

Pure Magnesium From China and Israel

Investigations Nos. 701-TA-403 and 731-TA-895-896 (Final)

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

GLOSSARY OF ABBREVIATIONS

Alcan	Alcan Aluminum Corporation
Alcoa	Alcoa Incorporated
ASTM	American Society for Testing and Materials
Avisma	Avisma Titanium and Magnesium Works
C.i.f.	Cost, insurance, and freight
CMA	China Magnesium Association
COGS	Cost of goods sold
Commerce	United States Department of Commerce
Commission/USITC	United States International Trade Commission
DSM	Dead Sea Works, Ltd.
ESM	ESM Manufacturing
EU	European Union
F.o.b.	Free on board
FR	<i>Federal Register</i>
FTA	Free Trade Agreement
GSP	Generalized System of Preferences
HTS	Harmonized Tariff Schedule of the United States
LTFV	Less than fair value
Magcorp	Magnesium Corporation of America
NAFTA	North American Free Trade Agreement
Northwest Alloys	Northwest Alloys, Incorporated
PRW	Production and related worker
R&D	Research and development
Reade	Reade Manufacturing Company
Remacor	Reactive Metals & Alloys Corporation
Rossborough	Rossborough Manufacturing Company
SG&A	Selling, general, and administrative
Solikamsk	Solikamsk Magnesium Works
Timminco	Timminco Corporation
USTR	United States Trade Representative
USWA International	United Steelworkers of America AFL-CIO-CLC

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-403 and 731-TA-895-896 (Final)

PURE MAGNESIUM FROM CHINA AND ISRAEL

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of pure magnesium, provided for in subheading 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).² The Commission also determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b) and § 1673d(b)) that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded by reason of imports from Israel of pure magnesium provided for in subheadings 8104.11.00 and 8104.19.00, and 8104.30.00 of the HTSUS, that have been found by the Department of Commerce to be sold in the United States at LTFV and to be subsidized by the Government of Israel.

BACKGROUND

The Commission instituted these investigations effective October 17, 2000, following receipt of a petition filed with the Commission and Commerce by Magcorp, Salt Lake City, UT, the United Steel Workers of America, Local 8319, Salt Lake City, UT, and the USWA International.³ The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of pure magnesium from Israel were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b) and imports of pure magnesium from China and Israel were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation 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* of June 4, 2001 (66 FR 29987) and September 20, 2001 (66 FR 48478). The hearing was held in Washington, DC, on October 11, 2001, 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)).

² Commissioners Hillman and Miller dissenting. They defined two domestic like products, pure granular magnesium and pure magnesium ingot. With respect to pure granular magnesium, they found subject imports from Israel to be negligible and they found that the domestic pure granular magnesium industry is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded by reason of subject imports from China. They also found that the domestic pure magnesium ingot industry is not materially injured or threatened with material injury and the establishment of an industry in the United States is not materially retarded by reason of subject imports from Israel.

³ See letter from petitioners dated October 26, 2000, amending the petitions to include the USWA International as co-petitioners and April 20, 2001 amendment to petitions adding "concerned employees of Northwest Alloys, Inc." as co-petitioners.

VIEWS OF THE COMMISSION

Based on the record in the final phase of these investigations, we determine that an industry in the United States is materially injured by reason of imports of pure magnesium from China that the U.S. Department of Commerce ("Commerce") found to be sold in the United States at less than fair value.¹ We further determine that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of pure magnesium from Israel that Commerce found to be subsidized and sold in the United States at less than fair value.²

I. DOMESTIC LIKE PRODUCT

A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."³ Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant domestic industry as the "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."⁴ In turn, 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."⁵

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.⁶ No single factor is dispositive, and the Commission

¹ Commissioners Hillman and Miller dissenting. They found two domestic like products, corresponding to granular magnesium and magnesium ingot. With respect to granular magnesium, they found subject imports from Israel to be negligible, and they found that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of granular magnesium from China that Commerce found to be sold in the United States at less than fair value. With respect to magnesium ingot, they found that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of magnesium ingot from Israel that Commerce found to be subsidized and sold in the United States at less than fair value. See Separate and Dissenting Opinion of Commissioners Hillman and Miller.

² We note that no party argued that the establishment of an industry in the United States was materially retarded by reason of Chinese or Israeli subject imports.

³ 19 U.S.C. § 1677(4)(A).

⁴ Id.

⁵ 19 U.S.C. § 1677(10).

⁶ See, e.g., 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) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case'"). The Commission generally considers a number of factors 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. See e.g., Nippon, 19 CIT at 455 & n.4; Timken Co. v. (continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁸ Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise that has been found to be subsidized or sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.⁹

B. Product Descriptions

In its final determination, Commerce defined the imported merchandise within the scope of the Israeli investigation as:

imports of pure magnesium products, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as “ultra-pure” magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent pure magnesium, by weight (generally referred to as “pure magnesium”); and (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an “ASTM Specification for Magnesium Alloy”¹⁰ (generally referred to as “off-specification pure” magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight. Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials which the Department is aware are used to make such excluded reagents are: lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nepheline syenite, feldspar, aluminum, alumina (Al₂O₃), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of antidumping duties.

⁶ (...continued)

United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁷ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

⁸ See, e.g., Nippon, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”)

⁹ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single domestic like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission’s determination of six like products in investigations where Commerce found five classes or kinds).

¹⁰ The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

The merchandise subject to this investigation is classifiable under 8104.11.00, 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.¹¹

As Commerce's final determination regarding Chinese subject imports explained:

There is an existing antidumping duty order on pure magnesium from the PRC. See Notice of Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation, 60 FR 25691 (May 12, 1995). The scope of this investigation excludes pure magnesium that is already covered by the existing order, and classifiable under item numbers 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

The scope of this investigation includes imports of pure magnesium products, regardless of chemistry, including, without limitation, raspings, granules, turnings, chips, powder, and briquettes, except as noted above.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent pure magnesium, by weight (generally referred to as "pure" magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, and that do not conform to an "ASTM Specification for Magnesium Alloy"¹² (generally referred to as "off-specification pure" magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight. Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials which the Department is aware are used to make such excluded reagents are: lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nepheline syenite, feldspar, aluminum, alumina (Al_2O_3), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of antidumping duties.

¹¹ 66 Fed. Reg. 49351, 49352 (Sept. 27, 2001) (countervailing duty); 66 Fed. Reg. 49349, 49350 (Sept. 27, 2001) (antidumping duty).

¹² The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

The merchandise subject to this investigation is classifiable under 8104.30.00 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.¹³ Magnesium is a silver-white, metallic element that is the eighth most abundant element in the earth's crust and the third most plentiful element dissolved in seawater; most magnesium is derived from magnesium-bearing ores (dolomite, magnesite, brucite, and olivine), seawater, or well and lake brines. Its 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. Pure magnesium in unwrought form contains at least 99.8 percent magnesium by weight,¹⁴ and is contrasted with alloy magnesium, which consists of magnesium and other metals, typically aluminum and zinc, containing less than 99.8 percent magnesium by weight, with magnesium the largest metallic element in the alloy, by weight. Alloy magnesium may be preferred to pure magnesium due to certain properties such as strength, ductility, workability, corrosion resistance, density, or castability.¹⁵

C. Domestic Like Product

In the preliminary phase of these investigations, the Commission majority found one domestic like product, but indicated that it would reexamine the domestic like product finding in any final investigations.¹⁶ In the final phase of these investigations, petitioner argued that there is a single domestic like product that includes both magnesium ingot and granular magnesium, and Israeli producer Dead Sea Magnesium ("DSM") concurred.¹⁷ Rossborough Manufacturing ("Rossborough"), a grinder, argued that the Commission should find two domestic like products, magnesium ingot and granular magnesium,¹⁸ and aluminum producer Alcoa and its fully-owned subsidiary, Northwest Alloys ("Northwest"), a magnesium ingot producer, asserted that there is substantial evidence supporting the existence of two domestic like products.¹⁹

Physical Characteristics and Uses. Pure magnesium is widely used in commercial applications because it is easily machined and lightweight, has a high strength-to-weight ratio, and has special

¹³ 66 Fed. Reg. 49345, 49346 (Sept. 27, 2001).

¹⁴ In this document, the term "pure magnesium" includes magnesium ingot and granular magnesium.

¹⁵ See, e.g., CR at I-7 to I-8, I-9; PR at I-6 to I-8.

¹⁶ Commissioners Bragg, Koplan, and Okun found, on balance, that there was one domestic like product consisting of all pure magnesium, and they found that the lack of a clear dividing line between granular magnesium and magnesium ingot warranted broadening the domestic like product beyond the scope of the investigation for China to include magnesium ingot, but they also indicated their intention to reexamine these issues in any final phase investigations. Confidential Preliminary Views at 5-7. Based on the Commission's traditional six-factor analysis, Commissioners Miller, Hillman, and Askey defined two domestic like products: magnesium ingot and granular magnesium. Confidential Preliminary Views at 28-33. None of the six Commissioners broadened their definition(s) of the relevant domestic like product(s) to include alloy magnesium. Confidential Preliminary Views at 7, 30 n.14.

¹⁷ See, e.g., Petitioner's Prehearing Brief at 1-32; Petitioner's Posthearing Brief at 1-4; Hearing Tr. at 18-19, 25-35, 66-70, 72-73, 83-84; DSM's Prehearing Brief at 27-29.

¹⁸ Rossborough defined granular magnesium as "consisting of 'pure' magnesium that is crushed, ground, or otherwise processed to form powder or to form raspings, turnings, or granules with a maximum dimension in any direction of less than one inch." See, e.g., Rossborough's Prehearing Brief at 5.

¹⁹ See, e.g., Rossborough's Prehearing Brief at 1, 8-19, 32-33; Rossborough's Posthearing Brief at 1-8, Exhibit A at 16-21, 22-23; Hearing Tr. at 158-62; Northwest's Posthearing Brief at 1.

chemical and electrical properties that allow it to alloy well with metals such as aluminum. Pure magnesium is produced in a continuum of forms and sizes,²⁰ without a clear dividing line between magnesium ingot and granular magnesium.²¹ Granular magnesium is more volatile in that it has a high reactivity when exposed to water, sparks, or flame, but otherwise granular magnesium and magnesium ingot have the same chemical composition. During the period of investigation, there were domestic magnesium ingot and granular magnesium shipments to the desulfurization, metal reduction, and chemical segments of the U.S. market.²² We find the shipments to the desulfurization, metal reduction, and chemical segments to constitute a significant overlap in end uses.²³

Interchangeability. The record indicates that magnesium ingot and granular magnesium are interchangeable, particularly in the desulfurization segment and other segments where there were overlapping sales.²⁴ There is evidence that over the period of investigation, grinders, in particular, who use either magnesium ingot (once ground) or granular magnesium in their production processes, displaced purchases of domestic and imported magnesium ingot with purchases of granular magnesium from China.²⁵ In addition, petitioner argued that direct injection technology exists that might permit granular magnesium to be used for other purposes, such as aluminum alloying and ferroalloys.²⁶ The record, however, indicates that due to economic and safety considerations, there is currently only limited use of this technology in the ferroalloys industry and no known commercial use in the aluminum alloying industry; moreover, two major aluminum alloyers testified at the Commission's hearing that they simply could not and would not use granular magnesium in their production processes because it oxidized too quickly.²⁷

Channels of Distribution. A *** portion of magnesium ingot is captively consumed for aluminum alloying production ***, and the remainder is sold directly to end users. A *** portion of granular magnesium is captively consumed for the production of desulfurization reagents, and the remainder is sold directly to end users. There is significant overlap in the segments where magnesium

²⁰ Petitioner argued that magnesium ingot may be ground into granular form, and granular magnesium may be remelted into ingots or compressed into briquettes.

²¹ The record does not support Rossborough's argument of a one-inch dividing line between granular magnesium and magnesium ingot. See, e.g., Rossborough's Prehearing Brief at 5.

²² Although Table III-5 in the Commission's report suggests that there were domestic shipments of granular magnesium to the *** segment of the U.S. market, further inquiries revealed that these shipments in fact were ***. See, e.g., ***. The ***. CR at II-9 n.14; PR at II-5 n.14.

²³ The record indicates that *** percent in 1998, *** percent in 1999, *** percent in 2000, *** percent in interim 2000, and *** percent in interim 2001 of total domestic magnesium ingot shipments and *** percent in 1998, *** percent in 1999, *** percent in 2000, *** percent in interim 2000, and *** percent in interim 2001 of total domestic granular magnesium shipments were to the desulfurization segment. The segments where there was overlap represented *** percent in 1998, *** percent in 1999, *** percent in 2000, *** percent in interim 2000, and *** percent in interim 2001 of total domestic magnesium ingot shipments and *** percent in 1998, *** percent in 1999, *** percent in 2000, *** percent in interim 2000, and *** percent in interim 2001 of total domestic granular magnesium shipments, and the overlap might have been even more significant had low-priced granular magnesium imports not pushed magnesium ingot shipments largely out of the desulfurization segment during the period of investigation. CR/PR at Table III-5; see also, e.g., Petitioner's Prehearing Brief at 6-13; Hearing Tr. at 18-19, 25-27, 31-33, 69-73.

²⁴ See, e.g., CR/PR at Table III-5.

²⁵ See, e.g., CR/PR at Table III-5; purchaser questionnaire responses; Confidential Preliminary Views at 6, n.26.

²⁶ See, e.g., Petitioner's Prehearing Brief at 15-17, Exhibits 10, 11.

²⁷ See, e.g., CR at I-12, II-9 to II-10; PR at I-10, II-5 to II-6; Hearing Tr. at 27, 28, 33, 73-78, 217-19; Petitioner's Prehearing Brief at 13-17, Exhibits 10, 11; Petitioner's Posthearing Brief at 1, 3.

ingot and granular magnesium are sold, as indicated earlier. Some differences in channels of distribution do exist, however, in that granular magnesium is handled and shipped according to special Department of Transportation hazardous material regulations, typically under a nitrogen blanket, whereas magnesium ingot is not shipped in such a manner.²⁸

Common Manufacturing Facilities, Processes, Workers. The same production facilities, processes, and workers were used during the period of investigation to produce magnesium ingot and granular magnesium at least up to the grinding stage. The grinding operations generally took place in separate facilities using separate workers. Nonetheless, the record indicates that Magcorp produced limited quantities of granular magnesium during the period of investigation in its magnesium ingot facilities, although not for commercial consumption; and at the beginning of the period of investigation, Dow produced granular magnesium in its magnesium ingot facilities that was sold to the *** segment of the U.S. market.²⁹

Customer/Producer Perceptions. *** reported that magnesium ingot and granular magnesium are interchangeable as all granular magnesium is produced from ingots (including grinding slabs). Although *** reported that they are not interchangeable, limited evidentiary weight was placed on the latter responses given that the record indicates grinders progressively switched from magnesium ingot to lower-priced granular magnesium in the desulfurization segment, and *** reported using both magnesium ingot and granular magnesium during the period of investigation.³⁰

Price. The prices of both magnesium ingot and granular magnesium declined throughout the period of investigation.³¹ Historically, granular magnesium had been higher priced than magnesium ingot to reflect additional grinding costs. This pricing relationship changed, however, and by the end of the period of investigation, granular magnesium was selling for lower prices than magnesium ingot.³²

Conclusion: We find that, on balance, the record collected during the final phase of these investigations supports a finding of a single domestic like product, although there is some support for finding two domestic like products.³³ Granular magnesium and magnesium ingot are produced in a continuum of forms and sizes, without any clear dividing line, they share the same chemical properties, and they were sold through similar channels of distribution.³⁴ They are interchangeable at least for

²⁸ See, e.g., CR at I-8, I-10, III-8; PR at I-6 to I-8; CR/PR at Tables III-3, III-5; Rossborough's Prehearing Brief at 13-14; Rossborough's Posthearing Brief at 8; Hearing Tr. at 33..

²⁹ See, e.g., CR at I-9 to I-10, III-3, III-4 n.12; PR at I-8, III-1, III-3 n.12; see also *** purchaser questionnaire response; Hearing Tr. at 18-19, 33-34, 66-68, 69-70.

³⁰ See, e.g., CR at I-12, II-10; PR at I-10, II-5 to II-6; Hearing Tr. at 30, 35.

³¹ See, e.g., CR at I-13; PR at I-10.

³² See, e.g., CR/PR at Tables V-1 to V-5; Hearing Tr. at 35-36, 79, 83-84.

³³ We note Congress' admonition that the domestic like product standard should not be interpreted in "such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration." See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

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

significant end uses, particularly in the desulfurization segment.³⁵ Although the grinding operations generally took place in separate facilities using separate workers, the same production facilities, processes, and workers are used to produce magnesium ingot and granular magnesium up to the grinding stage.³⁶ We accordingly define one domestic like product in these investigations – pure magnesium that includes both granular magnesium and magnesium ingot.^{37 38}

II. DOMESTIC INDUSTRY

Section 771(4) of the Act defines the relevant industry as “the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes the major proportion of that product.”³⁹ In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.⁴⁰ There are two domestic industry issues in these investigations: whether grinders that produce granular magnesium should be included in the domestic industry, and whether certain producers of pure magnesium that purchased or imported subject merchandise during the period of investigation should be excluded from the domestic industry pursuant to the related parties provision.

A. Sufficient Production-Related Activities⁴¹

In deciding whether a firm qualifies as a domestic producer, the Commission generally analyzes the overall nature of a firm’s production-related activities in the United States, although production-related activity at minimum levels could be insufficient to constitute domestic production.⁴² In the final

³⁵ Significantly, grinders essentially replaced magnesium ingot purchases with granular magnesium imports during the period of investigation. While there was almost complete interchangeability in the desulfurization segment, we acknowledge that there was no interchangeability in the *** segment, which is a large consumer of pure magnesium. See, e.g., CR/PR at Table III-5; ***.

³⁶ In addition, the record indicates that Magcorp and Dow produced limited quantities of granular magnesium during the period of investigation in magnesium ingot facilities.

³⁷ We note that in the final phase of these investigations, DSM abandoned its argument that the domestic like product should include alloy and pure magnesium, and there were no additional data or arguments in the final phase of these investigations that warranted reconsideration of the Commission’s finding in the preliminary phase of these investigations that the domestic like product does not include alloy magnesium. See, e.g., DSM’s Prehearing Brief at 27.

³⁸ We note that the parties also addressed the issue of the semifinished domestic like product analysis, we would have reached the same finding had we relied on a semifinished domestic like product analysis.

³⁹ 19 U.S.C. § 1677(4)(A).

⁴⁰ See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

⁴¹ Vice Chairman Okun does not join the remainder of views for the domestic industry section. See Dissenting Views of Vice Chairman Deanna Tanner Okun.

⁴² 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;

(continued...)

phase of these investigations, petitioner argued that grinders do not engage in sufficient production-related activities to qualify as domestic producers, and Rossborough disagreed.⁴³

Source and extent of the firm's capital investment. The grinders reported a combined total original cost of property, plant, and equipment of *** in 1998, *** in 1999, *** in 2000, *** in interim 2000, and *** in interim 2001, with book values that fluctuated from *** during the period of investigation. The grinders reported combined capital expenditures of *** in 1998, *** in 1999, *** in 2000, *** in interim 2000, and *** in interim 2001. *** grinders, *** had no or limited capital expenditures during the period of investigation.⁴⁴

Technical expertise involved in U.S. production activities. There were two types of production methods used to make granular magnesium during the period of investigation in the United States: grinding pure magnesium using a particle reduction process, or ***. The latter method ***. Although the grinders offered specialized services to end users, particularly reagent purchasers in the steel industry, these special services appear related more to reagent production than granular magnesium production. On the other hand, the record does indicate that special handling requirements are necessary for granular magnesium due to its high reactivity.⁴⁵

Value added in the United States. Rossborough's witnesses estimated that the value added by grinding operations was approximately 6 to 15 cents per pound. The Commission's report contains estimated value added data for conversion activity reported by ESM, Reade, Rossborough, and Superior Powder; we note, however, that the data generally do not represent just the conversion of magnesium ingot into granular magnesium because the financial data reported by several companies reflect the production and sale of reagents. The data also reflect differences in reporting methodologies as well as different production processes *** and differences in the extent to which pure granular magnesium was imported. ESM's reported value added ranged from *** percent over the period of investigation, Reade's reported value added ranged from *** percent over the period of investigation, Rossborough's

⁴² (...continued)

- (4) employment levels;
- (5) quantity and type of parts sourced in the United States; and
- (6) any other costs and activities in the United States directly leading to production of the domestic like product.

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

⁴³ See, e.g., Petitioner's Prehearing Brief at 32-42, Exhibits 9, 13; Petitioner's Posthearing Brief at 1, 4-5; Hearing Tr. at 18, 100-01, 103-06; Rossborough's Prehearing Brief at 4, 20-22. In the preliminary phase of these investigations, Commissioners Bragg, Koplan, and Okun found one domestic like product and determined that the grinders' production-related activities in the United States were sufficient for inclusion in the domestic industry. Confidential Views at 7-8. Commissioners Miller, Hillman, and Askey found two domestic like products, and with respect to the granular magnesium industry, they found that the production-related activities of the grinders were sufficient to constitute domestic production. Confidential Views at 34-35.

⁴⁴ See, e.g., CR/PR at Table VI-9.

⁴⁵ See, e.g., CR at I-10 n.24; PR at I-8 n.24; Rossborough's Prehearing Brief at 13-14; Rossborough's Posthearing Brief at 8.

reported value added ranged from *** percent over the period of investigation, and Superior Powder's reported value added ranged from *** percent over the period of investigation.⁴⁶

Employment levels. The number of production workers reported by grinders decreased throughout the period of investigation, from *** in 1998 to *** in 1999 to *** in 2000, and was *** in interim 2001 compared to *** in interim 2000.⁴⁷

Quantity and type of parts sourced in the United States. The record indicates that grinders progressively shifted from purchasing domestically-produced magnesium ingot for their grinding operations to purchasing imported magnesium ingot; they increasingly purchased imported magnesium chips for finish grinding in the United States; and they increasingly purchased imported finished granular magnesium requiring no grinding in the United States. Based on the combined information for the four grinders that reported such data, purchases of domestically-produced magnesium ingot were *** percent in 1998, *** percent in 1999, and *** percent in 2000 of their total magnesium ingot purchases and imports, and were *** percent in interim 2001, compared to *** percent in interim 2000.⁴⁸

Conclusion. Although the evidence is mixed, on balance, we find that grinding operations constitute sufficient production-related activity to qualify these firms as domestic producers. The capital investment for grinding operations is not insignificant, nor were the capital expenditures during the period of investigation. Grinding is not a particularly complex process, but ***, and there is some degree of technical expertise involved in handling granular magnesium. Moreover, the Commission has found in previous investigations involving other products that grinding could be sufficient production-related activity.⁴⁹ The value-added data are of limited use, given the fact that they also include reagent activities.⁵⁰ Although employment levels are low, they are not insignificant.

Although we find grinding to constitute sufficient production-related activity to qualify a grinder as a domestic producer, the record indicates that one firm that does not produce magnesium ingot, also does not appear to be engaging in any grinding operations. *** did not report any purchases or imports of magnesium ingot (domestically-produced or otherwise) at any point during the period of investigation. It reported purchases of granular magnesium *** throughout this time.⁵¹ Thus, it does not appear that *** is engaging in domestic production.⁵² Consistent with other cases,⁵³ because *** is not engaging in production of the domestic like product, we do not include it in the domestic industry.

⁴⁶ See, e.g., CR at VI-15 to VI-18; PR at VI-6; CR/PR at Table VI-8. ***. CR/PR at Table VI-8.

⁴⁷ See, e.g., CR/PR at Table C-2.

⁴⁸ See, e.g., Grinding Worktables; Hearing Tr. at 167-68; see also, e.g., CR/PR at Table VI-8.

⁴⁹ See, e.g., Gray Portland Cement and Cement Clinker from Japan, Inv. No. 731-TA-461 (Final), USITC Pub. 2376 (Apr. 1991) at 14; Gray Portland Cement and Cement Clinker from Mexico, Inv. No. 731-TA-451 (Prelim.), USITC Pub. 2235 at 17-18 (Nov. 1989).

⁵⁰ The Commission asked the grinders to report their data corresponding to granular magnesium, but they reported that they were unable to do so, and their reported information includes some reagent activities. See, e.g., CR at VI-1 to VI-2; PR at VI-1. The product line provision of the statute permits the Commission to use the broader data set in such circumstances. 19 U.S.C. § 1677(4)(D); see also, e.g., Mitsubishi Elec. v. United States, 700 F. Supp. 538, 563-64 (Ct. Int'l Trade 1988).

⁵¹ Although the other grinders' magnesium ingot purchases were declining in favor of granular magnesium purchases and imports, they at least appear to have purchased magnesium ingot during the period of investigation. So, ostensibly they were engaged in some level of grinding operations. See, e.g., Grinding Worktables.

⁵² There is no indication in the record that ***.

⁵³ See, e.g., Ferrovandium and Nitrated Vanadium from Russia, Inv. No. 731-TA-702 (Review), USITC Pub. 3420 (May 2001) (firm that did not produce the domestic like product was not a producer).

B. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.⁵⁴ Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.⁵⁵

1. Whether any Domestic Producers are Related Parties

ESM is affiliated with ESM (Tianjin) Company, Ltd., Tianjin, China, which is a Chinese producer/exporter of magnesium ingot and granular magnesium.⁵⁶ ESM ***.⁵⁷ By virtue of its direct imports of subject merchandise, we find that ESM is a related party.

Three domestic firms purchased subject imports during the period of investigation: Magcorp ***,⁵⁸ Reade ***,⁵⁹ and Rossborough purchased ***.⁶⁰ It does not appear that these purchases resulted in direct or indirect control of an importer or exporter, or in a producer being controlled by an importer or exporter of subject merchandise. Accordingly, we do not find that Magcorp or Reade are related parties. We also do not find that Rossborough is a related party because ***, it is not clear that this resulted in control of an importer, or exporter, or in being controlled by an importer or exporter of subject merchandise.⁶¹

⁵⁴ 19 U.S.C. § 1677(4)(B).

⁵⁵ See, e.g., Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd mem., 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission examines in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the producer has decided to import the product subject to investigation (i.e., whether the firm benefits from the less than fair value sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market); and (3) the position of the related producers vis-a-vis the rest of the industry (i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry). See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd mem., 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to domestic production for related producers and whether the primary interests of the related producers lie in domestic production or importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Invs. Nos. 731-TA-741 to 743 (Final), USITC Pub. 3016 at 14, n.81 (Feb. 1997).

⁵⁶ See, e.g., CR at III-4; PR at III-3.

⁵⁷ See, e.g., CR at III-4 nn.8, 10; PR at III-3 nn.8, 10; ESM's importer and purchaser questionnaire responses.

⁵⁸ See, e.g., CR at III-3; PR at III-1.

⁵⁹ See, e.g., CR at III-5 & n.12; PR at III-3 & n.12.

⁶⁰ See, e.g., CR at III-6 & n.18; PR at III-4 & n.18; Rossborough's purchaser questionnaire response.

⁶¹ Even if Rossborough ***, we would not find that appropriate circumstances exist to exclude Rossborough from the domestic industry. Its ***, it admits that some of its grinding operations have been idled, and ***. ***. Rossborough opposes these petitions, but ***. Rossborough is the *** grinder in the United States, accounting for *** percent of domestic granular magnesium production in 2000. During the period of investigation, it captively consumed all granular magnesium in the production of reagents. Rossborough argues that it has been hurt by unfairly priced subject granular magnesium imports that have driven down reagent prices, and it contends that if an
(continued...)

2. Whether Appropriate Circumstances Exist to Exclude ESM from the Domestic Industry as a Related Party

The Commission must examine whether appropriate circumstances exist to exclude ESM from the domestic industry as a related party. ESM is *** producer of granular magnesium in the United States, accounting for *** percent of reported domestic granular magnesium production in 2000. *** of ESM's shipments were internal transfers for use in making downstream products such as reagents, and ESM ***. ***.⁶² The level of ESM's imports of *** was significant, equivalent to ***. Although ESM purchased ***. ESM *** the petitions in these investigations. ***.⁶³ Based on ***, we find that appropriate circumstances exist to exclude ESM from the domestic industry.⁶⁴

III. CUMULATION⁶⁵

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like product in the U.S. market.⁶⁶ In assessing whether subject imports compete with each other and with the domestic like product,⁶⁷ the Commission has generally considered four factors, including:

⁶¹ (...continued)

order is placed on those imports, Chinese producers will simply export reagents and drive Rossborough and the other reagent producers out of business. Rossborough claims that it has made serious efforts to continue grinding, including purchasing Remacor's assets, to safeguard its interests as a reagent producer. We note that it testified before the Commission in another proceeding opposing GSP status for granular magnesium, and it actively participated in both Commerce's and the Commission's investigations. See, e.g., CR at III-5 to III-6; PR at III-4; CR/PR at Tables III-1, IV-3, VI-7.

⁶² See, e.g., CR at III-4; PR at III-3.

⁶³ See, e.g., CR/PR at Tables III-1, IV-3; CR at VI-12 at n.21; PR at VI-5 n.12; Grinding Worktables; ESM's purchaser and importer questionnaire responses.

⁶⁴ Our decision to exclude ESM from the domestic industry, however, is based on its subject imports ***, so we do not exclude ESM from our analysis of the effect of subject imports from ***, which as explained below, is separate from our analysis of the effect of *** subject imports. Accordingly, for our analysis of the effect of Chinese subject imports, we define the domestic industry as ***, and for our analysis of the effect of Israeli subject imports, we define the domestic industry as ***. We note that ***

⁶⁵ Based on our definition of a single domestic like product in these investigations, we find that subject imports from China and Israel each exceeded the three percent statutory negligibility threshold during the pertinent period. CR/PR at Tables IV-2, IV-3; 19 U.S.C. § 1677(24). Accordingly, we conclude that imports from each subject country are not negligible.

⁶⁶ 19 U.S.C. § 1677(7)(G)(i).

⁶⁷ The Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition." SAA, H.R. Rep. 316, 103rd Cong., 2^d Sess. at 848 (1994), citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.⁶⁸

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.⁶⁹ Only a “reasonable overlap” of competition is required.⁷⁰

B. The Israel Free Trade Agreement Exception

Section 771(g) of the Act provides an exception to cumulation with respect to subject imports from Israel.⁷¹ That provision states that the Commission shall not cumulatively assess the volume and effects of imports

from any country that is a party to an agreement with the United States establishing a free trade area, which entered into force and effect before January 1, 1987, unless the Commission determines that a domestic industry is materially injured or threatened with material injury by reason of imports from that country.⁷²

Thus, where antidumping or countervailing duty investigations involve both Israel and another country, the Commission must first determine whether there is material injury to a domestic industry, or the threat thereof, by reason of imports from Israel. If this inquiry is answered in the affirmative, the subject imports from Israel are then eligible for cumulation with other subject countries. If this inquiry is

⁶⁸ See, e.g., Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278 to 280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁶⁹ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁷⁰ See, e.g., Goss Graphic System, Inc. v. United States, 33 F. Supp.2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”)

⁷¹ We do not cumulate imports from Russia in these investigations based on another statutory exception to cumulation. Commerce made a final negative determination with respect to imports from Russia, and the investigation of Russia has been terminated. See, e.g., 66 Fed. Reg. 49347, 49348 (Sept. 27, 2001); 66 Fed. Reg. 50680 (Oct. 4, 2001). Accordingly, we do not cumulate imports from Russia in the final phase of these investigations. 19 U.S.C. § 1677(7)(G)(ii)(II). Neither of the other statutory exceptions to the general rule on cumulation applies in these investigations. These exceptions concern countries as to which Commerce has made preliminary negative determinations for which there is no subsequent final determination, and countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act. 19 U.S.C. § 1677(7)(G)(ii).

⁷² 19 U.S.C. § 1677(7)(G)(ii)(IV).

answered in the negative, the Commission cannot cumulate the imports from Israel with imports from the other country or countries.

As set forth below in Sections V and VI, we determine that a domestic industry is not materially injured or threatened with material injury by reason of subject imports of pure magnesium from Israel, and this exception to cumulation applies for purposes of these final investigations. Accordingly, we do not cumulate subject imports from Israel with subject imports from China.

IV. MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM CHINA⁷³

In the final phase of antidumping and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.⁷⁴ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁷⁵ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁷⁶ In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁷⁷ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁷⁸

For the reasons discussed below, we determine that the domestic industry is materially injured by reason of subject imports from China that Commerce found to be sold in the United States at less than fair value.

A. Conditions of Competition and Business Cycle

We find several conditions of competition relevant to our analysis in these investigations.

1. Captive Production

Certain data issues have complicated our consideration of captive production issues in these investigations. It is not possible to calculate internal shipments as a percentage of total domestic production of granular magnesium and magnesium ingot combined. Because of the potential for double-counting magnesium ingot, production data for the two are not combined.⁷⁹ The record indicates that magnesium ingot was both transferred to related firms for use in *** applications and transferred

⁷³ In light of the fact that Vice Chairman Okun determines that grinders/reagent producers are not part of the domestic industry, for the remainder of the determination, she does not find it necessary to consider the effects of subject imports on the grinders/reagent producers in her material injury/threat of material injury analyses.

⁷⁴ 19 U.S.C. §§ 1671d(b), 1673d(b).

⁷⁵ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B); see also, e.g., Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

⁷⁶ 19 U.S.C. § 1677(7)(A).

⁷⁷ 19 U.S.C. § 1677(7)(C)(iii).

⁷⁸ Id.

⁷⁹ See, e.g., CR/PR at Table III-2.

internally during the period of investigation.⁸⁰ We find that the second statutory requirement is not met in these investigations because the cost share for pure magnesium in aluminum products such as beverage can body stock is less than one percent, and thus pure magnesium could not be considered “the predominant material input.”⁸¹ Accordingly, we do not find that the statutory captive production provision applies with respect to internal transfers of magnesium ingot.

*** internally consumed all of its granular magnesium production, and its internal shipments of granular magnesium were *** metric tons in 1998, *** in 1999, *** in 2000, *** in interim 2000, and *** in interim 2001, whereas *** commercial shipments were *** metric tons in 1998, *** metric tons in 1999, *** metric tons in 2000, *** metric tons in interim 2000, and *** metric tons in interim 2001.⁸² Grinders that produced granular magnesium internally consumed granular magnesium in the production of reagent mixtures for desulfurization applications in the steel industry. We find that the third statutory criterion is not satisfied in these circumstances because the production of granular magnesium sold in the merchant market generally is sold to the desulfurization segment for use in reagents.⁸³ Thus, the third criterion is not satisfied because the granular magnesium production sold in the merchant market is generally used in the production of the downstream article, reagents for the desulfurization segment.

Although we find that the statutory captive production provision does not apply in these circumstances, we nevertheless consider captive production as a relevant condition of competition in these investigations.

2. Production Process

During the period of investigation, two production methods were used to produce magnesium ingots, the electrolytic process⁸⁴ and the silicothermic process,⁸⁵ and there were three firms that produced magnesium ingot in the United States, Magcorp, Northwest, and Dow.⁸⁶ Domestic producer Northwest argued that the silicothermic process involves higher raw material costs than most magnesium production plants in the world (including Magcorp) that use electrolytic processes because: (1) it is a batch rather than a continuous process; (2) it requires expensive reductants (ferrosilicon and/or aluminum); and

⁸⁰ See, e.g., CR at III-8; PR at III-5; CR/PR at Table III-3.

⁸¹ See, e.g., CR at II-11; PR at II-6.

⁸² See, e.g., CR at ***; PR at ***; Producer Questionnaire Responses of ***.

⁸³ See, e.g., CR at ***; PR at ***; CR/PR at Table III-5; *** Producer’s Questionnaire Response at question I-22.

⁸⁴ Magcorp produced magnesium ingot using an electrolytic process in which brine from the surface waters of the Great Salt Lake in Utah were evaporated and treated to produce a concentrated solution of magnesium chloride, which was further concentrated and dried to yield magnesium chloride powder. The powder was then melted, further purified, and fed into electrolytic cells operating at 700° Celsius. Direct electrical current was sent through the cells to break down the magnesium chloride into chlorine gas and molten magnesium metal. The metal rose to the surface where it was guided into storage wells and cast into ingots. See, e.g., CR at I-9; PR at I-8. DSM reported using the same production process as Magcorp, but with newer electrolytic cells. See, e.g., DSM’s Prehearing Brief at 7. Some Chinese producers use the electrolytic process. CR at VII-4; PR at VII-1.

⁸⁵ Northwest produced magnesium ingot using a silicothermic process in which magnesium-bearing dolomite mined from an open pit method was the primary feed material. Calcined dolomite, ferrosilicon, and alumina were ground, heated, and briquetted. The briquets were subsequently reduced in a heated vacuum, producing magnesium vapor. The vapor was crystallized in a condensing chamber, melted, and ladled into casting forms. See, e.g., CR at I-9 to I-10; PR at I-8. Some Chinese producers use the silicothermic process. See, e.g., CR at VII-4; PR at VII-1.

⁸⁶ Dow ceased magnesium ingot production in November 1998, and Northwest ceased production in September 2001. See, e.g., CR at III-1 n.1; PR at III-1 n.1; CR/PR at Table III-1; Northwest/Alcoa’s Prehearing Brief at 2.

(3) final processing requires added costs due to the remelting of magnesium.⁸⁷ Apparently, although it is difficult to switch between production of magnesium and non-magnesium products on this equipment, it is easier to switch between production of pure and alloy magnesium ingots with this equipment.⁸⁸ During the period of investigation, most granular magnesium was produced from smaller ingots or magnesium chips, and was ground into powder using a particle reduction process in the United States, but one grinder atomized molten pure magnesium to produce granular magnesium.⁸⁹

3. Demand

Demand for magnesium ingot largely depends on the demand for aluminum, particularly aluminum sheet used in the production of beverage cans and other packaging. Magnesium ingot also is used in other applications including grinding into granular magnesium. Twenty purchasers reported that cost shares for pure magnesium usually range from less than one percent (for various aluminum products and for ***) to more than 90 percent (for production of desulfurization and alloying products).⁹⁰ Only alloy magnesium or scrap magnesium and calcium carbide were cited as potential substitutes for pure magnesium but mainly only for desulfurization applications, and factors limit their substitutability for pure magnesium even in this context.⁹¹ The record indicates conflicting views on whether overall demand is increasing, decreasing, or stable. The data gathered in these investigations, however, indicate that total apparent domestic consumption for magnesium ingot and granular magnesium declined during the period of investigation. Whereas open-market granular magnesium consumption increased, open-market magnesium ingot consumption decreased.⁹²

4. Non-Subject Imports

Non-subject imports were present in the U.S. market throughout the period of investigation. They accounted for *** of apparent domestic consumption of magnesium ingot by quantity, and *** of apparent open-market consumption of magnesium ingot by quantity during that time.⁹³ Non-subject imports accounted for *** of apparent domestic consumption of granular magnesium by quantity, and

⁸⁷ See, e.g., Northwest/Alcoa's Prehearing Brief at 1, 2-3.

⁸⁸ See, e.g., CR at II-4; PR at II-4.

⁸⁹ See, e.g., CR at I-10 n.24; PR at I-8 n.24.

⁹⁰ See, e.g., CR at II-8, II-11; PR at II-5, II-6.

⁹¹ See, e.g., CR at II-19; PR at II-13.

⁹² *** reported that global demand for pure magnesium increased slightly or remained unchanged since January 1, 1998. It reported that overall North American demand declined as a result of falling demand in aluminum alloying, steel desulfurization, and other areas. *** reported that U.S. demand is either flat or growing several percent per year. Three domestic producers reported demand was cyclical or unchanged, and one reported demand was decreasing. Four of seven responding importers stated that demand was unchanged, while the remaining three importers reported increasing demand. Twelve of twenty-five purchasers reported that demand for the product they produced using magnesium had not changed, eight reported declining demand, three reported increased demand, one reported that demand fluctuated with ***, and one did not report how demand had changed. See, e.g., CR at II-8; PR at II-5; see also Mem. INV-Y-222 (Oct. 25, 2001) at Tables IV-10, IV-12; CR/PR at Tables IV-11, IV-13; Petitioner's Prehearing Brief at 62; Petitioner's Posthearing Brief at Exhibit A at 5-7, 9-10, App. 17; DSM's Prehearing Brief at 11-14, 18; DSM's Posthearing Brief at Exhibit A at 21; Hearing Tr. at 23, 47, 55-57, 114-15, 181-82, 184-85.

⁹³ See, e.g., Mem. INV-Y-222 (Oct. 25, 2001) at Tables IV-10, IV-12.

*** of apparent open-market consumption of granular magnesium by quantity.⁹⁴ The primary sources of non-subject magnesium ingot during the period of investigation were Russia, Canada, and non-subject imports from China, whereas the primary source of non-subject granular magnesium during the period of investigation was Canada.⁹⁵

B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁹⁶

We find that the volume of subject imports of granular magnesium from China and the increase in that volume is significant in all respects.⁹⁷ The volume of Chinese subject imports increased from 9,972 metric tons in 1998 to 13,185 metric tons in 1999 and to 15,262 metric tons in 2000. We attribute the lower volume of Chinese subject imports in interim 2001 (2,281 metric tons) as compared to interim 2000 (6,277 metric tons) to the pendency of these investigations.⁹⁸ As a share of total apparent domestic granular magnesium consumption by quantity, Chinese subject imports increased from *** percent in 1998 to *** percent in 1999, to *** percent in 2000, and was lower in interim 2001 (*** percent) compared to interim 2000 (*** percent). Apparent domestic consumption of pure granular magnesium decreased between 1998 and 1999 but increased between 1999 and 2000, and it was lower in interim 2001 than in interim 2000.⁹⁹ During this time, the domestic producers’ share of total apparent domestic granular magnesium consumption declined between 1998 and 1999, increased between 1999 and 2000, and was higher in interim 2001 than in interim 2000.¹⁰⁰ Non-subject imports accounted for *** of total apparent domestic consumption of granular magnesium by quantity.¹⁰¹

⁹⁴ See, e.g., CR/PR at Tables IV-11, IV-13.

⁹⁵ See, e.g., Hearing Tr. at 130-32. During most of these investigations, petitioner argued that pure magnesium is a commodity product, but later in the final phase of these investigations, petitioner argued that purchasers, particularly in the aluminum alloying and metal reduction segments of the U.S. market, view pure magnesium differently depending on whether it is produced by a “western” producer such as a North American, Israeli, or European producer, or an “eastern” producer such as Russian or Chinese producers. See, e.g., Petitioner’s Prehearing Brief at 58-62; Petitioner’s Posthearing Brief at Exhibit A at 10-13; Hearing Tr. at 24, 29-30, 60-61, 81-83, 97-99, 106-07. Although this issue was raised too late in the investigations for inclusion in the purchaser questionnaires, to the extent that there was evidence regarding this issue, it generally did not favor such a distinction. See, e.g., DSM’s Prehearing Brief at 1-3, 24-26; DSM’s Posthearing Brief at 2-4, Exhibit A at 6-10, 12-13, 14-15, 16; Hearing Tr. at 130-32, 137-40, 172-73, 200-04; Northwest/Alcoa’s Posthearing Brief at Exhibit A at 5.

⁹⁶ 19 U.S.C. § 1677(7)(C)(i).

⁹⁷ Due to concerns about double-counting discussed earlier, we compared the volume of Chinese subject imports with apparent domestic consumption of granular magnesium. At the Commission’s hearing, the parties were asked to estimate the relationship between magnesium ingot and granular magnesium quantities, and they estimated that a metric ton of magnesium ingot was roughly equivalent to a metric ton of granular magnesium. Hearing Tr. at 210-11. Using this estimate, the volume of Chinese subject imports also was significant.

⁹⁸ See, e.g., CR/PR at Table IV-3; see also 19 U.S.C. § 1677(7)(I); SAA at 854.

⁹⁹ See, e.g., CR/PR at Table IV-11; Producer Questionnaire Responses of ***.

¹⁰⁰ See, e.g., CR/PR at Table IV-11; Producer Questionnaire Responses of ***.

¹⁰¹ See, e.g., CR/PR at Table IV-11. As a share of apparent open-market granular magnesium consumption by quantity, Chinese subject imports were *** percent in 1998, *** percent in 1999, *** percent in 2000, and were
(continued...)

Accordingly, for purposes of this final determination, we determine that Chinese subject import volume, and the increase in that volume both in absolute terms and relative to consumption in the United States, is significant.

C. Price Effects of the Subject Imports

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁰²

The record indicates that Chinese subject imports are highly substitutable for domestically-produced pure magnesium, particularly in the production of reagent mixtures for the desulfurization segment of the U.S. market.¹⁰³ Price is an important consideration in choosing a pure magnesium supplier and pure magnesium products.¹⁰⁴ Average unit values as well as the direct pricing data collected in these investigations show declining prices of Chinese subject imports, declining domestic prices, as well as considerable underselling by Chinese subject imports at significant margins over the period of investigation.¹⁰⁵ Chinese subject imports undersold the domestic like product in all possible price comparisons at average margins that increased from 49.1 percent in 1998 to 72.7 percent in 1999, and to 79.5 percent in 2000.¹⁰⁶ Although most of the shipments of Chinese subject imports were to the

¹⁰¹ (...continued)

*** percent in interim 2001 compared to *** percent in interim 2000. During this time, the domestic producers' share of apparent open-market granular magnesium consumption by quantity was *** percent in 1998, *** percent in 1999, *** percent in 2000, *** percent in interim 2000, and *** percent in interim 2001. Non-subject imports accounted for *** percent in 1998, *** percent in 1999, *** percent in 2000, *** percent in interim 2000, and *** percent in interim 2001 of apparent open-market consumption of granular magnesium by quantity. See, e.g., CR/PR at Table IV-13.

¹⁰² 19 U.S.C. § 1677(7)(C)(ii).

¹⁰³ CR at II-14; PR at II-9; CR/PR at Tables II-3 to II-7, III-5, IV-6.

¹⁰⁴ Nine of twenty-six purchasers reported quality as the most important factor for choosing a pure magnesium supplier, and eight reported price. Two purchasers reported availability, qualified supplier, or purity as the most important factor. Sixteen of twenty-six purchasers listed quality or price as the second most important factor for choosing a pure magnesium supplier. See, e.g., CR at II-12; PR at II-7; CR/PR at Table II-1. Twenty-three of twenty seven responding purchasers of pure magnesium products reported that availability, product consistency, and reliability of supply are very important purchasing factors, whereas twenty-two reported that product quality is very important and nineteen reported delivery time is very important. Twelve reported that lowest price is very important, and twelve responded that lowest price is somewhat important. See, e.g., CR/PR at Table II-2.

¹⁰⁵ See, e.g., CR at V-14; PR at V-6; CR/PR at Tables III-3 (commercial, internal, and total U.S. shipments), IV-3, V-4, and V-5.

¹⁰⁶ See, e.g., CR at V-14; PR at V-6.

desulfurization segment of the U.S. market ***,¹⁰⁷ the record indicates that Chinese subject imports had adverse effects throughout the market. For example, the low-priced Chinese subject imports drove domestic producers and DSM largely out of the desulfurization segment of the U.S. market, leading to intensified price competition in the aluminum alloying segment of the market between the domestic like product, magnesium ingot imports from Israel, and non-subject magnesium ingot imports, such as imports from Russia.¹⁰⁸ The prices of Chinese subject imports in the desulfurization segment of the market were so low that they were even lower than magnesium ingot prices to that and other segments of the market.¹⁰⁹

For these reasons, we find that there has been significant price underselling by subject imports from China as compared with the price of domestic like product, and the effect of imports of such merchandise otherwise depresses prices to a significant degree.

D. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.¹¹⁰ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{111 112 113}

¹⁰⁷ As a share of total shipments of Chinese subject import to the U.S. market, those shipped to the desulfurization segment were *** percent in 1988, *** percent in 1999, *** percent in 2000, *** percent in interim 2000, and *** percent in interim 2001. CR/PR at Table IV-6. Although the Commission’s report suggests that *** percent in 1999, *** percent in 2000, and *** percent in interim 2000 of Chinese subject imports were shipped to the *** segment, further inquiries revealed that these shipments were destined for use in ***. See, e.g., Oct. 25, 2001 staff notes of economist regarding telephone conversation with ***.

¹⁰⁸ See, e.g., CR/PR at Tables III-5, IV-4; Hearing Tr. at 25, 29, 177, 179, 210; DSM’s Prehearing Brief at 1-3, 24-26; DSM’s Posthearing Brief at 2-4, Exhibit A at 6-10, 12-13, 14-15, 16.

¹⁰⁹ See, e.g., CR/PR at Tables V-1 to V-5; Hearing Tr. at 25, 28, 29, 33, 82, 179, 193, 210. Petitioner argued that before the entry of dumped Chinese granular magnesium into the U.S. market, the price differential between granular magnesium and magnesium was small and that granular magnesium sold at a higher price due to the additional grinding operations. See, e.g., Hearing Tr. at 83-84.

¹¹⁰ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 (“In material injury determinations, 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 also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”)

¹¹¹ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885; Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25, n.148.

¹¹² The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its final antidumping duty determinations, Commerce assigned the following antidumping duty margins to subject imports: Minmetals Precious and Rare Minerals Import and Export/China National Nonferrous Metals Industrial Trading Group Corp. (24.67); PRC-wide (305.56). 66 Fed. Reg. 49345, 49346 (Sept. 27, 2001).

¹¹³ Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary),

(continued...)

Consistent with our findings that the volume of Chinese subject imports during the period of investigation and the increase in that volume compared to apparent domestic consumption was significant, and that there was significant price underselling and significant price depression over that same period by reason of subject imports from China, we find that Chinese subject imports are having a significant adverse impact on the domestic industry. Specifically, significant volumes of Chinese subject imports at low prices displaced the domestic like product in the desulfurization segment of the market, and intensified competition throughout the U.S. market, including in the aluminum alloying segment where the domestic like product also competed with subject imports from Israel and non-subject imports from countries like Russia.¹¹⁴ Domestic producer Magcorp declared bankruptcy at the end of the period of investigation,¹¹⁵ Northwest announced the closure of its production facilities in September 2001,¹¹⁶ and the condition of the magnesium ingot producers declined during the period of investigation.¹¹⁷ Although the data concerning grinders are less meaningful to the extent that they include some reagent production, the grinders also experienced declining performance throughout the period of investigation. *** Rossborough testified about the injurious effects of Chinese subject imports on its operations, and the data show the deteriorating condition of the grinders.¹¹⁸ We acknowledge arguments that were raised

¹¹³ (...continued)

USITC Pub. 3345 (Sept. 2000) at 11, n.63.

¹¹⁴ See, e.g., CR/PR at Tables III-5, IV-4, V-1 to V-5; Hearing Tr. at 25, 28, 29, 33, 82, 177, 179, 193, 210; DSM's Prehearing Brief at 1-3, 24-26; DSM's Posthearing Brief at 2-4, Exhibit A at 6-10, 12-13, 14-15, 16. Although DSM argued that Northwest's shipments to its related parent were sheltered from import competition, we find subject imports had a significant adverse impact on the domestic industry as a whole.

¹¹⁵ See, e.g., CR at III-2 n.3; PR at III-1 n.3.

¹¹⁶ See, e.g., Northwest/Alcoa's Prehearing Brief at 2.

¹¹⁷ Domestic magnesium ingot production capacity was ***. Several magnesium ingot domestic industry performance indicators declined over the period of investigation, including production, capacity utilization, commercial shipments, internal consumption, total domestic shipments, and the unit value of shipments. Transfers to related firms improved somewhat over the period of investigation, but end-of-period inventories increased throughout the period of investigation. Although there was some fluctuation during the period of investigation, most magnesium ingot employment indicators worsened over the period of investigation. The domestic magnesium ingot producers lost market share throughout the period of investigation, as measured by their open-market shipments as a share of total apparent domestic magnesium ingot consumption and open-market shipments as a share of total open-market apparent domestic magnesium ingot consumption, although the domestic magnesium ingot producers' captive shipments as a share of total apparent domestic magnesium ingot consumption increased during the period of investigation. The domestic magnesium ingot producers had an ***, their cash flow and their capital expenditures and research and development expenses declined throughout the period of investigation, and petitioner argued that domestic magnesium ingot producers had difficulty raising capital and reduced returns on investment. See, e.g., CR/PR at Tables III-2 to III-4, III-7, VI-1, VI-4, VI-9; Mem. INV-Y-222 (Oct. 25, 2001) at Tables IV-10, IV-12; Petitioner's Prehearing Brief at 62-76, 118.

¹¹⁸ See, e.g., Hearing Tr. at 195, 204. Remacor filed for Chapter 11 bankruptcy in March 2001 and merged with Rossborough in August 2001. Although the level of granular magnesium shipments *** over the period of investigation and capacity utilization ***, all other granular magnesium performance indicators for these companies generally declined over the period of investigation, including capacity, production, unit values of shipments, and end-of-period inventories. Although there was some fluctuation during the period of investigation, most granular magnesium employment indicators worsened over the period of investigation. The domestic granular magnesium producers' operating income *** over the period of investigation, and their capital expenditures and research and development expenses declined over the period of investigation. Petitioner argued that the grinders suffered material injury. See, e.g., CR at III-1 n.2; PR at III-1 n.2; producer questionnaire responses of ***; CR/PR at Tables IV-7, VI-7, VI-9; Petitioner's Prehearing Brief at 77-82.

concerning dividends paid by Magcorp in 1996 and their linkage to delays and scaling back of Magcorp's installation of more efficient and less costly electrolytic cells,¹¹⁹ but we note that independent consultants stated at the time that the debt issuance and subsequent payout of dividends (as well as Magcorp's ability to handle the additional debt burden) were reasonable.¹²⁰ These arguments do not detract from the fact that subject imports from China materially injured the domestic industry.

In sum, the record indicates that the volume of Chinese subject imports and the increase in that volume is significant both absolutely and relative to apparent domestic consumption and Chinese subject imports undersold the domestic merchandise to a significant degree and had a significant depressing effect on domestic prices. As a result, the overall condition of the industry declined during the period of investigation. Based on the record, we find that the significant and increasing volume of low-priced subject imports from China had a significant negative impact on the U.S. industry. Accordingly, we find that the domestic industry is materially injured by reason of Chinese subject imports.

V. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM ISRAEL

The legal standards for the Commission's present material injury determination are set forth above, and we incorporate them by reference here.

For the reasons discussed below, we determine that the domestic industry is not materially injured by reason of subject imports from Israel that Commerce found to be subsidized and sold in the United States at less than fair value.

A. Conditions of Competition and Business Cycle

We incorporate by reference our earlier discussion of the relevant conditions of competition and business cycle.

B. Volume of Subject Imports

We find that the volume of subject imports from Israel is not significant either in absolute terms or relative to apparent domestic consumption or domestic production.¹²¹ Subject imports from Israel were comprised solely of magnesium ingot, as there were no imports of granular magnesium from Israel during the period of investigation.¹²² The volume of Israeli subject imports increased from 7,991 metric tons in 1998 to 11,778 metric tons in 1999, then decreased to 6,317 metric tons in 2000, a level lower than they were in 1998. The volume of subject imports from Israel was 1,755 metric tons in interim 2001

¹¹⁹ See, e.g., DSM's Prehearing Brief at 3-5, 9, 51-60; DSM's Posthearing Brief at 11-13; Hearing Tr. at 12-15, 132-34; Rossborough's Prehearing Brief at 22-26.

¹²⁰ See, e.g., Petitioner's Posthearing Brief at Exhibit A at 23-30, App. 23.

¹²¹ For purposes of assessing subject import volume from Israel, we relied on the official statistics reported in the Commission's report, but we note that these data likely overstate the volume from Israel to the extent that they include certain shipments of alloy magnesium that were mistakenly classified by DSM's customs agent. See, e.g., DSM's Prehearing Brief at 36-41.

¹²² CR/PR at Tables IV-2, IV-3. Due to concerns about double-counting discussed earlier, we compared the volume of Israeli subject imports with apparent domestic consumption of magnesium ingot and domestic production of magnesium ingot. At the Commission's hearing, the parties were asked to estimate the relationship between magnesium ingot and granular magnesium quantities, and they estimated that a metric ton of magnesium ingot was roughly equivalent to a metric ton of granular magnesium. Hearing Tr. at 210-11. Using this estimate, the volume of Israeli subject imports also was not significant.

compared to 3,303 metric tons in interim 2000.¹²³ Petitioner argued that the decline in Israeli import volume was attributable to the pendency of these investigations or rumors that these petitions were going to be filed. The decline in Israeli subject import volume began before the petitions were filed. As a share of total apparent domestic magnesium ingot consumption by quantity, Israeli subject imports increased from *** percent in 1998 to *** percent in 1999, then decreased to *** percent in 2000, and were *** percent in interim 2001 compared to *** percent in interim 2000.¹²⁴ As a share of apparent open-market magnesium ingot consumption by quantity, Israeli subject imports were *** percent in 1998, *** percent in 1999, *** percent in 2000, and were *** percent in interim 2001 compared to *** percent in interim 2000.¹²⁵ We do not find the volume of Israeli subject imports or any increase in that volume to be significant, particularly in comparison to the volume of subject imports of granular magnesium from China described earlier and the volume of non-subject imports, especially from Russia during the period of investigation, or in light of the expressed preference of a number of purchasers to have more than one or several suppliers.¹²⁶

The record shows that domestic magnesium ingot production volumes increased from *** metric tons in 1998 to *** metric tons in 1999, then decreased to *** metric tons in 2000, and were *** metric tons in interim 2001 compared to *** metric tons in interim 2000.¹²⁷ During this time, the domestic producers' share of total apparent magnesium ingot domestic consumption declined only slightly from *** percent in 1998 (of which *** percent was captive and *** percent was open market) to *** percent in 1999 (of which *** percent was captive and *** percent was open market), and *** percent in 2000 (of which *** percent was captive and *** percent was open market), and higher in interim 2001 at *** percent (of which *** percent was captive and *** percent was open market) than in interim 2001 at *** percent (of which *** percent was captive and *** percent was open market).¹²⁸ The trends in domestic production volume and market share are not linked to the trends in Israeli subject import volume.

Accordingly, based on the declining volume of subject imports from Israel over the period of investigation and our findings, discussed below, of a lack of significant underselling by Israeli subject imports and that subject imports from Israel do not suppress or depress prices of the domestic like product, we determine that subject imports from Israel are not significant, either in absolute terms or relative to apparent domestic consumption or domestic production.

C. Price Effects of the Subject Imports

The record indicates that Israeli subject imports are highly substitutable for domestically-produced pure magnesium, and, as indicated earlier, that price is an important consideration in choosing

¹²³ See, e.g., CR/PR at IV-2.

¹²⁴ See, e.g., CR/PR at Table IV-10.

¹²⁵ See, e.g., CR/PR at Table IV-12.

¹²⁶ See, e.g., Hearing Tr. at 133-34, 135, 139-42, 152, 156. Non-subject magnesium ingot imports from Russia were 12,715 metric tons in 1998, 9,998 metric tons in 1999, and 10,849 metric tons in 2000, and were 3,868 metric tons in interim 2001 compared to 5,331 metric tons in interim 2000. See, e.g., Commission's Prehearing Report at Table IV-2. Russian imports were *** percent in 1998, *** percent in 1999, *** percent in 2000, *** percent in interim 2000, and *** percent in interim 2001 of total apparent domestic magnesium ingot consumption, and were *** percent in 1998, *** percent in 1999, *** in 2000, *** percent in interim 2000, and *** percent in interim 2001 of apparent open-market consumption. See, e.g., Commission's Prehearing Report at Tables IV-10, IV-12.

¹²⁷ See, e.g., CR/PR at Table III-2.

¹²⁸ See, e.g., CR/PR at Table IV-10.

a pure magnesium supplier and pure magnesium products.¹²⁹ With respect to the desulfurization segment of the U.S. market, as indicated earlier, we do not attribute price declines in this sector to Israeli subject imports, but rather to low-priced subject imports from China, which effectively pushed the domestic like product and Israeli subject imports out of this sector during the period of investigation. The domestic industry lost considerable sales to the ***, and DSM argued that the domestic industry was not qualified to compete ***. The record does not substantiate petitioner's argument of significant underselling and price depression by subject imports from Israel. Average unit values as well as the pricing data collected in these investigations show declining prices of Israeli subject imports during the period of investigation, but these declines ***. Furthermore, subject imports from Israel frequently oversold the domestic like product, and such margins of underselling by Israeli subject imports that did exist declined over the period of investigation.¹³⁰ There was only a single confirmed lost sales allegation involving subject imports from Israel, and the confirmed lost revenue allegations where subject imports from Israel were offered to purchasers all involved circumstances where the imports from Russia were quoted at lower prices than the subject imports from Israel.¹³¹

For these reasons, we do not find any significant price underselling by subject imports from Israel as compared with the price of domestic like product in the United States, and we do not find that the effect of imports of such merchandise otherwise depresses or suppresses prices to a significant degree.

D. Impact of the Subject Imports^{132 133}

Consistent with our finding that the volume of Israeli subject imports during the period of investigation was not significant, and that there was no significant price underselling, price depression or suppression over that same period due to subject imports from Israel, we find that subject imports from

¹²⁹ See, e.g., CR at II-12; PR at II-7; CR/PR at Tables II-1 to II-7.

¹³⁰ See, e.g., CR at V-4 to V-5, V-13 to V-14, V-17 to V-20; PR at V-3 to V-4, V-6 to V-7; DSM's Prehearing Brief at 42-54. Subject imports from Israel were consistently priced higher than subject imports from China and were higher than non-subject imports, including those from Russia that were found to be fairly traded by Commerce, that were sold in significant volumes in the aluminum alloying sector, and that were highly substitutable for subject imports from Israel. See, e.g., Commission's Prehearing Report at Tables V-1 to V-5; CR/PR at Tables II-3, II-4, II-6, II-7. Contrary to petitioner's argument, DSM's level of underselling in this sector was declining significantly as its quality level was increasing following start-up and during a time when it was not producing T-bars, which are higher priced. In the interim period, when DSM's T-bar production began, subject imports from Israel began to oversell Magcorp. Moreover, when DSM was underselling at more significant levels (1998 and 1999), Magcorp's profitability was still high and when the underselling virtually disappeared in 2000, this was when Magcorp's profitability fell dramatically. Thus, it was the cross-over effects of the unfairly traded Chinese granular magnesium and the low-priced, but fairly traded Russian imports that were the cause of Magcorp's declining profitability in this sector.

¹³¹ See, e.g., Commission's Prehearing Report at Tables V-6 and V-7.

¹³² The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its final antidumping duty determinations, Commerce assigned the following antidumping duty margins to subject imports: Dead Sea Magnesium (28.14); all others from Israel (28.14). 66 Fed. Reg. 49349, 49350 (Sept. 27, 2001) (Israel).

¹³³ Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11, n.63.

Israel are not having a significant adverse impact on the domestic industry. We incorporate by reference our earlier impact discussion,¹³⁴ but in the absence of any volume or price effects, we conclude that the domestic industry is not experiencing material injury by reason of subject imports from Israel.

VI. NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM ISRAEL

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹³⁵ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”¹³⁶ In making our determination, we have considered all factors that are relevant to this investigation.¹³⁷

Based on an evaluation of the relevant statutory factors, we find that an industry in the United States is not threatened with material injury by reason of imports of pure magnesium from Israel that Commerce found to be subsidized and sold in the U.S. market at less than fair value.

In its final determination, Commerce found that DSM benefitted from three non-recurring countervailable subsidies. First, it found that DSM benefitted from a grant under the Law of Encouragement of Capital Investments (“ECIL”), a regional development program aimed at providing assistance to enterprises located in disadvantaged regions of the country. DSM’s magnesium plant is located in Zone A, the zone receiving the highest level of benefits under this program, and in 1993, the Government of Israel approved an ECIL grant for the construction of the magnesium plant in the amount of 38 percent of the total approved investment, and that amount was subsequently increased in separate amendments in 1996 and 1999. Second, Commerce determined that DSM benefitted from an infrastructure grant from the Government of Israel to cover the company’s expenses for building infrastructure around the new magnesium plant. Third, Commerce found that DSM benefitted from grants under the Law of Encouragement of Industrial Research and Development. Under this program the Government of Israel provides grants in the amount of 30 to 66 percent of the approved R&D expenditures, depending on the type of project and the location where the proposed R&D will be undertaken, with companies located in Zone A receiving a higher level of benefit than companies located elsewhere. Commerce determined that if not repaid, the grants under the program conferred a benefit in an amount equal to the difference between the non-specific base rate of 30 percent of the approved R&D cost and the rate at which the Government of Israel reimbursed DSM for its research expenses; although some of the grants under this program were repaid, Commerce determined that the company still

¹³⁴ For our analysis of the effect of subject imports from Israel on the domestic granular magnesium producers, we examined *** granular magnesium data, to the extent that they were available. We note that most of ***. See, e.g., CR at VI-13; PR at VI-5. Including ***. See, e.g., Producers’ Questionnaire Responses of ***; CR/PR at Tables VI-7, VI-9.

¹³⁵ 19 U.S.C. §§ 1673d(b)(1), 1677(7)(F)(ii).

¹³⁶ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984); see also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

¹³⁷ 19 U.S.C. § 1677(7)(F)(i). Factor VII regarding raw and processed agriculture products is inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(i)(VII).

benefitted from interest-free use of money during the time period between the receipt and the repayment of the grant. Commerce determined that the countervailable subsidies for these three programs were 16.02, 0.49, and 0.01 percent ad valorem, respectively.¹³⁸

DSM's foreign production capacity declined over the period of investigation, and it is projected to continue to decline in the imminent future.¹³⁹ The record indicates that demand for alloy magnesium is expected to be stronger than for pure magnesium, and that DSM, the only known Israeli producer, is likely to use its production facilities for producing alloy magnesium over pure magnesium, particularly in light of its contractual practices involving alloy magnesium.¹⁴⁰ DSM's exports to the United States declined over the period of investigation and are projected to decline in the imminent future, whereas its exports to other countries are significant.¹⁴¹ Although it has added T-bar capacity that is used to produce special magnesium ingots for the aluminum alloying industry,¹⁴² we do not find that the volume and market penetration of subject imports from Israel is likely to be significant in the imminent future. Furthermore, we note that the level of end-of-period inventories in Israel declined over the period of investigation and are projected to decline in the imminent future, and importer end-of-period inventories of subject imports from Israel were not significant during the period of investigation.¹⁴³ In light of the competitive conditions in the U.S. market discussed above and trends in Israeli subject import volume throughout the period of investigation, we find that there is not a significant rate of increase of imports of pure magnesium from Israel indicating the likelihood of substantially increased subject imports from Israel in the imminent future.

Available information suggests that, while it may be possible for DSM to use the same production facilities to produce alloy magnesium,¹⁴⁴ the record does not indicate a potential for product shifting likely to result in a significant increase in subject import volumes in the imminent future, particularly in light of demand projections for the two products.

The record does not indicate a likelihood that the subject imports from Israel will enter the U.S. market at prices that will have a significant depressing or suppressing effect on prices for the domestic like product or increase demand for further imports. Subject imports from Israel frequently oversold the domestic like product during the period of investigation. In those instances where subject imports from Israel undersold the domestic like product, the margins of underselling were small and declining.¹⁴⁵

With respect to the impact of the Israeli subject imports on the industry's production and development efforts, the record is mixed.¹⁴⁶ We find that the insignificant volume of subject Israeli imports has not had actual and potential negative effects on the existing development and production

¹³⁸ See Memo from Richard W. Moreland to Faryar Shirzad regarding Issues and Decision Memorandum from the Final Determination in the Countervailing Duty Investigation of Pure Magnesium from Israel (Sept. 14, 2001), found at <http://ia.ita.doc.gov/frn/summary/israel/01-24232-1.txt>.

¹³⁹ See, e.g., CR/PR at Table VII-2.

¹⁴⁰ See, e.g., CR at II-8, II-19; PR at II-5, II-13; Petitioner's Prehearing Brief at 62; Petitioner's Posthearing Brief at Exhibit A at 5-7, 9-10, App. 17; Hearing Tr. at 23, 47, 55-57, 89-89, 114-15; DSM's Prehearing Brief at 10-14, 18, 61, 63, 65; DSM's Posthearing Brief at Exhibit A at 21; Hearing Tr. at 181-82, 184-85. During the period of investigation, DSM contracted with Volkswagen *** and agreed to supply alloy magnesium for automotive applications. ***. See, e.g., DSM's Posthearing Brief at Exhibit A at 20 for actual quantities.

¹⁴¹ See, e.g., CR/PR at Table VII-2.

¹⁴² See, e.g., CR at VII-5 n.12; PR at VII-2 n.12.

¹⁴³ See, e.g., CR/PR at Table VII-3.

¹⁴⁴ See, e.g., DSM's Prehearing Brief at 7.

¹⁴⁵ See, e.g., CR/PR at Tables V-3 to V-5.

¹⁴⁶ See, e.g., CR/PR at Appendix D.

efforts of the domestic industry, and is unlikely to have such effects in the future. *** reported that it has had to reduce the size of its capital investments or cancel expansion projects, but domestic producers continued to make capital expenditures and research and development expenditures during the period of investigation.¹⁴⁷

We have considered whether there are any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time). We observe in this regard that there are no known dumping findings or antidumping remedies in third-country markets against the subject imports from Israel.¹⁴⁸

Given the lack of likely volume and price effects of subject imports from Israel and the present condition of the domestic industry, we find that material injury by reason of subject imports from Israel is not imminent.

Based on an evaluation of all of the relevant statutory factors, we do not find that further dumped and subsidized subject imports from Israel are imminent or that material injury by reason of such imports would occur absent antidumping duty and countervailing duty orders. Accordingly, we do not find that an industry in the United States is threatened with material injury by reason of subject imports from Israel that Commerce found to be subsidized and sold in the United States at less than fair value.

CONCLUSION

For the foregoing reasons, we determine that an industry in the United States is materially injured by reason of imports of pure magnesium from China that Commerce found to be sold in the United States at less than fair value. We further determine that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of pure magnesium from Israel that Commerce found to be subsidized and sold in the United States at less than fair value.

¹⁴⁷ See, e.g., CR/PR at Appendix D, Table VI-9.

¹⁴⁸ See, e.g., CR at VII-8; PR at VII-3.

Based on an evaluation of all of the relevant statutory factors, we do not find that further dumped and subsidized subject imports from Israel are imminent or that material injury by reason of such imports would occur absent antidumping duty and countervailing duty orders. Accordingly, we do not find that an industry in the United States is threatened with material injury by reason of subject imports from Israel that Commerce found to be subsidized and sold in the United States at less than fair value.

CONCLUSION

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DISSENTING VIEWS OF COMMISSIONER OKUN

Vice Chairman Okun does not join the Commission's views in the domestic industry section. On the basis of the record compiled in the final phase of these investigations, Vice Chairman Okun concludes that grinders/reagent producers do not engage in sufficient production-related activity to qualify as domestic producers. Using the Commission's traditional six factor test, the record indicates the following:

Source and extent of the firm's capital investment. The grinders reported a combined total original cost of property, plant and equipment ranging between ***.¹ These amounts, however, appear related more to reagent production than granular magnesium production. Petitioner estimated that the capital investment to establish a grinding operation is approximately \$2 million compared to the \$500 million needed to establish a magnesium ingot production facility.²

Technical expertise involved in U.S. production activities. The technical expertise required to convert magnesium into granular form is not significant because the process consists of little more than feeding magnesium ingot or chips into a grinding machine to reduce the material. In contrast, a series of complex chemical and metallurgical processes are needed to produce magnesium ingot, including harvesting magnesium chloride solution from solar evaporation ponds, removing impurities from the solution, converting the magnesium chloride solution to powder form, melting and purifying the magnesium chloride powder using chlorine and other chemicals, creating the electrolytic reaction necessary to produce magnesium metal from the magnesium chloride, collecting and transferring the chlorine gas by-product, capturing the molten magnesium metal, transferring the magnesium to the cast house for further refinement, and then casting the magnesium into ingot form.³ Although the grinders/reagent producers offered specialized services to end users, these services appear related more to reagent production than granular magnesium production.

Value added in the United States. At most, the value added by the grinding process is approximately 6 to 15 cents per pound;⁴ this is minor relative to the cost of producing magnesium ingot. Petitioner estimated that the grinding cost would add only a value equivalent to about *** percent.⁵ While the grinders/reagent producers estimated that the value added was greater (ESM reported value added ranged from *** percent and Rossborough reported value added ranged from *** percent),⁶ the data do not represent only the conversion of magnesium ingot into granular form because the financial data reported by several companies reflect the production and sale of reagents. Indeed, *** reported similar ranges for value added,⁷ but it did not report any purchases or imports of magnesium ingot during the period of investigation. This suggests that the value it reported represents the value added for reagent production.

¹ See CR/PR at Table VI-9.

² See Petitioner's Prehearing Brief at 34.

³ See Petitioner's Prehearing Brief at 35-36; Petitioner's Posthearing Brief at 4-5.

⁴ Hearing Tr. at 211-12.

⁵ See Petitioner's Prehearing Brief at 36-38.

⁶ See CR/PR at Table VI-8.

⁷ Id.

Employment levels. The number of employees required to grind magnesium ingot into granular magnesium is insignificant relative to that required to produce magnesium ingot, with grinders/reagent producers reporting employing *** production and related workers in 2000 compared to the *** production and related workers employed by magnesium ingot producers in 2000.⁸ Again, the number of grinding/reagent production workers include total employment at those firms, which focus on reagent production rather than granular magnesium production.

Quantity and type of parts sourced in the United States. The record indicates that the grinders/reagent producers progressively shifted from purchasing domestically produced or imported magnesium ingot for their grinding operations to purchasing imported magnesium granules requiring no further grinding.⁹

Any other costs and activities in the United States directly leading to production of the domestic like product. No party made arguments concerning the last factor.

Accordingly, Vice Chairman Okun concludes that grinders/reagent producers do not engage in sufficient production-related activity to qualify as domestic producers. She notes that much of the data supplied by the grinders/reagent producers reflect the production and sale of reagents, thereby overstating their grinding operations. However, assuming *arguendo* that their data are correct, it is clear that the value added by grinders/reagent producers is low. Capital investment by grinders/reagent producers also appears low, particularly compared to the capital investment required to establish and maintain a magnesium ingot facility. Grinding is not particularly complex even though there is some degree of technical expertise involved in handling granular magnesium because of its reactivity. While employment levels are not insignificant, they are low compared to magnesium ingot production employment levels. Moreover, the Commission has found in previous investigations involving other products that converters were not engaged in sufficient production-related activity to support their inclusion in the domestic industry.¹⁰

⁸ See CR/PR at Table III-8.

⁹ See, e.g., Grinding Worktables; Hearing Tr. at 167-68; CR/PR at Table VI-8.

¹⁰ See, e.g., *Synthetic Indigo from China*, Inv. No. 731-TA-851 (Final), USITC Pub. 3310 (June 2000) at 6-8 (Commission excluded from the domestic industry companies that convert indigo powder into indigo paste based in part because the capital investment to build a diluting facility (\$3 million) was substantially less than what was required to build an indigo manufacturing facility (\$60 million) and the value added by the converters was not significant).

DISSENTING VIEWS OF COMMISSIONERS MARCIA E. MILLER AND JENNIFER A. HILLMAN

Based on the record in these investigations, we find that an industry in the United States is not materially injured or threatened with material injury by reason of imports of granular magnesium from China that the U.S. Department of Commerce ("Commerce") found were sold in the United States at less than fair value ("LTFV"), and imports of pure magnesium ingot from Israel that Commerce found were sold in the United States at LTFV and subsidized by the Government of Israel.¹ We also find that imports of pure granular magnesium from Israel that Commerce found were sold at LTFV and subsidized by the Government of Israel are negligible.

I. Domestic Like Product and Industry

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of subject merchandise, the Commission must first define the "domestic like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 ("the Act") defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of the domestic like product constitutes a major proportion of the total domestic production of that product."² In turn, 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."³

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.⁴ Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise alleged to be sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.⁵ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁶ Although the Commission must accept the determination of Commerce as to the scope

¹ There is no issue in these investigations regarding whether there is a reasonable indication that a domestic industry is materially retarded by reason of subject imports.

² 19 U.S.C. § 1677(4)(A).

³ 19 U.S.C. § 1677(10).

⁴ See, e.g., *NEC Corp. v. United States*, 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) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case'"). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes, and production employees; (5) customer or producer perceptions; and, where appropriate, (6) price. See, e.g., *Nippon*, 19 CIT at 455 n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation.

⁵ *Hosiden Corp. v. Advanced Display Manufacturers*, 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); *Torrington*, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

⁶ *Nippon Steel*, 19 CIT at 455; *Torrington*, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in "such a narrow fashion as to
(continued...)

of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.⁷

In its final determination, Commerce defined the imported merchandise within the scope of the Israeli investigation as:

imports of pure magnesium products, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes. Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as “ultra-pure” magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent pure magnesium, by weight (generally referred to as “pure magnesium”); and (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an “ASTM Specification for Magnesium Alloy”⁸ (generally referred to as “off-specification pure” magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight. Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials which the Department is aware are used to make such excluded reagents are: lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nepheline syenite, feldspar, aluminum, alumina (Al₂O₃), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of antidumping duties.

The merchandise subject to this investigation is classifiable under 8104.11.00, 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.⁹

Commerce’s final determination regarding Chinese subject imports explained:

⁶ (...continued)

permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

⁷ *Hosiden Corp. v. Advanced Display Mfrs.*, 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); *Torrington*, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

⁸ The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

⁹ 66 Fed. Reg. 49351, 49352 (Sept. 27, 2001) (countervailing duty); 66 Fed. Reg. 49349, 49350 (Sept. 27, 2001) (antidumping duty).

There is an existing antidumping duty order on pure magnesium from the PRC. See Notice of Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation, 60 FR 25691 (May 12, 1995). The scope of this investigation excludes pure magnesium that is already covered by the existing order, and classifiable under item numbers 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

The scope of this investigation includes imports of pure magnesium products, regardless of chemistry, including, without limitation, raspings, granules, turnings, chips, powder, and briquettes, except as noted above.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent pure magnesium, by weight (generally referred to as "pure" magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, and that do not conform to an "ASTM Specification for Magnesium Alloy"¹⁰ (generally referred to as "off-specification pure" magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight. Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials which the Department is aware are used to make such excluded reagents are: lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nepheline syenite, feldspar, aluminum, alumina (Al_2O_3), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of antidumping duties.

The merchandise subject to this investigation is classifiable under 8104.30.00 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.¹¹

Magnesium is a silver-white metallic element that is the eighth most abundant element in the earth's crust and the third most plentiful element dissolved in seawater; most magnesium is derived from magnesium-bearing ores (dolomite, magnesite, brucite, and olivine), seawater, or well and lake brines. Its 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. Pure magnesium in unwrought form contains at least 99.8 percent magnesium by weight, and is contrasted with alloy magnesium, which consists of magnesium and other metals, typically aluminum and zinc, containing less than 99.8 percent magnesium by weight, with magnesium the largest metallic element in the alloy, by

¹⁰ The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

¹¹ 66 Fed. Reg. 49345, 49346 (Sept. 27, 2001).

weight. Alloy magnesium may be preferred to pure magnesium due to certain properties such as strength, ductility, workability, corrosion resistance, density, or castability.¹²

Applying the Commission's traditional six-factor test,¹³ we define two domestic like products, namely pure magnesium ingot and pure granular magnesium.

Physical characteristics and uses. Pure magnesium ingot and pure granular magnesium share some basic properties, but differ in size, dimensions, and shape.¹⁴ These differences result in varied characteristics and, consequently, in different end uses.

Pure magnesium ingot and pure granular magnesium have the same chemical composition. Whether in the ingot or granular form, pure magnesium (except "off-specification pure" magnesium) contains at least 99.8 percent magnesium by weight, is light weight, and has special metallurgical and chemical properties.¹⁵

Commonly produced by an electrolytic process (by Magnesium Corporation of America, or "Magcorp") or a silicothermic process (by Northwest Alloys, or "Northwest") in the United States, molten magnesium metal is refined and typically cast into ingots or slabs.¹⁶ Pure magnesium ingot is commonly used in the manufacture of aluminum alloys, often for use in beverage cans and in some automotive parts. Aluminum producers typically purchase pure magnesium ingot cast in larger shapes such as rounds, billets, peg-lock ingots or T-shapes.¹⁷ Pure magnesium ingot is also used in magnesium anodes for the protection of iron and steel in underground pipe and water tanks and various marine applications.¹⁸

Pure granular magnesium consists of pieces in various sizes (including raspings, turnings, granules, chips, and powders) that are most commonly produced from the machining or grinding of magnesium ingots (including grinding slabs) or billets.¹⁹ Granular magnesium's primary end use is in steel desulfurization, for which it is blended with other desulfurizing agents (e.g., lime and calcium carbide) to produce a desulfurizing reagent. Granular magnesium is also used in defense applications,

¹² See, e.g., Confidential Staff Report, as amended by Mem. INV-Y-222 (Oct. 25, 2001) ("CR"), at I-7 to I-8, I-9; Public Staff Report ("PR") at I-6 to I-8.

¹³ The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes, and production employees; (5) customer or producer perceptions; and, where appropriate, (6) price. See, e.g., *Nippon*, 19 CIT at 455 n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. Application of the Commission's semifinished products analysis is not appropriate in these investigations because there are significant alternative uses for magnesium ingot other than production of granular magnesium.

¹⁴ CR at I-12; PR at I-9. Previous investigations have distinguished granular from magnesium ingot based upon size, with granular magnesium being characterized as being of a maximum dimension of one inch. *Pure Magnesium from China*, Inv. No. 731-TA-696 (Review), USITC Pub. 3346 (Aug. 2000) at 5; *Magnesium from Canada*, Inv. Nos. 701-TA-309-A-B and 731-TA-528 (Review), USITC Pub. 3324 (July 2000) at 5-6; *Magnesium from China, Russia, and Ukraine*, Inv. Nos. 731-TA-696-698 (Final), USITC Pub. 2885 (May 1995) at 7-9; see also *Continuation of Antidumping Duty Order: Pure Magnesium from the People's Republic of China*, 65 Fed. Reg. 64422, 64423 (Oct. 27, 2000) ("[G]ranular primary magnesium (including turnings, chips and powder), having a maximum physical dimension (i.e., length or diameter) of one inch or less, . . .").

¹⁵ CR at I-7 to I-8; PR at I-6 to I-7.

¹⁶ CR at I-9 to I-10; PR at I-8.

¹⁷ CR at I-10; PR at I-8.

¹⁸ CR at I-8; PR at I-7.

¹⁹ CR at I-8 and I-10; PR at I-7 and I-8. Magnesium powder can also be produced by atomization of molten pure magnesium. CR at I-10 n.24; PR at I-8 n.24.

such as military ordnance and flares, and is also sold to chemical companies and pharmaceutical manufacturers.²⁰

Pure granular magnesium is much more volatile than pure magnesium ingot. In producing granular magnesium, the particle size is finely reduced, and such particles are highly reactive, and will emit explosive hydrogen gas when they come into contact with moisture. Because of this volatility, granular magnesium must be treated with special precautions during the production process and in any shipping and handling processes.²¹

The record indicates that pure magnesium ingot and pure granular magnesium share the same fundamental chemical composition in that they are both pure magnesium. However, granular magnesium is a downstream product with significant physical differences compared to ingot, including size and reactivity (which are essential to granular magnesium's uses, especially in desulfurization), and because of those differences, there are significant differences in end uses for ingot and granular magnesium.²² We also find that there is not a "continuum" of sizes, as Magcorp contends. While there are a variety of ingot sizes, these stop well above the one-inch line.²³ All forms of granular magnesium are substantially below the one-inch dividing line, and are not cast into regular shapes, as ingots are, but rather are produced in a variety of generally irregular forms (e.g., raspings and turnings).²⁴

Manufacturing Facilities and Employees. There is no meaningful overlap between the domestic producers of magnesium ingot and the domestic producers of granular magnesium, and there are no common manufacturing facilities, equipment, or production employees used to produce both magnesium ingot and granular magnesium.²⁵ While the record suggests that it might not be particularly difficult or costly for domestic ingot producers to add facilities to their plants to produce granular magnesium,²⁶ they have not done so, indicating a significant separation between products and industries.

Interchangeability. *** contend that ingot and granular magnesium are always interchangeable, since granular magnesium is produced from ingot. However, *** of the commercial granular magnesium producers stated that these products are not readily interchangeable in actual use.²⁷

Pure magnesium ingot cannot be used for the production of steel desulfurization reagents without first being converted to granular form. While direct injection technology exists that might permit pure granular magnesium to be used in other segments of the market that currently use ingot, such as

²⁰ CR at I-8, I-12, and II-1; PR at I-7, I-9, and II-1.

²¹ Rossborough's Posthearing Brief at 3.

²² While both pure magnesium ingot and pure granular magnesium are used in ductile iron production, *** CR at II-9 n.14; PR at II-5 n.14.

²³ Magcorp's ingots ranged in size from 25 to 1000 pounds. Petitioners' Prehearing Brief at Exhibit 7; Hearing Tr. at 26 (Kaplan). The physical exhibits presented by petitioners at the hearing also showed a clear gap between the smaller ingots (which were not domestic product) and the various forms of granular magnesium. See Hearing Tr. at 26 (Kaplan).

²⁴ Magcorp has also alleged that briquettes blur the distinction between ingot and granular magnesium. However, the record clearly shows that there are currently no commercial uses for briquettes, and that they are created merely as a step in recycling of granular magnesium. See, e.g., Hearing Tr. at 72-73 (Kaplan).

²⁵ CR at I-12; PR at I-8. Magcorp produces a small amount *** of granular magnesium (raspings, chips, turnings, etc.) as a result of its ingot finishing operations. Magcorp does not commercially sell any of the granular magnesium it produces. CR at I-12 n.33 and Table III-1; PR at I-10 n.33 and Table III-1. Magcorp claimed that Dow produced granular magnesium during the investigation period. However, the record contains no evidence of significant commercial production by Dow. See Rossborough's Posthearing Brief at 4. The *** sale of granular magnesium by Dow on the record *** CR at III-4 n.12; PR at III-3 n.12.

²⁶ See e.g., Magcorp's Prehearing Brief, at 22.

²⁷ CR at I-12; PR at I-10. ***

aluminum alloying and ferroalloys, use of this technology has been extremely limited largely due to economic and safety considerations.²⁸ Two major aluminum alloyers testified at the Commission's hearing that they simply could not and would not use granular magnesium in their production processes because it oxidized too fast.²⁹ Thus, there is very little interchangeability between granular magnesium and magnesium ingot. Granular magnesium is rarely if ever used for applications that traditionally use magnesium ingot. Magnesium ingot cannot be used for granular magnesium applications without being converted into granular form.

Customer and Producer Perceptions. Because of the differences in end uses and customers for ingot and granular magnesium, there are corresponding differences in producer and customer perceptions. The ingot producers perceive granular and ingot as the same product, at different levels of processing, while granular producers largely perceive them as different products.³⁰ However, as noted above, none of the ingot producers actually produce granular magnesium commercially. All purchasers reported that magnesium ingot and granular magnesium are not used in the same applications, and the reasons included the following: (1) granular magnesium was required by specifications or as a component; (2) safety requirements for granular magnesium; (3) melt loss; (4) melting procedures and production process require magnesium ingot; (5) efficiency; (6) chemical purity requirements; (7) use of an injection process requires granular magnesium; and (8) different reactions. While four firms reported using magnesium ingot and granular magnesium for the same downstream product, ***.³¹

Channels of Distribution. As noted above, granular magnesium and magnesium ingot are sold to largely different end users, and the channels of distribution reflect those differences. Whereas granular magnesium is typically consumed internally by grinders for the production of reagents or shipped for use in chemical or defense applications, such as military ordnance and flares, the vast majority of domestically produced magnesium ingot is transported directly from the production site to the end-use facility, typically an aluminum alloyer.³² Moreover, because of its highly reactive nature, shipments of granular magnesium must usually follow special transportation precautions, unlike shipments of ingot magnesium.³³ A *** of U.S. producers' shipments of pure magnesium ingot were transferred to related firms, accounting for *** percent of domestic shipments in 2000.³⁴ *** share of U.S. grinders' total shipments of pure granular magnesium was internally consumed, accounting for *** percent of

²⁸ CR at I-12; PR at I-10.

²⁹ Hearing Tr. at 151, 169 (Anton) and 170 (Yosowitz). See also Alcoa and Northwest's Prehearing Brief at 7 and Alcoa and Northwest's Posthearing Brief at 9. *** Rossborough's Posthearing Brief at 16; fax dated October 26, 2000 from Richard Tomer, Purchasing Manager, Rossborough-Remacor.

³⁰ CR at I-12 to I-13; PR at I-10. Grinders produce granular magnesium from purchased ingot, and then internally consume some of the granular magnesium to produce desulfurizing reagent, and sell some granular magnesium directly to end users such as chemical companies. CR at III-3 to III-6; PR at III-3 to III-4. In most cases, the steel industry end user does not actually purchase granular magnesium, but rather purchases the reagent and to that extent the steel industry's perceptions would not be relevant to our like product analysis. The relevant question goes to the perceptions of producers and customers of ingot and granular magnesium, not to the perceptions of producers and customers of the reagent end-use product.

³¹ CR at II-9 to II-10; PR at II-5 to II-6.

³² CR at I-8 and I-13; PR at I-7 and I-10; Rossborough's Prehearing Brief at 13-14; Rossborough's Posthearing Brief at 8.

³³ Rossborough's Prehearing Brief at 14 and 17; Hearing Tr. at 162 (Stanceau).

³⁴ CR/PR at Table III-9. *** which accounted for *** percent of *** 2000 U.S. shipments. CR at II-1; PR at II-1.

shipments in 2000.³⁵ This internal consumption reflects the fact that the granular magnesium produced by the grinders is then used by them as the primary active ingredient to produce steel desulfurizing reagents; these desulfurizing reagents are then shipped to the end user in the steel industry.³⁶

Price. No direct price comparisons are possible due to the different end-uses for ingot and granular magnesium. Moreover, a substantial amount of domestically produced magnesium of both forms is internally consumed.³⁷ Domestic prices for both products declined over the investigation period.³⁸ The record indicates that, for at least some end-uses, granular magnesium carries a substantial price premium over ingot.³⁹ There are obviously costs associated with grinding magnesium ingot into granular form, which Rossborough estimates to be six to fifteen cents per pound, and historically granular magnesium has carried a higher price reflecting those costs.⁴⁰

Conclusion. While there are some similarities, mainly in basic chemical characteristics, between pure granular magnesium and pure magnesium ingot, the record shows substantial differences in most of the factors examined, most notably end uses, production processes and facilities, interchangeability, and customer perceptions. The record also does not show a continuum of products with no clear dividing line; rather, there are substantial differences between products on either side of the one-inch dividing line. Finally, we find it is not appropriate to combine an upstream and downstream product into one like product when the record indicates substantial differences between them. Thus, we find two like products, pure granular magnesium and pure magnesium ingot.⁴¹

II. Pure Granular Magnesium

A. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a [w]hole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product. . . .”⁴² In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic

³⁵ CR at II-2; PR at II-1. We note that, while *** Its shipments of *granular magnesium* are entirely captively consumed for production of that reagent. CR at III-5; PR at III-4. Similarly, *** CR at III-4 to III-5; PR at III-3; Reade’s Producer Questionnaire Response. Thus, the actual portion of the industry’s shipments that is captively consumed is likely much higher than indicated in the Staff Report.

³⁶ CR at I-14 and II-1; PR at I-11 and II-1.

³⁷ CR at II-1 to II-2; PR at II-1.

³⁸ CR at I-13; PR at I-10.

³⁹ Compare CR/PR at Table V-3 and Table V-5.

⁴⁰ Rossborough’s Prehearing Brief at 19. It appears to be undisputed however, that granular imports from China are currently selling at prices lower than those for magnesium ingot. See, e.g., CR/PR at Tables V-1 to V-5.

⁴¹ We note that this result is consistent with prior Commission practice. See *Pure Magnesium from China*, Inv. No. 731-TA-696 (Review), USITC Pub. 3346 (Aug. 2000) at 5; *Magnesium from Canada*, Inv. Nos. 701-TA-309-A-B and 731-TA-528 (Review), USITC Pub. 3324 (July 2000) at 5-6; *Magnesium from China, Russia, and Ukraine*, Inv. Nos. 731-TA-696-698 (Final), USITC Pub. 2885 (May 1995) at 7-9.

⁴² 19 U.S.C. § 1677(4)(A).

production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.⁴³

We consider whether each producer of granular magnesium, known as grinders, is appropriately included in the domestic industry. 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 and considered 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.⁴⁴ Because we have found that granular magnesium is a separate like product, our domestic industry analysis is within the context of production of granular magnesium only, and we do not compare between ingot and granular production with respect to the above factors. Rather, we assess, within the context of the industry producing granular magnesium, whether each producer engages in sufficient production-related activity to qualify as a domestic producer.

Petitioners argue that the grinders do not engage in sufficient production-related activities to qualify as domestic producers, and it cautions the Commission to focus on their grinding operations, not their production of reagents. It emphasizes that grinding operations are minor finishing operations and notes that grinders are purchasing less domestic magnesium ingot, more imported magnesium chips for grinding into powder, and more imported granular magnesium than at the beginning of the period of investigation ("investigation period"), such that they are no longer engaged in much, if any, domestic grinding operations.⁴⁵ Rossborough disputes these contentions, pointing to the producers' capital investment and employment of a substantial number of workers.⁴⁶

We note at the outset that some of the grinders had difficulty in separating data for grinding from that for reagent production. This difficulty stems from the nature of their operations, in which granular magnesium is frequently internally consumed to produce a downstream product. While we recognize the limitations of the data on the record, there are no other sources of data, and we find that the record provides a sufficient basis for our analysis.

***⁴⁷ *** Accordingly, we do not include *** in the domestic industry.

⁴³ See e.g., *Certain Carbon Steel Plate from China, Russia, South Africa and Ukraine*, Inv. Nos. 731-TA-753-756 (Final), USITC Pub. 3076 at 9 (Dec. 1977).

⁴⁴ See *Citric Acid and Sodium Citrate from China*, Inv. No. 731-TA-863 (Preliminary), USITC Pub. 3277 at 8 (Feb. 2000); *Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea*, Inv. Nos. 701-TA-387-391, 731-TA-816-821 (Final), USITC Pub. 3273 at 9 (Jan. 2000).

⁴⁵ Petitioner's Prehearing Brief at 32-42, 120-22, Exhibit 9 (Rossborough's testimony at Commission's GSP hearing about its switch in purchasing behavior from domestically produced magnesium ingots to imports from China), Exhibit 13 (showing ***); Petitioners' Posthearing Brief at 1; Hearing Tr. at 18 (Legge), 100-01 (Dorn), and 103-06 (Dorn and Button).

⁴⁶ Rossborough's Prehearing Brief at 30-31; Rossborough's Posthearing Brief at 9-10.

⁴⁷ *** Questionnaire Responses.

With respect to ****⁴⁸ reported substantial levels of capital investment.⁴⁹ *** reported capital expenditures throughout the investigation period, and *** reported R&D expenditures as well.⁵⁰ While grinding is not a particularly complex process, Reade uses a more sophisticated production method and there is some degree of technical expertise involved in handling granular magnesium; there are other cases where the Commission has found that grinding was sufficient production-related activity.⁵¹ Producers of granular magnesium provided information on their value added in converting ingots and chips into granular magnesium. *** which use traditional grinding, had a ratio of conversion cost to COGS ranging from *** to *** percent in the full years within the investigation period. Reade, which uses a more complex process, had a ratio of conversion costs to COGS ranging from *** to ***.⁵² Each producer had a substantial number of production workers.⁵³ The record indicates that grinders progressively have been shifting from purchasing domestically produced magnesium ingot for their grinding operations to purchasing imported magnesium ingot and granular magnesium.⁵⁴

We conclude that grinding operations (including ESM's atomization process) constitute sufficient production-related activity to qualify *** as domestic producers. The capital investment for grinding operations is not insignificant, nor were capital expenditures or employment during the investigation period. The value-added numbers do not appear to be a terribly useful indicator, given the fact that they may also include reagent activities. While these companies have shifted their sourcing, this does not outweigh the other evidence that supports finding them to be domestic producers.

B. Related Parties

Section 771(4)(B) of the Act allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or that are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.⁵⁵

⁴⁸ Rossborough merged with granular producer Reactive Metals & Alloys Corporation ("Remacor") in August 2001, following Remacor's filing for Chapter 11 bankruptcy in March 2001. Remacor did not file a separate questionnaire in these final investigations. CR at III-1 n.2; PR at III-1 n.2.

⁴⁹ In 2000, the original cost of property, plant, and equipment was *** and ***. The book value was *** and ***. *** did not report this information. Producer Questionnaire Responses.

⁵⁰ CR/PR at Table VI-9.

⁵¹ See, e.g., *Gray Portland Cement and Cement Clinker from Japan*, Inv. No. 731-TA-461 (Final), USITC Pub. 2376 (Apr. 1991) at 14; *Gray Portland Cement and Cement Clinker from Mexico*, Inv. No. 731-TA-451 (Prelim.), USITC Pub. 2235 at 17 and 18 (Nov. 1989) ("if the like product includes cement, the grinding and blending of clinker to produce cement constitutes domestic production."). Moreover, as discussed above, we must assess this factor in the context of granular magnesium production, not by comparison to ingot production.

⁵² CR/PR at Table VI-8.

⁵³ In 2000, the average number of production workers was *** for Rossborough, *** for Reade, and *** for ESM. Producer Questionnaire Responses.

⁵⁴ CR at VI-17; PR at VI-6; Grinders' Producer, Purchaser, and Importer Questionnaire Responses.

⁵⁵ *Sandvik AB v. United States*, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), *aff'd mem.*, 904 F.2d 46 (Fed. Cir. 1990); *Empire Plow Co. v. United States*, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the

(continued...)

Petitioner and respondent Dead Sea Magnesium Ltd. (“DSM”) argue that the grinders are related parties and that they should be excluded producers from the domestic industry.⁵⁶ Rossborough argues against any exclusions, stating that it is inappropriate for petitioner to seek exclusion of Rossborough from an industry to which the petitioner does not itself belong.⁵⁷

ESM is affiliated with ESM (Tianjin) Company, Ltd., Tianjin, China, which is a Chinese producer/exporter of magnesium ingot and granular magnesium.⁵⁸ ESM ***.⁵⁹ By virtue of its corporate affiliation and its direct imports of subject merchandise, we find that ESM is a related party.

Rossborough purchased subject granular imports during the investigation period.⁶⁰ It does not appear that these purchases resulted in direct or indirect control of an importer or exporter. Accordingly, we do not find Rossborough to be a related party.

ESM is *** producer of granular magnesium in the United States, accounting for *** percent of reported domestic granular magnesium production in 2000. *** of ESM’s shipments were internal transfers for use in making downstream products such as reagents, and ESM ***.⁶¹ ESM’s imports of Chinese granular magnesium accounted for ***.⁶² Although ESM purchased ***,⁶³ ***,⁶⁴ ***.⁶⁵ Based on the foregoing, we find that appropriate circumstances exist to exclude ESM from the domestic grinding industry.

C. Negligible Imports of Granular Magnesium

Imports from a subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.⁶⁶ The statute further provides that imports from a single country that comprise less than 3 percent of total imports of such merchandise may not be considered negligible if there are several countries subject to investigation with negligible imports and the sum of such imports from all those countries in the

⁵⁵ (...continued)

U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., *Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), *aff’d mem.*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., *Melamine Institutional Dinnerware from China, Indonesia, and Taiwan*, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

⁵⁶ Petitioner’s Prehearing Brief at 42-48; Petitioner’s Posthearing Brief at 5; Hearing Tr. at 36; DSM’s Prehearing Brief at 28-29; DSM’s Posthearing Brief at Exhibit A at 4-5.

⁵⁷ Rossborough’s Prehearing Brief at 33-34; Rossborough’s Posthearing Brief at 11-14.

⁵⁸ CR at III-4; PR at III-3.

⁵⁹ CR at III-4; PR at III-3.

⁶⁰ Rossborough purchased ***. Rossborough’s Purchaser Questionnaire Response.

⁶¹ CR at III-4; PR at III-3.

⁶² ESM’s Importer Questionnaire Response; CR/PR at Table IV-3.

⁶³ CR at III-4 n.12; PR at III-3 n.12.

⁶⁴ ESM’s Purchaser Questionnaire Response.

⁶⁵ CR at VI-13 n.26; PR at VI-5 n.26.

⁶⁶ 19 U.S.C. § 1677(24)(A)(i)(I).

aggregate accounts for more than 7 percent of the volume of all such merchandise imported into the United States.⁶⁷

The statute also provides that, even if imports are found to be negligible for purposes of present material injury, they shall not be treated as negligible for purposes of a threat analysis should the Commission determine that there is a potential that imports from the country concerned will imminently account for more than 3 percent of all such merchandise imported into the United States, or that there is a potential that the aggregate volumes of imports from the several countries with negligible imports will imminently exceed 7 percent of all such merchandise imported into the United States.⁶⁸ By operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.⁶⁹

There were no subject pure granular magnesium imports from Israel over the investigation period.⁷⁰ Thus, these imports are negligible under the statute for purposes of a present material injury determination. Based on the absence of any subject imports over the investigation period and the lack of any indication on the record of capacity in Israel for production of granular magnesium, we do not find that subject imports from Israel will imminently exceed three percent of total imports. Thus, we find subject imports of pure granular magnesium from Israel to be negligible for purposes of our analysis of both present material injury and threat of material injury.

D. No Material Injury by Reason of Allegedly LTFV Imports

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.⁷¹ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁷² The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."⁷³ In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁷⁴ No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁷⁵

For the reasons discussed below, we determine that the domestic industry is not materially injured by reason of subject imports from China that are sold in the United States at less than fair value.

⁶⁷ 19 U.S.C. § 1677(24)(A)(ii).

⁶⁸ 19 U.S.C. § 1677(24)(A)(iv).

⁶⁹ 19 U.S.C. § 1671b(a)(1), 19 U.S.C. § 1673b(a)(1).

⁷⁰ CR/PR at Table IV-3.

⁷¹ 19 U.S.C. § 1673d(b).

⁷² 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). *See also Angus Chemical Co. v. United States*, 140 F.3d 1478 (Fed. Cir. 1998).

⁷³ 19 U.S.C. § 1677(7)(A).

⁷⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁷⁵ *Id.*

1. Conditions of Competition

In evaluating the impact of subject imports on the domestic industry, the statute directs the Commission to consider all relevant factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁷⁶ Conditions of competition relevant to the pure granular magnesium market are discussed below.

The main use of granular pure magnesium is to produce desulfurizing reagents for steelmaking.⁷⁷ These reagents consist of granular magnesium in powder form blended with other desulfurizing agents.⁷⁸ The other notable market for pure granular magnesium is the chemicals industry, which accounted for *** percent or less of granular magnesium commercial sales throughout the investigation period.⁷⁹ Most production by domestic grinders consists of production of pure magnesium powder either by grinding down ingot or other forms of granular magnesium, such as chips and granules. Most of this powder is then used by the same grinder to produce its downstream desulfurization reagents.⁸⁰

Apparent consumption of granular pure magnesium remained steady over the investigation period, initially falling from 39,836 metric tons in 1998 to 38,634 metric tons in 1999, but then rising to 39,816 metric tons in 2000. Consumption was 13,263 metric tons in interim 2001, compared to 18,596 metric tons in interim 2000.⁸¹

Over the investigation period, domestic grinders increased their purchases of imported granular magnesium. These grinders’ purchases of subject imports totaled *** metric tons in 1998, *** metric tons in 1999, and *** metric tons in 2000; they were *** metric tons in interim 2001, compared to *** metric tons in interim 2000.⁸²

Nonsubject imports of granular pure magnesium, almost entirely from Canada, have increased over the investigation period, both in absolute volume and as a share of domestic apparent consumption. Nonsubject imports rose from 4,662 metric tons in 1998 to 6,097 metric tons in 2000. Nonsubject import volume was 3,318 metric tons in interim 2001 and 3,483 metric tons in interim 2000.⁸³ Nonsubject market share (by volume) rose from 11.7 percent in 1998 to 15.3 percent in 2000, and was 7.8 percent in interim 2001 compared to 18.7 percent in interim 2000.⁸⁴

2. Volume

Section 771(C)(I) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁸⁵ The volume of subject imports of granular magnesium from China increased over the investigation period, rising from 9,972 metric tons in 1998 to 15,262 metric tons in 2000. Subject import volume was lower in interim 2001, at 2,281 metric

⁷⁶ 19 U.S.C. § 1677(7)(C)(iii).

⁷⁷ In 2000, *** percent of total U.S. producers’ granular magnesium shipments were to the desulfurization market; the figure was *** percent in 1999 and *** percent in 1998. Producer Questionnaire Responses of ***

⁷⁸ CR at I-8; PR at I-7.

⁷⁹ Producer Questionnaire Responses of ***

⁸⁰ CR at I-10 and II-1; PR at I-8 and II-1.

⁸¹ CR/PR at Table IV-11.

⁸² Questionnaire Responses of ***

⁸³ CR/PR at Table IV-3.

⁸⁴ CR/PR at Table IV-11.

⁸⁵ 19 U.S.C. § 1677(7)(C)(I).

tons, than in interim 2000, when it was 6,277 metric tons.⁸⁶ As a share of apparent U.S. consumption (by volume), subject imports rose from 25.0 percent in 1998 to 38.3 percent in 2000, and was 17.2 percent in interim 2001 compared to 33.8 percent in interim 2000.⁸⁷ We find the volume and market share of the subject imports to be significant.

3. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁸⁸

There is little directly comparable pricing for granular pure magnesium. The Commission collected pricing data for granular magnesium for two market segments: (1) steel producers and grinders, and (2) other end users. With respect to the first segment, these subject imports are entirely or almost entirely purchased by reagent producers, who further process the imports into desulfurization reagents.⁸⁹ Thus, the reported prices for subject imports are for sales to grinders. (The exception is ***⁹⁰ In contrast, domestic producers reported prices for sales of desulfurization reagents to steel producers. Thus, these prices are not directly comparable. With respect to the second segment, the record indicates a variety of products with different prices.⁹¹ Again, these prices are not directly comparable.

The record indicates that subject import prices and domestic prices declined over the investigation period.⁹² However, as discussed above, it is difficult to make meaningful price comparisons between subject imports and domestic product. Because all subject imports are used for either production of desulfurization reagents or ***,⁹³ there is no direct competition with the product of the domestic grinders that is sold on the open market for other uses. Moreover, a substantial portion of domestic product is consumed internally for production of downstream desulfurization reagents.⁹⁴

Because of the very limited direct competition between subject imports and domestic producers' end-products, the substantial portion of domestic production that is internally consumed, and the fact that the domestic producers are themselves the purchasers of *** of the subject imports, we cannot determine

⁸⁶ CR/PR at Table IV-3.

⁸⁷ CR/PR at Table IV-11.

⁸⁸ 19 U.S.C. § 1677(7)(C)(ii).

⁸⁹ CR/PR at Table IV-6. We note that this table erroneously reports some shipments of imports for aluminum alloying; in fact, these shipments were used in *** Oct. 25, 2001 staff notes of economist regarding telephone conversation with ***

⁹⁰ CR/PR at Table V-4 n.2.

⁹¹ CR at V-13 n.6; PR at V-6 n.6.

⁹² CR/PR at Table V-4 and V-5.

⁹³ CR/PR at Table IV-6. See also CR/PR at Table IV-5, showing no shipments of subject imports as powder, indicating a lack of competition between subject imports and domestic product that is sold as powder (e.g., to chemical or military applications).

⁹⁴ CR at II-2; PR at II-1. We note that, while *** Its shipments of *granular magnesium* are entirely captively consumed for production of that reagent. CR at III-5; PR at III-4. Similarly, *** CR at III-4 to III-5; PR at III-3; Reade's Producer Questionnaire Response.

that significant underselling has occurred, nor can we determine that the subject imports adversely affect prices for the domestic like product to a significant degree.^{95 96}

4. Impact

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.⁹⁷ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{98 99}

A major factor in our analysis is the position the domestic industry has taken on the petition. ***¹⁰⁰ and Rossborough appeared as a party in this final investigation in opposition to the petition.

We do not find that the subject imports had a material adverse impact on the domestic industry. Because much of the granular magnesium produced in the United States is internally consumed, the domestic producers are able to provide only limited meaningful data, especially with respect to sales value and profit/loss. The data on the record indicate ***.¹⁰¹

While the industry’s ***.¹⁰² ***¹⁰³ ***.¹⁰⁴ Thus, the data, while limited in utility, present a mixed picture of the condition of the industry.

Therefore, based on the record in these investigations, in particular the opposition *** to the petition and our finding of no significant underselling or price depression or suppression, we find that

⁹⁵ No domestic producer of pure granular magnesium has made any specific allegations of lost sales or lost revenues with respect to granular magnesium. *** lost sales allegations were related to sales of its magnesium-based reagents, not pure granular magnesium.

⁹⁶ Rossborough has stated that granular magnesium imports have exerted downward pressure on Rossborough’s reagent prices that have harmed Rossborough’s profitability. Rossborough’s Posthearing Brief at 1, 12-13. Our conclusion on price effects is based on the record as a whole, including the fact that it is the grinders themselves that are responsible for *** of the subject imports. Moreover, we cannot conclude that subject imports are underselling domestic product, given that they do not compete for sales to the same end-users.

⁹⁷ 19 U.S.C. § 1677(7)(C)(iii); *see also* Statement of Administrative Action (“SAA”) at 851 and 885 (“In material injury determinations, 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 also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”)

⁹⁸ 19 U.S.C. § 1677(7)(C)(iii); *see also* SAA at 851 and 885 and *Live Cattle from Canada and Mexico*, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25, n.148.

⁹⁹ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its final antidumping duty determinations, Commerce assigned the following antidumping duty margins to subject imports: Minmetals Precious and Rare Minerals Import and Export/China National Nonferrous Metals Industrial Trading Group Corp. (24.67); PRC-wide (305.56); and Dead Sea Magnesium (28.14). 66 Fed. Reg. 49345, 49346 (Sept. 27, 2001).

¹⁰⁰ CR/PR at Table III-1.

¹⁰¹ From 1998 to 2000, net sales quantity ***. The net sales value *** CR/PR at Table VI-7.

¹⁰² *** Producers’ Questionnaire Responses of *** CR/PR at Tables IV-7 and IV-9.

¹⁰³ Capital expenditures for the *** CR/PR at Table VI-9.

¹⁰⁴ *** Producers’ Questionnaire Responses of ***

there is no reasonable indication that an industry in the United States is materially injured by reason of imports of granular pure magnesium from China that are allegedly sold in the United States at less than fair value.

E. No Threat of Material Injury by Reason of Allegedly LTFV Imports

Section 771(7)(F) of the Act directs the Commission to determine whether the domestic industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹⁰⁵ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”¹⁰⁶ In making our determination, we have considered all factors that are relevant to this investigation.¹⁰⁷ Based on an evaluation of the relevant statutory factors, we find that an industry in the United States is not threatened with material injury by reason of subject imports from China.

As was the case with our present material injury analysis, a major factor in our analysis of threat is the position the domestic industry has taken on the petition. The domestic industry *** and has not indicated any imminent changes that would lead to a threat of material injury by reason of subject imports.

The record indicates that there may be unused production capacity in China to produce granular magnesium. In particular, there are a large number of magnesium producers in China, and exports of granular magnesium from China have been increasing over the investigation period, both to the United States and to other export markets.¹⁰⁸ There is also potential for product-shifting, as a relatively low level of investment is required for producers of magnesium ingot to shift to production of granular magnesium.¹⁰⁹ The record overall indicates that the recent increase in subject imports to the United States is likely to continue.

Inventories of subject imports fell from *** metric tons in 1998 to *** metric tons in 2000. Inventories were lower in interim 2001, at *** metric tons, than in interim 2000, when they were *** metric tons.¹¹⁰

As discussed above, due to the nature of the market for this product, especially the large share of subject imports consumed for production of downstream product by the industry itself, the substantial share of domestic production that is internally consumed, and the limited direct competition between subject imports and domestic product, we do not find it likely that imports of subject merchandise will significantly depress or suppress domestic prices. Nor do we find any other demonstrable trends indicating a likely threat of material injury.

¹⁰⁵ 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

¹⁰⁶ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” *Metallwerken Nederland B.V. v. United States*, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), citing *American Spring Wire Corp. v. United States*, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984); see also *Calabrian Corp. v. United States*, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

¹⁰⁷ 19 U.S.C. § 1677(7)(F)(I). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(I)(I) and (VII).

¹⁰⁸ CR at VII-1 to VII-4, PR at VII-1 to VII-2. Because only two producers in China provided data in response to the Commission’s questionnaire, our analysis of the industry in China is based primarily on publicly available information.

¹⁰⁹ See Magcorp’s Prehearing Brief at 22.

¹¹⁰ CR/PR at Table C-2.

Therefore, based on the record in these investigations, in particular the opposition *** to the petition and our finding of no likely significant underselling or price depression, we find that the domestic industry producing pure granular magnesium is not threatened with material injury by reason of subject imports from China.

III. Pure Magnesium Ingot

A. Domestic Industry

Section 771 (4)(A) of the Act defines the relevant industry as the “producers as a [w]hole of a 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 . . .”¹¹¹ 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.¹¹² Thus, we define the domestic pure magnesium ingot industry to be Magcorp and Northwest Alloys, consistent with our definition of magnesium ingot as a separate like product.¹¹³

B. Conditions of Competition

In evaluating the impact of subject imports on the domestic industry, the statute directs the Commission to consider all relevant factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹¹⁴ Conditions of competition relevant to the pure magnesium ingot market are discussed below.¹¹⁵

Two domestic producers of pure magnesium ingot, Magcorp and Northwest Alloys, produced pure magnesium ingot throughout the investigation period. A third company, Dow Magnesium, exited the domestic market in November 1998.¹¹⁶ Northwest Alloys, which was the *** producer in 2000, transferred the majority of its production to its corporate parent, Alcoa.¹¹⁷ Effective October 1, 2001, however, Northwest Alloys ceased magnesium production,¹¹⁸ and attributed its shut-down to the higher cost structure inherent in its silicothermic production process and to global market conditions.¹¹⁹

¹¹¹ 19 U.S.C. § 1677(4)(A).

¹¹² See e.g., *Certain Carbon Steel Plate from China, Russia, South Africa and Ukraine*, Inv. Nos. 731-TA-753-756 (Final), USITC Pub. 3076, p. 9 (Dec. 1997).

¹¹³ In these investigations, the two domestic producers, Magcorp and Northwest Alloys, ***. Thus, we do not find that either company is a related party.

¹¹⁴ 19 U.S.C. § 1677(7)(C)(iii).

¹¹⁵ Northwest Alloys transferred product to its corporate parent Alcoa, for use in producing aluminum alloy. CR at III-3; PR at III-2. No party has raised the issue of whether the captive production provision, 19 U.S.C. § 1677(7)(C)(iv), applies to the pure magnesium ingot industry. Because the domestic like product (pure magnesium ingot) is not the predominant input in the production of the downstream article, accounting for only about 1 percent of aluminum can body stock, the second criterion of the statute is not met. CR at II-11; PR at II-5.

¹¹⁶ CR at III-1 n.1; PR at III-1 n.1.

¹¹⁷ These transfers accounted for *** percent of Northwest Alloys’ U.S. shipments in 2000. CR/PR at Table VI-6.

¹¹⁸ CR at III-3 n.6; PR at III-2 n.6. Posthearing Brief of Northwest Alloys at 2-3.

¹¹⁹ Prehearing Brief of Northwest Alloys at 1-5.

During 1998-2000, U.S. apparent consumption fell by about *** percent, with a continued decline in interim 2001.¹²⁰ U.S. producers, importers, and purchasers were mixed in their demand outlooks, with most predicting steady demand or slow growth.¹²¹ Pure magnesium ingot is sold mainly to aluminum producers with smaller amounts sold to producers of granular magnesium and for several other uses. Demand for pure magnesium is tied to demand in its primary end use markets, particularly demand for aluminum sheet used for production of beverage cans and other packaging.¹²²

Structural supply changes in the domestic industry have caused granular magnesium producers to seek out additional sources of supply, a trend that was heightened after Dow Chemical Company exited the U.S. magnesium ingot industry. Dow, which closed its production facilities in 1998, had been a significant domestic producer of pure magnesium.¹²³ It was an important supplier of ingot to downstream grinders, especially given the significant level of the ingot industry's captive consumption.¹²⁴ Dow's exit caused the producers of granular magnesium to seek out alternative sources of both ingot and granular magnesium.¹²⁵ This purchasing shift has led to a decrease by more than *** percent in sales of magnesium ingot to domestic granular magnesium producers.¹²⁶

The production processes for pure and alloy magnesium are similar and typically performed at common manufacturing facilities, with the same employees and basic equipment.¹²⁷ The domestic industry appears to have shifted some production away from pure magnesium toward alloy magnesium.¹²⁸

Respondent Dead Sea Magnesium argued that alloy is a strong market for primary magnesium production, particularly related to demand in the automotive sector.¹²⁹

Domestic and imported pure magnesium ingot are considered to be relatively close substitutes. Petitioners argued in the preliminary phase investigations that domestic ingot and subject and nonsubject imported ingot, including that from Israel and Russia, were substitutable.¹³⁰ The Israeli producer, Dead Sea Magnesium, entered the U.S. market under what they called a "Western orientation," seeking to compete on the basis of quality, purity, reliability, and technical support, selling under fixed term, fixed price contracts.¹³¹ However, suppliers of imported Israeli magnesium noted that any premium was overshadowed by the significantly lower-priced yet substitutable Russian ingots.¹³² Purchasers generally

¹²⁰ CR/PR at Table IV-10.

¹²¹ CR at II-10; PR at II-6.

¹²² CR at II-10; PR at II-6.

¹²³ DSM Prehearing Brief at 15.

¹²⁴ The ingot industry's captive consumption in 2000 was over *** percent of total shipments. *** CR at III-8, PR at III-5 and CR/PR at Table III-3.

¹²⁵ CR at II-1; PR at II-1; DSM Prehearing Brief, pp. 21-23.

¹²⁶ CR/PR at Table III-5.

¹²⁷ Alloy magnesium consists of magnesium and other metals, typically aluminum and zinc. It is principally used in structural applications, primarily in castings and extrusions for the automotive industry. Pure magnesium is seldom used in such applications because of its inferior tensile and yield strengths compared to alloy magnesium. *Magnesium from Canada*, USITC Pub. 3324, at I-7-8. Magcorp and Northwest Alloys can produce both pure and alloy magnesium. *Id.* at III-1.

¹²⁸ DSM Posthearing Brief at 14. The records from recent five-year reviews confirm that while there has been little recent growth in demand for pure magnesium, there has been significant growth in demand for alloy magnesium. *Magnesium from Canada*, USITC Pub. 3324, at II-4.

¹²⁹ DSM Prehearing Brief at 14.

¹³⁰ Prehearing Staff Report, Memorandum INV-Y-170 (Aug. 30, 2001) at II-14.

¹³¹ Hearing Tr. at 135 (Hochschild); DSM Prehearing Brief at 1.

¹³² Hearing Tr. at 139-140 (Yosowitz) ("Russian magnesium is completely interchangeable with Israeli magnesium").

require their pure magnesium ingot suppliers to be certified or prequalified to these factors.¹³³ All responding purchasers reported that Israeli and U.S. pure magnesium ingot were used in the same applications.¹³⁴

Suppliers of pure magnesium compete primarily based on price. Purchasers reported contacting between two and five suppliers before making a purchase, although they also indicated that they do not change suppliers frequently. Contracts continue to form the primary basis through which pure magnesium ingot is sold, accounting for more than *** percent of total sales for domestic product, and up to *** percent for the Israeli magnesium.¹³⁵ ***¹³⁶

Another factor in the market is the presence of nonsubject imports. There are significant volumes of pure magnesium ingot from Russia in the U.S. market, accounting for 15.5 percent of domestic consumption in 2000. Further, the Commission conducted two reviews last year of outstanding orders on pure magnesium ingot from Canada and China. Despite the Canada order, imports of magnesium from Canada have more than doubled during the investigation period, and accounted for over *** percent of the domestic market in 2000. Total nonsubject imports accounted for *** percent of domestic consumption in 2000.¹³⁷

C. Pure Magnesium Ingot from Israel

1. No Reasonable Indication of Material Injury

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹³⁸

The volume of subject imports from Israel rose early in the period of investigation and then declined steadily. Between 1998 and 1999, imports from Israel rose from *** metric tons to *** metric tons. They then declined to *** metric tons in 2000, and were lower in interim 2001 relative to interim 2000.¹³⁹ These import levels corresponded to shares of domestic apparent consumption of *** percent in 1998, *** percent in 1999, *** percent in 2000 and *** percent in interim 2001.¹⁴⁰

Viewed in isolation, the absolute volume and market share of subject imports from Israel is significant. However, in light of the recent declines in import volumes and the lack of price effects or an impact on the domestic industry, as discussed below, we find that subject imports have not materially injured the domestic industry.

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether (I) there has been significant price underselling by the imported

¹³³ CR at II-14; PR at II-7.

¹³⁴ CR at II-18; PR at II-11.

¹³⁵ CR at V-3; PR at V-3.

¹³⁶ CR at V-3; PR at V-3.

¹³⁷ Prehearing Staff Report, Memorandum INV-Y-170 (Aug. 30, 2001) at Table IV-10.

¹³⁸ 19 U.S.C. § 1677(7)(C)(i).

¹³⁹ Subject imports from Israel were *** metric tons in interim 2001 compared to *** metric tons in interim 2000. CR/PR at Table IV-8. DSM argues that the actual subject import volumes are lower due to misclassifications. DSM Prehearing Brief at 37. DSM states the actual volumes were 6,961 metric tons in 1998, 7,823 metric tons in 1999, and 4,559 metric tons in 2000. Interim 2001 imports were 1,775 metric tons, compared to 2,278 metric tons in interim 2000. Magcorp does not dispute that some misclassifications likely occurred, but disagrees on the magnitude. Magcorp Prehearing Brief at 83-86. Our conclusion with respect to volume would be the same regardless of which import data are used.

¹⁴⁰ CR/PR at Table IV-10.

merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁴¹

An issue raised in this investigation by the petitioner was that as a Western supplier, DSM should have been able to charge a higher price than Russian suppliers.¹⁴² DSM, however, argues that while they may on occasion receive a price premium over Russian ingot, it is not to the extent suggested by Magcorp.¹⁴³ DSM argues that, while historically buyers were willing to pay more for quality and service, these factors have taken on less importance as differences in the quality of ingot from countries such as Russia and China have disappeared.¹⁴⁴ DSM also noted that while there are industry publications showing "European" and "U.S. import" prices, these generally refer to prices in the European markets and may include price quotes for ingot from Russia, China, and other suppliers.¹⁴⁵ Moreover, as discussed above, the record indicates a high degree of substitutability between domestic, subject, and nonsubject pure magnesium ingot.

Available price comparison data show in general, subject imports undersold by declining margins early in the investigation period and oversold towards the end.¹⁴⁶ Because pure magnesium ingot from Russia had been subject to investigation prior to Commerce issuing a negative antidumping duty determination with respect to imports from Russia, we also have price data on these imports. Israeli underselling margins were generally lower than margins for the Russian product in most instances.¹⁴⁷ The record indicates that other lower priced imports, particularly Russian, were present in larger volumes than imports from Israel. Moreover, domestic price drops are not correlated with subject import volumes from Israel -- prices for domestic ingot continued to fall as import volumes from Israel declined.

Further, imports of pure granular magnesium contributed to the drop in prices of magnesium ingot. Such imports captured most of the desulfurization market, reducing demand and prices for both domestic and imported magnesium ingot. During the preliminary and final phases of these investigations, domestic, Israeli and Russian producers all testified that imports of Chinese granular magnesium had a negative effect on the ingot magnesium market, particularly earlier in the investigation period.¹⁴⁸ In fact, the Israeli producers testified that they had been forced out of the desulfurization market early in the investigation period by imports from China.¹⁴⁹

Finally, lost sales and lost revenue allegations naming competition with Israeli magnesium generally also named competition with Russian ingot.¹⁵⁰ Any confirmed allegations that were specific only to Israel were for relatively small volumes of product.¹⁵¹

¹⁴¹ 19 U.S.C. § 1677(7)(C)(ii).

¹⁴² Magcorp Posthearing Brief at 9.

¹⁴³ Hearing Tr. at 137-38 (Hochschild).

¹⁴⁴ DSM Posthearing Brief at 8.

¹⁴⁵ DSM Posthearing Brief, *Answers to Commissioner Questions* at 14-15.

¹⁴⁶ See CR/PR at Tables V-1, V-2 and V-3. Average margins of underselling and overselling for Israeli ingot fell from 9.5 percent in 1998 to a negative 5.5 percent in 2000 and a negative 6.6 percent in interim 2001. CR at V-14; PR at V-6.

¹⁴⁷ See CR/PR at Tables V-1 and V-2.

¹⁴⁸ See also, Transcript of the Preliminary Staff Conference at 27 (Koplan); SMW and SMC Postconference Brief at 9-11; DSM Postconference Brief at 20.

¹⁴⁹ Hearing Tr. at 108 (Goder) and CR/PR at Table IV-6. See also Importer Questionnaires (showing imports from Israel to the desulfurization market declined substantially in 1999 and 2000 from 1997 and 1998 levels).

¹⁵⁰ Compare CR/PR at Tables V-6 and V-7 with Prehearing Staff Report at Tables V-6 and V-7.

¹⁵¹ CR/PR at Tables V-6 and V-7, CR at V-14 - V-20; PR at V-6 and V-7. *** naming solely Israel were confirmed. These sales were to ***. All other lost sales naming Israel were either denied or named Russia in

(continued...)

In sum, particularly in light of the significant volumes of lower-priced nonsubject imports present in the domestic market and competition with granular magnesium, we do not find that there has been significant price underselling by subject imports from Israel as compared with the price of the domestic like product or that subject imports from Israel have depressed prices or prevented price increases which otherwise would have occurred, to a significant degree.

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."¹⁵² These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the industry."^{153 154}

The data show that over the investigation period, the pure magnesium ingot industry experienced declines in many economic indicators, such as operating income, production, shipments and market share.¹⁵⁵ However, the most significant declines in operating performance occurred later in the investigation period, at the same time that volumes of subject imports from Israel were also declining.¹⁵⁶ For example, while operating margins declined somewhat between 1998 and 1999, the industry remained at a *** percent operating margin in 1998 and *** percent in 1999. It was only later, in 2000 and interim 2001, that the industry's margin dropped sharply, to *** and *** percent, respectively.¹⁵⁷ Declines also

¹⁵¹ (...continued)

addition to Israel. In those instances, it is not possible to state definitively that the loss is attributable to Israel alone, especially in light of the generally lower prices for Russian magnesium ingot.

¹⁵² 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 ("In material injury determinations, 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 also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.")

¹⁵³ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885; *Live Cattle from Canada and Mexico*, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary) USITC Pub. 3155 (Feb. 1999) at 25, n. 148.

¹⁵⁴ The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its final antidumping duty determination, Commerce assigned the following antidumping duty margins to subject imports: Dead Sea Magnesium (28.14); all others from Israel (28.14). 66 *Fed. Reg.* 49349, 49350 (Sept. 27, 2001) (Israel).

¹⁵⁵ The domestic industry's capacity utilization fluctuated over the investigation period, but exhibited a downward trend, declining from *** percent in 1998 to *** percent in 2000. CR/PR at Table C-1. We note that *** Magcorp produced *** metric tons of alloy magnesium in 1998 and *** metric tons in 2000, accounting for *** and *** percent, respectively, of its total production. Magcorp Posthearing Brief at Ehb. 24. The industry's production fell from *** metric tons in 1998 to *** metric tons in 2000; it was *** metric tons in interim 2001 compared to *** metric tons in interim 2000. The industry's share of domestic apparent consumption declined slightly, from *** percent in 1998 to *** percent in 2000, and *** in interim 2001, to *** percent. Employment and wages both declined, although productivity increased over 1998-2000, before dropping in 2001. Inventories increased from *** metric tons in 1998 to *** metric tons in 2000; a comparison of interim periods showed decreasing levels. CR/PR at Table C-1.

¹⁵⁶ As discussed above, subject import volume increased between 1998 and 1999 but then *** declined over the balance of the period of investigation. The initial increase was in response to Dow's exit from the market, CR/PR at III-1 n.1, as purchasers were forced to look to alternative sources of supply, particularly given difficulties some purchasers reported with obtaining magnesium from other domestic suppliers. See, e.g., Questionnaire Response of ***.

¹⁵⁷ CR/PR at Table C-1. The operating margin for full year 2000 was well below that for interim 2000, *** percent compared to *** percent, respectively.

corresponded to a reduction in demand later in the period, which led to a decline in both domestic shipments and imports.¹⁵⁸

The record from our recent five-year reviews suggests that the domestic industry to some extent shifted its product line from pure magnesium to alloy magnesium, given increases in demand for alloy products and flat and declining demand for pure magnesium.¹⁵⁹ Accordingly, it is likely that declines in the pure magnesium market in part reflected the shift in demand from pure to alloy magnesium.

The petitioning company, Magcorp, itself experienced *** financial conditions throughout most of the investigation period, particularly during the early period when import volumes from Israel increased.¹⁶⁰ We note that Magcorp sells *** in the merchant market, while *** of Northwest Alloys' shipments are related party transfers. Thus, Magcorp would be more affected by any injurious imports; yet, until 2000, when subject imports from Israel declined, it performed ***. Moreover, the bulk of the decline in *** shipment levels occurred in the desulfurization market, the market in which imports from Israel also lost ground at the same time.¹⁶¹ Both appear to have lost sales of slabs to grinders, who were shifting to purchasing Chinese granular magnesium.¹⁶² Thus, granular magnesium imports from China, rather than imports of ingot from Israel, were the cause of lower sales in that area of the market. Moreover, lower-priced imports from sources other than Israel make up *** of imports, further diluting the likelihood that *** and declining volumes from Israel are having a significant impact on the domestic industry.

The record also points to other causes of declines in Magcorp's financial condition. The company took on a large quantity of debt early in the investigation period that appears to have yielded little to no benefit to the company's operations and interest payments on that debt have dragged down the company's performance.¹⁶³ This debt burden has also made it difficult for Magcorp to obtain additional financing. Moreover, the company itself has pointed to a downturn in domestic steel production as a *** cause of a decline in its shipments.¹⁶⁴

Therefore, we find that subject imports from Israel have not had a substantial negative impact on the domestic industry. Accordingly, we do not find that the domestic magnesium ingot industry is materially injured by reason of subject imports from Israel.

¹⁵⁸ U.S. apparent consumption declined from *** metric tons in 1998 and *** metric tons in 2000, with a further *** percent decline comparing interim periods. CR/PR at Table C-1. U.S. producer shipments declined by *** percent between 1998 and 2000, declining from *** metric tons in 1998 to *** metric tons in 2000. *Id.* Overall subject imports decreased by *** percent between 1998 and 2000, and fell further in interim 2001 compared to 2000, by *** percent. *Id.*

¹⁵⁹ *Magnesium from Canada*, USITC Pub. 3324, at II-4.

¹⁶⁰ Magcorp's operating income ratio was *** percent in 1998, *** percent in 1999, and *** percent in 2000; Northwest Alloys' margins were ***] percent in 1998, *** percent in 1999, and *** percent in 2000. The interim period margins for Magcorp, which covers activity in November 2000-April 2001, was *** percent, while Northwest Alloys' operating margin for January-June 2001 was *** percent. CR/PR at Tables VI-2 and VI-3. Magcorp's operating loss in its interim period *** CR at VI-6 n.12; PR at VI-3 n.12.

¹⁶¹ The domestic industry's commercial shipments of grinding slab declined from *** metric tons in 1998 to *** metric tons in 2000. CR/PR at Table III-4.

¹⁶² Imports of granular magnesium from China increased from 9,972 metric tons in 1998 to 15,262 metric tons in 2000. CR/PR at Table IV-9.

¹⁶³ CR at VI-7, n. 13; PR at VI-3 n.13.

¹⁶⁴ Staff Report of the Preliminary Investigation, CR at VI-2 n. 7.

2. No Threat of Material Injury by Reason of Subject Imports of Pure Magnesium from Israel

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹⁶⁵ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”¹⁶⁶ In making our determination, we have considered all factors that are relevant to this investigation.¹⁶⁷ For the reasons set forth below, we find that the domestic magnesium ingot industry is not threatened with material injury by reason of the subject imports from Israel.¹⁶⁸ In performing our threat analysis, we have first examined whether there is “any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports.”¹⁶⁹ The record indicates that while the subject producer in Israel had *** unused capacity early in the period of investigation, its capacity utilization rate has been substantially higher later in the period of investigation, even as its

¹⁶⁵ 19 U.S.C. §§ 1673d(b)(1), 1677(7)(F)(ii).

¹⁶⁶ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” *Metallwerken Nederland B.V. v. United States*, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), citing *American Spring Wire Corp. v. United States*, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984); see also *Calabrian Corp. v. United States*, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

¹⁶⁷ 19 U.S.C. § 1677(7)(F)(i). Factor VII regarding raw and processed agriculture products is inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(i)(VII).

¹⁶⁸ As required by the statute, when performing our threat analysis, we have considered the nature of the countervailable subsidy involved in this investigation. In its final determination, Commerce found that DSM benefitted from three non-recurring countervailable subsidies. First, it found that DSM benefitted from a grant under the Law of Encouragement of Capital Investments (“ECIL”), a regional development program aimed at providing assistance to enterprises located in disadvantaged regions of the country. DSM’s magnesium plant is located in Zone A, the zone receiving the highest level of benefits under this program, and in 1993, the Government of Israel approved an ECIL grant for the construction of the magnesium plant in the amount of 38 percent of the total approved investment, and that amount was subsequently increased in separate amendments in 1996 and 1999. Second, Commerce determined that DSM benefitted from an infrastructure grant from the Government of Israel to cover the company’s expenses for building infrastructure around the new magnesium plant. Third, Commerce found that DSM benefitted from grants under the Law of Encouragement of Industrial Research and Development. Under this program the Government of Israel provides grants in the amount of 30 to 66 percent of the approved R&D expenditures, depending on the type of project and the location where the proposed R&D will be undertaken, with companies located in Zone A receiving a higher level of benefit than companies located elsewhere. Commerce determined that if not repaid, the grants under the program conferred a benefit in an amount equal to the difference between the non-specific base rate of 30 percent of the approved R&D cost and the rate at which the Government of Israel reimbursed DSM for its research expenses; although some of the grants under this program were repaid, Commerce determined that the company still benefitted from interest-free use of money during the time period between the receipt and the repayment of the grant. Commerce determined that the countervailable subsidies for these three programs were 16.02, 0.49, and 0.01 percent *ad valorem*, respectively. See Memo from Richard W. Moreland to Faryar Shirzad regarding Issues and Decision Memorandum from the Final Determination in the Countervailing Duty Investigation of Pure Magnesium from Israel (Sept. 14, 2001), found at <http://ia.ita.doc.gov/frn/summary/israel/01-24232-1.txt>.

¹⁶⁹ 19 U.S.C. § 1677(7)(F)(i)(II).

exports to the United States have been declining.¹⁷⁰ The record also indicates that no other country maintains trade restrictions on Israeli magnesium ingot that would limit Israeli exports to other markets.¹⁷¹ Moreover, DSM reported no plans to increase capacity in the imminent future; in fact, its capacity in interim 2001 was lower than the comparable period in 2000 and its capacity is projected to remain slightly below earlier levels.¹⁷² Accordingly, we find no significant unused production capacity or actual or likely increases in production capacity in Israel that are likely to lead to substantially increased subject imports into the U.S. in the imminent future.

We have also considered whether there has been “a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports.”¹⁷³ In this case, the volume of imports from Israel increased early in the period and then declined from 1999 onward.¹⁷⁴ Moreover, the record indicates that the Israeli producer is likely to retain a strong interest in production of nonsubject alloy magnesium.¹⁷⁵ Additionally, DSM has substantial contracts in place with Volkswagen, which is a 35 percent owner of DSM, and General Motors that result in a substantial portion of DSM’s production capacity being committed to produce alloy magnesium for those purchasers.¹⁷⁶ Accordingly, the record indicates that import volumes from Israel have been decreasing and are unlikely to increase to the detriment of U.S. producers.

Similarly, we have examined “whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports.”¹⁷⁷ As we explained in our injury views above, the record does not indicate that subject imports from Israel have had significant effects on the price of domestic merchandise. We do not find that this is likely to change, especially given the declining volume of subject imports and the continuing substantial presence of lower-priced nonsubject imports. Accordingly, we find that Israeli magnesium ingot is not entering the United States at prices that are likely to have a significant depressing or suppressing effect on domestic price or are likely to increase demand for further imports.

We have also considered the levels of “inventories of the subject merchandise.”¹⁷⁸ Israeli importer end of period inventories increased from 1998 to 2000, and declined sharply in interim 2001,¹⁷⁹ and Israeli producer end of period inventories after 1999 were well below 1998 levels.¹⁸⁰ Accordingly, we do not find that inventory levels of subject merchandise support a finding of a threat of material injury.

We are also directed to consider whether there is a “potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently

¹⁷⁰ DSM’s pure magnesium ingot capacity utilization rates were *** percent in 1998, *** percent in 1999 and *** percent in 2000. CR/PR at Table VII-2. Its pure magnesium capacity declined in 2000 and is projected to decline further in 2001 and 2002, *Id.*, consistent with its shifting of production capacity from pure to alloy production. CR at VII-5; PR at VII-2.

¹⁷¹ CR at VII-8; PR at VII-3.

¹⁷² CR/PR at Table VII-2.

¹⁷³ 19 U.S.C. § 1677(7)(i)(III).

¹⁷⁴ Based on official import statistics, subject imports from Israel were *** metric tons in 1998, *** in 1999, and *** in 2000. In interim 2001, subject imports fell further, to *** metric tons. CR and PR at Table IV-2.

¹⁷⁵ CR at VII-5; PR at VII-2.

¹⁷⁶ CR at VII-4 n.14; PR at 2 n.14; Record data show that sales to VW in 2001 were *** while sales to GM were *** DSM Posthearing Brief, Answers to Commissioners’ Questions at 20.

¹⁷⁷ 19 U.S.C. § 1677(7)(F)(i)(III).

¹⁷⁸ 19 U.S.C. § 1677(7)(F)(i)(V).

¹⁷⁹ CR/PR at Table VII-3.

¹⁸⁰ CR/PR at Table VII-2.

being used to produce other products.¹⁸¹ While shifting production lines between pure magnesium and alloy magnesium is possible, the record does not indicate that such a shift is likely, given continued demand for alloy magnesium.

We also examined “the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.”¹⁸² The record shows that the domestic industry *** increased its capital expenditures over the period of investigation, with a more than *** percent increase between 1998 and 2000.¹⁸³ Research and development expenditures generally were lower over the period of investigation ***.¹⁸⁴ Thus, the record indicates that there has been little or no adverse effects on domestic capital expenditures. Moreover, as discussed above in the material injury section, the record indicates that subject imports from Israel have had and will continue to have little or no impact on the domestic industry overall and, accordingly, have and will continue to have little or no impact on the industry’s ability to finance production and development efforts in the imminent future.¹⁸⁵

Finally, we are required by the statute to consider any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).¹⁸⁶ We do not find that the record in these investigations indicates that there are any demonstrable adverse trends suggesting that the subject imports from Israel will imminently materially injure the domestic industry.

In sum, we determine that the domestic industry producing pure magnesium ingot is not threatened with material injury by reason of the subject imports from Israel.

For the foregoing reasons, we determine that the domestic industry producing pure magnesium ingot is neither materially injured nor threatened with material injury by reason of imports of pure magnesium ingot from Israel that are alleged to be subsidized and to be sold in the United States at less than fair value.

¹⁸¹ 19 U.S.C. § 1677(7)(F)(i)(VI).

¹⁸² 19 U.S.C. § 1677(7)(F)(i)(VIII).

¹⁸³ Capital expenditures increased from *** in 1998 to *** in 2000. CR/PR at Table VI-9.

¹⁸⁴ See CR/PR at Table VI-9, and CR at VI-18 n.37; PR at VI-6 n.37.

¹⁸⁵ As discussed above, Magcorp has taken on substantial debt and used the majority of the proceeds for purposes not related to the operation of the company. CR at VI-7 n.13; PR at VI-3 n.13. Thus, any difficulties regarding development and production efforts would primarily be due to the company’s financing situation.

¹⁸⁶ 19 U.S.C. § 1677(7)(F)(i) (IX).