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2<sup>nd</sup> Sunset Reviews  
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October 31, 2005

MEMORANDUM TO: Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited  
Sunset Reviews of the Countervailing Duty Orders on Pure Magnesium  
and Alloy Magnesium from Canada

### Summary

We have analyzed the substantive responses and rebuttal comments of the interested parties in the expedited sunset reviews of the countervailing duty (“CVD”) orders covering pure magnesium and alloy magnesium from Canada. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in these sunset reviews for which we received a substantive response and rebuttal comments:

1. Likelihood of continuation or recurrence of a countervailable subsidy
2. Net countervailable subsidy likely to prevail
3. Nature of the subsidy

### History of the Orders

The Department of Commerce (“the Department”) published its final affirmative countervailing duty determinations on pure magnesium and alloy magnesium from Canada in the Federal Register on July 13, 1992. See Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium From Canada, 57 FR 30946 (July 13, 1992) (“Final Determinations”). In the final determinations, the Department found estimated net subsidy rates of 21.61 percent for Norsk Hydro Canada, Inc. (“NHCI”) and all other manufacturers/producers/exporters of pure magnesium and alloy magnesium, except Timminco, Ltd. (“Timminco”). In the investigation, the Department found that manufacturers/producers/exporters of pure magnesium and alloy magnesium received benefits under the following programs: exemption

from paying water bills, Article 7 grants from the Québec Industrial Development Corporation (“SDI”), and preferential electric rates. In addition, Federal Funding for a Feasibility Study under the Canada-Québec Subsidiary Agreement on Industrial Development (“Federal Funding for a Feasibility Study”) was determined to convey countervailable subsidies but was not included in the calculation of the net subsidy rate because in 1990 NHCI reimbursed the Government of Québec for the funds received under that program and NHCI would not receive any more assistance under this particular Subsidiary Agreement.

On August 31, 1992, the Department issued the CVD orders, utilizing the subsidy rates found in the original investigations. Because Timminco did not receive benefits from any of the foregoing programs, Timminco was excluded from these orders. See Countervailing Duty Orders: Pure Magnesium and Alloy Magnesium From Canada, 57 FR 39392 (August 31, 1992) (“Canadian Magnesium Orders”).

Since the issuance of the orders, the Department has conducted one set of changed circumstances reviews. In the final results of its changed circumstances reviews, the Department found that the amended electricity contract between NHCI and Hydro-Québec no longer provided a countervailable subsidy. See Final Results of Changed Circumstances Administrative Reviews: Pure Magnesium and Alloy Magnesium From Canada, 57 FR 54047 (November 16, 1992). The net subsidy rate was accordingly reduced to 7.61 percent ad valorem for NHCI.

There have been twelve administrative reviews since the issuance of the countervailing duty orders. The Department is currently conducting administrative reviews for the calendar year 2004. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 70 FR 56631 (September 28, 2005).

The Department has also conducted a new shipper review of Magnola Metallurgy Inc. (“Magnola”) for the period from January 1, 2001, to December 31, 2001. The Department determined that Magnola benefitted from the Manpower Training Mandate (“MTM”) program administered by the GOQ. See Alloy Magnesium from Canada: Final Results of Countervailing Duty New Shipper Review, 68 FR 22359 (April 28, 2003) (“Final New Shipper Review”). On September 9, 2005, a NAFTA binational panel affirmed the results of the Final New Shipper Review. See In the Matter of Alloy Magnesium from Canada, Final Results of U.S. Dept. of Comm. Countervailing Duty New Shipper Review, USA-CDA-2003-1904-02 (September 9, 2005).

On August 2, 1999, the Department initiated the first sunset reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See Initiation of Five-Year (“Sunset”) Reviews, 64 FR 41915 (August 2, 1999). As a result of the first sunset reviews, pursuant to sections 751(c) and 752 of the Act, the Department determined that revocation of the countervailing duty orders on pure magnesium and alloy magnesium from Canada would likely lead to continuation or recurrence of a countervailable subsidy. See Pure Magnesium and Alloy Magnesium From

Canada; Final Results of Full Sunset Reviews of Countervailing Duty Orders, 65 FR 41444 (July 5, 2000) (“Magnesium First Sunset Reviews”). On August 21, 2000, the Department published a ministerial error notice with respect to the “all others” rate reported to the International Trade Commission (“ITC”). See Pure and Alloy Magnesium From Canada; Ministerial Error in Final Results of Full Sunset Reviews of Countervailing Duty Orders, 65 FR 50677 (August 21, 2000). On August 2, 2000, the ITC, pursuant to section 751(c) of the Act, determined that revocation of the countervailing duty orders on pure magnesium and alloy magnesium from Canada would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Magnesium from Canada, 65 FR 47517 (August 2, 2000), and USITC Publication 3324 (July 2000), Investigation Nos. 701-TA-309-A-B and 731-TA-528 (Review) (collectively “ITC’s First Sunset Reviews”). Accordingly, the Department published a notice of the continuation of the countervailing duty orders on pure magnesium and alloy magnesium from Canada, pursuant to 19 CFR 351.218(f)(4) of the Department’s regulations. See Continuation of Antidumping Duty Order on Pure Magnesium From Canada and Countervailing Duty Orders on Pure and Alloy Magnesium From Canada, 65 FR 49964 (August 16, 2000).

The Department’s final determination in Magnesium First Sunset Reviews was appealed to a NAFTA binational panel. The NAFTA panel remanded the determination to the Department with instructions to reconsider the determination to utilize the results of the sixth administrative review as the subsidy rate to be reported for NHCI to the ITC, the basis of the “all others” rate, and the reasons for the failure to investigate Magnola. See In the Matter of Pure and Alloy Magnesium from Canada, USA-CDA-00-1904-07 (March 27, 2002). The Department issued a remand redetermination which was challenged by the GOQ and US Magnesium. The NAFTA panel affirmed the Department’s findings in part, but again remanded the case to the Department with instructions to remove the reporting of an “all others” subsidy rate. See In the Matter of Pure Magnesium and Alloy Magnesium from Canada (CVD), USA-CDA-00-1904-07 (October 15, 2002) (“Magnesium from Canada: NAFTA panel decision”). As a result of the NAFTA panel’s remand, the Department issued a redetermination in compliance with the NAFTA panel’s instructions. See Redetermination Pursuant to NAFTA Panel Remand: Pure Magnesium and Alloy Magnesium From Canada, 68 FR 33920 (June 6, 2003). The Department’s redetermination was affirmed by the NAFTA panel. See In the Matter of Pure Magnesium and Alloy Magnesium from Canada, USA-CDA-00-1904-07 (January 10, 2003).

## Background

On July 1, 2005, the Department initiated sunset reviews of the CVD orders on pure magnesium and alloy magnesium from Canada pursuant to section 751(c) of the Act. See Initiation of Five-Year ("Sunset") Reviews, 70 FR 38101 (July 1, 2005). The Department received comments from US Magnesium LLC (“US Magnesium”) and the GOQ on August 1, 2005, within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). No submissions were received from respondent companies. On August 5, 2005, the Department extended the due date for parties to submit rebuttal comments to August 12, 2005. On August 12, 2005, US

Magnesium and the GOQ filed rebuttal comments. On August 22, 2005, the Department, in its adequacy determination, stated that because a government response alone is not sufficient for full sunset reviews in which the orders are not<sup>1</sup> done on an aggregate basis, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), we are conducting expedited reviews of these CVD orders. See Memorandum from Susan Kuhbach to Barbara E. Tillman: Adequacy Determination: 2<sup>nd</sup> Sunset Review of the Countervailing Duty Orders on Pure Magnesium and Alloy Magnesium from Canada, dated August 22, 2005, which is on file in the Central Records Unit, Room B-099 of the main Department Building.

### Discussion of Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting these reviews to determine whether revocation of the CVD orders would likely lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the programs which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the ITC the net countervailable subsidy likely to prevail if the orders are revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures (“SCM”).

Below, we address the substantive responses and rebuttal comments of the interested parties.

#### 1. Continuation or Recurrence of a Countervailable Subsidy

##### Interested Parties’ Comments

###### *US Magnesium’s Affirmative Arguments:*

US Magnesium<sup>2</sup> argues that revocation of the CVD orders on pure magnesium and alloy magnesium from Canada will result in the continuation or recurrence of a countervailable subsidy. US Magnesium asserts that the history of these proceedings clearly shows that in the years following the issuance of the orders, NHCI continued to receive countervailable subsidies

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<sup>1</sup>The August 22, 2005, memo inadvertently omitted the word “not” which has been added to the phrase in this document.

<sup>2</sup>Magnesium Corporation of America, US Magnesium’s predecessor, was the petitioner in the CVD investigation which led to the issuance of the CVD orders. See US Magnesium’s Response to the Notice of Initiation, August 1, 2005, at 4.

and Magnola, a new shipper since the Magnesium First Sunset Reviews, also received significant benefits from a countervailable subsidy program. Based on this history, it is highly likely that countervailable subsidies would continue and intensify if the orders were revoked.

US Magnesium notes that no information as to a termination of the MTM program has been submitted by the GOQ or Magnola during the administrative reviews of the CVD order. US Magnesium states that Magnola began producing and exporting alloy magnesium to the United States in 2001. According to US Magnesium, in 2003 the Department completed the Final New Shipper Review in which it determined that the subsidy was a non-recurring grant to be amortized over an average useful life of 14 years, and calculated a rate of 7.00 percent. In the 2003 administrative review, US Magnesium states that the Department calculated a preliminary subsidy rate of 5.40 percent, and asserts that Magnola has accrued benefits that will continue to be amortized for years to come.

US Magnesium notes that Magnola ceased its production operations in April 2003, but that its facilities have not been permanently closed. US Magnesium asserts that Magnola stated that the shutdown was only temporary “until the market conditions allow for a viable operation of the plant.” US Magnesium’s Response to the Notice of Initiation, August 1, 2005, at 13, citing “Metallurgie Magnola Inc. Confirms Idling of Magnesium Plant,” Press Release, March 24, 2003. In order to restart the magnesium plant, US Magnesium contends that Magnola will likely need to carry out a significant new training program to fill the needs of the 380 workers laid off at the time production was ceased. According to US Magnesium, because Magnola would likely incur qualifying training expenses for its new labor force, it likely would be eligible to receive another disproportionately large subsidy, and it would likely apply for such assistance.

US Magnesium notes that the GOQ, through the Societe Generale de Financement du Québec (“SGF”), has a 20 percent equity share in Magnola. When Magnola announced plans to cease production, US Magnesium asserts that SGF considered possibilities to keep Magnola in operation, including trying to impose tariffs on imports of Chinese magnesium into Canada. US Magnesium notes that SGF was quoted as saying, “{t}he {Magnola} plant is huge and state of the art; we can’t get rid of it just like that.” US Magnesium’s Response to the Notice of Initiation, August 1, 2005, at 13-14, citing “SGF seeks tariff vs. China to protect Magnola interest,” American Metal Market, February 5, 2003. Without these CVD orders, US Magnesium contends that the GOQ has every incentive to provide countervailable subsidies to encourage the restart of this plant.

US Magnesium notes that, in Magnesium First Sunset Reviews, the Department found that the SDI Article 7 subsidy program continued to exist. US Magnesium contends the SDI, including the Article 7 subsidy program, was made part of Investissement-Québec (“I-Q”) in 1998. US Magnesium states that Article 7, under which SDI provided a countervailable subsidy to NHCI, has become Article 28 under I-Q. Therefore, US Magnesium contends that the program has not been eliminated and is still available to provide subsidies to NHCI and Magnola.

According to US Magnesium, NHCI would likely benefit from new Article 7 grants in the absence of the discipline of the orders. US Magnesium argues that, as demonstrated by NHCI's behavior prior to the imposition of the orders, NHCI is eager to receive government subsidies to expand its production capacity. US Magnesium contends that NHCI put its 1997 expansion plans on hold when it failed to achieve revocation of the antidumping and countervailing duty orders. More recently, US Magnesium notes that NHCI announced plans to add 7,000 tons of capacity to its Becancour plant. See US Magnesium's Response to the Notice of Initiation, August 1, 2005, at 15, citing "Hydro Magnesium to hike Becancour capacity," American Metals Market, January 28, 2005. US Magnesium argues that, without the discipline of the CVD orders, NHCI would likely seek to implement its expansion plans and the long-contemplated doubling of capacity. US Magnesium maintains that NHCI would seek and obtain government subsidies in order to achieve expansion.

*GOQ's Rebuttal Arguments:*

The GOQ argues that the fully amortized SDI Article 7 benefit tail has no bearing on likely future subsidization. According to the GOQ, in the original investigation, the Department did not find grants authorized under Article 7 to be countervailable. Rather, the GOQ argues that the Department only found one specific grant provided to NHCI on a one-time non-recurring basis was disproportionate to others provided under Article 7. The GOQ contends that the Department recognized the grant as a one-time grant authorized by a single act of the GOQ, and that NHCI could not expect to receive additional grants in the future without legislative action (*i.e.*, government approval) by the GOQ. See Rebuttal of the Gouvernement Du Québec to US Magnesium's Substantive Response in the Second Sunset Review of the Countervailing Duty Orders on Pure and Alloy Magnesium from Canada, August 12, 2005, at 3-5 ("GOQ Rebuttal"), citing Preliminary Results of First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium, 61 FR 11187, 11188 (March 19, 1996); 19 USC § 1675(d)(2)(A).

The GOQ argues that US Magnesium's reliance on an eight-year old press release as constituting "long expressed intent" or "long-contemplated doubling of capacity" blantly mischaracterizes the importance of this short release. As noted by a NAFTA binational panel in a dumping proceeding, the GOQ contends that "the most that can be derived from the press release is the conclusion that magnesium production by NHCI would increase if final board approval were obtained." GOQ Rebuttal at 6, citing Pure Magnesium from Canada (AD), USA-CDA-00-1904-06 (April 28, 2003). The GOQ notes that the Panel held that "the evidence is no indication of the probability of resumed dumping of pure magnesium" and the GOQ contends that the same holds true here. Id.

The GOQ states that the MTM program offers no basis for the continuation of the CVD orders. The GOQ argues that no weight can reasonably be given to US Magnesium's reliance on a March 2003 news article published before Magnola went out of business. According to the GOQ, US Magnesium's portrayal of Magnola as a looming threat that intentionally chose to shut

down all production and exporting operations to lie in wait for the expiration of these orders and procure additional benefits under the MTM program is inaccurate. The GOQ asserts that there is simply no evidence that revocation of the orders is likely to lead to the continuation or recurrence of countervailable subsidies. Specifically, the GOQ states that Magnola is not currently in business, and is not poised to apply for and receive new and possibly countervailable assistance under the MTM program in the future. GOQ Rebuttal at 7.

*GOQ's Affirmative Arguments:*

The GOQ contends that the Department should determine that revocation of the orders will not lead to recurrence or continuation of subsidization and injury in the foreseeable future. The GOQ argues that the sole basis for the affirmative likelihood determination in the first sunset reviews is gone, as indicated by the Department's statement at that time: "{t}he only remaining program to examine is the Article 7 SDI program." See GOQ's Substantive Response of the Gouvernement Du Québec to the Department of Commerce's Notice of Second Five Year Sunset Reviews, August 1, 2005, at 4. Also, in this same determination, according to the GOQ, the Department stated that, "NHCI will continue to receive benefits until the year 2004. . ." *Id.* The GOQ asserts that all parties to this proceeding and the Department agree that the benefit associated with that amortization period is now fully extinguished as of December 31, 2004, before the initiation of these current sunset reviews. Also, the GOQ notes that Magnola went out of business in March 2003 and is, therefore, no longer an exporter/producer of the subject merchandise. Accordingly, the GOQ contends that any alleged subsidies previously given to Magnola are irrelevant for purposes of these sunset reviews.

*US Magnesium's Rebuttal Arguments:*

US Magnesium argues that the Department should conduct expedited sunset reviews and issue final results based on facts available because both NHCI and Magnola, producers of subject merchandise covered under the CVD orders on pure magnesium and alloy magnesium, failed to respond to the Department's notice of initiation. US Magnesium contends that, under 19 CFR 351.218(e)(1)(ii)(C) of the Department's regulations, if the Department determines that the respondents provided an inadequate response to the notice of initiation of a sunset review, the Department will normally conduct an expedited sunset review. According to 19 CFR 351.218(e)(1)(ii)(A), US Magnesium argues that the Department normally will conclude that the respondents have provided an adequate response to a notice of initiation if the respondents accounting for more than 50 percent, on a volume or value basis, of the total exports of subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation submit complete responses to the Department. US Magnesium contends that the Department's most recent administrative reviews for calendar year 2003 shows that NHCI and Magnola were the only subject exporters of pure and alloy magnesium to the United States. According to US Magnesium, because neither NHCI nor Magnola responded to the notice of initiation, the GOQ's response is inadequate by definition. Therefore, US Magnesium contends that the Department will not be able to review each respondent's volume and value of

exports of the subject merchandise to the United States. In addition, according to US Magnesium, the failure of either NHCI or Magnola to provide company-specific information about their past and future shipments of pure and alloy magnesium to the U.S. and plans to expand and add production capacity, significantly impedes the Department's reviews and requires resorting to the facts available, including adverse inferences as contemplated by 19 USC § 1677e.

US Magnesium notes that under 19 CFR 351.308(f), for facts available in a sunset review, the Department will rely on: (1) calculated countervailing duty rates from prior Department determinations; and (2) information contained in parties' substantive responses to the notice of initiation. US Magnesium argues that any assertions by the GOQ regarding the two companies' confidential shipment histories and likely future business plans is pure speculation and inherently unreliable because the GOQ does not have the proprietary information of NHCI or Magnola. Therefore, US Magnesium asserts that the Department should conduct expedited reviews and issue the final results of the reviews based on facts available.

US Magnesium argues that, under the Department's established policy and long-standing practice, when a benefit stream from a non-recurring subsidy continues beyond the end of the sunset review, the Department must determine that a countervailable subsidy continues to exist regardless of whether the program that gave rise to the long-term benefit continues to exist. See US Magnesium's Rebuttal Comments to Gouvernement Du Québec's Substantive Response, August 12, 2005 ("US Magnesium Rebuttal"), at 4-5, citing Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18874 (April 16, 1998) ("Policy Bulletin 98:3"). According to US Magnesium, because Magnola will continue to benefit from the MTM program beyond the end of the sunset reviews, the Department must determine that countervailable subsidies are likely to continue or recur if the CVD orders are revoked.

US Magnesium asserts that Magnola did not "go out of business." US Magnesium notes that Magnola's parent company, Noranda, states on its web site that "production at Magnola was idled for an indefinite period of time due to market conditions." US Magnesium Rebuttal at 6, citing <http://my.noranda.com/Noranda/Corporate/Our+Business/Magnesium.htm>. In May 2005, according to US Magnesium, the CEO of Noranda noted that conditions are becoming more favorable for restarting the plant. See US Magnesium Rebuttal at 6. Also, according to US Magnesium, Magnola's participation in the appeal of the Final New Shipper Review before a NAFTA binational panel indicates that Magnola is prepared to restart production of magnesium if the CVD orders on pure magnesium and alloy magnesium are revoked.

US Magnesium notes that, although Magnola only exported alloy magnesium during the period covered by the Final New Shipper Review, its failure to provide a response in these reviews precludes the Department from knowing how much pure magnesium Magnola has exported or plans to export to the United States. US Magnesium notes that in the first sunset proceeding, the ITC stated that, "NHCI and Magnola could redirect or shift production from

alloy magnesium to pure magnesium simply by not adding alloying elements. . .” and that Magnola has started to solicit potential customers in the United States to sell its pure magnesium. US Magnesium Rebuttal at 8, citing ITC’s First Sunset Reviews at 14. US Magnesium posits that Magnola’s website states that it offered both pure magnesium and alloy magnesium for sale in Canada and elsewhere prior to idling production. See US Magnesium Rebuttal at 9. According to US Magnesium, Magnola’s likely production and exports of pure magnesium to the United States, if the order is revoked, will continue to benefit from the MTM grants. Id.

US Magnesium contends that, contrary to the GOQ’s arguments, first, Magnola will continue to benefit from the MTM program beyond the end of the sunset reviews. Second, US Magnesium asserts that the expiration of the benefit from the Article 7 grant does not constitute termination or elimination of the program. US Magnesium argues that the GOQ has not provided evidence that the program has been eliminated through administrative or legislative actions. Third, US Magnesium points out that NHCI has provided no evidence indicating that it would not be likely to pursue its well-publicized expansion goals or to seek government subsidies that would enable it to achieve those goals.

#### Department’s Position

Pursuant to section 351.218(e)(1)(ii)(A) of the Department’s regulations, the Department determined that the substantive response filed by the GOQ was inadequate to warrant full reviews, because respondent interested parties failed to provide any responses. See 19 CFR 351.218(d)(2)(iii). Consequently, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department determined to conduct an expedited, 120-day, reviews of these orders. The Department does not find compelling reasons to deviate from its “normal” practice in conducting an expedited review.

The continuation of a program is highly probative of the likelihood of continuation or recurrence of countervailable subsidies if the order were revoked. See Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 (“SAA”), at 888 (1994). Additionally, the presence of programs that have not been used, but have also not been terminated, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy. Thus, absent evidence to the contrary, we find that countervailable programs continue to exist. In particular, we note that no information has been provided to indicate that either the SDI Article 7 program or the MTM program has been terminated. In addition, we agree with US Magnesium that the benefit stream of the MTM program continues through 2006.

Specifically, in the Final New Shipper Review, the Department found that the MTM program was countervailable and that Magnola received a disproportionately large amount of MTM benefits (in the form of a grant) compared to other recipients. As stated in the SAA at 889, in analyzing grants, the Department “will consider whether the fully allocated benefit stream is likely to continue after the end of the review. . .”. Magnola’s benefit stream from the MTM program will continue beyond the end of these sunset reviews. While Magnola is not currently a producer/exporter of subject merchandise, the Department notes that the allocation period of the

benefit received by Magnola from its grant from the MTM program has not expired. Moreover, in the absence of participation by Magnola in the current reviews, the Department has no basis in determining Magnola's current and future status. We disagree with the GOQ that the idling of Magnola's facilities is a basis for finding no likelihood.

With respect to the SDI Article 7 grant, we acknowledge that the "benefit tail" has expired as of the end of 2004. Accordingly, NHCI will not benefit from the 1991 SDI Article 7 grant examined in the Final Determinations. Although NHCI is no longer receiving benefits from this Article 7 grant, the GOQ has not provided evidence that this program has been terminated. US Magnesium has provided evidence that the SDI Article 7 program has been replaced with Article 28 under I-Q. Therefore, it is the Department's position that, although the Article 7 grant received by NHCI has been fully allocated prior to the effective date of this sunset finding, the program under which this countervailable grant was provided continues. See 19 USC § 1675a(b)(4)(A).

Therefore, on the basis of the information on the record, and for the reasons stated above, we continue to find that revocation of these orders would likely lead to a continuation or recurrence of a countervailable subsidy for respondent interested parties.

## 2. Net Countervailable Subsidy Likely to Prevail

### Interested Parties' Comments

#### *US Magnesium's Affirmative Arguments:*

According to US Magnesium, in the original investigation, the Department found a net subsidy of 6.18 percent for NHCI with respect to the Article 7 grant. US Magnesium recommends that the Department should report this rate as the rate likely to prevail absent the CVD orders with respect to NHCI. Alternatively, US Magnesium states that the Department should report the rate of 1.21 percent for NHCI, which is the rate found preliminarily in the twelfth administrative reviews of the CVD orders. See US Magnesium's Response to the Notice of Initiation, August 1, 2005, at 16-17.

In following with the Department's Policy Bulletin 98:3, US Magnesium recommends reporting, for Magnola, the "all others" rate of 21.61 percent determined in the original investigation as the rate likely to prevail absent the CVD orders. See US Magnesium's Response to the Notice of Initiation, August 1, 2005, at 17. Alternatively, US Magnesium states that the Department should report the 7.00 percent rate calculated in the Final New Shipper Review.

#### *GOQ's Rebuttal Arguments:*

The GOQ asserts that the Department should refer a net countervailable subsidy rate of 0.00 percent to the ITC. The GOQ argues that the rates recommended by US Magnesium are

entirely inappropriate and should be disregarded by the Department. According to the GOQ, to the extent the Department considers the Article 7 grant program for purposes of both the pure magnesium and alloy magnesium orders at issue, the appropriate rate that should be referred for NHCI is 0.00 percent, because the Article 7 benefit stream has been fully exhausted. The GOQ posits that any alleged subsidies previously given to Magnola are irrelevant for purposes of these sunset reviews in light of Magnola's closure in March 2003. Therefore, the GOQ argues that the appropriate rate to be reported for Magnola, and only for purposes of the alloy order at issue in these second sunset reviews, is 0.00 percent. Alternatively, the GOQ contends that should the Department determine that this rate is not appropriate, a rate of 1.84 percent, the rate calculated for Magnola in the most recently-completed administrative review on the alloy order, should be reported. See GOQ Rebuttal at 8, citing *Pure Magnesium and Alloy Magnesium from Canada: Final Results of Countervailing Duty Administrative Reviews*, 69 FR 55412 (September 14, 2004). The GOQ notes that US Magnesium appears to agree with the GOQ that no "all others" rate can or should be reported to the ITC.

*GOQ's Affirmative Arguments:*

The GOQ contends that the Department should refer to the ITC a rate of 0.00 percent, as the rate which is likely to prevail should the CVD orders be revoked. According to the GOQ, the long history of these orders confirms that the use of the original investigation subsidy rate would be inappropriate. The GOQ states that in conducting its numerous prior reviews, the Department has determined that certain programs previously found to confer countervailable subsidies have been terminated. Thus, the GOQ posits that there is no rate likely to prevail if the CVD orders on pure and alloy magnesium are revoked. Further, the GOQ argues that no "all others" rate remains to be used as the basis for the rate that is likely to prevail should the instant orders be revoked because a NAFTA binational panel instructed the Department to remove the reporting of an "all others" rate altogether in 2002.

*US Magnesium's Rebuttal Arguments:*

US Magnesium states that the Department should report a rate of 6.18 percent for NHCI as the rate likely to prevail absent the CVD orders with respect to both pure and alloy magnesium. Regarding Magnola, US Magnesium contends that the Department should report the "all others" rate of 7.34 percent as the rate likely to prevail if the CVD orders are revoked, because Magnola did not exist at the time of the original investigation. Alternatively, according to US Magnesium, the Department should report a rate of 7.00 percent calculated in the new shipper review of Magnola on alloy magnesium and 7.34 percent on pure magnesium. US Magnesium Rebuttal at 12.

US Magnesium contends that contrary to the GOQ's arguments, the Department is not bound by the NAFTA panel's erroneous determination that the Department is not required to report an "all others" rate to the ITC in a sunset review. US Magnesium contends that, unlike the circumstances of the first sunset reviews, two companies, NHCI and Magnola, have exported

subject merchandise to the United States, and there are likely shipments of non-reviewed merchandise, *i.e.*, pure magnesium from Magnola. Therefore, US Magnesium contends that the Department should report an “all others” rate of 7.34 percent as the rate likely to prevail with respect to likely, previously unreviewed shipments of pure and alloy magnesium from Canada.

### Department’s Position

Section 752(b)(3) of the Act provides that the Department will report to the ITC the net countervailable subsidy rate that would be likely to prevail if the orders were revoked. With respect to NHCI, the Department finds that the benefit received from NHCI under Article 7 program has been fully exhausted. Moreover, as explained above, all the other subsidies found to provide countervailable benefits to NHCI were terminated prior to the Magnesium First Sunset Reviews. Accordingly, the Department has no basis on which to determine the net countervailable subsidy likely to prevail for NHCI with respect to the pure magnesium and alloy magnesium orders.

For Magnola in the alloy magnesium order, we are reporting a rate of 1.84 percent to the ITC. We note that Magnola began shipping the merchandise subject to the alloy magnesium order after the final determination in the countervailing duty investigations. In the administrative review process, the Department determined that Magnola received countervailable benefits from the MTM program. Where the Department has conducted an administrative review of an order and found a new countervailable program, we normally will adjust the net countervailable subsidy rate determined in the original investigation. See SAA at 890. Accordingly, the Department has applied the calculated subsidy rate from the 2002 administrative review of the alloy magnesium order, 1.84 percent. See Pure Magnesium and Alloy Magnesium From Canada: Final Results of Countervailing Duty Administrative Reviews, 69 FR 55412 (September 14, 2004). Magnola’s alloy magnesium rate reflects the subsidy being provided to Magnola at the time it began shipping subject merchandise to the United States. We are not reporting a rate to the ITC for Magnola under the order on pure magnesium because Magnola has not exported pure magnesium to the United States and, consequently, we have never calculated a rate for Magnola regarding that product.

The Department is also reporting an “all others” rate to the ITC. The Department calculates an “all others” rate in all investigations and reports that to the ITC for its injury determinations, regardless of the number of producers. The Department normally reports an “all others” rate to the ITC for its injury determinations in sunset reviews.

We have adjusted the “all others” rate by removing the countervailable subsidy rates associated with programs that have been terminated prior to the Magnesium First Sunset Reviews. We note that in the context of an administrative review we do not change the “all others” rate. See Federal-Mogul Corporation and Torrington Company v. United States, 822 F. Supp. 782 (CIT 1993) and Floral Trade Council v. United States, 822 F. Supp. 766 (CIT 1993).

Therefore, the only program remaining in our calculation is the SDI Article 7 program. We are reporting a rate of 6.34 percent to reflect the rate likely to prevail for the pure magnesium order. For the alloy magnesium order, we have further adjusted the rate to reflect the countervailable benefits of the 2002 administrative review from the MTM program, 1.84 percent. Accordingly, we are reporting a rate of 8.18 percent to reflect the rate likely to prevail for the alloy magnesium order.

### 3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidy and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the SCM. We note that Article 6.1 of the SCM expired effective January 1, 2000. The following programs do not fall within the meaning of Article 3 of the SCM. However, they could be subsidies described in Article 6.1 of the SCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the SCM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record for the Department to make such a determination.

We are providing the ITC with the following program descriptions.

*Article 7 Grants from the Québec Industrial Development Corporation:* The SDI is a crown corporation which acts as an investment corporation and administers development programs on behalf of the GOQ. Established in 1971 under the Québec Industrial Development Act, the program has been amended several times. Funding for SDI is obtained through the Québec National Assembly, through the sale of notes, bonds and other securities, and by an endowment established by the GOQ at the time of SDI's formation.

Acting on special mandates from the GOQ, the SDI provides assistance under Article 7 in the form of loans, loan guarantees, grants, assumptions of costs on loans, and equity investments. This assistance is offered to major projects capable of having a major impact upon Québec's economy. Article 7 assistance greater than 2.5 million dollars must be approved by the Council of Ministers, and assistance over 5 million dollars becomes a separate budget item under Article 7. To be approved for assistance in this amount, the Council of Ministers must determine that the project to be financed is of special economic importance and value to the province. Funding for this type of assistance does not come from the SDI budget, but comes from the budget of the Council of Ministers. After approval from the Council of Ministers, the Treasury Board will authorize release of the funds. This is done on a project-by-project basis.

*Emploi-Québec Manpower Training Measure Program:* The Emploi-Québec ("E-Q") MTM program provides two funding levels under which companies may receive

reimbursement of labor training expenses: small-scale economic projects and major economic projects. Companies are eligible to receive reimbursement of 50 percent of their labor training expenses.

Small-scale project recipients are eligible to receive a maximum reimbursement of \$100,000. However, the \$100,000 reimbursement limit does not apply to major economic projects. Major economic projects are required to: 1) create either 50 jobs or 100 jobs in 24 months, depending on whether the company is a new company or an established company; 2) have the approval of the Ministry's *Commission des partenaires du marché du travail*; and 3) agree to close monitoring by the E-Q. The Labor Market Development Fund sets aside \$40 million annually to finance major economic projects and, while all industries are eligible to receive funding, priority is given to manufacturing sectors where exporting is a priority and to projects from the service, commerce and accommodation sectors, if they have the potential to attract international clientele or foreign business to Québec.

In accordance with 19 CFR 351.524(c)(1) and (2), we have treated these grants as non-recurring subsidies because separate, project specific government approval was required to receive benefits, and funding for all projects under the MTM program was generally limited to 24 months.

### Final Results of Reviews

We determine that revocation of the countervailing duty orders would be likely to lead to continuation or recurrence of a countervailable subsidy. With respect to the pure magnesium order, we are reporting a rate of 6.34 percent for “all others” and we have no basis for reporting a rate for NHCI. With respect to the alloy magnesium order, we are reporting a rate of 1.84 percent for Magnola, 8.18 percent for “all others,” and we have no basis for reporting a rate for NHCI.

Recommendation

Based on our analysis of the substantive responses received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results in the Federal Register.

AGREE: \_\_\_\_\_

DISAGREE: \_\_\_\_\_

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Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

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(Date)