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May 31, 2013

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

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

SUBJECT: Decision Memorandum for Preliminary Results of 2011-2012 Antidumping Duty Administrative Review: Pure Magnesium from the People's Republic of China

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SUMMARY

In response to requests from interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on pure magnesium from the People's Republic of China ("PRC") for the period of review ("POR") May 1, 2011, through April 30, 2012. The review covers two exporters of subject merchandise, Tianjin Magnesium Metal Co., Ltd. ("TMM" or "MMC")[1] and Tianjin Magnesium International Co., Ltd. ("TMI"). However, the Department preliminarily finds that TMI did not have reviewable transactions during the POR. Based on an analysis of the facts of this case and the evidence on the record, the Department preliminarily finds that TMM and Company A[2] are appropriately collapsed and treated as a single entity for purposes of calculating a dumping margin in this proceeding.[3] In addition, we preliminarily determine that TMM made sales of subject merchandise at less than normal value during the POR.

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[1] The Department uses "TMM" as a short cite reference to the Tianjin Magnesium Metal Co., Ltd., as this is the logical acronym for the company. In its own submissions, Tianjin Magnesium Metal Co., Ltd., uses the acronym "MMC" as a short cite reference to its company name. Regardless of the acronym used, TMM and MMC are the same entity.

[2] The identity of "Company A" is proprietary. *See* Memorandum from Andrew Medley, International Trade Compliance Analyst, through Melissa Skinner, Director, Antidumping and Countervailing Duty Operations, Office 8, to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, entitled, "2011-2012 Administrative Review of the Antidumping Duty Order on Pure Magnesium from the People's Republic of China: Preliminary Affiliation and Collapsing Memorandum," dated concurrently with this memorandum ("Affiliation and Collapsing Memorandum").

[3] *See* Affiliation and Collapsing Memorandum.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Unless otherwise extended, we intend to issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

Background

On May 12, 1995, the Department published in the *Federal Register* an antidumping duty order on pure magnesium from the PRC.[4] On May 1, 2012, the Department published a notice of opportunity to request an administrative review of the *Order* for the POR May 1, 2011, through April 30, 2012.[5] On May 2, 2012, the Department received a timely request from TMM for review of its sales during the POR.[6] On May 31, 2012, the Department received from US Magnesium LLC ("USM" or "Petitioner"), the petitioner in the underlying investigation, a timely request for review of TMI, the respondent in prior reviews of the *Order*.[7]

On July 10, 2012, the Department initiated an administrative review of the *Order* with respect to sales of subject pure magnesium during the POR.[8] On July 13, 2012, TMI submitted a timely-filed certification indicating that it had no shipments of subject merchandise to the United States during the POR.[9] Consistent with its practice, the Department asked U.S. Customs and Border Protection ("CBP") to conduct a query on potential shipments made by TMI during the POR; CBP did not provide any evidence that contradicts TMI's claim of no shipments.[10] We note that we will continue to examine TMI's no shipment certification during this review. Based on TMI's certification and our analysis of CBP information, we preliminarily determine that TMI did not have any reviewable transactions during the POR.

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[4] *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) ("*Order*").

[5] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 77 FR 25679 (May 1, 2012).

[6] *See* Letter from TMM, entitled, "Pure Magnesium from the People's Republic of China; Request for 751 Administrative Review of Exports by Tianjin Magnesium Metal Co., Ltd.," dated May 2, 2012.

[7] *See* Letter from Petitioner, entitled, "Pure Magnesium From The People's Republic Of China/Request For Administrative Review," dated May 31, 2012.

[8] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 40565 (July 10, 2012) ("*Initiation Notice*").

[9] *See* letter from TMI, entitled, "Pure Magnesium from the People's Republic of China; A-570-832; Certification of No Sales by Tianjin Magnesium International, Co., Ltd.," dated July 13, 2012. *See also* accompanying unpublished *Federal Register* notice, entitled, *Pure Magnesium from the People's Republic of China: Preliminary Results of 2011-2012 Antidumping Duty Administrative Review*, ("*Preliminary Results*"), dated concurrently with this memorandum. The remainder of this memorandum only discusses the preliminary results with respect to TMM's sale during the POR. However, consistent with its recently announced refinement to its assessment practice in non-market economy ("NME") cases, it is typically appropriate not to rescind the review in part in this circumstance, but rather to complete the review with respect to TMI. *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-95 (October 24, 2011).

[10] *See* CBP Message Number 2261308, dated September 17, 2012.

On December 19, 2012, we extended the time limit for the preliminary results of review by 120 days, pursuant to section 751(a)(3)(A) of the Act, to June 3, 2013.[11]

Scope of the Order

Merchandise covered by the order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra pure" magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as "off-specification pure" magnesium).

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.
Excluded from the scope of the order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (i.e., length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by the order are currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 8104.11.00, 8104.19.00,

[11] *See* Memorandum from Brendan Quinn, International Trade Compliance Analyst, through Melissa Skinner, Director, AD/CVD Operations, Office 8, to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, entitled, "Pure Magnesium from the People's Republic of China: Extension of Deadline for Preliminary Results of 2011-2012 Antidumping Duty Administrative Review," dated December 19, 2012. *See also* Memorandum from Paul Piquado, Assistant Secretary for Import Administration, entitled, "Tolling of Administrative Deadlines as a Result of the Government Closure During Hurricane Sandy," dated October 31, 2012 and Memorandum from Brendan Quinn to the File, entitled, "Tolling of Deadlines," dated November 1, 2012, and Memorandum from Brendan Quinn to the File, entitled, "Correction to the Prior Tolling of Deadlines Memorandum," dated November 1, 2012.

8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

DISCUSSION OF THE METHODOLOGY

Affiliation and Collapsing

We preliminarily determine that TMM and Company A are affiliated, pursuant to section 771(33)(E) of the Act.[12] In addition, based on the evidence provided in TMM's questionnaire responses, we also preliminarily determine that TMM and Company A are appropriately collapsed and treated as a single entity in this administrative review. This finding is based on the determination that the ownership, management, and operations of TMM and Company A are intertwined and, thus, there is significant potential for manipulation of price between the two entities.[13] As a result of this preliminary finding, we will request that TMM disclose the name of its affiliate (*i.e.*, Company A) as public information for the remainder of this proceeding in order to assign the collapsed entity a joint cash-deposit rate under both company names.[14]

If TMM is unwilling to disclose the name of its affiliate publicly, we may determine that TMM has impeded this proceeding by failing to cooperate by withholding information that would be necessary for the Department to administer any rate calculated for TMM and its affiliate in this proceeding. In accordance with section 776(b) of the Act, in such circumstances, the Department may determine the cash deposit rate for TMM by relying upon adverse facts available.

Bona Fides Inquiry

Petitioner raised concerns regarding whether TMM's sale during the POR is *bona fide*, as defined and applied in the Department's practice.[15] In evaluating whether a sale is *bona fide*, the Department considers the totality of the circumstances to determine whether the sales under consideration are atypical, distortive, or otherwise unrepresentative of normal business practices. Specifically, for the purpose of determining whether or not a sale subject to review is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was

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[12] TMM acknowledged this affiliation in its submission, entitled, "Pure Magnesium from the People's Republic of China; A-570-832; Response to the Section A Questionnaire by Tianjin Magnesium Metal Co., Ltd.," dated September 4, 2012 ("TMM's SAQR").

[13] *See* Affiliation and Collapsing Memorandum.

[14] *See* Letter from the Department to TMM, entitled, "2011-2012 Administrative Review of the Antidumping Duty Order on Pure Magnesium from the People's Republic of China: Treatment of Certain Business Proprietary," dated concurrently with this memorandum.

[15] *See* Letter from Petitioner, entitled, "Administrative Review Of The Antidumping Duty Order On Pure Magnesium From The People's Republic of China; Petitioner's Request For A Bona Fide Sales Inquiry," dated December 7, 2012 ("Petitioner's *Bona Fide* Sales Request").

made on an arms-length basis.[16] The Department requested further information from TMM on the aforementioned factors in a supplemental questionnaire.[17] TMM provided a timely response to the Department's request for further information on the *bona fide* sales factors.[18]

We preliminarily find TMM's reported U.S. sale during the POR to be *bona fide* based on the facts on the record.[19] First, the sale was completed approximately one month prior to the completion of the POR, and, though the Department has certain concerns with respect to the timeline of how TMM and its supplier were established with respect to the completion of the sale during the POR, there does not seem to be anything specifically unusual in the timing of TMM's sale to the unaffiliated customer. Second, TMM's sale price is slightly higher than spot prices for secondary pure magnesium benchmark prices submitted by Petitioner, but not significantly higher when considering that TMM sold what it (and Petitioner) finds to be high-quality secondary magnesium. Third, despite Petitioner's assertion to the contrary, TMM demonstrated the quantity examined reflects a commercially-reasonable shipment size. Fourth, there were no unusual expenses arising from the POR sale. Fifth, there is no record evidence that the merchandise was not resold at a profit. Sixth, the sale was made to an unaffiliated customer with the terms set by negotiation and payment received in a timely manner, indicating that the sale was made at arm's-length.

Therefore, based on the totality of the circumstances, the Department preliminarily finds that there is insufficient information from which to determine TMM's sales activities were unreasonable, and the record supports a finding that TMM's sales practices during the POR were *bona fide* based on the Department's standard criteria.[20]

Nonmarket Economy Country

The Department considers the PRC to be a nonmarket economy ("NME") country.[21] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an

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[16] *See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 S ("*TTPC*") (CIT 2005), citing *Am. Silicon Techs. v. United States*, F. Supp. 2d 992, 995 (CIT 2000).

[17] *See* Supplemental Questionnaire from the Department to TMM, entitled, "2011-2012 Administrative Review of the Antidumping Duty Order on Pure Magnesium from the People's Republic of China: Request for Further Explanation of Information Bracketed as Business Proprietary: First Supplemental Questionnaire for TMM's Section C&D Questionnaire Responses and Bona Fide Sales-Related Questionnaire," dated January 14, 2013.

[18] *See* Response from TMM, entitled, "Pure Magnesium from the People's Republic of China; A-570-832; Response of Tianjin Magnesium Metal Co., Ltd. to the Sections C&D Supplemental Questionnaire," dated January 28, 2013 ("SCDSQR").

[19] *See* Memorandum to Melissa Skinner, Director, AD/CVD Operations, Office 8, Import Administration, through Eugene Degnan, Program Manager, AD/CVD Operations, Office 8, from Brendan Quinn, International Trade Analyst, AD/CVD Operations, Office 8, entitled, "2011-2012 Antidumping Duty Administrative Review of Pure Magnesium from the People's Republic of China: Preliminary *Bona Fide* Sales Analysis Memorandum," dated concurrently with this memorandum ("Preliminary *Bona Fide* Memorandum") for full analysis of this issue.

[20] *See id*., for a full discussion of this issue and the proprietary information referenced herein.

[21] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results. Accordingly, we calculated NV using the factors of production ("FOP") methodology in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

Pursuant to section 771(18)(C)(i) of the Act, a designation of a country as an NME remains in effect until it is revoked by the Department. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.[22]

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.[23] It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure)* and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,[24] as further developed by *Silicon Carbide*.[25] However, if the Department determines that a company is wholly foreign-owned or located in a market economy ("ME"), then a separate rate analysis is not necessary to determine whether it is independent from government control.[26]

TMM is the only respondent fully reviewed in this administrative proceeding.[27] TMM reported that both TMM and Company A are wholly Chinese-owned companies and, thus, the collapsed entity is a wholly Chinese-owned company.[28] Therefore, the Department must analyze whether the respondent can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

a. Absence of De Jure Control

[22] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006).

[23] *See Initiation Notice*, 77 FR at 40566.

[24] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*")

[25] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

[26] *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

[27] Though the Department also initiated a review on TMI, both TMI reported and CBP confirmed that TMI did not have reviewable transactions during the POR, as discussed above. For this, along with other proprietary reasons discussed in the Collapsing and Affiliation Memorandum, TMM is the only respondent reviewed for these preliminary results.

[28] *See* TMM's SAQR; s*ee also* Response from TMM entitled, "Pure Magnesium from the People's Republic of China; A-570-832; Response by Tianjin Magnesium Metal Co., Ltd. to the Section A Supplemental Questionnaire," dated December 28, 2012 ("SASQR").

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[29]

The evidence provided by TMM supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export license; (2) there are applicable legislative enactments decentralizing control of companies; and (3) there are formal measures by the government decentralizing control of companies.[30]

b. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[31] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

For TMM, we determine that the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing that TMM: (1) sets its own export prices independent of the government authority; (2) retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management.[32]

The evidence placed on the record of this review by TMM supports a finding of an absence of *de jure* and *de facto* government control with respect to its exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we are preliminarily granting TMM separate rate status.

[29] *See Sparklers*, 56 FR at 20589.
[30] *See* SAQR at A-2 to A-7 and Exhibits A-2 through A-5.
[31] *See Silicon Carbide*, 59 FR at 22586-87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).
[32] *See* SAQR at A-7 to A-11 and Exhibit A-6.

Surrogate Country and Surrogate-Value Data

On November 2, 2012, the Department sent interested parties a letter inviting comments on surrogate-country selection and surrogate-value ("SV") data.[33] The Department received surrogate-country and SV comments and data from Petitioner and TMM.[34]

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[35] The Department determined that Colombia, Costa Rica, Indonesia, the Philippines, South Africa, and Thailand are countries whose per capita gross national incomes ("GNI") are comparable to the PRC in terms of economic development.[36] We discuss the sources of the SVs used in this review in the "Normal Value" section, below.

[33] *See* Letter from the Department to Interested Parties, entitled, "2011-2012 Administrative Review of the Antidumping Duty Order on Pure Magnesium from the People's Republic of China: Request for Comments on the Selection of a Surrogate Country and Surrogate Values," dated November 7, 2012, containing the Department's internal memorandum from Eugene Degnan to Carole Showers, entitled, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Pure Magnesium ("PM") from the People's Republic of China ("China")," dated November 2, 2012 ("Surrogate Country List and Request for Comment").

[34] *See* (1) Letter from Petitioner, entitled, "Administrative Review Of The Antidumping Duty Order On Pure Magnesium From The People's Republic of China: Petitioner's Comments On Surrogate Country Selection," dated November 21, 2012 ("Petitioner's Surrogate Country Comments"); (2) Letter from TMM, entitled, "Pure Magnesium from the People's Republic of China; A-570-832; Surrogate Country Comments of Tianjin Magnesium Metal Co., Ltd.," dated November 21, 2012 ("TMM's Surrogate-Country Comments"); (3) Letter from the Petitioner, entitled, "Pure Magnesium from the People's Republic of China: US Magnesium's Initial Comments Concerning Valuation of the Factors of Production," dated December 7, 2012 ("Petitioner's Initial SV Submission"); (4) Letter from TMM, entitled, "Pure Magnesium from the People's Republic of China; A-570-832; Surrogate-Value Information Submission by Tianjin Magnesium Metal Co., Ltd.," dated December 7, 2012 ("TMM's Surrogate Country Comments and SV Submission"); (5) Letter from Petitioner, entitled, "Pure Magnesium From the People's Republic of China: Proposed Supplemental Questions Concerning TMM's Reported Scrap Factor," dated December 18, 2012 ("Petitioner's Comments and Questions Regarding TMM's Scrap"); (6) Letter from Petitioner, entitled, "Pure Magnesium from the People's Republic of China: US Magnesium's Rebuttal Comments Concerning Valuation of Factors of Production," dated December 21, 2012 ("Petitioner's FOP Rebuttal Comments"); (7) Letter from TMM, entitled, "Pure Magnesium from the People's Republic of China; A-570-832; (8) Rebuttal Surrogate-Value Submission of Tianjin Magnesium Metal Co., Ltd.," dated December 21, 2012 ("TMM's Rebuttal FOP Comments"); (9) Letter from TMM, entitled, "Pure Magnesium from the People's Republic of China; A-570-832; Response by Tianjin Magnesium Metal Co., Ltd. to the Rebuttal Surrogate-Value Comments of US Magnesium LLC dated December 21, 2012," dated December 31, 2012 ("TMM's Response to Petitioner's FOP Rebuttal Comments"); and (10) Letter from TMM, entitled, "Pure Magnesium from the People's Republic of China; A-570-832; Additional Surrogate Value Information by Tianjin Magnesium Metal Co., Ltd.," dated April 3, 2013 ("TMM's 4/3/13 Additional SV Submission").

[35] *See* Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("*Policy Bulletin*").

[36] *See* Surrogate Country List and Request for Comment.

Petitioner argues that the Philippines is the most appropriate surrogate country because: a) China and the Philippines are at comparable levels of economic development; b) the Philippines is a significant producer of merchandise comparable to the products under review;[37] and c) the Philippines is a reliable source for information to calculate the values of FOPs in cases involving China, because it provides a robust set of well-developed and reliable data sources, particularly for the FOPs relevant to this proceeding.[38]

TMM agrees with Petitioner that none of the potential surrogate countries are indigenous producers of pure magnesium and none of the SV data from any one country is complete and, thus, the Department may have to obtain SVs from more than one country.[39] TMM asserts that Thailand is the most appropriate primary surrogate country, but that the Department should also look to South African and/or Indian SV data and financial ratios.[40]

<u>Economic Comparability</u>

As explained in our Surrogate Country List and Request for Comment, the Department considers Colombia, Costa Rica, Indonesia, the Philippines, South Africa, and Thailand all to be comparable to the PRC in terms of economic development.[41] Accordingly, unless we find that all of the countries determined to be equally economically comparable are not significant producers of comparable merchandise, are not reliable sources of publicly-available SV data, or are not suitable for use based on other reasons, or we find that another equally comparable country is an appropriate surrogate country, we will rely on data from one of these countries.[42] Therefore, we consider all six countries identified in the Surrogate Country List as having met this prong of the surrogate country selection criteria.

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[37] *See* Petitioner's Surrogate Country Comments. Petitioner notes that it is unaware of any primary or secondary pure magnesium producers in any of the potential surrogate countries. As such, no potential surrogate country is a significant producer of identical merchandise. Petitioner then states that, in prior reviews of the *Order* (as well as AD orders on similar magnesium products such as magnesium metal from the PRC), primary aluminum production was found to be analogous and comparable to primary magnesium production where no indigenous magnesium production was found in potential surrogate countries. Petitioner asserts that the product sold by TMM during the POR was secondary pure magnesium, the production process of which is dissimilar from primary pure magnesium production. Thus, Petitioner asserts that the secondary pure-magnesium production process is analogous not to primary aluminum production, but to aluminum extrusion production (which involves a comparable type of smelting process), and that the comparability of aluminum extrusion production to secondary magnesium production is supported by the Department's determinations in *Magnesium Metal from the People's Republic of China*, 75 FR 65450 (October 25, 2010) and *Pure Magnesium from the People's Republic of China*, 75 FR 80791 (December 23, 2011) and accompanying Issues and Decision Memorandum ("IDM") at Comment 2.

[38] *See id*.

[39] *See* TMM's Surrogate-Country Comments and TMM's Surrogate-Country Comments and SV Submission

[40] *See* TMM's Surrogate-Country Comments and SV Submission. TMM does not provide further explanation to support its assertion that Thailand should be selected as the primary surrogate country (although TMM's comments imply that data availability is a deciding factor).

[41] *See* Surrogate Country List and Request for Comment.

[42] *See, e.g., Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703, 67708 (November 2, 2011), unchanged in *Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012).

The Department has previously determined that India is less economically comparable to the PRC than the six identified countries.[43] Consequently, we will not consider India as an appropriate surrogate country unless we are unable to find a more economically comparable surrogate country which satisfies all remaining criteria for selection.

Significant Producers of Identical or Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. While the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter,"[44] it does not preclude reliance on additional or alternative metrics. Moreover, neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."[45] Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[46] Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.[47]

In the instance that identical merchandise is not produced by any of the potential surrogate countries, the Department must determine if other merchandise that is comparable is produced in these countries. How the Department does this depends on the subject merchandise.[48] In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

> In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.[49]

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[43] *See Hand Trucks and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Administrative Review*, 77 FR 1464, 1466 (January 10, 2012).

[44] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

[45] *See Policy Bulletin* at 2.

[46] *Id.* The *Policy Bulletin* also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." *Id.* at note 6.

[47] *See Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65676 (December 15, 1997) ("{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").

[48] *See Policy Bulletin* at 2.

[49] *Id.* at 3.

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.[50]

In this case, although both Petitioner and TMM each state that they were unable to find evidence of indigenous magnesium producers in any of the potential surrogate countries, export data on the record shows that all of the potential surrogate countries identified in the Surrogate Country List have significant exports of comparable merchandise, as defined by the HTS subheadings listed in the scope of the *Order*.[51] Thus, because none of the potential surrogate countries have been definitively disqualified through the above analysis, the Department looks to the availability of SV data to determine the most appropriate surrogate country.

<u>Data Availability</u>

When evaluating SV data, the Department considers several factors including whether the SV data is publicly available, contemporaneous with the POR, representative of broad-market averages, from an approved surrogate country, tax and duty-exclusive, and specific to the input.[52] There is no hierarchy among these criteria. It is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.[53] Because neither data nor surrogate financial statements exist on the record for Colombia, Costa Rica, or Indonesia, we will not consider these countries further for primary surrogate-country-selection purposes at this time. South Africa, the Philippines, and Thailand, however, have data available, and parties to the proceeding placed financial statements from each of these countries on the record of this review.[54]

We agree with TMM that the fact that India (the primary surrogate country selected in past reviews of the *Order)* is not included on the Surrogate Country List does not equate to a finding that India is not economically comparable to the PRC (only that it is not as comparable as the six countries selected) and, thus, the omission of India does not definitively preclude the use of Indian data to value FOPs in the instant proceeding. However, because we have determined that the necessary FOP data is available from a single primary surrogate country (*i.e.*, the Philippines, as discussed below and in the Preliminary SV Memorandum) and because TMM failed to provide any argument or support to explain why the use of data from a country not on the

[50] *See* section 773(c) of the Act; *see also Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999).

[51] For further information and our full analysis of the export data for identical/comparable merchandise, *see* Memorandum to Melissa Skinner, Director, AD/CVD Operations, Office 8, from Andrew Medley, International Trade Compliance Analyst, entitled, "2011-2012 Antidumping Duty Administrative Review of Pure Magnesium from the People's Republic of China: Preliminary Results Surrogate Country and Surrogate Value Memorandum," dated concurrently with this notice ("Preliminary SV Memorandum").

[52] *See, e.g.*, *Certain Activated Carbon from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012), and accompanying Issues and Decision Memorandum at 8.

[53] *See Policy Bulletin*.

[54] *See* Petitioner's Initial SV Submission (placing Philippine SV data and financial statements on the record); TMM's Surrogate Country Comments and SV Submission (placing Thai, South African, and Indian SV data and financial statements onto the record); and TMM's 4/3/13 Additional SV Submission (placing further Thai, Indian, and South African information on the record).

Department's surrogate country list is appropriate in this instance, we have not further considered India for surrogate-country-selection purposes.

Further, we note that the primary input consumed by TMM's supplier in the production of the subject merchandise sold during the POR is magnesium scrap classified under Harmonized Tariff Schedule ("HTS") subcategory 8104.20 ("Magnesium Waste and Scrap"). Global Trade Atlas ("GTA") data show that Thailand only imported products classified under HTS subcategory 8104.20 from the PRC and Vietnam. Because our practice is to disregard prices from NME countries from the average value,[55] Thailand lacks a usable surrogate value for the primary input. Moreover, GTA data on the record for South Africa show that imports of HTS subcategory 8104.20 consist only of import data from a single month prior to the POR, and thus, do not fulfill our preference for contemporaneous broad market average information.[56] As such, neither surrogate country suggested by TMM provides usable data to value the principal input.[57] Furthermore, the Thai and South African financial statements on the record are from companies that do not produce comparable merchandise. For the aforementioned reasons, we do not find Thailand or South Africa to be sufficiently appropriate for consideration as primary surrogate countries. In comparison, the Philippine information submitted by Petitioner provides contemporaneous SV data for all inputs, including the scrap magnesium under HTS subcategory 8104.20, as well as surrogate financial statements for producers of comparable merchandise.[58]

The Department, therefore, finds that the Philippines is the appropriate surrogate country to use in this review in accordance with section 773(c)(4) of the Act. We base this decision on the following facts: (1) the Philippines is at a level of economic development comparable to that of the PRC; (2) the Philippines is a significant producer of comparable merchandise; (3) the Philippines has the best quality data available for valuing magnesium scrap, the most significant input into the subject merchandise; and (4) as explained above and discussed further below in the "Factor Valuations" section and in the Preliminary SV Memorandum, the Philippines is the sole country with contemporaneous SV data for all inputs and surrogate financial statements for producers of comparable merchandise. As a consequence, the Philippines provides the best opportunity to use quality, publicly-available data to value FOPs and we have calculated NV using Philippine prices, when available and appropriate, to value the FOP of TMM's supplier of subject merchandise during the POR.[59] In accordance with 19 CFR 351.301(c)(3)(ii), interested

[55] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China*, 69 FR 75294, 75300 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005).

[56] *See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

[57] Moreover, neither the Thai nor South African data on the record represent a complete dataset for all inputs. *See* Preliminary SV Memorandum for a full discussion of this analysis.

[58] *See id.*

[59] *See id.*

parties may submit publicly-available information to value FOP until 20 days after the date of publication of the preliminary results.[60]

Date of Sale

TMM reported the invoice date as the date of sale because it claims that all material terms for its one U.S. sale of subject merchandise during the POR were settled on the invoice date.[61] In accordance with 19 CFR 351.401(i) and the Department's long-standing practice of determining the date of sale,[62] the Department preliminarily determines that the invoice date is the most appropriate date to use as the respondent's date of sale.

Fair Value Comparisons

To determine whether the sale of pure magnesium to the United States by TMM was made at less than NV, we compared the export price ("EP") to NV, as described in the "Export Price" and "Normal Value" sections below.

Differential Pricing Analysis

The Department's differential pricing analysis requires a finding of a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin.

The differential pricing analysis evaluates all purchasers, regions, and time periods to determine whether a pattern of price differences exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes reported by TMM. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of investigation being examined based upon the reported date of sale. For purposes of analyzing sales transactions by customer, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period,

[60] In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative SV information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[61] *See* TMM's SAQR at A-15.

[62] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

that the Department uses in making comparisons between export price (or constructed export price) and normal value for the individual dumping margins.

In the first stage of the differential pricing analysis, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. In this review, because there is only one sale,[63] there are not two observations with which to test for whether a pattern of prices that differ significantly exists. Accordingly, the Department is not applying the differential pricing analysis and is calculating TMM's dumping margin using its standard method by comparing the weighted-average normal value to the weighted-average export price.

<u>Export Price</u>

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we have used EP for the U.S. sales of TMM because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because calculation of a constructed export price was not otherwise warranted.

We have based EP on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we have made deductions from the starting price for movement expenses, including expenses for foreign inland freight from the plant to the port of exportation, domestic brokerage and handling, international freight, marine insurance, brokerage and handling expenses incurred in the United States, inland freight expenses incurred

[63] The fact that TMM had only one sale during the POR was initially bracketed as proprietary. However, TMM subsequently disclosed this information publicly on the record. *See* Submission from TMM, entitled, "Pure Magnesium from the People's Republic of China; A-570-832; Response to the Section C & D Questionnaires by Tianjin Magnesium Metal Co., Ltd.," dated September 11, 2012 ("SCDQR") at C-22 (stating: "MMC paid additional U.S. inland freight for the sale during the POR"); *see also*, SCDSQR at 18 (stating: "The Brazil data clearly demonstrates that the MMC sale was not at an aberrationally high price"); *see also, e.g.*, Letter from TMM, entitled, "Pure Magnesium from the People's Republic of China; A-570-832; Rebuttal of Tianjin Magnesium Metal Co., Ltd. to the Factual Information of US Magnesium LLC dated March 11, 2013," dated March 21, 2013 at page 4 (stating: "MMC's Sale Price Was Within the Range of Selling Prices During the POR"), at page 5 (stating: "Where MMC's price was within the range of prices of others, not an outlier, it can be seen to be a typical commercial sale during the POR"), at page 6 (stating, "The petitioner thus can be seen to be claiming, on the one hand, that the price which MMC charged to its customer was too high, but on the other hand claims an input value for magnesium scrap which is significantly higher than MMC's price," and "But, as MMC has reported, it shipped the amount ordered by its unaffiliated customer, and this was thus a normal commercial sale," and at page 7 (stating, "In the case of MMC there was a commercial order from a customer which was fulfilled by it. This was thus a normal commercial sale in the ordinary course of business… What is important is that there was a sale by MMC according to the order of an unaffiliated customer in the United States").

in the United States, and U.S. customs duty. TMM did not report or claim any other adjustments to EP.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(e) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department's questionnaire requires that TMM provide information regarding the weighted-average FOPs for all suppliers that produce the merchandise under consideration, not just the FOPs from a supplier. This methodology ensures that the Department's calculations are as accurate as possible.[64]

Section 773(c) of the Act provides that the Department will value the FOPs in NME cases using the best available information regarding the value of such factors in an ME country or countries considered to be appropriate by the administering authority. The Act requires that when valuing the FOPs, the Department utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a comparable level of economic development, and (2) significant producers of comparable merchandise.[65] As stated above, the Department has preliminarily determined to select the Philippines as the primary surrogate country.

Under section 773(c)(3) of the Act, FOPs used by TMM's supplier(s) in the production of pure magnesium include, but are not limited to, (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department based NV on TMM's reported FOPs for materials, energy, and labor.

Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise exported by TMM, the Department calculated NV based on the FOPs reported by TMM for the POR. As discussed in the "Surrogate Country" section, above, the Department used Philippine import data and other publicly available Philippine sources in order to calculate SVs for TMM's FOPs. To calculate NV, the Department multiplied TMM's reported per-unit FOPs by publicly-available SVs.[66] The Department's practice when selecting the best available information for valuing FOPs is to

[64] *See, e.g., Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 FR 61395 (October 28, 2003), and accompanying Issue and Decision Memorandum at Comment 19.

[65] *See* section 773(c)(4) of the Act.

[66] *See* Preliminary SV Memorandum.

select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[67]

The Department adjusted input prices by including freight costs, as appropriate, to render them delivered prices. Specifically, to Philippine import SVs reported on a cost, insurance, and freight basis, the Department added a surrogate freight cost using the shorter of: (i) the reported distance from the domestic supplier to the factory; or (ii) the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, the Department adjusted SVs for inflation and exchange rates, and the Department converted all applicable FOPs to a per-metric ton basis.

Furthermore, with regard to the Philippine import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, India, South Korea, and Thailand may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.[68] Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[69] Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.[70] Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an "unspecified" country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[71] Therefore, we have not used prices from these countries in calculating the Philippine import-based SVs.

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[67] *See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

[68] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

[69] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

[70] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988); *see also Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30763 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007).

[71] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China*, 69 FR 75294, 75300 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005).

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a ME and pays for it in ME currency, the Department may value the factor using the actual price paid for the input.[72] TMM reported that it did not purchase inputs from ME suppliers for the production of the merchandise under consideration.[73]

The record shows that data in the Philippine import statistics, as well as those from the other Philippine sources, are contemporaneous with the POR, product-specific, and tax-exclusive.[74] In those instances where we could not obtain publicly available Philippine data contemporaneous to the POR with which to value factors, we adjusted the SVs using, where appropriate, inflation factors derived from the Philippine Producer Price Index ("PPI"), as published in the International Monetary Fund's *International Financial Statistics*.[75] The Department used Philippine Import Statistics from the GTA and other publicly available Philippine sources to value most raw materials, energy, and packing inputs that TMM used to produce subject merchandise during the POR.

As discussed above, TMM requested that the Department select Thailand, not the Philippines, as the primary surrogate country and suggests that, regardless of the country selected as the primary surrogate country, the Department remains open to using sources outside the primary surrogate country to value inputs. In particular, TMM expresses concern about the Philippine value for the primary input, magnesium scrap under HTS subcategory 8104.20,[76] which TMM argues is: a) unrepresentative of a commercial quantity; and b) unreliable, as the corresponding export information cannot be found for the exporting country. Moreover, TMM asserts that the Philippine data are aberrational, because the price is demonstrably higher than the import prices for: (1) imports of the same HTS subcategory from other potential surrogate countries (*i.e.*, Thailand and South Africa, as well as India); and, (2) GTA data and spot price benchmarks for higher-value products on the record, such as prices for alloy magnesium products and for secondary pure magnesium products (*i.e.*, the output of production), which should logically command higher prices than the input at issue.[77]

[72] *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc. v. United States*, 268 F.3d 1376, 1382-1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

[73] *See* TMM's SCDQR at D-7.

[74] *See* Preliminary SV Memorandum.

[75] *See id*.

[76] Though TMM provides SV information for flux, sulfur, electricity, freight, and packing inputs for Thailand, South Africa, and India, the difference between these values and the corresponding Philippine values is virtually inconsequential to the underlying margin calculation. Moreover, the arguments forwarded in TMM's Rebuttal FOP Comments and TMM's Response to Petitioner's FOP Rebuttal Comments demonstrate that TMM's primary objection to the selection of the Philippines as the primary surrogate country is the "aberrational" nature of the Philippine import data for HTS subcategory 8104.20 (along with the surrogate financial statements provided by Petitioner), and not any other particular Philippine SV data. As such, because we have selected the Philippines as the primary surrogate country and discussed this determination at length above and in the Preliminary SV Memorandum, we only address TMM's objection to Philippine SV information in the context of their arguments with respect to the magnesium scrap surrogate value herein.

[77] *See* TMM's Rebuttal FOP Comments.

As discussed above, when selecting SVs for use in an NME proceeding, the Department's preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POR, with each of these factors applied non-hierarchically to the particular case-specific facts and with preference to data from a single surrogate country. The Philippine data fulfill each aspect of the aforementioned SV test, as they are publicly available, non-export, tax-exclusive, product-specific, contemporaneous, and from the primary surrogate country. Moreover, TMM failed to provide any SV information appropriate for use in the alternative. As discussed in the "Surrogate Country" section, above, GTA data show that Thailand only imported products classified under HTS subcategory 8104.20 from the PRC and Vietnam and is, thus, inappropriate as a source to value the magnesium scrap due to our practice of disregarding prices from NME countries from the determination of surrogate value. GTA data on the record for South African imports of HTS subcategory 8104.20 consist of only of import data from a single month prior to the POR, and, thus, do not fulfill our preference for contemporaneous, broad-market-average information. The Indian import data for HTS subcategory 8104.20 are not from a country included on the list of potential surrogate countries. Moreover, TMM's explanation of why the Indian import data for scrap magnesium represent a suitable alternative to the Philippines data fails to demonstrate how the Indian data fulfills each aspect of the Department's SV test.[78] Thus, even if the Department were to agree that it is appropriate to value this input using sources of information on the record outside the primary surrogate country, the Philippine data remain the *only* data on the record from which to value magnesium scrap inputs, because no other data on the record are: (1) contemporaneous; (2) from a potential surrogate country determined to be economically comparable and a significant producer of comparable merchandise; (3) representative of market-economy transactions; and/or (4) specific to the input in question.

Finally, we do not find that TMM provided sufficient evidence to support the assertion that the Philippine data are aberrational. The Department typically looks to AUV prices for similar basket categories from other potential surrogate countries as viable benchmarks.[79] As discussed above, the Thai and South African import data for HTS subcategory 8104.20 are either unusable or non-contemporaneous, no other potential surrogate country imported products under the HTS 8104.20 subcategory, and Indian data are not representative of a potential surrogate. Although TMM notes that U.S. spot prices and GTA data for U.S. imports (or exports to the U.S.) of alloy magnesium and secondary pure magnesium are lower than the Philippine GTA import data for magnesium scrap, we note, however, that import values from countries at different levels of economic development from the PRC are not suitable comparative price benchmarks to test the validity of selected SVs and that AUVs for less-specific merchandise are similarly unsuitable for comparison.[80]

For the aforementioned reasons, we preliminarily determine that Philippine data for imports of magnesium scrap under HTS subcategory 8104.20 represent the best, and only, information

[78] Though TMM suggests that the Indian price is more in line with benchmarks, as discussed below, these benchmarks are either unusable, not contemporaneous, or representative of non-comparable products. *See* Preliminary SV Memorandum for a full discussion of this issue.

[79] *See, e.g., Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 57329 (October 2, 2008) and accompanying IDM at Comment 10.

[80] *See Carrier Bags/PRC* (March 17, 2008) at Comment 6.

available to value the scrap inputs used by TMM's supplier in the production of subject merchandise during the POR.

In these preliminary results, the Department calculated the labor input using data on industry-specific labor cost from the primary surrogate country (*i.e.*, the Philippines), as described in *Labor Methodologies.*[81] The Department relied on the ILO's Yearbook Chapter 6A labor cost data for the Philippines for the year 2008, because this is the most recent Chapter 6A data available for the Philippines. The Department further determined that the two-digit description under ISIC-Revision 3-D ("27-Manufacture of Basic Metals: 2008") is the best available information because it is specific to the industry being examined and, therefore, is derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor cost data reported by the Philippines to the ILO under Sub-Classification 27 of the ISIC-Revision 3-D, in accordance with section 773(c)(4) of the Act. For further information on the calculation of the wage rate, *see* Preliminary SV Memorandum.

We determine that contemporaneous Philippine data from *The Cost of Doing Business in Camarines Sur* represents the best available information from which to value electricity consumed in the production of subject merchandise during the POR (available at the Philippine government's web site for the province: *http://www.camarinessur.gov.ph*; these data pertained only to industrial consumption).[82] However, the financial statements used to calculate financial ratios for these preliminary results were not sufficiently detailed to allow the Department to isolate energy expenses from other expenses such as selling, general, and administrative expenses. When energy costs are not specifically broken out in a financial statement, the Department presumes that these costs are accounted for in the surrogate financial ratios.[83] Therefore, the Department was able to calculate an overhead surrogate ratio based on the full cost of manufacturing, including energy. In order to not double count the respondents' energy costs, we have properly excluded energy expenses from elsewhere in our NV calculation.

We valued truck freight expenses by averaging the rates charged by the Confederation of Truckers Association of the Philippines, Inc. and the distances to 92 destinations within the Philippines. The rates reflect prices in effect in 2011.[84]

We valued brokerage and handling expenses using a price list of export procedures necessary to export a standardized cargo of goods in the Philippines, as published in the World Bank's *Doing Business 2013, Economy Profile: Philippines* publication.[85]

We valued marine insurance using a price quote for July 2010, which we obtained from RJG Consultants.[86] RJG Consultants is a market economy provider of marine insurance.

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[81] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) ("*Labor Methodologies*").

[82] *See id.*

[83] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009) and accompanying IDM at Comment 2.

[84] *See* Preliminary SV Memorandum.

[85] *See id.*

19 CFR 351.408(c)(4) directs the Department to value overhead, selling, general, and administrative expenses ("SG&A") and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. In this review, Petitioner submitted the 2011 financial statements of the following companies:

- **R.U. Foundry & Machine Shop Corporation ("R.U. Foundry")**: a Philippine Iron and Steel Casting/Foundry;[87]
- **SOH Technologies Corp. ("SOH")**: a Philippine metal processor;[88]

TMM placed the 2011 financial statements of the following companies on the record:

- **Varopakorn Public Company Limited ("Varopakorn")**: a Thai manufacturer and distributor of semi-finished aluminum products.[89]
- **UBIS (Asia) Public Company Limited ("UBIS")**: a Thai industrial chemical producer for the Metal Packaging Industry.[90]
- **Alucon Public Company Limited ("Alucon")**: a Thai company producing and distributing aluminum containers.[91]
- **Hulamin Limited ("Hulamin")**: a South African company consisting of two groups: one group manufactures and supplies fabricated and rolled semi-finished aluminum products; the other manufactures and supplies extruded aluminum products.[92]
- **MAN Industries (India) Limited ("Man Industries")**: an Indian manufacturer and beveler of submerged arc welded pipe.[93]
- **Sudal Industries Limited ("Sundal")**: an Indian manufacturer of aluminum extrusions, aluminium alloys, and relevant downstream products.[94]
- **Century Extrusions Limited ("CEL")**: an Indian producer of aluminum extrusions and value-added products thereof.[95]

We have declined to use any of the financial statements submitted by TMM during the course of this review. First, certain Thai statements submitted by TMM show that the corresponding producer receives subsidies.[96] Moreover, because we agree with Petitioner that the secondary pure magnesium production process used to manufacture the subject merchandise during the POR is a relatively simple smelting process which is generally analogous to aluminum-extrusion

[86] *See id.*
[87] *See* Petitioner's Initial SV Submission.
[88] *See id*.
[89] *See* TMM's Surrogate Country Comments and SV Submission.
[90] *See id.*
[91] *See id.*
[92] *See id.*
[93] *See id.*
[94] *See id.*
[95] *See* TMM's 4/3/13 Additional SV Submission.
[96] The Thai Government provided three machines to Varopakorn free of charge for ten years starting June 2007 (note 13 of Varopakorn's financial statement). UBIS received a reduced income tax rate (from 30% to 25%) as a result of the Market for Alternative Investment subsidy (*see* note 20 of UBIS's financial statement).

production or other types of basic, metal-smelting and casting/molding operations,[97] none of the companies for which TMM submitted surrogate financial information produced merchandise that is identical or comparable to the subject merchandise in question.[98]

On the other hand, the financial statements for R.U. Foundry and SOH submitted by Petitioner do not contain subsidies found to be countervailable and are from producers of comparable merchandise. R.U. Foundry provides basic foundry operations for various metals, whereas SOH provides basic casting operations for non-ferrous metals, and neither appears to provide further value-added finishing or fabrication processes. Accordingly, we have preliminarily determined to use the contemporaneous, audited, 2011 financial statements of R.U. Foundry and SOH as the basis for calculating the surrogate financial ratios in this review. Both companies earned a profit during the 2011 fiscal reporting period and the statements of each are complete, legible, and sufficiently detailed to disaggregate materials, labor, overhead, and SG&A expenses.[99] Furthermore, because we find the selection of the Philippines as the primary surrogate country provides for the best data for inputs and labor, these financial statements allow consistency with our preference to value all SVs in from a single surrogate country.

For a complete listing of all the inputs and a detailed discussion about our SV selections, *see* Preliminary SV Memorandum.

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.[100]

[97] *See* TMM's SCDQR at Exhibit D-1, describing the production process. *See, e.g., Magnesium Metal from the People's Republic of China*, 75 FR 65450 (October 25, 2010) and *Pure Magnesium from the People's Republic of China*, 75 FR 80791 (December 23, 2011) and IDM at Comment 2 as support of the comparability of aluminum extrusion production to secondary magnesium production.

[98] Varopakorn makes aluminum rolled products from aluminum ingots. UBIS makes coatings and lacquers used in the production of cans. The majority of Alucon's business is the production of finished aluminum containers. MAN industries makes steel pipe. Hulamin, Sundal, and CEL make fabricated aluminum products. As such, none of the producers made simple ingots, extrusions, forgings, or castings from smelted inputs, as did TMM's supplier during the POR, and instead made more complex and, thus, non-comparable products. *See* Preliminary SV Memorandum for further discussion.

[99] *See* Preliminary SV Memorandum.

[100] *See id*.

Conclusion

We recommend applying the above methodology for these preliminary results.

__________ __________
Agree Disagree

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Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

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(Date)