency of product" which was reported by one purchaser as the third most important factor.

Source: Compiled from data submitted in response to Commission questionnaires.

As noted in table II-1, quality is an important consideration for purchasers of magnesium. Firms were asked to identify the factors that determine the quality of magnesium. Responding companies cited a number of factors, including meeting ASTM specifications, chemistry, cleanliness, magnesium content, and size.

Purchasers were also asked if they require their suppliers to become certified or prequalified with respect to the quality, chemistry, or strength of the magnesium that they purchase. Of the 23 responding purchasers, 21 reported that they do require certification or prequalification; the certification process can be as simple as determining that the magnesium meets ASTM standards or it can be more involved. A few purchasers reported that they do lab testing and do trial runs with the material in order to qualify the material.²⁷ The factors considered by purchasers when they are qualifying suppliers include availability, customer service, delivery capabilities, environmental condition, financial stability, logistics, price, product quality, and reliability. Purchasers were also asked to estimate the time that it takes to certify/qualify a new supplier; responses ranged from 2 weeks to 6 months.

²⁷ ***.

Purchasers were asked if they were aware of the country of origin and the manufacturer of the magnesium that they purchased. In addition, purchasers were also asked if their customers were aware of and/or interested in the country of origin of the magnesium that is supplied to them. The following tabulation summarizes the responses.

Purchaser/customer decision	Always	Usually	Sometimes	Never
Purchaser makes decision based on producer	3	4	10	9
Purchaser's customer makes decision based on producer	0	2	7	13
Purchaser makes decision based on country of origin	1	2	13	10
Purchaser's customer makes decision based on country of origin	0	2	6	14

Based on the available information presented above, purchasers more frequently made buying decisions based on the producer of the magnesium as opposed to the country of origin. Of the responding purchasers, three always make buying decisions based on the producer, 4 usually do, 10 sometimes do, and 9 never do. However, most (23 of 26) reported that they sometimes or never make decisions based on the country of origin of the magnesium. Most purchasers reported that their customers sometimes or never make purchasing decisions based on the magnesium producer or the country of origin.

Purchasers were asked if they always, usually, sometimes, or never purchased the lowest-priced magnesium. Almost one half of the responding purchasers (11 of 24) indicated that they usually buy the least-expensive magnesium. One purchaser reported always purchasing the lowest-priced product; 8 firms sometimes purchased the lowest-priced product, and 4 purchasers reported that they never purchased the lowest-priced product. Purchasers were also asked if they had purchased magnesium from one source at a higher price even if a comparable product was available from another source at a lower price. Seventeen purchasers reported that they had purchased magnesium at a higher price and gave a variety of reasons for doing so. Reasons given include reliability, technical support/service, product range, availability, desire to maintain multiple sources of supply, shorter leadtimes, credit terms, and existence of contracts.

Purchasers were asked to rate the importance of 15 factors in their purchasing decisions (table II-2). The factors listed as very important were reliability of supply (25 firms), availability (24 firms), price, (23 firms), product consistency (23 firms), quality meets industry standards (21 firms), delivery time (19 firms), and delivery terms (15 firms). Other factors with a large number of purchasers reporting the factor as very important include extension of credit (9 firms), packaging (13 firms), quality exceeds industry standards (10 firms), technical support/service (10 firms), and U.S. transportation costs (10 firms). There were a couple of factors that had a relatively large number of purchasers reporting the factor as not important; these include minimum quantity requirements (11 firms), and product range (9 firms).

Table II-2
Magnesium: Importance of purchase factors, as reported by purchasers

Factor	Very important	Somewhat important	Not important
	Number of firms responding		
Availability	24	2	0
Delivery terms	15	11	0
Delivery time	19	6	1
Discounts offered	8	17	1
Extension of credit	9	16	1
Price	23	3	0
Minimum quantity requirements	3	12	11
Packaging	13	11	2
Product consistency	23	3	0
Quality meets industry standards	21	4	1
Quality exceeds industry standards	10	12	4
Product range	6	11	9
Reliability of supply	25	1	0
Technical support/service	10	11	5
U.S. transportation costs	10	15	1

Note.—Not all purchasers responded for each factor. Other factors, listed by one purchaser each, were “existing relationship” and “sizes and shapes;” both were rated as “very important.”

Source: Compiled from data submitted in response to Commission questionnaires.

Comparisons of Domestic Products and Subject Imports

Purchasers were asked for a country-by-country comparison on the same 15 factors (table II-3). For the U.S. pure magnesium product compared to the Canadian pure magnesium product, the majority of responding purchasers reported that the two products were comparable. There were only two factors (delivery time and extension of credit) that had two of the five responding firms reporting differences.²⁸ Purchasers also made comparisons between U.S.-produced alloy magnesium and Canadian alloy magnesium (table II-4). As with pure magnesium, the majority of responding purchasers stated that alloy magnesium from the United States and from Canada were comparable.

For U.S.-produced pure magnesium compared to Chinese pure magnesium, there were several factors for which purchasers reported differences. A majority of responding purchasers (3 of 4) stated that U.S. pure magnesium is superior to Chinese pure magnesium with respect to availability, delivery time, lower U.S. transportation costs, packaging, product consistency, reliability of supply, and technical support/service. All four responding purchasers reported that Chinese pure magnesium was lower priced than the U.S. product. For U.S. alloy magnesium compared to Chinese alloy magnesium, a majority of responding purchasers (at least five of eight) reported that the U.S. product was superior with respect to availability, delivery time, product consistency, quality exceeds industry standards, reliability of supply, and technical support/service (table II-4). Six of the eight responding purchasers reported that Chinese alloy magnesium has a lower price compared to the U.S. product.

²⁸ Two of the five firms reported that the U.S. was superior to Canada with respect to delivery time and two reported that Canada was superior with regard to extension of credit.

Table II-3
Pure magnesium: Comparisons of product by sources, as reported by purchasers

Factor	U.S. vs. Canada			U.S. vs. China			Canada vs. China		
	S	C	I	S	C	I	S	C	I
	Number of firms responding								
Availability	0	5	0	3	1	0	1	0	1
Delivery terms	0	4	1	2	2	0	0	2	0
Delivery time	2	3	0	3	1	0	2	0	0
Discounts offered	0	5	0	1	2	1	0	2	0
Extension of credit	0	3	2	2	1	1	0	2	0
Lower price ¹	1	3	1	0	0	4	0	0	2
Lower U.S. transportation costs ¹	1	4	0	3	1	0	1	1	0
Minimum quantity requirements	0	5	0	0	4	0	0	2	0
Packaging	0	5	0	3	1	0	1	1	0
Product consistency	0	5	0	3	1	0	1	1	0
Product range	0	5	0	1	2	1	1	0	1
Quality exceeds industry standards	0	5	0	2	2	0	1	1	0
Quality meets industry standards	0	5	0	0	4	0	0	2	0
Reliability of supply	0	5	0	3	1	0	2	0	0
Technical support/service	0	5	0	3	1	0	2	0	0
Factor	U.S. vs. nonsubject			Canada vs. nonsubject			China vs. nonsubject		
	S	C	I	S	C	I	S	C	I
	Number of firms responding								
Availability	4	6	0	3	2	1	1	0	1
Delivery terms	2	7	1	3	3	0	0	2	0
Delivery time	3	7	0	3	3	0	0	0	2
Discounts offered	1	8	1	0	5	1	0	2	0
Extension of credit	0	7	3	0	5	1	0	2	0
Lower price ¹	2	7	1	2	3	1	2	0	0
Lower U.S. transportation costs ¹	3	7	0	2	4	0	0	2	0
Minimum quantity requirements	0	10	0	0	6	0	0	2	0
Packaging	1	9	0	1	5	0	0	1	1
Product consistency	2	8	0	1	5	0	0	1	1
Product range	2	8	0	1	5	0	1	1	0
Quality exceeds industry standards	1	9	0	1	5	0	0	1	1
Quality meets industry standards	1	9	0	1	5	0	0	2	0
Reliability of supply	4	6	0	3	3	0	0	1	1
Technical support/service	5	5	0	2	4	0	0	1	1

¹ A rating of "S" means that the price or U.S. transportation costs of the first-mentioned country is lower than that of the second-mentioned country.

Note.—"S" means that the first-mentioned country's product is Superior; "C" means that both countries' products are Comparable; and "I" means that the first-mentioned country's product is Inferior. Not all companies gave responses for all factors.

Source: Compiled from data submitted in response to Commission questionnaires.

Table II-4
Alloy magnesium: Comparisons of product by sources, as reported by purchasers

Factor	U.S. vs. Canada			U.S. vs. China			Canada vs. China		
	S	C	I	S	C	I	S	C	I
	Number of firms responding								
Availability	1	8	0	5	3	0	3	2	0
Delivery terms	0	8	1	3	5	0	2	3	0
Delivery time	2	6	1	5	3	0	3	2	0
Discounts offered	0	8	1	0	6	2	0	3	2
Extension of credit	1	6	2	4	3	1	1	3	1
Lower price ¹	2	6	1	0	2	6	0	0	5
Lower U.S. transportation costs ¹	2	7	0	4	4	0	1	4	0
Minimum quantity requirements	0	9	0	0	7	1	0	5	0
Packaging	0	9	0	3	5	0	2	3	0
Product consistency	0	9	0	5	3	0	2	3	0
Product range	0	6	3	1	7	0	2	3	0
Quality exceeds industry standards	0	8	1	5	3	0	3	2	0
Quality meets industry standards	0	8	1	3	5	0	2	3	0
Reliability of supply	0	9	0	7	1	0	4	1	0
Technical support/service	1	5	3	5	3	0	4	1	0
Factor	U.S. vs. nonsubject			Canada vs. nonsubject			China vs. nonsubject		
	S	C	I	S	C	I	S	C	I
	Number of firms responding								
Availability	7	5	1	3	3	1	2	1	4
Delivery terms	2	11	0	0	7	0	1	5	1
Delivery time	7	5	1	4	3	0	0	4	3
Discounts offered	0	11	2	0	7	0	2	5	0
Extension of credit	1	11	1	0	7	0	1	5	1
Lower price ¹	3	4	5	2	4	1	6	1	0
Lower U.S. transportation costs ¹	1	12	0	0	7	0	0	7	0
Minimum quantity requirements	0	12	0	0	7	0	0	7	0
Packaging	3	10	0	1	6	0	0	5	2
Product consistency	2	11	0	2	5	0	0	6	1
Product range	1	9	2	1	5	1	1	4	2
Quality exceeds industry standards	1	11	1	1	6	0	0	6	1
Quality meets industry standards	1	11	1	1	6	0	0	6	1
Reliability of supply	7	6	0	5	1	1	1	3	3
Technical support/service	3	7	3	5	0	2	0	4	3
¹ A rating of "S" means that the price or U.S. transportation costs of the first-mentioned country is lower than that of the second-mentioned country. Note.—"S" means that the first-mentioned country's product is Superior; "C" means that both countries' products are Comparable; and "I" means that the first-mentioned country's product is Inferior. Not all companies gave responses for all factors. Source: Compiled from data submitted in response to Commission questionnaires.									

Producers, importers, and purchasers were also asked to assess how interchangeable magnesium from the United States was with magnesium from subject countries and nonsubject countries (tables II-5 and II-6). While all three responding U.S. producers reported that pure magnesium from all sources were always interchangeable, importers and purchasers were mixed in their responses. For the United States compared to Canada, most importers and purchasers reported that the two products are always interchangeable. With regard to U.S. pure magnesium and pure magnesium imported from China, most importers and purchasers reported that they are always or frequently used interchangeably.

For alloy magnesium, most producers, importers, and purchasers reported that the two products are always or frequently used interchangeably (table II-6). While no importers or purchasers reported that alloy magnesium from the various sources were never used interchangeably, some did report that the products were only sometimes used interchangeably.

In addition, firms were asked to assess how often differences other than price were significant in their sales of magnesium from the United States, Canada, China, or other countries (tables II-7 and II-8). For pure magnesium, both responding producers and most importers reported that such differences were sometimes or never significant. For alloy magnesium, most producers (3 of 4) reported that there are sometimes differences that are significant; the remaining producer (***) reported that differences were never significant. While most importers reported that such differences were sometimes or never important, two of five did report that differences other than price were always significant in sales of U.S. vs. Chinese alloy magnesium.

Table II-5
Pure magnesium: U.S. firms' perceived degree of interchangeability of products produced in the United States and other countries¹

Country comparison	U.S. producers				U.S. importers				U.S. purchasers			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. Canada	3	0	0	0	4	1	0	2	8	2	0	0
U.S. vs. China	3	0	0	0	1	3	0	2	3	4	1	1
U.S. vs. other	3	0	0	0	1	2	1	2	5	4	2	0
Canada vs. China	3	0	0	0	1	3	1	0	3	5	1	1
Canada vs. other	3	0	0	0	1	2	3	0	4	3	2	0
China vs. other	3	0	0	0	1	2	3	0	3	3	2	1

¹ Firms were asked if pure magnesium produced in various country pairs is used interchangeably.

Note.—“A” means Always, “F” means Frequently, “S” means Sometimes, and “N” means Never.

Source: Compiled from data submitted in response to Commission questionnaires.

Table II-6**Alloy magnesium: U.S. firms' perceived degree of interchangeability of products produced in the United States and other countries¹**

Country comparison	U.S. producers				U.S. importers				U.S. purchasers			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. Canada	2	2	0	0	4	1	0	0	13	2	0	0
U.S. vs. China	2	2	0	0	2	3	2	0	3	6	2	0
U.S. vs. other	2	2	0	0	1	2	2	0	3	5	3	0
Canada vs. China	2	2	0	0	1	2	0	0	5	4	1	0
Canada vs. other	1	2	0	0	1	1	1	0	3	2	3	0
China vs. other	2	2	0	0	1	2	0	0	3	2	2	0

¹ Firms were asked if alloy magnesium produced in various country pairs is used interchangeably.

Note.—“A” means Always, “F” means Frequently, “S” means Sometimes, and “N” means Never.

Source: Compiled from data submitted in response to Commission questionnaires.

Table II-7**Pure magnesium: U.S. firms' perceived significance of differences other than price between magnesium produced in the United States and magnesium produced in other countries¹**

Country comparison	U.S. producers				U.S. importers			
	A	F	S	N	A	F	S	N
U.S. vs. Canada	0	0	1	1	1	0	1	2
U.S. vs. China	0	0	1	1	1	0	1	2
U.S. vs. other	0	0	1	1	1	0	1	0
Canada vs. China	0	0	1	1	1	0	1	2
Canada vs. other	0	0	1	1	1	0	1	0
China vs. other	0	0	1	1	1	0	1	0

¹ Firms were asked if differences other than price between magnesium produced in various country pairs were a significant factor in their sales of the products.

Note.—“A” means Always, “F” means Frequently, “S” means Sometimes, and “N” means Never.

Source: Compiled from data submitted in response to Commission questionnaires.

Table II-8**Alloy magnesium: U.S. firms' perceived significance of differences other than price between magnesium produced in the United States and magnesium produced in other countries¹**

Country comparison	U.S. producers				U.S. importers			
	A	F	S	N	A	F	S	N
U.S. vs. Canada	0	0	3	1	1	0	2	2
U.S. vs. China	0	0	3	1	2	0	1	2
U.S. vs. other	0	0	3	1	1	0	1	1
Canada vs. China	0	0	3	1	0	0	1	2
Canada vs. other	0	0	3	1	0	0	1	1
China vs. other	0	0	3	1	0	0	1	2

¹ Firms were asked if differences other than price between magnesium produced in various country pairs were a significant factor in their sales of the products.

Note.—“A” means Always, “F” means Frequently, “S” means Sometimes, and “N” means Never.

Source: Compiled from data submitted in response to Commission questionnaires.

Comparisons of U.S. Product and Subject Imports with Nonsubject Imports

In general, at least 50 percent of responding purchasers reported that U.S. pure magnesium is comparable to pure magnesium from nonsubject sources (table II-3). A number of purchasers reported that U.S. pure magnesium is superior to pure magnesium from nonsubject sources with respect to availability (4 of 10), reliability of supply (4 of 10), and technical support/service (5 of 10).

A majority (i.e., over 50 percent) of purchasers that made comparisons between pure magnesium from Canada and from nonsubject countries found the two products to be comparable with respect to discounts offered, extension of credit, lower U.S. transportation costs, minimum quantity requirements, packaging, product consistency, product range, quality exceeds industry standards, quality meets industry standards, and technical support/service (table II-3). At least one half of the responding firms noted that the Canadian pure magnesium product was superior with regard to availability, delivery terms, delivery time, and reliability of supply. For pure magnesium from China compared to pure magnesium from nonsubject sources, only two purchasers provided information. These firms were often split, but both agreed that nonsubject imports were superior for delivery time; imports from China were lower-priced; and the two products were comparable for delivery terms, discounts offered, extension of credit, lower U.S. transportation costs, minimum quantity requirements, and quality meets industry standards.

For alloy magnesium from the United States compared to alloy magnesium from nonsubject sources, most purchasers found the two products comparable (table II-4). There were some exceptions in that a majority (7 of 13) of responding purchasers noted that U.S. alloy magnesium was superior with regard to availability, delivery time, and reliability of supply. The same pattern existed with comparisons between Canada and nonsubject sources in that most purchasers found the two products comparable except for a couple of factors; a majority of firms reported that Canada was superior with regard to delivery time (four of seven firms), reliability of supply (five of seven firms), and technical support/service (five of seven firms). For comparisons between alloy magnesium from China and from nonsubject sources, most purchasers found the products to be comparable except with regard to availability and lower price. A majority of firms found the availability of nonsubject imports better (four of seven firms) and the price of Chinese product lower (six of seven firms).

ELASTICITY ESTIMATES

This section discusses elasticity estimates. Parties were requested to provide comments in their prehearing briefs and comments are addressed as appropriate.

U.S. Supply Elasticity

The domestic supply elasticity for magnesium measures the sensitivity of the quantity supplied by the U.S. industry to a change in the U.S. market price of magnesium. On the basis of information relating to capacity utilization, the importance of export markets, inventories, and the flexibility of shifting production between magnesium and other products, it is likely that the domestic supply elasticity for both pure and alloy magnesium falls in the range of 5 to 10.²⁹

Subject Import Supply Elasticity

The import supply elasticity measures the response in subject imports to a changing U.S. price. The existence of some excess capacity,³⁰ some home market consumption, exports to third countries, and inventories of pure magnesium suggests that Canadian producers are likely to be able to increase shipments of pure magnesium to U.S. market. Staff proposes an import supply elasticity range between 5 and 10 for imports of pure magnesium. Available data indicate that there is less unused capacity for alloy magnesium, however; shipments to the Canadian home market accounted for a larger share of total shipments (***) percent in 2005). Based on this information, it is likely that the import supply elasticity for Canadian alloy magnesium is also in the range of 5 to 10.

U.S. Demand Elasticity

The U.S. demand elasticity for magnesium measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of this product. Based on information on substitute products and cost shares, it is likely that the U.S. demand elasticity for pure magnesium is in the range of -0.25 to -0.5.³¹ Given the somewhat greater availability of substitute products, it is likely that the U.S. demand elasticity for alloy magnesium is higher, or in the range of -0.75 to -1.0.³²

Substitution Elasticity

The substitution elasticity is a measure of the degree to which domestically produced magnesium and imported subject magnesium from Canada and China are substitutable across a range of possible uses. Based on the available information, staff suggests that the elasticity of substitution for pure magnesium is in the range of 4 to 6 for both pure and alloy magnesium.

²⁹ Petitioner noted in its prehearing brief that U.S. supply is elastic (US Magnesium's prehearing brief, p. 35).

³⁰ The overall industry capacity utilization was *** percent in 2005, which represents the capacity utilization rate of Norsk Hydro.

³¹ US Magnesium contends that the demand for pure magnesium is price inelastic (US Magnesium's prehearing brief, p. 68).

³² US Magnesium stated that demand for magnesium is highly inelastic (US Magnesium's prehearing brief, p. 34)

PART III: CONDITION OF THE U.S. INDUSTRY

Since January 2000, there have been only two U.S. producers of primary magnesium in the United States and several U.S. producers of secondary magnesium. During the initial review there were two U.S. producers of primary magnesium, Northwest Alloys and Dow Magnesium. Northwest Alloys, a wholly owned subsidiary of Aluminum Co. of America (Alcoa), Pittsburgh, PA, ceased production of magnesium in October 2001.¹ Dow Magnesium, a subsidiary of Dow Chemical Corp., Midland, MI, ceased magnesium production at its Freeport, TX, plant in November 1998 after it sustained extensive damage from lightning strikes and flooding.²

The Commission sent questionnaires to all known U.S. producers of magnesium, including diecasters and grinders, and received completed responses from two firms believed to account for all known production of primary magnesium and six firms believed to account for most secondary magnesium production in the United States since January 2000.³ Of the six responding secondary magnesium producers, two firms were diecasters. Information on responding U.S. producers, the locations of corporate headquarters, the positions taken with respect to continuation of the orders, the types of magnesium produced, and shares of U.S. production in 2005, are presented in table III-1.

US Magnesium (formerly Magcorp), the petitioner in the original investigations, is a wholly owned subsidiary of Renco Metals, Inc., Salt Lake City, UT. US Magnesium opposes the revocation of the countervailing duty orders on imports of pure and alloy magnesium from Canada and the antidumping duty order on imports of pure magnesium from China.

US Magnesium has production facilities in Rowley, UT, with a capacity of *** metric tons. US Magnesium produces a variety of magnesium products, including both pure and alloy magnesium, using the electrolytic process with lake brine as the raw material.

¹ Historically, Northwest Alloys produced pure magnesium for its internal aluminum operations, with company transfers accounting for *** of the company's total shipments in 1998 and 1999, the last two years of its magnesium operations. Northwest Alloys ***.

Although Northwest Alloys ***, and claims that it ceased operations because *** (producer questionnaire response, question I-3a), a spokesman for the Concerned Employees of Northwest Alloys testified in the China and Israel investigations in 2000-01 that Northwest Alloys closed because of cheap imports. US Magnesium argues that Northwest Alloys closed because of unrestrained imports from China, and cited the Labor Department's Trade Adjustment Assistance ("TAA") certification in response to a petition by Northwest Alloys that cited unfair imports; however, the imports cited in the TAA application were listed as being from Israel and the CIS (e.g., Russia).

² Dow Magnesium ***.

³ ***.

One of the firms which provided a usable response to the Commission's questionnaire and whose data are included in the U.S. industry data in this report is diecaster Spartan Light Metal Products, which ***.

Other diecasters did not provide data in response to the Commission's questionnaire, except for intracompany transfers data submitted by ***. In the 2004-05 investigations on alloy magnesium from China and pure and alloy magnesium from Russia, ***.

Table III-1

Magnesium: U.S. producers, locations of corporate headquarters, positions on continuation of the orders, reported U.S. production and shares of U.S. production in 2005, and types of magnesium produced in 2000-05

Firms	Location	Position on continuation of the orders	Products produced in 2000-05		U.S. production of pure and alloy magnesium in 2005	
			Pure	Alloy	Quantity (metric tons)	Share of total (percent)
Primary:						
US Magnesium ¹	Salt Lake City, UT	Supports	✓	✓	***	***
Northwest Alloys ²	Addy, WA	***	✓	✓	***	***
Subtotal					***	***
Secondary:						
Amacor ³	Anderson, IN	***		✓	***	***
Garfield Alloys ⁴	Garfield Hts, OH	***		✓	***	***
Halaco Engineering ⁵	Oxnard, CA	(⁶)		✓	***	***
MagReTech ⁷	Bellevue, OH	***		✓	***	***
Meridian	Eaton Rapids, MI	***		✓	***	***
Spartan Light Metal ⁸	Sparta, IL	*** ⁹		✓	***	***
Subtotal		***			***	***
Total		***	2	8	***	***

¹ US Magnesium, Salt Lake City, UT, is a wholly owned subsidiary of Renco Group, Inc., New York, NY. US Magnesium is the successor company to Magcorp. On August 3, 2001, Magcorp filed for protection under Chapter 11 of the U.S. Bankruptcy Code. The bankruptcy court authorized the sale of substantially all of Magcorp's assets to U.S. Magnesium. The sale was completed in June 2002.

² Northwest Alloys is a wholly owned subsidiary of Alcoa, Inc., Pittsburgh, PA. Northwest Alloys ceased operations and production of magnesium on October 1, 2001.

³ Amacor is a producer of secondary alloy magnesium that began operations in 2001. On April 3, 2003, Amacor purchased Xstrata Magnesium Corporation (XMC) from Xstrata PLC, Zug, Switzerland, for \$1.2 million. The major asset of XMC is a magnesium recycling plant in Anderson, IN. The Xstrata plant was commissioned in 2000 to recycle scrap to produce magnesium alloy for the U.S. auto industry. See *Xstrata Sells Magnesium Division*, Recycling Today, April 8, 2003, retrieved at www.recyclingtoday.com/news/news.asp?ID=3901 on April 5, 2004. A January 2005 fire at its production facility temporarily halted its production.

⁴ Garfield Alloys is ***. Garfield Alloys' production facility was destroyed in a fire on December 29, 2003. The firm has not resumed production of magnesium; it stated that ***. ***.

⁵ On July 24, 2002, Halaco Engineering ("Halaco") filed for chapter 11 bankruptcy protection, citing unfairly traded imports from China and Russia as a contributing cause of its financial ills. On September 23, 2004, it ceased production of magnesium, ***. Data presented for Halaco are based on the firm's responses to the Commission's producers' questionnaire from the recent investigations concerning imports of magnesium from China and Russia.

⁶ Information not provided.

⁷ MagReTech, Bellevue, OH, is ***.

⁸ Spartan Light Metal Products ("Spartan"), Sparta, IL, is a diecaster that produces secondary alloy magnesium from re-melted magnesium scrap for re-use in its diecasting production.

⁹ Although Spartan ***.

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. PRODUCERS' CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

Data on U.S. producers' capacity, production, and capacity utilization are presented in table III-2. Information on capacity, production, and capacity utilization, by firms, is presented in table III-3.

***, U.S. producers' capacity to produce pure magnesium was *** apparent U.S. consumption. ***, U.S. producers' capacity to produce pure magnesium has been *** apparent U.S. consumption. During ***, U.S. producers' capacity to produce alloy magnesium was *** apparent U.S. consumption of alloy magnesium ***; ***, U.S. producers' capacity to produce alloy magnesium *** the consumption of alloy magnesium. ***, U.S. producers' capacity to produce pure and alloy magnesium combined was *** apparent U.S. consumption ***.

Table III-2
Magnesium: U.S. capacity, production, and capacity utilization, by type, 2000-05

* * * * *

Table III-3
Magnesium: U.S. capacity, production, and capacity utilization, by types and by firms, 2000-05

* * * * *

U.S. PRODUCERS' DOMESTIC SHIPMENTS, COMPANY TRANSFERS, AND EXPORT SHIPMENTS

Table III-4 presents data on U.S. producers' shipments of pure and alloy magnesium, by types, for the period 2000-05. Information on U.S. producers' shipments by types of end users is presented in table III-5 and figure III-2 and figure III-3.

U.S. producers' U.S. shipments of pure magnesium decreased by *** percent from 2000 to 2005 as a result of the closure of Northwest Alloys' production facility in 2001. U.S. producers' U.S. shipments of alloy magnesium increased by *** percent from 2000 to 2005.

***. Export shipments of pure magnesium decreased by *** percent from 2000-05, and export shipments of alloy magnesium decreased by *** percent during this same period.

As indicated in table III-5, U.S. producers' commercial shipments of alloy magnesium to aluminum manufacturers decreased by *** percent between 2003 and 2005. These shipments were primarily by *** alloy magnesium producers: ***. *** is the *** primary shipper of alloy magnesium to aluminum manufacturers remaining in 2005. ***. Principally because of market exits, U.S. producers' alloy magnesium shipments to aluminum manufacturers decreased by *** percent between 2003 and 2005. *** claims that shipments have decreased not because of market conditions, but because of ***.⁴

As shown in figure III-2, shipments to aluminum manufacturers accounted for *** percent of U.S. commercial shipments of pure magnesium in 2005, followed by shipments to granular/reagent producers (*** percent), and shipments to "others" (*** percent). As shown in figure III-3, U.S. producers' shipments to diecasters accounted for *** percent of U.S. commercial shipments of alloy magnesium in 2005, followed by shipments to aluminum manufacturers (*** percent), and shipments to "others" (*** percent).

⁴ *** shipments to diecasters were incorrectly posted to shipments to granule/reagent producers in the 2004-05 investigations on China and Russia (inv. Nos. 731-TA-1071-1072 (Final)). Data for 2003 have been corrected to reflect actual questionnaire submissions. This means that U.S. producers' shipments to granule/reagent producers were *** during 2003-05.

Table III-4
Magnesium: U.S. producers' shipments, by types, 2000-05

* * * * *

Table III-5
Magnesium: U.S. producers' commercial U.S. shipments, by end users and by types, 2004-05

* * * * *

Figure III-2
Pure magnesium: U.S. producers' commercial shipments, by end user and by type, 2005

* * * * *

Figure III-3
Alloy magnesium: U.S. producers' commercial shipments, by end user and by type, 2005

* * * * *

**U.S. PRODUCERS' IMPORTS, PURCHASES,
AND RELATED-PARTY CONSIDERATIONS**

Information on U.S. producers' purchases during the period 2000-05 is presented in table III-6. As shown in the table, *** U.S. producers, ***, purchased pure and alloy magnesium from other domestic producers or U.S. importers. Although it is true that *** imported subject merchandise from Canada or China during the period 2000-05, *** obtained alloy magnesium from ***.⁵ Additionally, no U.S. producer indicated that it had any related firms engaged in importing pure or alloy magnesium from Canada or China, nor did any U.S. producer indicate that it had any related firms engaged in producing or exporting magnesium in Canada or China.

U.S. PRODUCERS' INVENTORIES

Table III-7 presents data on U.S. producers' inventories of magnesium, by types, during 2000-05. Between 2000 and 2005, end-of-period inventories of pure magnesium decreased by *** percent, while inventories of alloy magnesium decreased by *** percent. End-of-period inventories of pure magnesium as a share of total shipments decreased from *** percent in 2000 to *** percent in 2005. End-of-period inventories of alloy magnesium as a share of total shipments decreased from *** percent in 2000 to *** percent in 2005. End-of-period inventories of pure and alloy magnesium (combined) as a share of total shipments decreased from *** percent in 2000 to *** percent in 2005.

Table III-6
Magnesium: U.S. producers' purchases, by types, 2000-05

* * * * *

⁵ Also, ***.

**Table III-7
Magnesium: End-of-period inventories of U.S. producers, by types, 2000-05**

* * * * *

U.S. PRODUCERS' EMPLOYMENT, WAGES, AND PRODUCTIVITY

Table III-8 presents data on U.S. producers' employment, wages, and productivity for the period 2000-05. The Commission requested that U.S. producers provide separate employment, wage, and productivity data for pure and alloy magnesium. Since the same workers are employed to produce both pure and alloy magnesium, the producers provided allocations based on their production mix.

**Table III-8
Magnesium: Average number of production and related workers, hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, by types, 2000-05**

* * * * *

FINANCIAL EXPERIENCE OF U.S. PRODUCERS

Background

During the periods reviewed, US Magnesium⁶ and Northwest Alloys⁷ provided usable financial data on their operations producing pure and alloy (including secondary alloy) magnesium while Amacor,

⁶ US Magnesium resulted from the asset sale from bankruptcy of Magcorp on June 24, 2002. It is the successor to that firm and its direct parent is the Renco Group, a holding company that is, in turn, owned by Mr. Ira Rennert and certain family trusts. US Magnesium reported on a fiscal-year basis that ends on ***. The firm provided a copy of its audited financial statements, which staff reconciled with its questionnaire response. In the audit opinion, US Magnesium's ***. US Magnesium's response to questions regarding "other causes of injury," including respondents' allegations that the owners withdrew \$150 million from Magcorp, driving it into bankruptcy, and that US Magnesium has a potential \$900 million liability that arises from environmental lawsuits, was presented in app. E in *Magnesium from China and Russia*, Investigation Nos. 731-TA-1071-1072 (Final), USITC Publication 3763 (May 2005).

⁷ Northwest Alloys (Addy, WA), an operating unit of Alcoa, provided usable data in these and in prior investigations of pure and alloy magnesium. In its press release of June 22, 2001, Alcoa announced that it would shut down Northwest Alloys as of October 1, 2001 "due to high production costs and unfavorable market conditions." (Electricity costs escalated sharply in the U.S. Pacific Northwest as a result of a power crisis.) Alcoa also stated that its magnesium requirements would be sourced through its worldwide contacts. In its questionnaire response it stated that ***, and it provided ***.

Garfield, Halaco,⁸ MagReTech,⁹ and Spartan¹⁰ provided usable financial data on their commercial and tolling operations producing secondary alloy magnesium.¹¹ These reported data are believed to represent the majority of U.S. production of pure and alloy magnesium in these periods.

Operations on Pure and Alloy Magnesium

The Commission requested financial data from producers of pure magnesium as well as from producers of alloy magnesium. Differences between data for pure and alloy magnesium reported in the trade and financial sections of the Commission’s producers’ questionnaire *** are attributable to ***, and are due to a timing difference and the inclusion of freight charges in the financial data for sales; also ***.

The industry producing magnesium in the United States includes firms that produce pure magnesium and firms that produce alloy magnesium by combining pure magnesium and alloying ingredients, or remelting and processing magnesium-containing scrap. As part of their tolling operations, these scrap processors obtain their input raw material, magnesium scrap, at no cost and provide a fee-based processing service whereby alloy magnesium in usable form is returned to the company that provides the scrap. In order to assist the Commission in its consideration of the results of U.S. producers in these reviews, this section of the report presents financial data in the following order:

Table III-9.—Presents financial data for the operations on pure and total alloy magnesium (which includes non-tolled and tolled alloy magnesium) aggregated;

Table III-10.—Presents data on pure magnesium only;

Table III-11.—Presents pure magnesium data on a firm-by-firm basis;

Table III-12.—Presents data for total alloy magnesium (aggregated for the non-tolled and tolled operations on alloy magnesium);

Table III-13.—Presents total alloy magnesium data on a firm-by-firm basis.

The average unit values (“AUV”) shown in tables III-9, III-12, and III-13 should be used with caution as tolling fees and costs of tolling are lower than those of commercial sales or than those of internal consumption or transfers. The data in tables III-9 and III-12 have been adjusted to eliminate the double-counting of sales and costs of the tolling that ***. In addition to this adjustment, the data of *** have been added to the report.

**Table III-9
Magnesium: Results of operations of U.S. firms on pure and total alloy magnesium, fiscal years 2000-05**

* * * * *

⁸ Halaco, a subchapter S corporation, filed a Chapter 11 bankruptcy petition on July 24, 2002, and *** closed its Oxnard, CA, plant on September 23, 2004. E-mail to staff from Joe Dorn, counsel to US Magnesium, March 14, 2006. Staff used data submitted by Halaco for 2000-04 in the 2004-05 investigations concerning imports of magnesium from China and Russia. Halaco was the target of several environmental lawsuits related to its disposal of used oil, its air emissions, industrial water discharge, and its slag heap located adjacent to the Ormond Beach wetlands in Ventura County, CA.

⁹ Garfield Alloys and MagReTech are ***. Garfield’s plant burned in December 2003, resulting in the complete loss of production at Garfield and most company records ***. Certain sales and cost data for commercial operations and tolling were estimated.

¹⁰ Spartan is a diecaster that recycles magnesium-containing scrap generated from its operations.

¹¹ Amacor, Garfield, Halaco, MagReTech, and Spartan reported ***.

Table III-10
Pure magnesium: Results of operations of U.S. firms, fiscal years 2000-05

* * * * *

Table III-11
Pure magnesium: Results of operations of U.S. firms, by firm, fiscal years 2000-05

* * * * *

Table III-12
Total alloy magnesium: Aggregated results of non-toll and tolling operations of U.S. firms, fiscal years 2000-05

* * * * *

Table III-13
Total alloy magnesium: Aggregated results of non-toll and tolling operations of U.S. firms, by firm, fiscal years 2000-05

* * * * *

With respect to the data for pure magnesium (table III-10), the quantity and value of total sales fell *** between 2000 and 2002, mainly attributable to Northwest’s cessation of production. Sales quantity increased between 2002 and 2003 as did sales value, even though the average unit value of sales declined between the two years. Two factors may have played a role in the increase in quantity: one was the small increase in U.S. industrial production, and the other was US Magnesium’s emergence from bankruptcy in late June 2002. Also contributing to an increase in sales between 2002 and 2003 was an increase in volume as US Magnesium’s new “M” cell operations ramped up. Between 2003 and 2005, total sales quantity fell, but the fall was mitigated by an increased unit sales value, leading to improvements in financial performance.¹²

Total cost of goods sold fell *** between 2001 and 2002, again because of the exit of Northwest and because US Magnesium recognized a *** in 2001. The *** reduction in raw material costs between 2001 and 2002 is *** attributable to the exit of Northwest Alloys. The firm was a *** producer and its inputs and production process contribute to raw material costs. Northwest’s raw material inputs were composed of ***. Raw materials and electricity totaled \$*** in 2001, or *** percent of its total COGS in that year. Northwest also consumed natural gas in producing dolomite and in the refining process which it included in other factory costs. Natural gas costs were \$*** in 2001. In contrast, US Magnesium uses magnesium chloride brine (water high in salt) which it obtains at low or no cost from the Great Salt Lake, and it initially uses solar evaporation ponds in which the brine is concentrated.¹³ US Magnesium’s brine costs were \$*** in 2001; in that same year it included “process materials” in raw materials worth \$***; these two items together were *** percent of total COGS. Energy costs, including charges for natural gas and electricity, were included in other factory costs and totaled \$*** in 2001. From 2002 on, COGS fluctuated with sales volume although unit COGS declined between 2002 and 2003 as well as between 2003 and 2004 because of increased production efficiencies at US Magnesium that are attributable to its new cell technology.

¹² Hearing transcript, p. 23 (Legge).

¹³ See conference transcript (Legge), *Magnesium From China and Russia*, Inv. Nos. 731-TA-1071-1072 (Preliminary), pp. 14-15.

Energy costs of electricity and natural gas rose *** between 2002 and 2005 (and probably led to the increased unit value of COGS in 2005 from 2004). Natural gas is used to further refine molten magnesium that comes from the firm’s electrolytic cells. Natural gas also is used to produce alloy magnesium by melting pure magnesium in a furnace. Electricity at high amperage is consumed in the production of pure magnesium in the firm’s electrolytic cells—to separate magnesium chloride brine from chlorine and other elements. “Energy” is classified with ***, and is ***. Although the new “M” cells may be more efficient than the cells they replace, the costs of both electricity and natural gas have risen, affecting pure and alloy production costs.¹⁴ US Magnesium stated that at the same time prices of magnesium are falling in the U.S. market, rising energy costs have weakened its financial condition and resulted in a cost-price squeeze.¹⁵

The value of selling, general, and administrative (SG&A) expenses increased between 2000 and 2005. Although US Magnesium emerged from bankruptcy, SG&A expenses include certain items such as freight charges on shipments as well as accrued charges. Changes in selling expenses partly reflect changes in freight charges on shipments of finished product, which, in turn, vary with sales volume. General and administrative expenses include accrued overhead items. In the case of US Magnesium, G&A expenses include ***¹⁶ and an accrual for environmental liabilities of \$***.¹⁷ Beginning in 2004, US Magnesium incurred expenses on an annual basis for ***.¹⁸

Data for US Magnesium’s energy costs incurred in the production of pure magnesium are shown in table III-14.

Table III-14
Pure magnesium: Energy costs of US Magnesium, fiscal years 2000-05

* * * * * * *

With respect to the data for total alloy magnesium (table III-12), sales quantity increased irregularly between 2000 and 2002 before declining thereafter with the decline *** between 2003 and 2005; sales value decreased irregularly from 2000 to 2005. ***. The average unit value of sales fell *** between 2000 and 2004, and recovered *** between 2004 and 2005. COGS fell steadily between 2000 and 2005, affected by US Magnesium’s accrual of *** in 2001 as well as that firm’s ***. COGS is approximately flat between 2001 and 2003 when the *** is excluded, as changes in raw material costs, direct labor, and other factory costs canceled each other out. Changes in raw material costs are related to changes in the cost of magnesium-bearing scrap, which is the primary input. Changes in other factory costs also are related to rising energy costs (natural gas is used to melt magnesium-containing scrap).

¹⁴ According to testimony at the Commission’s hearing, the new “M” cells increased electrical efficiency, reduced consumption of electrical power, reduced chlorine emissions, and resulted in other operating efficiencies. Hearing transcript, pp. 20-21 (Legge).

¹⁵ US Magnesium’s posthearing brief, p. 12.

¹⁶ US Magnesium’s audited financial statements for 2005; the total was allocated between pure and alloy magnesium based on the relative ratio of sales values.

¹⁷ Conversation with *** on February 23, 2005; the total was allocated between pure and alloy magnesium based on the relative ratio of sales values.

¹⁸ E-mail from ***, March 1, 2005.

Data for US Magnesium's energy costs incurred in the production of alloy magnesium are shown in table III-15.

Table III-15
Alloy magnesium: Energy costs of US Magnesium, fiscal years 2000-05

* * * * *

Tolling of Alloy Magnesium

In tolling (or toll conversion) operations, one firm, the tollee, typically arranges for another firm, the toller, to produce usable magnesium metal alloy by recycling magnesium-containing scrap that is provided by the tollee. The tollee typically purchases the magnesium scrap raw materials and other materials and arranges delivery of the scrap to the toller. The toller processes it and charges a conversion charge, or tolling fee for the service. Tollers included: ***. With the exception of ***, most of the tolling reported in the Commission's questionnaire was performed on behalf of firms making downstream products, primarily fabricated diecast parts for the automotive industry. Tolling data on alloy magnesium are included in table III-9 (pure and total alloy) and in table III-12 (total alloy, the aggregate of non-toll and tolled alloy). Because ***,¹⁹ the tolling data in the two tables noted represent tolling on behalf of non-reporting firms only.

Value Added

Alloy magnesium typically is produced by recycling magnesium-bearing scrap and adding pure magnesium and/or alloying materials to it to achieve the desired magnesium alloy. The tollee, the firm contracting for tolling services from a toller, typically delivers scrap and other raw material inputs to the toller, receiving back the desired product. *** for such services, although the *** after ***. The value-added ratios are not shown here. Total conversion fees were shown in ***.²⁰ For ***. For ***.²¹

Variance Analysis

A variance analysis based upon the results of the U.S. firms on their operations producing all magnesium (*i.e.*, the data in table III-9) is not presented here. This is because a variance analysis, which provides an assessment of changes in profitability as a result of changes in volume, sales prices, and costs, is effective when the product under examination is homogeneous through the periods examined, with little or no variation in product mix. In these reviews, there are several events which decrease the value of a variance analysis—a major producer exiting the industry, the entry of another producer with high start-up costs, US Magnesium's ***, and the increasing amounts of product toll-processed throughout the periods for which data were collected.

¹⁹ See note to file, May 4, 2006.

²⁰ E-mail from *** to staff, April 27, 2006.

²¹ See telephone interview notes and e-mails between staff and ***.

Capital Expenditures and Research and Development Expenses

The responding firms' data on capital expenditures and their research and development ("R&D") expenses for the production of pure and total alloy magnesium are shown in table III-16. US Magnesium has made *** in capital improvements to its pure magnesium production facilities during 2000-05. These improvements were focused on ***. US Magnesium testified at the hearing that the startup of new "M" cells and capacity expansion has been delayed due to falling market prices of magnesium.²² It further stated that the firm remains "highly vulnerable to further reductions in market prices. Revocation of the orders would prevent it from being able to complete the modernization project and stymie its ability to improve its cost efficiency."²³

Assets and Return on Investment

The Commission's questionnaire requested data on assets used in the production, warehousing, and sale of magnesium to compute return on investment ("ROI") for 2000 to 2005. The data for total net sales and operating *** are from table III-9. Operating income was divided by total net sales, resulting in the operating income ratio. Total net sales was divided by total assets, resulting in the asset turnover ratio. The operating income ratio was then multiplied by the asset turnover ratio, resulting in ROI; the expanded form of this equation shows how the profit margin and total assets turnover ratio interact to determine the return on investment. U.S. producers' total assets and their ROI are presented in table III-17. The total assets utilized in the production, warehousing, and sales of magnesium fell from 2001 to 2002, *** attributable to Northwest's exit from the industry and ***. The data show that the calculated industry ROI varied widely during the periods reviewed but was positive only in 2000 and in 2005. ROI calculated separately for US Magnesium *** during 2001-04, but is *** percent in 2005. In its posthearing brief, US Magnesium stated that it ***.²⁴

Table III-16

Pure and alloy magnesium: Value of capital expenditures and R&D expenses of U.S. firms, fiscal years 2000-05

* * * * *

Table III-17

Magnesium: Value of assets used in the production, warehousing, and sale, and return on investment, fiscal years 2000-05

* * * * *

²² US Magnesium's posthearing brief, pp. 10 and 13, and hearing transcript, p. 22 (Legge) and 32 (Tissington).

²³ US Magnesium's posthearing brief, p. 10.

²⁴ US Magnesium's posthearing brief, exh. 1, pp. 15-16. ***. Also, as noted earlier, US Magnesium's *** in its audit opinion.

PART IV: U.S. IMPORTS AND THE INDUSTRIES IN CANADA AND CHINA

U.S. IMPORTS

The Commission sent importers' questionnaires to 60 firms believed to be importing pure or alloy magnesium from Canada or China from 2000-05.¹ Eighteen firms responded to the importers' questionnaire, with 9 firms indicating imports of the subject merchandise from Canada² and no firms indicating imports of the subject merchandise from China. Responding U.S. importers are believed to account for virtually all U.S. imports of pure and alloy magnesium from Canada in 2005, and no U.S. imports of pure magnesium from China in 2005.³

Import data for Canada are based on responses to the Commission's importers' questionnaire.⁴ However, import data for China and all other sources are based on official Commerce statistics.^{5 6} Table IV-1 presents information on imports of pure magnesium from 2000-05. Table IV-2 presents information on alloy magnesium during this same period.

Table IV-1
Pure magnesium: U.S. imports, by sources, 2000-05

* * * * *

Table IV-2
Alloy magnesium: U.S. imports, by sources, 2000-05

* * * * *

¹ A list of importers was developed from proprietary information provided by Customs that identified foreign manufacturers, importers of record, and consignees of the subject merchandise by entry. Additional potential U.S. importers were identified from lists of firms responding to Commission questionnaires in previous magnesium reviews and investigations.

² Data on imports from Canada exclude the imports of Timminco Canada, whose imports are excluded from the countervailing duty orders on pure and alloy magnesium from Canada. Although nine firms reported imports from Canada, in effect there were *** that accounted for all imports of subject product from Canada.

³ There were virtually no U.S. imports of pure magnesium from China during the period 2000-05, with only 19 metric tons of subject imports in 2005.

⁴ Data provided in importer responses from *** were not used in the import data herein because they entailed the double-counting of imports already reported by ***.

⁵ Official Commerce statistics for pure magnesium are based on HTS subheading 8104.11.00. To the extent that subject pure magnesium from China enters the United States under HTS subheadings 8104.20.00 (magnesium waste and scrap), 8104.30.00 (magnesium raspings, turnings, and powders), 8104.90.00 (other magnesium shapes), 3824.90.11 and 3824.90.19 (prepared binders for foundry molds and cores), and 9817.00.90 (remelt scrap ingot), the subject import data for China presented may be slightly understated.

⁶ Official Commerce statistics for alloy magnesium are based on HTS subheading 8104.19.00.

U.S. PRODUCERS' IMPORTS

No U.S. producer imported subject merchandise from either Canada or China from 2000 to 2005.
***.

U.S. IMPORTERS' SHIPMENTS

Information on U.S. importers' shipments of subject magnesium imported from Canada, by types of end users, is presented in table IV-3. Information on U.S. importers' shipments of subject magnesium imported from China, by types of end users, is presented in table IV-4.

Table IV-3

Magnesium: U.S. importers' commercial shipments of imports from Canada, by end users and by types, 2004-05

* * * * *

Table IV-4

Magnesium: U.S. importers' commercial shipments of imports from China, by end users and by types, 2004-05

* * * * *

U.S. IMPORTERS' INVENTORIES

Table IV-5 presents information on U.S. importers' inventories of pure magnesium. Table IV-6 presents information on U.S. importers' inventories of alloy magnesium.

Table IV-5

Pure magnesium: U.S. importers' end-of-period inventories of imports, by sources, 2000-05

* * * * *

Table IV-6

Alloy magnesium: U.S. importers' end-of-period inventories of imports, by sources, 2000-05

* * * * *

U.S. IMPORTERS' CURRENT ORDERS

Table IV-7 presents information on U.S. importers' current orders for delivery after December 31, 2005. *** U.S. firms have arranged for imports of pure magnesium during calendar year 2006, while *** U.S. firms have arranged for imports of alloy magnesium during calendar year 2006. Only *** has arranged for imports in 2007.

Table IV-7

Magnesium: U.S. importers' current orders for delivery after December 31, 2005

* * * * *

THE INDUSTRY IN CANADA

Canada is the world's second-largest producer of primary magnesium (pure and alloy magnesium), with production in 2004 of *** metric tons, accounting for *** percent of worldwide production in 2004, the latest period for which comparative data are available.⁷ There are three Canadian producers of magnesium: Norsk Hydro Canada Inc. ("Norsk Hydro"), Magnola Metallurgy ("Magnola"), and Timminco Metals Corporation Ltd. ("Timminco Canada"). Norsk Hydro is the only active Canadian producer subject to these reviews.⁸

Data on the magnesium industry in subject Canada are based on the questionnaire responses of two firms, Norsk Hydro and Magnola, that are believed to account for virtually all of the Canadian exports of the subject merchandise to the United States from 2000-05. Information on Canadian producers' production capacity, production, shipments, and inventories of pure magnesium is presented in table IV-8. Information on Canadian producers' production capacity, production, shipments, and inventories of alloy magnesium is presented in table IV-9. Aggregate data on Canadian producers' production capacity, production, shipments, and inventories of alloy magnesium is presented in table IV-10.

Table IV-8
Pure magnesium: Data on the industry in Canada, 2000-05

* * * * * * *

Table IV-9
Alloy magnesium: Data on the industry in Canada, 2000-05

* * * * * * *

Table IV-10
Pure and alloy magnesium: Data on the industry in Canada, 2000-05

* * * * * * *

Production capacity for pure magnesium increased by *** percent from 2000 to 2003 and then decreased, with capacity utilization decreasing from ***⁹ percent in 2000 to *** percent in 2005. Production decreased by *** percent between 2000 and 2005, ***.

⁷ The production level is as reported by Norsk Hydro and Magnola in their questionnaire responses. World comparison calculated based on information provided by Deborah A. Kramer, *Magnesium*, Minerals Yearbook 2004, U.S. Geological Survey ("USGS"), table 8; Deborah A. Kramer, *Magnesium Metal*, U.S. Geological Survey, *Mineral Commodity Summaries*, January 2005 using Canadian production quantities as reported by the individual companies. ***.

⁸ Timminco Canada was found to be selling at fair value and Magnola has suspended operations. Timminco's data are excluded from the Canadian industry data presented throughout this section.

Timminco Canada produces both pure and alloy magnesium; however, the firm specializes in producing ultra-pure grade pure magnesium (99.95 percent magnesium by weight). Timminco Canada has a subsidiary in the United States based in Aurora, CO, Timminco Inc. ("Timminco Colorado"), that ***.

⁹ Because firms can switch production from pure to alloy relatively easily, Norsk Hydro's capacities for pure and alloy magnesium were allocated based on the ratio of production of pure magnesium to that of alloy magnesium. Because of this, production may exceed capacity in any given year depending on actual production volumes.

Production capacity for alloy magnesium increased by *** percent from 2000 to 2003 and then decreased, with capacity utilization decreasing from *** percent in 2000 to *** percent in 2005. Production decreased by *** percent between 2000 to 2005, ***.

Production capacity for both pure and alloy magnesium combined increased by *** percent from 2000 to 2003 and then decreased, with capacity utilization decreasing from *** percent in 2000 to *** percent in 2005. Production decreased by *** percent between 2000 and 2005, ***.

Shipments of pure magnesium (based on quantity) to Canadian customers as a share of total shipments decreased from *** percent in 2000 to *** percent in 2005, while shipments to the United States increased from *** percent in 2000 to *** percent in 2005. Shipments of alloy magnesium (based on quantity) to Canadian customers as a share of total shipments decreased from *** percent in 2000 to *** percent in 2005, while shipments to the United States increased from *** percent in 2000 to *** percent in 2005. Total shipments of pure and alloy magnesium (based on quantity) combined to Canadian customers as a share of total shipments decreased from *** percent in 2000 to *** percent in 2005, while shipments to the United States increased from *** percent in 2000 to *** percent in 2005.

Norsk Hydro

In 2005, Norsk Hydro's total Canadian production capacity was ***¹⁰ metric tons ***.¹¹ However, Norsk Hydro reported ***. The American Metal Market reported a possible expansion of Norsk Hydro's capacity by 7,000 metric tons.¹² Norsk Hydro asserted that the ***.¹³ Norsk Hydro also reported that ***.¹⁴ In 2005, Norsk Hydro exported *** percent of its alloy production to the United States and further indicated that “***.”

Norsk Hydro reported that the countervailing duty order on pure and alloy magnesium has had “***.”¹⁵ Furthermore, Norsk Hydro emphasizes that “***.”¹⁶

¹⁰ Norsk Hydro reported that its reported production capacity includes ***. Norsk Hydro indicated that it is ***.

¹¹ US Magnesium argues that the plans were postponed because Norsk Hydro failed to achieve revocation of the antidumping duty and countervailing duty orders in the first sunset review (hearing transcript, p. 43 (Button)).

¹² David Brooks, *Hydro Magnesium to hike Beacancour Capacity*, American Metal Market, January 28, 2005, found at www.amm.com/news-2005-01-28_15-24-00.html, retrieved February 22, 2006.

To date, *** metric ton annual capacity ***. Norsk Hydro estimates it will ***. (Norsk Hydro's posthearing brief, p. 8.)

¹³ Foreign Producer Questionnaire, section II-4. US Magnesium argues that the bulk of Norsk Hydro's new capacity would be for the U.S. market, primarily because of its own competition with Chinese imports (hearing transcript, p. 43 (Button)).

¹⁴ Foreign Producer Questionnaire, response to question II-8.

¹⁵ Foreign Producer Questionnaire, response to questions II-12a & 14.

¹⁶ Foreign Producer Questionnaire, response to question II-15.

Magnola¹⁷

Magnola, a subsidiary of Noranda Minerals Inc.,¹⁸ produced magnesium from October 2000 to April 2003, when it suspended production.¹⁹ Magnola's production facility is located in Danville, Quebec. When it ceased operations, Magnola reported annual production capacity of *** metric tons.²⁰ However, the U.S. Geological Survey ("USGS") reports that Magnola, while currently not operating, has an annual production capacity of 63,000 metric tons.²¹ In a recent American Metal Market article, Noranda indicated that the Magnola plant was not permanently closed but was on a low-cost care and maintenance status and would remain closed until "[a] resolution in the magnesium market."²² Magnola also indicated that ***.²³ Though Magnola ***, the increase in world prices pushed the *Societe Generale de Financement du Quebec*, a 20-percent owner of Magnola, to announce that the "Magnola magnesium foundry near Asbestos, Que., could reopen in the next few years."²⁴ In its questionnaire response, *** stated that it ***.^{25 26}

While operating, Magnola's annual production was *** metric tons of magnesium. Magnola claimed that "****".²⁷

¹⁷ The GOQ argues that adverse inferences should not be made of the GOQ because of its inability to obtain information from Magnola. The GOQ does not represent Magnola and Magnola did not seek GOQ's participation in this review. (GOQ's posthearing brief, p. 7.) Furthermore, though the GOQ does not control Magnola, have much contact with Magnola, nor attend Magnola board meetings the President of the *Societe Generale de Financement du Quebec* recently stated that Magnola will not reopen (GOQ's posthearing brief, pp. 5 and 7).

¹⁸ Noranda Minerals is a subsidiary of Falconbridge Ltd., Toronto, Canada.

¹⁹ Noranda reportedly stated that the shutdown was "for an indefinite period of time, until market conditions allow for a viable operation of the plant." It indicated that about 10 workers would remain on site after the shutdown to maintain the plant. Noranda also reportedly decried the impact that imports from China had on Magnola. "Noranda to shutter Quebec magnesium plant," *American Metal Market*, March 26, 2003, found at www.amm.com/news-2003-03-26_01-10-00.html, retrieved March 23, 2006.

²⁰ Foreign Producer Questionnaire, response to question II-16a & c.

²¹ Public spreadsheet supplied by Deborah A. Kramer, Commodity Specialist, USGS, February 27, 2006.

²² Rory Carrol, *Noranda/Falconbridge keen on sales of aluminum assets*, *American Metal Market*, May 17, 2005, found at www.amm.com/news-2005-05-17_15-39-00.html, retrieved February 22, 2006. See also Wayne Wagner, *Magnesium*, Office of Minerals and Metals Sector, Natural Resources Canada found at: www.nrcan.gc.ca/mms/cmty/content/2004/36.pdf, retrieved February 28, 2006.

According to US Magnesium, Magnola continues to employ two persons to handle magnesium marketing. These two employees, ***, are *** that still attend conferences and engage in other activities related to the marketing of magnesium (US Magnesium's posthearing brief, p. 5 and app. 22, p. 5).

Based on previous experience utilizing Alcan electrolytic cell technology, specifically the Mark cell series, US Magnesium argues that restarting the Magnola plant would not be prohibitive but would rather cost \$50-60 million to recommission an original investment of \$880 million (US Magnesium's posthearing brief, attachment 1, p. 36 and attachment 22, pp. 2-5).

²³ Foreign Producer Questionnaire, response to question II-1. The GOQ argues that "Magnola is shut down, out of business, the investment by Quebec's investment arm in the plan {has been} written off. It is not coming back" (posthearing brief, p. 1). It also points out that Noranda, itself, has written off a majority of the investment in the Magnola plant (posthearing brief, p. 6).

²⁴ *Quebec Wants to Reopen Magnola Plant*, Magnesium.com-Newsroom Service, www.magnesium.com/w3/news-room/print/hph?news=1863, retrieved February 22, 2006.

²⁵ Foreign producer Questionnaire, response to question I-4.

²⁶ ***.

²⁷ Foreign Producer Questionnaire, response to question II-8.

Timminco Canada

Timminco Canada was the first manufacturer of magnesium in Canada and is a relatively small niche producer of ultra-pure magnesium products. The firm has one manufacturing facility in Haley, Ontario. While Timminco is not subject to these reviews, it had a reported production capacity in 2005 of 9,000 metric tons.²⁸

Other Canadian Projects

Beyond current producers, there is one project that may significantly increase magnesium production capacity in Canada in the future. Leader Mining International, Calgary, Alberta, is financing the Cogburn Magnesium Project in Haley, British Columbia. The project was described as a US\$1.3 billion integrated quarry and magnesium reduction plant with an annual production capacity of 131,000 metric tons of high-purity magnesium alloy.^{29 30} In 2003, Hatch Associates, Calgary, Alberta, an engineering consulting firm hired by Leader Mining, produced a positive project feasibility study for the mine and smelter. It indicated that the Cogburn Project was economically viable at \$1.27 per pound prices.³¹ In October 2005, Leader Mining submitted a “Draft Terms of Reference” to the British Columbia Environmental Assessment Office, indicating that the project is continuing and that it has the “potential to be a world-class, long-life producer of high quality magnesium metal by 2008.”^{32 33}

THE INDUSTRY IN CHINA

China is by far the world’s largest producer of primary magnesium (pure and alloy magnesium), with production in 2004 of 426,000 metric tons, or *** percent of worldwide production in 2004, the latest period for which comparative data are available.³⁴ Moreover, China’s National Bureau of Statistics reported an 8-percent annual growth rate for magnesium production in 2005, with production reaching 496,000 metric tons of pure magnesium.³⁵

Exports of pure magnesium from China were 189,000 metric tons in 2005, while exports of alloy magnesium were 93,000 metric tons during the same period.³⁶ The Chinese government is taking steps to

²⁸ Public spreadsheet supplied by Deborah A. Kramer, Commodity Specialist, USGS, February 27, 2006.

²⁹ Project description found at leadermining.com/company-fram.html, retrieved February 22, 2006.

³⁰ *Cogburn Magnesium Project Update*, Magnesium.com–Newsroom Service, www.magnesium.com/w3/newsroom/print.php?news=2024, retrieved February 23, 2006.

³¹ According to the 2004 Magnesium Minerals Yearbook, the average price for magnesium was between \$1.55 and \$1.60 per pound in 2004. However, the last reported price as reported by the American Metals Market is \$1.29 per pound (November 2005).

³² *Introducing: The Cogburn Magnesium Project*, brochure found at leadermining.com/Cogburn_brochure_2005v3.pdf, retrieved February 23, 2006.

³³ ***. The GOQ’s posthearing brief stated that the Cogburn project is “no closer to fruition than it was in 2003” and that the project “has no chance of being constructed, tested, staffed, trained, and producing magnesium in the reasonably foreseeable future . . .” (GOQ posthearing brief, Responses of the GOQ to Commissioner Questions, p. 3).

³⁴ World comparison calculated using Deborah A. Kramer, *Magnesium*, Minerals Yearbook 2004, U.S. Geological Survey (“USGS”), table 8, and Deborah A. Kramer, *Magnesium Metal*, U.S. Geological Survey, *Mineral Commodity Summaries*, January 2005 using Canadian production quantities as reported by the individual companies.

³⁵ *Mineral Industry Surveys, Magnesium in the Fourth Quarter 2005*, USGS, March 2006.

³⁶ *Ibid.*

stem the flow of exports by reducing the magnesium export rebate from 13 percent to 5 percent. The lower export rebate is expected to increase the price for Chinese magnesium on the world market.³⁷

In response to the Commission's notice of institution of this review, US Magnesium reported that in 2004, pure magnesium was produced by 136 companies in 10 provinces in China. The Commission attempted to send (via fax or e-mail) foreign producers' questionnaires to 57 Chinese firms for which contact information was available. The Commission also contacted via e-mail the China Magnesium Association ("CMA"), which represents most producers and exporters of magnesium in China, and asked the association's assistance in distributing the Commission's foreign producers' questionnaire to all member firms.

The Commission received a questionnaire response from only one Chinese producer, ***, that is believed to account for approximately *** percent of Chinese production of subject pure magnesium. ***.³⁸ Information on the responding Chinese producer's production capacity, production, shipments, and inventories is presented in table IV-11.

Table IV-11
Pure magnesium: Data on the sole reporting firm in China, 2000-05

* * * * *

There are conflicting figures and estimates on the levels of capacity and production of magnesium in China.³⁹ Based on information gathered in the Commission's most recent antidumping investigation concerning imports of alloy magnesium from China,⁴⁰ the CMA was quoted in the press as stating that China's capacity to produce pure and alloy magnesium was 480,000 to 500,000 metric tons in 2002 (with production of 268,000 metric tons), and that capacity would increase to 700,000 metric tons in 2003.⁴¹ Capacity is now estimated at 527,600 metric tons with production of roughly 469,000 metric tons.⁴²

According to the USGS, magnesium producers in China "continue to announce planned capacity increases, although some {firms} have delayed previously announced plans because of a sharp rise in fuel costs and raw material and freight restrictions."^{43 44} However, firms stalling expansion have been instructed by government agencies that small producers must "boost production capacity . . . or face

³⁷ *Ibid.*

³⁸ A total of 139 firms were identified as producers of pure and alloy magnesium by Customs, through research, and by US Magnesium. Of the 139 firms identified, staff was able to obtain contact information for 57 firms. Of those 57 firms, questionnaires were successfully faxed and/or e-mailed to 29 firms.

³⁹ Quantities reported herein represent both pure and alloy. It is believed that even though end users may not easily switch between pure and alloy magnesium, the producers are capable of switching production quickly.

⁴⁰ *Magnesium from China and Russia*, Investigation Nos. 731-TA-1071 and 1072 (Final), USITC Publication 3763 (April 2005).

⁴¹ *Minerals Industry Surveys: Magnesium in the Second Quarter 2003*, USGS, August 2003, p. 2; and *Chinese Magnesium Hot in Europe, But Seen Moderating*, Platts Metal Week, August 4, 2003, p. 15.

⁴² Public spreadsheet supplied by Deborah A. Kramer, Commodity Specialist, USGS, February 27, 2006. ***. Staff telephone conversation with Deborah A. Kramer in the 2004-05 investigations, April 1, 2004.

⁴³ *Mineral Industry Surveys, Magnesium in the Fourth Quarter 2003*, USGS, February 2004 <http://minerals.usgs.gov/minerals/pubs/commodity/magnesium/mgmis4g03.pdf>, retrieved March 22, 2005 and *Mineral Industry Surveys, Magnesium in the Third Quarter 2003*, USGS, November 2003 found at minerals.usgs.gov/minerals/pubs/commodity/magnesium/mgmis3g03.pdf, retrieved March 22, 2005.

⁴⁴ Minhe Magnesium Co. canceled expansion plans in Qinghai Province, China due to poor market conditions. Original plans called for 16,000 metric tons of additional capacity to be added by the end of 2005 (Deborah Kramer, *U.S. Geological Survey, Mineral Commodity Summaries, January 2006: Magnesium Metal*, found at <http://minerals.usgs.gov/minerals/pubs/mcs/2006/mcs2006.pdf>, retrieved March 27, 2006).

closure.”⁴⁵ The government statement was aimed at producers with less than 8,000 metric tons capacity in Shanxi province. Furthermore, 40 small magnesium plants have recently shut down because of falling prices and environmental concerns.⁴⁶ The Chinese Magnesium Association also indicated that an additional 40 plants would close by the end of 2005.⁴⁷

China’s Shanxi province accounts for 71 percent of the total Chinese production capacity, and the top six producers are all located in that province.⁴⁸ Information provided by the USGS indicates that Chinese production capacity was 527,600 metric tons in 2005.⁴⁹ Table IV-12 presents Chinese production capacity by province in 2005.

Table IV-12
Magnesium: Chinese production capacity, by province, 2005¹

Province	Production capacity	Share of capacity
	<i>Metric tons</i>	<i>Percent</i>
Shanxi Province	373,400	70.8
Ningxia Province	73,000	13.8
Henan Province	30,700	5.8
Jilin Province	24,000	4.6
Qinghai Province	7,000	1.3
Liaoning Province	5,000	1.0
Guizhou Province	5,000	1.0
Jiangsu Province	4,000	0.8
Inner Mongolia	3,500	0.7
Hebei Province	2,000	0.4
Total	527,600	100.0

¹ ***. Production capacity is for pure and alloy combined.

Source: Public spreadsheet supplied by Deborah A. Kramer, Commodity Specialist, USGS, February 27, 2006.

According to official Commerce statistics, U.S. imports of pure magnesium from China have decreased since 2004. Imports of pure magnesium declined steadily from 244 metric tons in 2000 to 19 metric tons in 2005. Since 2000 a total of 597 metric tons of pure magnesium have been imported from China. The *** exporter of pure magnesium was *** in 2005. The largest exporters of pure magnesium

⁴⁵ *China Getting Tough with Alumina, Magnesium*, American Metal Market, March 7, 2005, www.amm.com/news-2005-03-07_09-02-56.html, retrieved March 2, 2006.

⁴⁶ These plants were reported to have an average of 1,000 metric tons capacity. (Deborah Kramer, U.S. Geological Survey, *Mineral Commodity Summaries, January 2006: Magnesium Metal*, found at <http://minerals.usgs.gov/minerals/pubs/mcs/2006/mcs2006.pdf>, retrieved March 27, 2006.)

⁴⁷ *Ibid.*

⁴⁸ The top seven Chinese producers represent 42 percent of Chinese magnesium production capacity. They are, in descending order: Shanxi Wanke Jinrun Magnesium Co.; Shanxi Wenxi Yinguan Magnesium Industry Group Corp.; Jishan County Silicon Magnesium Smelter (Huayu); Taiyuan Tongxiang Magnesium Co. Ltd.; Jilin Linjian Magnesium Industry Group; Qinghai Dongli Machinery Manufacturing Corp.; and Shanxi Qingxu Tongxiang Magnesium Corp. Ltd. Public spreadsheet supplied by Deborah A. Kramer, Commodity Specialist, USGS, February 27, 2006.

⁴⁹ Public spreadsheet supplied by Deborah A. Kramer, Commodity Specialist, USGS, February 27, 2006.

since 2000 were ***; combined, they exported *** percent of the total exports from China during the period of review.⁵⁰

Antidumping Duty Orders in Third-Country Markets

India reportedly applied definitive antidumping duties on imports of magnesium from China from July 24, 1998, until May 1, 2003. The duties were withdrawn upon a request by the affected domestic industry. Beginning in 1999, the European Union had an antidumping duty order on imports of pure magnesium (unwrought unalloyed magnesium) from China; the order expired in 2003. On April 29, 2003, Brazil initiated antidumping investigations on imports from China of magnesium ingot and magnesium powder and on October 11, 2004, imposed antidumping duties of \$1.18 per kilogram (\$0.535 per pound) on pure magnesium ingot and \$0.99 per kilogram (\$0.449 per pound) on magnesium granules.⁵¹ Furthermore, in October 2005 Brazil expanded duties to include alloy magnesium (magnesium content less than 99.8 percent) from China.⁵²

The World Market

The primary sources of U.S. imports of pure magnesium are from Israel and Russia. They accounted for 72.4 percent of all U.S. pure magnesium imports in 2005. For alloy magnesium, Canada, China, Israel, and Taiwan accounted for 85.5 percent of all U.S. imports in 2005.⁵³

According to Deborah Kramer of the USGS, annual world production capacity of both pure and alloy magnesium is approximately 770,000 metric tons. The top three countries by capacity are China, Canada, and Russia, which account for 81 percent of world production capacity. Ukraine and the United States tie for the fourth place; combined, they account for 12 percent of world production capacity.

New Technology

The Australian Commonwealth Scientific and Research Organization (“CSRIO”) developed a new alloy magnesium casting technology called T-Mag. T-Mag has the ability to produce high-integrity magnesium alloy casting with lower porosity. This allows producers to decrease the metal required for alloy casting from approximately 6 kilograms (kg) to 3.7 kg for a 3.5 kg casting. Using this process, magnesium alloy engines that are 25 percent lighter than current aluminum alloy blocks can be built.⁵⁴

⁵⁰ Two of the top five Chinese producers (pure and alloy), ***, were successfully contacted by Commission staff; however, neither firm submitted a foreign producer questionnaire response. According to Customs data, collectively, these two firms accounted for *** percent of China’s pure and alloy magnesium exports to the United States between 2000-05. *** accounted for *** exports to the United States of pure magnesium in 2005, the *** year that it exported pure magnesium.

⁵¹ *Magnesium from China and Russia*, Investigation Nos. 731-TA-1071 and 1072 (Final), USITC Publication 3763 (April 2005) p. VII-4 and US Magnesium’s prehearing brief, exh. 28, p. 2.

⁵² *Mineral Industry Surveys, Magnesium in the Third Quarter 2005*, USGS, November 2005.

⁵³ USITC Data Web.

⁵⁴ *Mineral Industry Survey, Magnesium in the Fourth Quarter 2005*, USGS, March 2006.

New Plant Developments

The construction of a new magnesium production facility in Port Sokhna, Egypt has been halted due to higher than expected construction costs.⁵⁵ Egypt Magnesium Co. (“EMag”) indicated that global demand for equipment and services, as well as high raw material prices (steel and copper), contributed to the decision to halt construction. Total annual production capacity of this plant, to be built in two phases, is to be 88,000 metric tons.⁵⁶ EMag is currently searching for ways to reduce costs to re-start construction.

In October 2005, MagIndustries Corp. opened its first brine well in Brazzaville, Congo while construction continues on a 60,000-metric-ton magnesium production facility. The brine extraction field will include five commercial-scale production wells. The brine will initially go to a potassium salt extraction plant before being transported to a new magnesium enrichment facility.⁵⁷

Korab Resources Ltd. is investigating magnesium recovery from its Batchelor magnesite deposit in New South Wales, and International Minerals Corp. Pty Ltd. is investigating magnesium recovery from a waste silica-magnesia tailings pile, also in New South Wales.⁵⁸ However, Lyons River and Arthur River, Tasmania, canceled plans to construct a 95,000 metric ton magnesium plant.⁵⁹

⁵⁵ *Mineral Industry Surveys, Magnesium in the Third Quarter 2005*, USGS, November 2005.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ Deborah Kramer, *U.S. Geological Survey, Mineral Commodity Summaries, January 2006: Magnesium Metal*, Found at minerals.usgs.gov/minerals/pubs/mcs/2006/mcs2006.pdf retrieved March 27, 2006.

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICING

U.S. producers' information on the cost of raw materials in pure magnesium and in alloy magnesium are reported in Part III of this report. In its questionnaire response, ***.

Transportation Costs to the United States

Transportation costs, as a ratio to the customs value, from subject countries to the United States (excluding U.S. inland costs) in 2005 were 1.0 percent for Canadian pure and alloy magnesium and 0.1 percent for Chinese pure magnesium. These estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value.

U.S. Inland Transportation

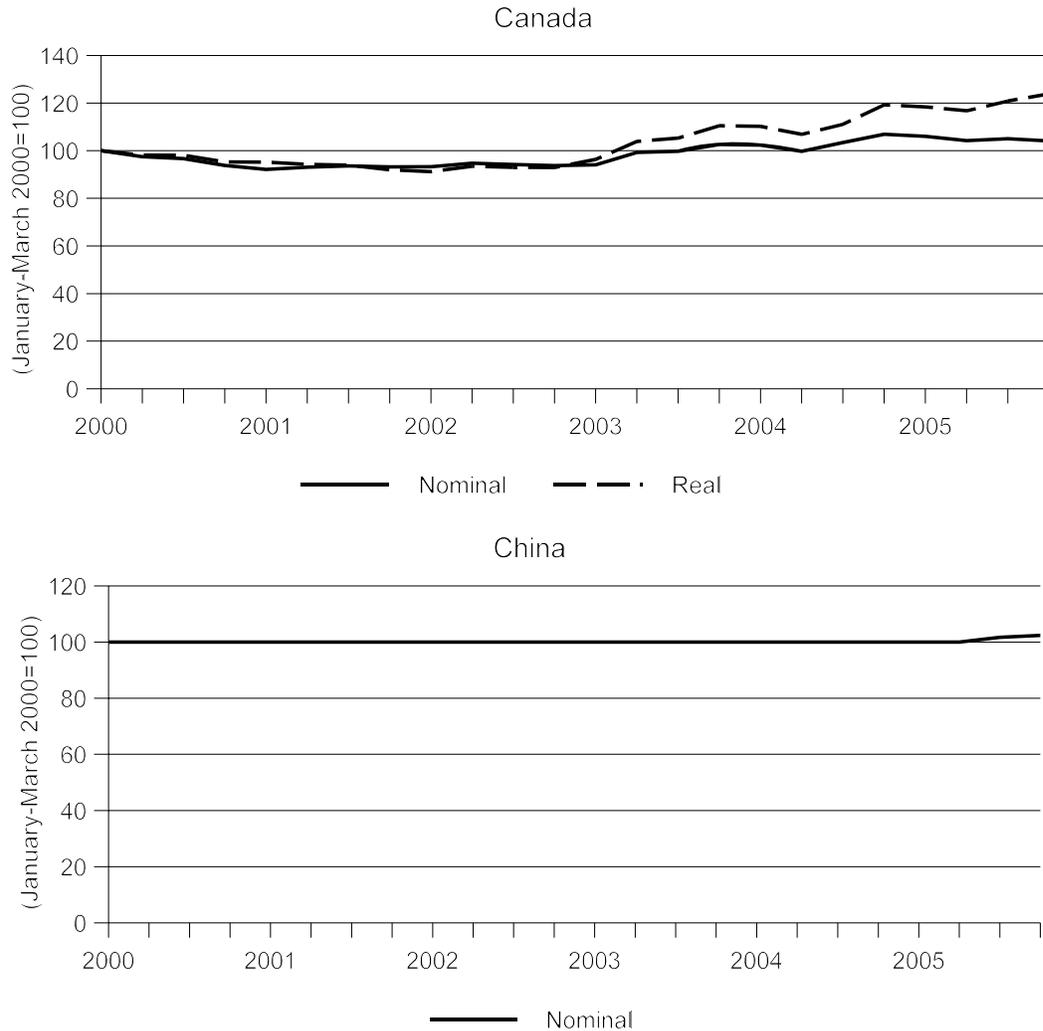
Four U.S. producers reported that their U.S. inland transportation costs for magnesium ranged from 3 to 6 percent of the total delivered cost of the product. Six importers reported that their U.S. inland transportation costs ranged from 0.5 to 8 percent, with three of these firms reporting costs between 2 and 3 percent.

Three of the four responding producers reported shipping most of their product between 101 and 1,000 miles; however, *** reported that it shipped *** percent of its magnesium ***. Two of the six responding importers reported shipping most of their product 100 miles or less; two reported shipping most of their product between 100 and 1,000 miles; one reported shipping most of its product over 1,000 miles; and one shipped half of its product between 101 and 1,000 miles and half longer distances.

EXCHANGE RATES

Quarterly real and/or nominal exchange rates reported by the International Monetary Fund for the currencies of Canada and China relative to the U.S. dollar during 2000-05 are shown in figure V-1.

Figure V-1
Exchange rates: Indices of the nominal and real exchange rates of the currencies of Canada and China
relative to the U.S. dollar, by quarters, January 2000-December 2005



Source: International Monetary Fund, *International Financial Statistics*, ifs.apdi.net/imf/ifsbrowser.aspx?branch=ROOT, retrieved March 13, 2006.

PRICING PRACTICES

Most U.S. producers and importers reported selling pure and alloy magnesium on a transaction-by-transaction basis or on a contract basis. Three of the five responding U.S. producers reported using both transaction-by-transaction pricing and contracts for multiple shipments, and two reported that prices were determined by negotiations or bids. Two of the five responding importers reported transaction-by-transaction prices; one reported both transaction-by-transaction pricing and contracts; one reported selling all using contracts; and one reported setting prices on a cost-plus basis.

Pricing Methods

U.S. producers reported sales terms for pure and alloy magnesium separately. *** reported selling most of its pure magnesium using both long-term and short-term contracts.¹ In 2005, *** percent of *** pure magnesium was sold using short-term contracts, *** percent was sold using long-term contracts, and *** percent was sold on the spot market. Of the three U.S. producers reporting sales of alloy magnesium, two sold the majority of their product using short-term contracts, and one sold the majority of its product on the spot market. *** reported any sales using long-term contracts.

Two importers reported their sales terms for pure magnesium from Canada; one of these sold *** its product using short-term contracts and one sold *** on the spot market. Of the importers which reported sales of alloy magnesium from Canada, one reported that more than *** percent was sold using short-term contracts and the rest was sold on the spot market. Only one importer reported information on sales methods for pure magnesium from China; this firm reported selling *** via short-term contracts.

*** provided information on the provisions of its long-term and short-term contracts.² Long-term contracts for *** typically run for *** while short-term contracts are usually for a ***. With regard to price renegotiation during a contract period, *** stated that *** contracts have meet-or-release provisions but *** also noted that “***.”³ *** further stated that some customers will ***. *** also reported that the average length of its long-term and short-term contracts *** since 2000.⁴

*** also provided information on its sales of magnesium to U.S. customers. *** reported that *** percent of its sales of pure magnesium to U.S. customers in 2005 were made on the basis of *** contracts with the remaining *** percent made ***.⁵ With regard to sales of alloy magnesium, *** sales in 2005 were made on a contract basis. *** reported that *** percent of its 2005 sales were made on a long-term contract basis and *** percent were made on a short-term contract basis. For its long-term contracts (for both pure and alloy magnesium), *** stated that the average duration varies by customer and has ranged from *** to ***.⁶ *** short-term contracts typically run from *** to *** months. According to ***.

Sales Terms and Discounts

Both responding U.S. producers reported selling on a delivered basis. For sales of pure Canadian magnesium, one importer sold on a delivered basis and the other sold on a dock duty paid (“DDP”) basis; for sales of Canadian alloy magnesium, one importer reported selling on a delivered basis, one on an f.o.b. basis, and one sold on a DDP basis. For sales of Chinese pure magnesium, one importer reported that it sold on a delivered basis and the other sold DDP. Four of the five responding U.S. producers and

¹ Questionnaires defined long-term contracts, short-term contracts, and spot sales in the following manner: long-term contracts are multiple deliveries for more than 12 months; short-term contracts are multiple deliveries up to 12 months; and spot sales are single-delivery transactions.

² ***.

³ ***.

⁴ In response to a question on the impact (if any) of the antidumping proceeding on magnesium metal from China and Russia based on the petition filed in February 2004, ***. While ***.

Eight importers provided information in response to this question. Four of these firms stated that the antidumping proceeding on imports of magnesium metal from China and Russia resulted in increased prices of magnesium in the U.S. market; two importers indicated that imports from China stopped as a result; and two importers reported no effect.

⁵ *** reported that the average length of its contracts *** (Norsk Hydro’s posthearing brief, app., p. 10).

⁶ ***.

all responding importers reported sales terms of net 30 days;⁷ the other U.S. producer, ***, reported that its sales terms are ***. Three producers reported quantity discounts, but none of the importers reported any discounts.

PRICE DATA

The Commission requested U.S. producers and importers to provide quarterly data for the total quantity and delivered value of sales of two magnesium products to unrelated U.S. customers. Data were requested for the period January 2000 through December 2005. The magnesium products for which pricing data were requested are as follows:

Product 1.—Pure magnesium ingot containing at least 99.8 percent magnesium by weight but less than 99.95 percent magnesium by weight

Product 2.—Alloy magnesium ingot containing no more than 9 percent aluminum and 1 percent zinc by weight

Five U.S. producers and one importer of Canadian product provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters.⁸ No firms reported pricing data for sales of imported pure magnesium from China. By quantity, pricing data reported by responding firms for 2005 accounted for *** percent of reported U.S. producers' shipments of pure magnesium and *** percent of reported U.S. producers' shipments of alloy magnesium. Price data accounted for *** percent of reported U.S. shipments of subject pure magnesium imported from Canada and *** percent of reported U.S. shipments of subject imported alloy magnesium from Canada in 2005. Data on prices, quantities, and margins of underselling (overselling) of products 1 and 2 are presented in tables V-1 through V-3 and figures V-2 and V-3.⁹

Table V-1

Magnesium: Weighted-average delivered prices and quantities of domestically produced product 1 and product 1 imported from Canada, by types of end users, and margins of underselling/(overselling), by quarters, January 2000-December 2005

* * * * * * *

Table V-2

Magnesium: Weighted-average delivered prices and quantities of domestically produced and imported product 2 (alloy magnesium) sold to diecasters, and margins of underselling/(overselling), by quarters, January 2000-December 2005

* * * * * * *

⁷ Two importers responded to this question for Canadian and Chinese pure magnesium, and three for Canadian alloy magnesium.

⁸ U.S. producers providing price data were ***. Importers providing usable price data were ***.

⁹ Highest and lowest prices and percent changes in prices by product, country, and channel of distribution are presented in table V-4.

Table V-3

Magnesium: Weighted-average delivered prices and quantities of domestic product 2 (alloy magnesium) sold to aluminum producers, granule producers, and others (non-diecasters), by end users and by quarters, January 2000-December 2005

* * * * *

Figure V-2

Magnesium: Weighted-average delivered prices of domestically produced and Canadian product 1 (pure magnesium), by end use and by quarter, January 2000-December 2005

* * * * *

Figure V-3

Magnesium: Weighted-average delivered prices of domestically produced and imported product 2 (alloy magnesium), by end use and by quarter, January 2000-December 2005

* * * * *

Table V-4

Magnesium: Summary of weighted-average delivered prices for products 1 and 2 and change in prices, by country and by channel of distribution

Product	Country	Channel of distribution/ type of purchaser	Highest price	Lowest price	Changes in price ¹
			<i>Per pound</i>		<i>Percent</i>
1	United States	Aluminum producers	***	***	***
1	United States	Granule producers	***	***	***
1	United States	Other (non-diecasters)	***	***	***
1	Canada	Aluminum producers	***	***	***
1	Canada	Other (non-diecasters)	***	***	***
2	United States	Aluminum producers	***	***	***
2	United States	Granule producers	***	***	***
2	United States	Other (non-diecasters)	***	***	***
2	United States	Diecasters	***	***	***
2	Canada	Diecasters	***	***	***

¹ Percentage change from the first quarter in which price data were available to the last quarter in which price data were available.

Note: Only countries for which price data were reported are listed.

Source: Compiled from data submitted in response to Commission questionnaires.

Price Trends and Comparisons¹⁰

U.S. producers' prices of product 1 (pure magnesium) sold to aluminum producers, granule producers, and producers of other products generally followed a similar trend; these prices declined irregularly from the beginning of 2000 to late 2003/early 2004. However, U.S. producers' prices for pure magnesium then increased during 2004 and 2005. Overall, prices for domestic pure magnesium sold to aluminum producers were *** percent lower at the end of the period compared to the beginning of the period. Prices for Canadian pure magnesium sold to aluminum manufacturers declined by *** percent from the first quarter of 2000 to the fourth quarter of 2002; these prices increased to their highest level in the third quarter of 2004 but then declined irregularly through late 2004 and in 2005. Overall, prices for Canadian pure magnesium sold to aluminum producers were *** percent higher at the end of 2005 as compared to the beginning of 2000. In 4 quarters, prices for Canadian pure magnesium sold to aluminum manufacturers were below those for the domestic product; margins ranged from *** to *** percent. In the other 19 instances the Canadian product was priced above the domestic product with margins of overselling ranging from *** to *** percent.

Prices for domestic pure magnesium (product 1) sold to granule producers and producers of other products had overall increases of *** and *** percent, respectively. Price data for sales of Canadian pure magnesium sold to other manufacturers fluctuated over the period and generally involved ***; these prices were *** percent lower at the end of 2005 as compared to the beginning of 2000. In 7 of 11 possible comparisons, prices for Canadian pure magnesium were below those for domestic pure magnesium with margins of underselling ranging from *** to *** percent. In the remaining 4 instances, the Canadian product was priced above the domestic product with margins of overselling ranging between *** and *** percent.

Price data for product 2 sold to diecasters were reported for both U.S. and Canadian product. U.S. producers' prices for alloy magnesium sold to diecasters were fairly steady in 2000 and 2001 before declining in 2002 and 2003; these prices then increased in 2004 and 2005. Overall, prices for U.S.-produced alloy magnesium sold to diecasters were *** percent lower at the end of 2005 compared to the beginning of 2000. Prices for Canadian alloy magnesium sold to diecasters fluctuated throughout the period of review; these prices were *** percent lower at the end of 2005 than they were at the beginning of 2000. Prices for Canadian alloy magnesium were below those for U.S.-produced alloy magnesium in 4 quarters in which comparisons were possible; margins of underselling ranged from *** percent to *** percent. In the other 20 instances, prices for Canadian alloy magnesium were above those for domestic alloy magnesium; margins of overselling ranged from *** to *** percent.

Prices for domestically produced alloy magnesium sold to aluminum producers were fairly stable in 2001 and 2002 but then increased in 2003 and 2004; these prices remained relatively stable during 2005 but were at a level that was about *** percent higher than in 2001. U.S. producers' prices of alloy magnesium sold to producers of other products declined irregularly from January-March 2000 to October-December 2004 before increasing in 2005. Overall, these prices were *** percent lower at the end of 2005 as compared to 2000.

Purchasers were asked if price changes had occurred in the magnesium market since 2000, and if so, were prices of U.S.-produced product higher or lower than the prices of imported magnesium. Three

¹⁰ US Magnesium's economic consultant stated that overselling by Canadian imports was due, in part, to the fact that questionnaire data were a mixture of both contract and spot prices (hearing transcript, p. 130 (Button)). In response to a request from staff, US Magnesium and Norsk Hydro provided data for sales of pure magnesium to aluminum manufacturers and sales of alloy magnesium to diecasters (US Magnesium's posthearing brief, ex. 23 and Norsk Hydro's posthearing brief, app. p. 10 and additional submissions to Commission staff). Based on these data and other information from US Magnesium and Norsk Hydro, *** sales for both suppliers are made on a contract basis. Therefore, prices for both U.S. and Canadian magnesium presented in this section represent both spot and contract sales; however, *** the price data are likely to reflect contract sales prices.

of the six responding purchasers reported that the price of U.S.-produced pure magnesium is now higher than the price of Canadian pure magnesium; the other three firms reported that the price of U.S.-produced pure magnesium is now lower than the price of Canadian pure magnesium. With regard to alloy magnesium, two purchasers stated that the price of U.S.-produced alloy magnesium was higher than the price of the Canadian product and three reported that the price of U.S.-produced alloy magnesium was lower. Seven of the nine responding purchasers reported that the price of U.S.-produced pure magnesium is now higher than the price of Chinese pure magnesium; the other two firms reported that the price of U.S.-produced pure magnesium is now lower than the price of Chinese pure magnesium.

APPENDIX A

***FEDERAL REGISTER* NOTICES AND
THE COMMISSION'S STATEMENTS ON ADEQUACY**

**INTERNATIONAL TRADE
COMMISSION**

**[Investigation Nos. 701-TA-309-A and B
(Second Review)]**

Magnesium From Canada

AGENCY: United States International
Trade Commission.

ACTION: Institution of five-year reviews
concerning the countervailing duty
orders on magnesium from Canada.

SUMMARY: The Commission hereby gives
notice that it has instituted reviews
pursuant to section 751(c) of the Tariff

Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty orders on magnesium from Canada would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;¹ to be assured of consideration, the deadline for responses is August 22, 2005. Comments on the adequacy of responses may be filed with the Commission by September 13, 2005. For further information concerning the conduct of these reviews 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 1, 2005.

FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On August 31, 1992, the Department of Commerce issued countervailing duty orders on imports of alloy and pure magnesium from Canada (57 FR 39392). Following five-year reviews by Commerce and the Commission, effective August 16, 2000, Commerce issued a continuation of the countervailing duty orders on imports of alloy and pure magnesium from Canada (65 FR 49964). The Commission is now conducting second reviews to determine whether revocation of the

countervailing duty orders would be likely to lead to continuation or recurrence of material injury to the domestic industries within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

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

(2) The *Subject Country* in these reviews is Canada.

(3) *The Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations (on remand) and its full five-year review determinations, the Commission found two separate *Domestic Like Products*: (1) alloy magnesium and (2) pure magnesium. Certain Commissioners defined the *Domestic Like Product* differently in the original determinations.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations (on remand) and its full five-year review determinations, the Commission found two separate *Domestic Industries* composed of (1) all domestic producers of alloy magnesium and (2) all domestic producers of pure magnesium. Certain Commissioners defined the *Domestic Industry* differently in the original determinations.

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

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as

provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

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

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or

¹ No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117-0016/USITC No. 05-5-129, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 22, 2005. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is September 13, 2005. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to This Notice of Institution: Please provide the requested information separately for each

Domestic Like Product, as defined by the Commission in its original and first five-year review determinations, and for each of the products identified by Commerce as *Subject Merchandise*. As used below, the term "firm" includes any related firms.

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

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

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

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

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

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 1999.

(7) If you are a U.S. producer of the *Domestic Like Products*, provide the following information on your firm's operations on that product during calendar year 2004 (report quantity data in metric tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in

which your workers are employed/ which are members of your association.

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

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

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

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in metric tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

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

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

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

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in metric tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

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

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total

exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Products* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 1999, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Products* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

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

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

Issued: June 22, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-13162 Filed 6-30-05; 8:45 am]

BILLING CODE 7020-02-P

Act of 1930 (19 U.S.C. 1675(c)) (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. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; ¹ to be assured of consideration, the deadline for responses is October 21, 2005. Comments on the adequacy of responses may be filed with the Commission by November 14, 2005. 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: September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. On May 12, 1995, the Department of Commerce issued an antidumping duty order on imports of pure magnesium from China (60 FR 25691). Following five-year reviews by Commerce and the Commission, effective October 27, 2000, Commerce issued a continuation of the antidumping duty order on imports of pure magnesium from China (65 FR 64422). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to

**INTERNATIONAL TRADE
COMMISSION**

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

Pure Magnesium From China

AGENCY: United States International Trade Commission.

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

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff

¹ No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117-0016/USITC No. 05-5-138, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

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

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

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination and its expedited five-year review determination, the Commission defined the *Domestic Like Product* as all pure magnesium, including off-specification ("off-spec") pure magnesium,² coextensive with Commerce's scope definition. One Commissioner defined the *Domestic Like Product* differently in the original investigation.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited five-year review determination, the Commission defined the *Domestic Industry* as all producers of pure magnesium, including off-spec pure magnesium, coextensive with Commerce's scope definition. One Commissioner defined the *Domestic Industry* differently in the original investigation.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into

the United States from a foreign manufacturer or through its selling agent.

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

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

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any

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

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 21, 2005. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is November 14, 2005. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the

² Off-spec pure magnesium is magnesium containing between 50 percent and 99.8 percent primary magnesium, by weight, that does 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.

explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

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

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

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

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

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

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

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 1999.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2004 (report quantity data in metric tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on

an aggregate basis, for the firms in which your workers are employed/which are members of your association.

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

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

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

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in metric tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

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

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

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

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in metric tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

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

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an

estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 1999, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

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

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

By order of the Commission.

Issued: August 29, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-17441 Filed 8-31-05; 8:45 am]

BILLING CODE 7020-02-P

the conduct of these reviews 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: October 4, 2005.

FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193) Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: On October 4, 2005, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (70 FR 38199, July 1, 2005) was adequate, but found that the respondent interested party group response was inadequate. The Commission also found that other circumstances warranted conducting full reviews.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.

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

By order of the Commission.

Issued: October 11, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-20621 Filed 10-13-05; 8:45 am]

BILLING CODE 7020-02-P

**INTERNATIONAL TRADE
COMMISSION**

[Investigation Nos. 701-TA-309-A and B
(Second Review)]

Magnesium From Canada

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the countervailing duty orders on magnesium from Canada.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty orders on magnesium from Canada would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning

¹Commissioner Jennifer A. Hillman dissenting.

behalf of the domestic interested party and an inadequate response from respondent interested parties, the Department determined to conduct expedited sunset reviews of these CVD orders pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C). As a result of these sunset reviews, the Department finds that revocation of the CVD orders would likely lead to continuation or recurrence of a countervailable subsidy at the levels indicated in the "Final Results of Reviews" section of this notice.

EFFECTIVE DATE: November 4, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Devta Ohri, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-1174 or (202) 482-3853, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2005, the Department initiated sunset reviews of the CVD orders on pure magnesium and alloy magnesium from Canada pursuant to section 751(c) of the Act. *See Initiation of Five-year ("Sunset") Reviews*, 70 FR 38101 (July 1, 2005). The Department received a notice of intent to participate from the domestic industry (US Magnesium LLC) and the Government of Quebec ("GOQ"), within the deadline specified in 19 CFR 351.218(d)(1)(i). US Magnesium LLC ("US Magnesium") claimed interested party status under section 771(9)(C) of the Act, while the GOQ claimed interested party status under section 771(9)(B) of the Act.

The Department received complete substantive responses from US Magnesium and the GOQ on August 1, 2005, within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). On August 5, 2005, the Department extended the due date for parties to submit rebuttal comments to August 12, 2005. On August 12, 2005, US Magnesium and the GOQ filed rebuttal comments. On August 22, 2005, the Department, in its adequacy determination, stated that because a government response alone is not sufficient for full sunset reviews in which the orders are not¹ done on an aggregate basis, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), we are conducting expedited reviews of these CVD orders. *See Memorandum from*

Susan Kuhbach to Barbara E. Tillman: Adequacy Determination: 2nd Sunset Review of the Countervailing Duty Orders on Pure Magnesium and Alloy Magnesium from Canada, dated August 22, 2005, which is on file in the Central Records Unit, Room B-099 of the main Department building.

Scope of the Orders

The products covered by these orders are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The pure and alloy magnesium subject to the orders is currently classifiable under items 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written descriptions of the merchandise subject to the orders are dispositive.

Secondary and granular magnesium are not included in the scope of these orders. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Analysis of Comments Received

All issues raised in these reviews are addressed in the Issues and Decision Memorandum ("Decision Memorandum") from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated October 31, 2005, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendation in this public memorandum which is on file in the Central Records Unit room B-099 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the countervailing duty orders would be likely to lead to continuation or recurrence of a countervailable subsidy.

DEPARTMENT OF COMMERCE

International Trade Administration
(C-122-815)

Final Results of Expedited Sunset Reviews of the Countervailing Duty Orders: Pure Magnesium and Alloy Magnesium from Canada

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

SUMMARY: On July 1, 2005, the Department of Commerce ("the Department") initiated sunset reviews of the countervailing duty ("CVD") orders on pure magnesium and alloy magnesium from Canada pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). *See Initiation of Five-year ("Sunset") Reviews*, 70 FR 38101 (July 1, 2005). On the basis of a notice of intent to participate and an adequate substantive response filed on

¹The August 22, 2005, memo inadvertently omitted the word "not" which has been added to the phrase in this document.

With respect to the pure magnesium order, we are reporting a rate of 6.34 percent for "all others" and we have no basis for reporting a rate for NHCl. With respect to the alloy magnesium order, we are reporting a rate of 1.84 percent for Magnola, 8.18 percent for "all others," and we have no basis for reporting a rate for NHCl.

Timminco, which was found to have an estimated net subsidy of zero in the original investigations, remains excluded from the orders. *See Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946 (July 13, 1992).

Notification Regarding Administrative Protective Order

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

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

Dated: October 31, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5-6126 Filed 11-3-05; 8:45 am]

BILLING CODE 3510-DS-S

Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: On December 5, 2005, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (70 FR 52122, September 1, 2005) was adequate but that the respondent interested party group response was inadequate. The Commission also found that other circumstances warranted conducting a full review.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.

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

By order of the Commission.

Issued: December 14, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5-7510 Filed 12-19-05; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

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

Pure Magnesium From China

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on pure magnesium from China.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) 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. A schedule for the review will be established and announced at a later date. 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: December 5, 2005.

FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the

identified in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: January 5, 2006.

FOR FURTHER INFORMATION CONTACT:

Hilary Sadler, Esq. or Maureen Flannery, AD/CVD Operations, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4340 or (202) 482-3020, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2005, the Department published the notice of initiation of the sunset review of the antidumping duty order on magnesium from China pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See *Initiation of Five-Year (“Sunset”) Reviews*, 70 FR 52074 (September 1, 2005). On September 16, 2005, the Department received a notice of intent to participate from US Magnesium, LLC, the domestic interested party, within the deadline specified in section 351.218(d)(1)(i) of the Department’s regulations. The domestic interested party claimed interested party status under section 771(9)(C) of the Act, as a manufacturer, producer, or wholesaler in the United States of a domestic like product. On October 3, 2005, the Department received a complete substantive response from the domestic interested party within the deadline specified in section 351.218(d)(3)(i) of the Department’s regulations. The Department did not receive a response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department’s regulations, the Department conducted an expedited review of this order.

Scope of the Order

The product covered by this review is pure primary 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,

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-832]

Pure Magnesium from the People’s Republic of China; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order

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

SUMMARY: On September 1, 2005, the Department of Commerce (“the Department”) initiated the sunset review of the antidumping duty order on pure magnesium from the People’s Republic of China (“China”). See *Initiation of Five-Year (“Sunset”) Reviews*, 70 FR 52074 (September 1, 2005). On the basis of a notice of intent to participate, and an adequate substantive response filed on behalf of the domestic interested party, and a lack of response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would likely lead to the continuation or recurrence of dumping. The dumping margin is

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 "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.

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 to U.S. Customs and November 14, 1997, Final Scope Ruling of Antidumping Duty Order on Pure Magnesium from China.

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 this review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated December 29, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Interested parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B-099 of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/>. 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 on pure magnesium from China would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margin:

Manufacturers/ Exporters/Producers	Weighted Average Margin (percent)
China-wide Rate	108.26

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

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

Dated: December 29, 2005.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5-8327 Filed 1-4-06; 8:45 am]

BILLING CODE 3510-DS-S

**INTERNATIONAL TRADE
COMMISSION**

[Investigation Nos. 701-TA-309-A and B
and 731-TA-696 (Second Review)]

**Pure and Alloy Magnesium From
Canada and Pure Magnesium From
China**

AGENCY: United States International
Trade Commission.

ACTION: Scheduling of full five-year
reviews concerning the countervailing
duty orders on pure and alloy
magnesium from Canada and the
antidumping duty order on pure
magnesium from China.

SUMMARY: The Commission hereby gives
notice of the scheduling of full reviews
pursuant to section 751(c)(5) of the
Tariff Act of 1930 (19 U.S.C. 1675(c)(5))
(the Act) to determine whether
revocation of the countervailing duty
orders on pure and alloy magnesium
from Canada and 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. With respect to
Investigations Nos. 701-TA-309-A and
B, the Commission has determined to
exercise its authority to extend the
review period by up to 90 days pursuant
to 19 U.S.C. 1675(c)(5)(B). For further
information concerning the conduct of
these reviews and rules of general
application, consult the Commission's
Rules of Practice and Procedure, part
201, subparts A through E (19 CFR part
201), and part 207, subparts A, D, E, and
F (19 CFR part 207).

DATES: *Effective Date:* January 4, 2006.

FOR FURTHER INFORMATION CONTACT: Fred
Fischer (202-205-3179 or
fred.fischer@usitc.gov), Office of
Investigations, U.S. International Trade
Commission, 500 E Street, SW.,
Washington, DC 20436. Hearing-
impaired persons can obtain
information on this matter by contacting
the Commission's TDD terminal on 202-
205-1810. Persons with mobility

impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. On October 4, 2005, the Commission determined that responses to its notice of institution of the five-year reviews concerning pure and alloy magnesium from Canada were such that full reviews pursuant to section 751(c)(5) of the Act should proceed notwithstanding its finding that the respondent interested party group response to its notice of institution was inadequate (70 FR 60108, October 14, 2005).¹ On December 5, 2005, the Commission determined that circumstances warranted conducting a full review of the order concerning pure magnesium from China, pursuant to section 751(c)(5) of the Act, notwithstanding its finding that the respondent interested party group response to its notice of institution was inadequate (70 F.R. 75483, December 20, 2005).² A record of the Commissioners' votes, the Commission's statements on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service lists. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notices of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain public service lists containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section

207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notices of institution of the reviews need not reapply for such access. Separate service lists will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the reviews will be placed in the nonpublic record on March 31, 2006, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on April 25, 2006, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 18, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held (if necessary) at 9:30 a.m. on April 20, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 11, 2006. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 4, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the

reviews may submit a written statement of information pertinent to the subject of the reviews on or before May 4, 2006. On May 26, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 31, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (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: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 5, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6-193 Filed 1-11-06; 8:45 am]

BILLING CODE 7020-02-P

¹ Commissioner Jennifer A. Hillman dissenting.

² Chairman Stephen Koplan and Commissioner Jennifer A. Hillman dissenting.

EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY
in
Magnesium from Canada, Inv. Nos. 701-TA-309-A, 309-B (Second Reviews)

On October 4, 2005, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675(c)(5).¹

The Commission received a response to the notice of institution from US Magnesium LLC, a domestic producer of pure and alloy magnesium. The Commission determined that the response was individually adequate. The Commission also determined that the domestic interested party group response was adequate because US Magnesium accounts for at least a substantial proportion of domestic production of pure magnesium and alloy magnesium.

With regard to respondent interested parties, the Commission received a response only from the Gouvernement du Québec (“GOQ”). The Commission determined that GOQ’s response was individually adequate. However, the Commission did not receive any responses from Canadian producers or exporters or U.S. importers and nothing in GOQ’s response indicated that it would be able to provide the type of information collected in a full review. Accordingly, the Commission determined that the respondent interested party group response was inadequate.

However, the Commission determined to conduct full reviews in this proceeding in light of several changes in the conditions of competition, including that Magnola, a large Canadian producer, reportedly ceased production of magnesium in 2003. Conducting a full review will also enable the Commission to consider the definition of the domestic like product for the purposes of these reviews. While the Commission found that pure magnesium and alloy magnesium were separate domestic like products in the first five-year reviews, in a recent investigation the Commission found a single domestic like product encompassing both pure and alloy magnesium. *Magnesium from China and Russia*, Inv. Nos. 731-TA-1071 and 1072 (Final), USITC Pub. 3763 (April 2005).

Therefore, the Commission did not exercise its discretion to conduct an expedited review, but instead determined to conduct a full review. A record of the Commissioners’ votes is available from the Office of the Secretary and the Commission’s web site (<http://www.usitc.gov>).

¹ Commissioner Jennifer A. Hillman dissented, voting for an expedited review in the absence of an adequate respondent interested party group response to the Commission’s notice of institution.

EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY

in

Pure Magnesium from China

Inv. No. 731-TA-696 (Second Review)

On December 5, 2005, the Commission determined that it should conduct a full review in the subject five-year review pursuant to section 751(c)(5) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675(c)(5).¹

The Commission received a response to its notice of institution from US Magnesium LLC, a domestic producer of pure magnesium. The Commission determined that this response was individually adequate. The Commission also determined that the domestic interested party group response was adequate. The Commission received no response from any respondent interested party and determined that the respondent interested party group response was inadequate.

In light of a desire to further examine the definition of the domestic like product in this review, the Commission found that circumstances warranted conducting a full review.

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

¹ Chairman Koplan and Commissioner Hillman dissenting, voting for an expedited review in the absence of an adequate respondent interested party group response to the Commission's notice of institution.

APPENDIX B

HEARING CALENDAR

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject: Pure and Alloy Magnesium from Canada and Pure Magnesium from China

Inv. Nos.: 701-TA-309-A-B and 731-TA-696 (Second Review)

Date and Time: April 25, 2006 - 9:30 a.m.

Sessions were held in connection with these reviews in the Main Hearing Room (room 101), 500 E Street, SW, Washington, DC.

OPENING REMARKS:

In Support of Continuation of Orders (**Stephen A. Jones**, King & Spalding LLP)

In Opposition to Continuation of Orders (**Patrick J. Togni**, Paul, Hastings, Janofsky & Walker LLP)

In Support of the Continuation of the Antidumping and Countervailing Duty Orders:

King & Spalding LLP
Washington, DC
on behalf of

US Magnesium LLC ("US Magnesium")

Michael Legge, President and Chief Executive Officer, US Magnesium
Cameron F. Tissington, Vice President, Sales and Marketing, US Magnesium
Kenneth R. Button, Senior Vice President, Economic Consulting Services, LLC
Jennifer Lutz, Senior Economic Consultant, Economic Consulting Services, LLC

Stephen A. Jones – OF COUNSEL
Michael P. Mabile

In Opposition to the Continuation of the Countervailing Duty Orders:

Paul, Hastings, Janofsky & Walker LLP
Washington, DC
on behalf of

Gouvernement du Quebec

Patrick J. Togni – OF COUNSEL

In Opposition to the Continuation of the Countervailing Duty Orders:– Continued

Stephoe & Johnson LLP
Washington, DC
on behalf of

Norsk Hydro Canada Inc.

Richard O. Cunningham – OF COUNSEL
Gregory S. McCue
Tina Potuto Kimble

REBUTTAL/CLOSING REMARKS:

In Support of Continuation of Orders (**Stephen A. Jones**, King & Spalding LLP
and **Kenneth R. Button**, Economic Consulting Services, LLC)

In Opposition to Continuation of Orders (**Patrick J. Togni**, Paul, Hastings, Janofsky & Walker LLP)

APPENDIX C

SUMMARY DATA

Table C-1
Pure magnesium: Summary data concerning the U.S. market, 2000-05

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Table C-2
Alloy magnesium: Summary data concerning the U.S. market, 2000-05

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Table C-3
Pure and alloy magnesium: Summary data concerning the U.S. market, 2000-05

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Table C-4
Pure magnesium (includes granular): Summary data concerning the U.S. market, 2000-05

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Table C-5
Pure and alloy magnesium (includes granular): Summary data concerning the U.S. market, 2000-05

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APPENDIX D

COMMENTS REGARDING THE EFFECTS OF THE COUNTERVAILING DUTY ORDERS AND THE ANTIDUMPING DUTY ORDER AND THE LIKELY EFFECTS OF REVOCATION

EFFECTS OF THE COUNTERVAILING DUTY ORDER ON IMPORTS OF PURE MAGNESIUM FROM CANADA

U.S. Producers

U.S. producers were asked to describe the significance of the existing countervailing duty order on imports of pure magnesium from Canada in terms of its effect on firms' capacity, production, U.S. shipments, inventories, purchases, employment, revenues, costs, profits, cash flow, capital expenditures, research and development expenditures, and asset values.¹ Five firms responded to this question, and the responses of U.S. producers are presented in table D-1.

U.S. Importers

U.S. importers were asked to describe the significance of the existing countervailing duty order on imports of pure magnesium from Canada in terms of its effect on firms' imports, U.S. shipments of imports, and inventories.² Seventeen firms responded to this question, and the responses of U.S. importers are presented in table D-2.

Foreign Producers

Producers in Canada were asked to describe the significance of the existing countervailing duty order on imports of pure magnesium from Canada in terms of its effect on their firms' production capacity, production, home market shipments, exports to the United States and other markets, and inventories.³ Two firms responded to this question, and the responses of Canadian producers are presented in table D-3.

Table D-1

Pure magnesium: U.S. producers' comments on the effects of the countervailing duty order on imports from Canada

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Table D-2

Pure magnesium: U.S. importers' comments on the effects of the countervailing duty order on imports from Canada

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Table D-3

Pure magnesium: Canadian producers' comments on the effects of the countervailing duty order on imports from Canada

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¹ Question II-17.a. of the U.S. producers' questionnaire.

² Question II-9.a. of the U.S. importers' questionnaire.

³ Question II-14 of the Canadian producers' questionnaire.

EFFECTS OF THE COUNTERVAILING DUTY ORDER ON IMPORTS OF ALLOY MAGNESIUM FROM CANADA

U.S. Producers

U.S. producers were asked to describe the significance of the existing countervailing duty order on imports of alloy magnesium from Canada in terms of its effect on firms' capacity, production, U.S. shipments, inventories, purchases, employment, revenues, costs, profits, cash flow, capital expenditures, research and development expenditures, and asset values.⁴ Five firms responded to this question, and the responses of U.S. producers are presented in table D-4.

U.S. Importers

U.S. importers were asked to describe the significance of the existing countervailing duty order on imports of alloy magnesium from Canada in terms of its effect on firms' imports, U.S. shipments of imports, and inventories.⁵ Seventeen firms responded to this question, and the responses of U.S. importers are presented in table D-5.

Foreign Producers

Producers in Canada were asked to describe the significance of the existing countervailing duty order on imports of alloy magnesium from Canada in terms of its effect on their firms' production capacity, production, home market shipments, exports to the United States and other markets, and inventories.⁶ Two firms responded to this question, and the responses of Canadian producers are presented in table D-6.

Table D-4

Alloy magnesium: U.S. producers' comments on the effects of the countervailing duty order on imports from Canada

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Table D-5

Alloy magnesium: U.S. importers' comments on the effects of the countervailing duty order on imports from Canada

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Table D-6

Alloy magnesium: Canadian producers' comments on the effects of the countervailing duty order on imports from Canada

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⁴ Question II-17.b. of the U.S. producers' questionnaire.

⁵ Question II-9.b. of the U.S. importers' questionnaire.

⁶ Question II-14 of the Canadian producers' questionnaire.

EFFECTS OF THE ANTIDUMPING DUTY ORDER ON IMPORTS OF PURE MAGNESIUM FROM CHINA

U.S. Producers

U.S. producers were asked to describe the significance of the existing antidumping duty order on imports of pure magnesium from China in terms of its effect on firms' capacity, production, U.S. shipments, inventories, purchases, employment, revenues, costs, profits, cash flow, capital expenditures, research and development expenditures, and asset values.⁷ Five firms responded to this question, and the responses of U.S. producers are presented in table D-7.

U.S. Importers

U.S. importers were asked to describe the significance of the existing antidumping duty order on imports of pure magnesium from China in terms of its effect on firms' imports, U.S. shipments of imports, and inventories.⁸ Seventeen firms responded to this question, and the responses of U.S. importers are presented in table D-8.

Foreign Producers

Producers in China were asked to describe the significance of the existing antidumping duty order on imports of pure magnesium from China in terms of its effect on their firms' production capacity, production, home market shipments, exports to the United States and other markets, and inventories.⁹ One firm responded to this question, and the response of this Chinese producer is presented in table D-9.

Table D-7

Pure magnesium: U.S. producers' comments on the effects of the antidumping duty order on imports from China

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Table D-8

Pure magnesium: U.S. importers' comments on the effects of the antidumping duty order on imports from China

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Table D-9

Pure magnesium: Chinese producers' comments on the effects of the antidumping duty order on imports from China

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⁷ Question II-17.c. of the U.S. producers' questionnaire.

⁸ Question II-9.c. of the U.S. importers' questionnaire.

⁹ Question II-14 of the Chinese producers' questionnaire.

LIKELY EFFECTS OF REVOCATION OF THE COUNTERVAILING DUTY ORDER ON PURE MAGNESIUM FROM CANADA

U.S. Producers

U.S. producers were asked if their firm would anticipate any changes in its capacity, production, U.S. shipments, inventories, purchases, employment, revenues, costs, profits, cash flow, capital expenditures, research and development expenditures, or asset values relating to the production of pure and alloy magnesium in the future if the countervailing duty order on pure magnesium from Canada were to be revoked.¹⁰ Three firms responded “Yes” and three firms responded “No.” The responses of U.S. producers are presented in table D-10.

U.S. Importers

U.S. importers were asked if their firm would anticipate any changes in its imports, U.S. shipments of imports, or inventories of pure and alloy magnesium in the future if the countervailing order on pure magnesium from Canada were to be revoked.¹¹ Four firms responded “Yes” and 11 firms responded “No.” The responses of U.S. importers are presented in table D-11.

U.S. Purchasers

U.S. purchasers were asked if their firm would anticipate any changes in its purchasing decision of pure and alloy magnesium in the future if the countervailing order on pure magnesium from Canada were to be revoked.¹² The responses of U.S. purchasers are presented in table D-12.

Foreign Producers

Producers in Canada were asked if their firm would anticipate any changes in its production capacity, production, home market shipments, exports to the United States and other markets, or inventories relating to the production of pure and alloy magnesium in the future if the countervailing duty order on pure magnesium from Canada were to be revoked.¹³ Of the two firms responding, ***. The responses of Canadian producers are presented in table D-13.

Table D-10

Pure magnesium: U.S. producers’ comments on the likely effects of revocation of the countervailing duty order on imports from Canada

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¹⁰ Question II-18.a. of the U.S. producers’ questionnaire.

¹¹ Question II-10.a. of the U.S. importers’ questionnaire.

¹² Question III-35.a. of the U.S. purchasers’ questionnaire.

¹³ Question II-15 of the Canadian producers’ questionnaire.

Table D-11

Pure magnesium: U.S. importers' comments on the likely effects of revocation of the countervailing duty order on imports from Canada

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Table D-12

Pure magnesium: U.S. purchasers' comments on the likely effects of revocation of the countervailing duty order on imports from Canada

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Table D-13

Pure magnesium: Canadian producers' comments on the likely effects of revocation of the countervailing duty order on imports from Canada

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LIKELY EFFECTS OF REVOCATION OF THE COUNTERVAILING DUTY ORDER ON ALLOY MAGNESIUM FROM CANADA

U.S. Producers

U.S. producers were asked if their firm would anticipate any changes in its capacity, production, U.S. shipments, inventories, purchases, employment, revenues, costs, profits, cash flow, capital expenditures, research and development expenditures, or asset values relating to the production of pure and alloy magnesium in the future if the countervailing duty order on alloy magnesium from Canada were to be revoked.¹⁴ Three firms responded "Yes" and three firms responded "No." The responses of U.S. producers are presented in table D-14.

U.S. Importers

U.S. importers were asked if their firm would anticipate any changes in its imports, U.S. shipments of imports, or inventories of pure and alloy magnesium in the future if the countervailing order on alloy magnesium from Canada were to be revoked.¹⁵ Two firms responded "Yes" and 14 firms responded "No." The responses of U.S. importers are presented in table D-15.

U.S. Purchasers

U.S. purchasers were asked if their firm would anticipate any changes in its purchasing decision of pure and alloy magnesium in the future if the countervailing order on pure magnesium from Canada were to be revoked.¹⁶ The responses of U.S. purchasers are presented in table D-16.

¹⁴ Question II-18.b. of the U.S. producers' questionnaire.

¹⁵ Question II-10.b. of the U.S. importers' questionnaire.

¹⁶ Question III-35.b. of the U.S. purchasers' questionnaire.

Foreign Producers

Producers in Canada were asked if their firm would anticipate any changes in its production capacity, production, home market shipments, exports to the United States and other markets, or inventories relating to the production of pure and alloy magnesium in the future if the countervailing duty order on alloy magnesium from Canada were to be revoked.¹⁷ Of the two firms responding, ***. The responses of Canadian producers are presented in table D-17.

Table D-14

Alloy magnesium: U.S. producers' comments on the likely effects of revocation of the countervailing duty order on imports from Canada

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Table D-15

Alloy magnesium: U.S. importers' comments on the likely effects of revocation of the countervailing duty order on imports from Canada

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Table D-16

Alloy magnesium: U.S. purchasers' comments on the likely effects of revocation of the countervailing duty order on imports from Canada

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Table D-17

Alloy magnesium: Canadian producers' comments on the likely effects of revocation of the countervailing duty order on imports from Canada

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LIKELY EFFECTS OF REVOCATION OF THE ANTIDUMPING DUTY ORDER ON PURE MAGNESIUM FROM CHINA

U.S. Producers

U.S. producers were asked if their firm would anticipate any changes in its capacity, production, U.S. shipments, inventories, purchases, employment, revenues, costs, profits, cash flow, capital expenditures, research and development expenditures, or asset values relating to the production of pure magnesium in the future if the antidumping duty order on pure magnesium from China were to be revoked.¹⁸ Three firms responded "Yes" and three firms responded "No." The responses of U.S. producers are presented in table D-18.

¹⁷ Question II-15 of the Canadian producers' questionnaire.

¹⁸ Question II-18.c. of the U.S. producers' questionnaire.

U.S. Importers

U.S. importers were asked if their firm would anticipate any changes in its imports, U.S. shipments of imports, or inventories of pure and alloy magnesium in the future if the antidumping duty order on pure magnesium from China were to be revoked.¹⁹ Seven firms responded “Yes” and nine firms responded “No.” The responses of U.S. importers are presented in table D-19.

U.S. Purchasers

U.S. purchasers were asked if their firm would anticipate any changes in its purchasing decision of pure and alloy magnesium in the future if the countervailing order on pure magnesium from Canada were to be revoked.²⁰ The responses of U.S. purchasers are presented in table D-20.

Foreign Producers

Producers in China were asked if their firm would anticipate any changes in its production capacity, production, home market shipments, exports to the United States and other markets, or inventories relating to the production of pure magnesium in the future if the antidumping duty order on pure magnesium from China were to be revoked.²¹ Based on the response of one firm, ***. The response of the Chinese producer is presented in table D-21.

Table D-18

Pure magnesium: U.S. producers’ comments on the likely effects of revocation of the antidumping duty order on imports from China

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Table D-19

Pure magnesium: U.S. importers’ comments on the likely effects of revocation of the antidumping duty order on imports from China

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Table D-20

Pure magnesium: U.S. purchasers’ comments on the likely effects of revocation of the countervailing duty order on imports from China

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Table D-21

Pure magnesium: Chinese producers’ comments on the likely effects of revocation of the antidumping duty order on imports from China

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¹⁹ Question II-10.c. of the U.S. importers’ questionnaire.

²⁰ Question III-35.c. of the U.S. purchasers’ questionnaire.

²¹ Question II-15 of the Chinese producers’ questionnaire.

