A-570-864
Sunset Review
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May 29, 2012

MEMORANDUM TO: Paul Piquado
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 Second Sunset Review of the Antidumping Duty Order on Pure Magnesium in Granular Form from the People's Republic of China

Summary

We have analyzed the substantive responses of the domestic interested party in the second sunset review of the antidumping duty order covering pure magnesium in granular form 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 we develop 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 a substantive response:

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

History of the Order

In 2001, the Department of Commerce ("Department") issued an antidumping duty order on imports of pure magnesium in granular form from the PRC.[1] Respondent, China Minmetals Precious & Rare Minerals Import and Export Corp. ("Minmetals"), received a margin of 24.67 percent, and the Department determined the PRC-wide rate to be 305.56 percent.[2]

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[1] *See Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China*, 66 FR 57936 (November 19, 2001) ("*Order*").

[2] *Id.*, 66 FR at 57937.

The Department has conducted no administrative, changed circumstance, duty absorption, or new shipper reviews since the issuance of this order.[3] The antidumping duty order remains in effect for all manufacturers and exporters of the subject merchandise from the PRC.

On October 2, 2006, the Department published the notice of initiation of the first sunset review of the antidumping duty order on pure magnesium in granular form from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act").[4] As a result of that review, the Department found that revocation of the antidumping duty order would likely lead to a continuation or a recurrence of dumping.[5] On March 1, 2007, the International Trade Commission ("ITC") determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on pure magnesium in granular form from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[6] On March 26, 2007, the Department published the notice of continuation of the antidumping order on pure magnesium in granular form from the PRC.[7]

Prior to the *First Sunset Review*, the Department conducted two scope rulings. On August 21, 2002, the Department issued a scope ruling finding that pure magnesium in granular form that is ground in Canada or another third country from pure magnesium ingots produced in the PRC is within the scope of the order.[8] On April 11, 2006, ESM Group, Inc. ("ESM") requested a scope clarification of whether atomized magnesium produced in the PRC from pure magnesium manufactured in the United States is within the scope of this order. On September 18, 2006, the Department determined that the atomization process does not substantially transform pure magnesium.[9] Therefore, the Department ruled that pure magnesium that is manufactured in the United States, exported to the PRC for atomization, and returned to the United States is not within the scope of the order.

Since the 2007 continuation of the antidumping duty order, the Department has issued two additional scope rulings. On October 27, 2011, the Department issued a scope ruling finding that pure magnesium in granular form that is ground in Mexico from pure magnesium ingots

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[3] However, on December 30, 2011, the Department initiated a review of pure magnesium in granular form covering the period November 1, 2010, through October 31, 2011, citing one respondent, China Minmetals Non-ferrous Metals Co., Ltd. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 82268, 82273 (December 30, 2011). The statutory deadline for the preliminary results of that review is August 1, 2012.

[4] *See Initiation of Five-Year ("Sunset") Reviews,* 71 FR 57921 (October 2, 2006).

[5] *See Pure Magnesium in Granular Form from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 5417 (February 6, 2007) ("*First Sunset Review*").

[6] *See Pure Magnesium from China*, 72 FR 10258 (March 7, 2007), USITC Publication 3908 (March 2007) (Investigation No. 731-TA-895 (Review)).

[7] *See Pure Magnesium in Granular Form from the People's Republic of China: Continuation of Antidumping Duty Order,* 72 FR 14076 (March 26, 2007).

[8] *See Notice of Scope Rulings and Anticircumvention Inquiries*, 68 FR 7772, 7774 (February 18, 2003).

[9] *See* Memorandum to the File "Pure Magnesium in Granular Form from the People's Republic of China: Final Scope Ruling: ESM Group Inc.," dated September 18, 2006.

produced in the PRC is within the scope of the order.[10] On February 11, 2011, the Department received a scope ruling request from ESM concerning whether United States-origin pure magnesium ingots exported to the PRC for atomization and re-exported to the United States are within the scope of the antidumping duty order on pure magnesium in granular form from the PRC. Pursuant to section 351.225(e) of the Department's regulations, we initiated ESM's scope ruling request on May 2, 2011. On October 28, 2011, we issued a finding that the country of origin of the atomized and re-exported magnesium is the United States and that, therefore, the product is outside the scope of the *Order*.[11]

Background

On February 1, 2012, the Department published the notice of initiation of the second sunset review of the antidumping duty order on pure magnesium in granular form from the PRC, pursuant to section 751(c) of the Act.[12] The Department received notice of intent to participate from US Magnesium LLC ("US Magnesium"), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. US Magnesium claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of pure magnesium in granular form. We received a complete substantive response from US Magnesium within the 30-day deadline specified in section 351.218(d)(3)(i) of the Department's regulations. We did not receive any responses from respondent interested parties in this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted an expedited (120-day) sunset review of the 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 this antidumping duty order would likely lead to a continuation or a 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.

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[10] *See* Memorandum to Christian Marsh, "Pure Magnesium in Granular Form from the People's Republic of China: Final Scope Ruling on Granular Magnesium Ground in Mexico," dated October 27, 2011.

[11] *See* Memorandum to Christian Marsh, "Pure Magnesium in Granular Form from the People's Republic of China: Final Scope Ruling for ESM Group Inc. (Atomized Magnesium)," dated October 28, 2011.

[12] *See Initiation of Five-Year ("Sunset") Review,* 77 FR 4995 (February 1, 2012).

1. Likelihood of a Continuation or a Recurrence of Dumping

Interested Party Comments

US Magnesium argues that revocation of this antidumping duty order would likely lead to the recurrence of dumping. US Magnesium contends that imports from the PRC have declined significantly since the issuance of the antidumping duty order, and have remained at levels well below those prevailing prior to the *Order*.[13] US Magnesium notes that the Department found dumping in the original investigation, and, absent any administrative review, those margins have continued in effect.[14] According to US Magnesium, the likelihood of dumping is heightened by other factors, including "the conditions of competition in the U.S. market, the PRC's unquestioned dominance of the world's pure magnesium production, the closure of magnesium plants in the European Union, India, the United States, and Canada due to competition from unfairly priced Chinese exports to other countries, and the very low level of current Chinese prices."[15] For these additional reasons, US Magnesium maintains that the revocation of the antidumping duty order on pure magnesium in granular form from the PRC would likely lead to a continuation or recurrence of dumping.[16]

Department's Position: Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1 (1994) ("SAA"), the House Report, H. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), 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.

The Department has not conducted any reviews of the antidumping duty order on pure magnesium in granular form from the PRC since the issuance of the *Order* in which it found significant margins above *de minimis*. We note that in February 2012, the Department announced a modification to its practice in five-year sunset reviews, such that it will no longer rely on weighted-average dumping margins that were calculated using a methodology determined to be inconsistent with the United States' World Trade Organization ("WTO") obligations. *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8102 (February 14, 2012). We have examined the margins calculated by the Department in the investigation and determined that they did not rely upon that methodology.

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[13] *See* letter from US Magnesium, "Second Five-year ("Sunset") Review of the Antidumping Duty Order on Pure Magnesium in Granular From from the People's Republic of China/Response of US Magnesium LLC to the Notice of Initiation," dated March 2, 2012 ("US Magnesium Substantive Response") at 6.

[14] *Id.* at 8.

[15] *Id.* at 6, 12-21.

[16] *Id.* at 8.

As a consequence, the cash-deposit rates established in the original investigation remain in effect, thereby exposing imports of pure magnesium in granular form to ongoing antidumping duty liability. Because those imports remain subject to antidumping duty liability, it is reasonable to infer that dumping has continued at an above *de minimis* level after issuance of the *Order*. If companies continue to dump with the discipline of an antidumping duty order in place, it is also reasonable to assume pursuant to the SAA that dumping would continue if the antidumping duty order were removed.[17]

In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considered the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order. As US Magnesium explains, with two exceptions, Chinese imports of pure magnesium in granular form declined significantly after the imposition of the order and now remain far below pre-order levels.[18] Those two exceptions are as follows:

(a) After the *Order* was imposed, the volume of imports increased significantly, until US Magnesium requested the Department to investigate imports of magnesium metal from the PRC. After the imposition of the dumping order on magnesium metal, the quantity of imports fell dramatically.[19]

(b) After the first sunset review, the volume of imports increased somewhat. US Magnesium contends that this brief rise in imports following the first sunset review likely does not represent subject merchandise because Minmetals, the only known producer of subject merchandise in the PRC, certified that it made no imports of subject merchandise during that period.[20]

Notwithstanding those two isolated spikes in import volumes, we find that the level of imports has trended downward since imposition of the *Order*.[21] Combining this fact with the existence of dumping margins above *de minimis* levels that, as described above, were not calculated with a methodology determined to be inconsistent with the United States' WTO obligations, and that remain applicable following issuance of the *Order*, the Department determines that dumping would likely continue or recur if the antidumping duty *Order* were revoked.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

US Magnesium states that the dumping margins from the original investigation are likely to prevail if the antidumping duty order were revoked. Indeed, it argues that the dumping margin

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[17] *See* SAA at 890.

[18] *See* US Magnesium Substantive Response at 10-12. *See also* Attachment II of this memorandum.

[19] *Id.* at 11 and Exhibit 2.

[20] *Id.* at 12.

[21] *Id.*

likely to prevail is 305.56 percent for companies that have not been reviewed, and 24.67 percent for Minmetals, because these rates were determined in the original investigation, and the Department conducted no administrative reviews since that time.[22] Therefore, US Magnesium requests that the Department report the margins from the original investigations to the ITC as the likely behavior of the manufacturers and exporters of pure magnesium in granular form if this antidumping duty order were revoked.[23]

Department's Position: The Department will provide to the ITC the company-specific margin from the investigation for each company that was investigated. For companies not investigated specifically, or for companies 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. The Department's preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC.[24]

In the first sunset review, the Department reported to the ITC margins from the original investigation.[25] For the final results of this expedited second sunset review, the Department has again determined to report to the ITC the margins from the original investigations because these dumping margins are the only calculated rates that reflect the behavior of exporters without the discipline of an order and information from subsequent reviews of the order does not warrant the use of a more recently calculated dumping margin. Therefore, the Department will report to the ITC the margins from the original investigations as contained in the Final Results of Reviews section of this notice.

Final Results of Review

We determine that revocation of the antidumping duty order on pure magnesium in granular form from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	**Weighted Average Margin (percent)**
China Minmetals Precious & Rare Minerals Import and Export/China National Nonferrous Metals Industry Trading Group Corp.	24.67
PRC-Wide Entity	305.56

22 *See* US Magnesium Substantive Response at 22.

23 *Id.*

24 *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).

25 *See First Sunset Review*, 72 FR at 5418.

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this sunset review in the Federal Register and notify the ITC of our determination.

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Paul Piquado
Assistant Secretary
for Import Administration

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(Date)

Attachment I
Margin Rate History of Pure Magnesium in Granular Form
Since the First Sunset Review

The Department did not conduct any administrative reviews regarding pure magnesium in granular form from the PRC.

Attachment II

United States Import Statistics																							
Commodity: 810430, Magnesium Raspings, Turnings And Granules, Graded According To Size; Magnesium Powders																							
Annual Data																							
Partner Country	Unit	Quantity																					
		1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
China	MTS	-	-	-	18.000	51.000	1,651.990	6,235.725	9,972.433	13,185.023	15,362.040	2,794.171	81.585	12.950	6,811.598	735.202	347.128	22.480	-	-	1,385.234	3,283.291	1,008.287