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Third Sunset Review
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September 29, 2011

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order on Pure Magnesium from the People's Republic of China

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SUMMARY

We have analyzed the responses of the interested parties in the third sunset review of the antidumping duty order covering pure magnesium from the People's Republic of China ("PRC"). We received no response from any respondent interested party in the review. We recommend that you approve the positions described in the *Discussion of the Issues* section of this memorandum. Below is the complete list of the issues in this sunset review for which we received substantive responses:

1. Likelihood of continuation or recurrence of dumping; and
2. Magnitude of the dumping margins likely to prevail

HISTORY OF THE ORDER

On May 12, 1995, the Department published an antidumping duty order on imports of pure magnesium from the PRC, applying a country-wide rate of 108.26 percent.[1] The Department published its notice of initiation of the first sunset review on April 3, 2000, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act").[2] As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping by the PRC-wide entity at a rate of 108.26 percent, the

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[1] *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)("*AD Order*").
[2] *See Notice of Initiation of Five-Year ("Sunset") Reviews*, 65 FR 17484 (April 3, 2000).

same rate as found in the investigation.[3] On September 12, 2000, the International Trade Commission ("ITC") determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4] On October 27, 2000, the Department published the notice of continuation of the antidumping duty order.[5]

On September 1, 2005, the Department published the notice of initiation of the second sunset review of the antidumping duty order on pure magnesium from the PRC, pursuant to section 751(c) of the Act.[6] As a result of its second review, the Department again found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping by the PRC-wide entity at a rate of 108.26 percent, the same rate as found in the investigation.[7] On March 7, 2007, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[8] On July 10, 2006, the Department published the notice of continuation of the antidumping duty order.[9]

The Department has conducted four administrative reviews and issued two scope rulings since the continuation of the order.[10] The Department has not conducted any changed circumstances reviews or duty absorption reviews during the period of this sunset review. The order remains in effect for all manufacturers and exporters of the subject merchandise from the PRC.

BACKGROUND

On June 1, 2011, the Department published the notice of initiation of the third sunset review of the antidumping duty order on pure magnesium from the PRC pursuant to section 751(c) of the

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[3] *See Pure Magnesium From the People's Republic of China; Final Results of Antidumping Duty Sunset Review*, 65 FR 47713 (August 3, 2000) and accompanying Issues and Decision Memorandum ("*First Sunset Final Results*").
[4] *See Pure Magnesium From China*, 65 FR 55047 (September 12, 2000) and USITC Pub. 3346, Inv. No. 731-TA-696 (Review) (August 2000).
[5] *See Continuation of Antidumping Duty Order: Pure Magnesium From the People's Republic of China*, 65 FR 64422 (October 27, 2000).
[6] *See Initiation of Five-year ("Sunset") Reviews*, 70 FR 52074 (September 1, 2005).
[7] *See Pure Magnesium from the People's Republic of China; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order*, 71 FR 580 (January 5, 2006) and accompanying Issues and Decision Memorandum ("*Second Sunset Final Results*").
[8] *See Pure and Alloy Magnesium From Canada and Pure Magnesium From China*, 71 FR 36359 (June 26, 2006) and USITC Pub. 3859, Inv. Nos. 701-TA-309-A-B and 731-TA-696 (Second Review) (June 2006).
[9] *See Continuation of Antidumping Duty Order: Pure Magnesium from the People's Republic of China*, 71 FR 38860 (July 10, 2006).
[10] *See Pure Magnesium from the People's Republic of China: Final Results of* 2004-2005 *Antidumping Duty Administrative Review*, 71 FR 61019 (October 17, 2006) and accompanying Issues and Decision Memorandum ("*04/05 AR Final*"); *see also Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 76336 (December 16, 2008) and accompanying Issues and Decision Memorandum ("*06/07 AR Final*"); *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 66089 (December 14, 2009) and accompanying Issues and Decision Memorandum ("*07/08 AR Final*"); *Pure Magnesium From the People's Republic of China: Final Results of the* 2008-2009 *Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010) and accompanying Issues and Decision Memorandum ("*08/09 AR Final*"); *see also Notice of Scope Rulings*, 72 FR 5677, 5678 (February 7, 2007).

Act.[11] The Department received notice of intent to participate from US Magnesium, LLC ("US Magnesium"),[12] a domestic interested party, within the deadline specified in 19 CFR 351.218(d)(1)(i). US Magnesium claimed interested party status under section 771(9)(C) of the Act, as a domestic manufacturer of pure magnesium. The Department also received a complete substantive response from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department received no response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of this order.

DISCUSSION OF THE ISSUES

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments of the interested party.

1. Likelihood of Continuation or Recurrence of Dumping

US Magnesium argues that revocation of the order would likely lead to the continuation or recurrence of dumping based on (1) the current dumping margins and the significant decline in import volume after the imposition of the order; (2) the continuation of dumping above a *de minimis* level since the order was imposed and since the prior sunset review; (3) the recent increase in import volumes that indicates that Chinese exporters cannot ship commercial quantities to the United States without dumping; (4) and the history of imports from the PRC shows that Chinese exporters are poised to exploit any opportunity to increase dumped exports to the U.S.[13]

US Magnesium also argues that other factors demonstrate dumping is likely to continue, including (1) the conditions of competition in the U.S. market; (2) the Chinese's industry's status as the world's largest magnesium producer; (3) the PRC's reliance on export markets; (4) barriers to Chinese exports in other countries; and (5) low Chinese export prices.[14]

US Magnesium notes that the data on import volumes of subject merchandise over the last five years show an increase from 2007-2009. US Magnesium argues that, despite these data, there has generally been a significant decline in imports of subject merchandise. US Magnesium explains that imports of pure magnesium from the PRC approached commercial quantities during

[11] *See Initiation of Five-Year ("Sunset") Review,* 76 FR 31588 (June 1, 2011).
[12] US Magnesium's predecessor, Magnesium Corporation of America, was the petitioner in the original investigation of this case.
[13] *See* US Magnesium's July 1, 2011 Response To The Notice of Initiation at 5-20.
[14] *Id.* at 20-24.

the 2007-2009 period because one Chinese exporter flooded the U.S. market while attempting to avoid antidumping duties by submitting false information to the Department. US Magnesium contends that, outside of these particular circumstances, imports of subject merchandise have decreased significantly since the imposition of the order.

Based on this analysis of import volumes since the last sunset review, US Magnesium states that Chinese exporters cannot ship commercial quantities to the U.S. without dumping and, therefore, revocation of the order would likely lead to a continuation or recurrence of dumping.

Department Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.[15] In the original investigation, the Department found that dumping occurred at levels above *de minimis*. In subsequent reviews, the Department continued to find dumping above *de minimis*.[16] Consequently, dumping margins, cash deposits rates, and assessment rates currently remain in effect above *de minimis* levels for all companies.

During the period of this sunset review, the Department determined a zero dumping rate for one company, Tianjin Magnesium International, Ltd. ("TMI"), in one administrative review.[17] Following that, the Department found dumping margins for TMI above *de minimis* rates in the three subsequent completed reviews.[18] Likewise, for the only other company individually examined, Shanxi Datuhe Coke & Chemicals, Co., Ltd. ("Datuhe"), the Department calculated dumping margins for Datuhe above *de minimis.* The Department may consider the existence of a zero dumping margin in making its determination of the likelihood of continuation or recurrence of dumping; however, a zero dumping margin alone will not require a determination that the continuation or recurrence of dumping is not likely.[19] Because dumping margins above *de minimis* have prevailed through the majority of the prior segments we are examining, the occurrence of one zero margin in one administrative review is insufficient to overcome the conclusion that "dumping continued at any level above *de minimis* after the issuance of the

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[15] *See* the Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, vol. 1 (1994); House Report, H. Rep. No. 103-826, pt. 1 (1994); Senate Report, S. Rep. No. 103-412 (1994); *Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998)("*Sunset Policy Bulletin*").

[16] *See Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review*, 63 FR 3085 (January 21, 1998); *see also First Sunset Final Results*; *Second Sunset Final Results*; *04/05 AR Final*; *06/07 AR Final*; *07/08 AR Final*; *08/09 AR Final*.

[17] *See 04/05 AR Final*, 71 FR at 61020.

[18] *See id.* (margin of 0.00%); *Pure Magnesium/PRC 06/07 AR Final*, 73 FR at 76337 (margin of 0.63%); *07/08 AR Final*, 74 FR at 61020 (margin of 111.73%); *08/09 AR Final*, 75 FR at 80794 (margin of .73%).

[19] *See* Section 752(c)(4)(A) of the Act; *Sunset Policy Bulletin*, 63 FR at 18873.

order."[20] Companies have continued to dump with the discipline of an order in place and, based on this past pricing behavior, it is reasonable to conclude that dumping would continue if the order were revoked.[21]

Pursuant to section 752(c)(1)(B) of the Act, the Department also considered the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order. In this case, the volume of imports during the period of review has been above the pre-order level, whether based on US Magnesium's submitted consumption statistics[22] or Global Trade Atlas ("GTA") statistics.[23] However, as explained above, dumping has continued above *de minimis* levels after the issuance of the order. The SAA instructs that "declining (or no) dumping margins *accompanied by* steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked."[24] Therefore, despite higher import volumes over the period, the coordinate declining dumping margins are absent. Accordingly, the Department determines that revocation of the order would likely lead to the continuation or recurrence of dumping.

Based on the above evidence, the Department has determined that dumping would likely continue or recur if the order were revoked because dumping margins continued above *de minimis* levels. Given these facts, it is not necessary that the Department address US Magnesium's other factors.[25]

2. Magnitude of the Margins Likely to Prevail

US Magnesium argues that the dumping margin of 108.26 percent calculated for all Chinese producers in the original investigation is likely to prevail if the order is revoked because, with only three exceptions, no other margin has been calculated, and the original margin best represents the behavior of Chinese producers and exporters in the absence of an order. US Magnesium further contends that there is no reason for the Department to deviate from its usual practice of using the original all others rate because margins have remained at 108.26 percent over the life of the order and subject imports have declined dramatically.[26]

Department Position

The Department will normally provide to the ITC the company-specific margins from the investigation for each company. For companies not investigated specifically, or for companies

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[20] *See id.*, SAA at 890 ("existence of dumping margins after the order…is highly probative of the likelihood of continuation or recurrence of dumping.").

[21] *See* SAA at 890.

[22] *See* US Magnesium's Response at Exhibits 7 and 8.

[23] Available online at: *http://www.gtis.com/gta*.

[24] SAA at 889-890 (emphasis added).

[25] *See, e.g.*, *Final Results of Expedited Sunset Review: Ball Bearings From Singapore*, 64 FR 60287, 60289 (November 4, 1999); *Second Sunset Final Results* at Comment 1. US Magnesium filed comments arguing that good cause exists for the Department to consider other factors (*e.g.*, price, cost, market, or economic) in accordance with section 752(c)(2) of the Act.

[26] *See* US Magnesium's Response at 25-26.

that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "country-wide" rate from the investigation. Under certain circumstances the Department may select a more recently calculated rate; however, the Department prefers to select a margin from the investigation because the investigation rate is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.[27]

The Department agrees with US Magnesium that 108.26 percent is the margin likely to prevail if the order were revoked. The Department determined the PRC-wide rate of 108.26 percent in the original investigation.[28] The Department determines this rate, which was also used in both prior sunset reviews, is probative of the behavior of Chinese producers and exporters if the order were revoked because it is the only margin that reflects their actions absent the discipline of the order.

FINAL RESULTS OF REVIEW

For the reasons stated above, we determine that revocation of the antidumping duty order on pure magnesium from the PRC would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margin:

Manufacturers/Exporters/Producers	Weighted-Average Margin
PRC-wide …………………..	108.26 percent

RECOMMENDATION

Based on our analysis of the substantive response received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results in the *Federal Register* and notify the ITC of our determination.

Agree _____ Disagree _____

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Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

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Date

[27] *See Potassium Permanganate from The People's Republic of China; Five-year ("Sunset") Review of Antidumping Duty Order; Final Results*, 70 FR 24520 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 2.
[28] *See AD Order*.