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International Trade Administration
Washington, D.C. 20230

A-570-832
Fourth Sunset Review
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January 30, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

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SUMMARY

We have analyzed the substantive response of US Magnesium, LLC ("US Magnesium") the sole participating interested party in the fourth sunset review of the antidumping duty ("AD") order covering pure magnesium from the People's Republic of China ("PRC").[1] We received no response from any respondent or other interested party in the review. Accordingly, we conducted an expedited (120-day) sunset review for this *Order*. Below is the complete list of the issues in this sunset review for which we received substantive responses:

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

We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

On October 3, 2016, the Department of Commerce ("Department") published the notice of initiation of the fourth sunset review of the antidumping duty order on pure magnesium from the

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[1] *See Notice of Antidumping Duty Order: 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*").

PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act").[2] The Department received a timely notice of intent to participate from US Magnesium,[3] a domestic interested party, within the 15-day period specified in 19 CFR 351.218(d)(1)(i).[4] In accordance with 19 CFR 351.218(d)(1)(ii)(A), US Magnesium claimed interested party status under section 771(9)(C) of the Act, as a domestic manufacturer of pure magnesium.[5] US Magnesium or its predecessor, Magnesium Corporation of America, were part of the original investigations and have participated in all of the segments of this proceeding since publication of the *Order*. The Department then received a complete substantive response from US Magnesium within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[6] The Department received no response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting an expedited (120-day) sunset review of the *Order*.[7]

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

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[2] *See Initiation of Five-Year ("Sunset") Review*, 81 FR 67967 (October 3, 2016).
[3] US Magnesium's predecessor, Magnesium Corporation of America, was the petitioner in the original investigation of this case.
[4] *See* letter from US Magnesium, "Five-Year ("Sunset") Review of Antidumping Duty Order on Pure Magnesium from the People's Republic of China: US Magnesium's Notice of Intent to Participate in Sunset Review," dated October 18, 2016.
[5] *Id.*, at 2. "US Magnesium states also that The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 8319 ("Local 8319") represents workers producing pure magnesium in US Magnesium's plant in Rowley, Utah. US Magnesium explains that Local 8319 and its national union leadership support the continuation of the antidumping *Order* on pure magnesium from China." *Id.*, at 1.
[6] *See* letter from US Magnesium, "Five-Year ("Sunset") Review of Antidumping Duty Order of Pure Magnesium from the People's Republic of China: US Magnesium's Response to the Notice of Initiation," dated November 2, 2016 ("U.S. Magnesium's Substantive Response").
[7] *See* letter to Ms. Catherine DeFilippo, Director, Office of Investigations, International Trade Commission, "Sunset Reviews October 2016," dated November 15, 2016.

(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, 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, the written description of the scope is dispositive.

HISTORY OF THE *ORDER*

1. Final Determination of Sales at Less-Than-Fair-Value and *Order*

On March 30, 1995, the Department issued its final affirmative determination of sales-at-less-than-fair-value ("LTFV") in the antidumping duty investigation of pure magnesium and alloy magnesium from the PRC, finding a PRC-wide entity rate of 108.26 percent for imports of pure magnesium.[8] On May 12, 1995, the Department published the *Order* covering imports of pure magnesium from the PRC, establishing a PRC-wide entity rate of 108.26 percent.[9]

2. Subsequent Administrative Reviews

Since publication of the *Order*, the Department has completed one new shipper review,[10] and six administrative reviews.[11] In addition, we have found four review periods where there have been

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[8] *See Notice of Final Determinations of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the People's Republic of China*, 60 FR 16437 (March 30, 1995) ("*LTFV Final Determination*"). The companion investigation involving alloy magnesium from the PRC ended as a result of the International Trade Commission's final negative injury determinations in that proceeding and, accordingly, an antidumping duty order was issued only for imports of the like pure magnesium product from the PRC.
[9] *See Order*, 60 FR at 25692.
[10] *See Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review*, 63 FR 3085 (January 21, 1998) ("97/98 *New Shipper Review*").
[11] *See Pure Magnesium from the People's Republic of China: Final Results of 2004-2005 Antidumping Duty Administrative Review*, 71 FR 61019 (October 17, 2006) ("*04/05 AR Final*"); *Pure Magnesium from the People's*

either no shipments or no reviewable entries.[12] Since the prior (third) sunset review, the Department has issued two final results of administrative review,[13] and three determinations of no shipments or no reviewable entries.[14]

3. Duty-Absorption Findings, Changed-Circumstances Reviews, Scope Inquiries

The Department has issued three scope rulings during the course of this *Order*.

- November 9, 2006 - alloy magnesium extrusion billets produced in Canada by Timminco, Ltd. from pure magnesium of Chinese origin are not within the scope of the *Order*.[15]

- December 4, 2006 - the processing of pure magnesium from the People's Republic of China by PEM Marignac in France does not substantially transform the pure magnesium and, thus, such magnesium remains a product of the PRC and within the scope of the *Order*.[16]

- July 16, 2015 - Dead Sea Magnesium Ltd.'s proprietary, patented magnesium alloys are covered by the scope of the *Order*.[17]

The Department has not conducted any changed circumstances reviews or duty absorption reviews in the history of this *Order*. The *Order* remains in effect for all manufacturers and exporters of the subject merchandise from the PRC.

Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 76336 (December 16, 2008) ("*06/07 AR Final*"); *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 66089 (December 14, 2009) ("*07/08 AR Final*"); *Pure Magnesium from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010) ("*08/09 AR Final*"); *Pure Magnesium from the People's Republic of China: Final Results of the 2009–2010 Antidumping Duty Administrative Review of the Antidumping Duty Order,* 76 FR 76945 (December 9, 2011) ("*09/10 AR Final*"); *Pure Magnesium from the People's Republic of China: Rescission of Antidumping Duty* Administrative Review, 76 FR 53408 (August 26, 2011) ("*10/11 Rescission*"); *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 79 FR 94, January 2, 2014 ("*11/12 AR Final*").

[12] *See 10/11 Rescission*; *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 29416 (May 22, 2014) ("*12/13 AR Final*"); *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 26541 (May 8, 2015) ("*13/14 AR Final*"); and *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015*, 81 FR 38670 (June 14, 2016) ("*14/15 AR Final*").

[13] *See 9/10 AR Final* and *11/12 AR Final*.

[14] *See 12/13 AR Final, 13/14 AR Final* and *14/15 AR Final*.

[15] *See also Notice of Scope Rulings*, 72 FR 5677 (February 7, 2007).

[16] *See* "Pure Magnesium from the People's Republic of China (A-570-832), Magnesium Metal from the People's Republic of China (A-570-896), and Magnesium Metal from Russia (A-821-819): Final Ruling in the Scope Inquiry on Chinese Magnesium Processed in France," dated December 4, 2006. *See also Notice of Scope Rulings*, 72 FR 5677 (February 7, 2007).

[17] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Dead Sea Magnesium Ltd.'s Patented Magnesium Alloys," dated July 16, 2015. *See also Notice of Scope Rulings*, 81 FR 14421 (March 17, 2016).

4. Prior Sunset Reviews

The Department published its notice of initiation of the first sunset review on April 3, 2000, pursuant to section 751(c) of the Act.[18] As a result of its review, the Department found that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping by the PRC-wide entity at a rate of 108.26 percent, the same rate as found in the investigation.[19] On September 12, 2000, the International Trade Commission ("ITC") determined, pursuant to section 751(c) of the Act, that revocation of the *Order* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[20] On October 27, 2000, the Department published the notice of continuation of the *Order*.[21]

On September 1, 2005, the Department published the notice of initiation of the second sunset review of the *Order* on pure magnesium from the PRC, pursuant to section 751(c) of the Act.[22] As a result of its second review, the Department again found that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping by the PRC-wide entity at a rate of 108.26 percent, the same rate as found in the investigation.[23] On June 26, 2006, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[24] On July 10, 2006, the Department published the notice of continuation of the *Order*.[25]

On June 1, 2011, the Department published the notice of initiation of the third sunset review of the *Order* pursuant to section 751(c) of the Act.[26] As a result of its third review, the Department again found that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping by the PRC-wide entity at a rate of 108.26 percent, the same rate as found in the investigation.[27] On November 8, 2011, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the order would be likely to lead to continuation or recurrence of material

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[18] *See Notice of Initiation of Five-Year ("Sunset") Reviews*, 65 FR 17484 (April 3, 2000).
[19] *See Pure Magnesium from the People's Republic of China; Final Results of Antidumping Duty Sunset Review*, 65 FR 47713 (August 3, 2000) and accompanying Issues and Decision Memorandum ("*First Sunset Final Results*").
[20] *See Pure Magnesium from China*, 65 FR 55047 (September 12, 2000) and USITC Pub. 3346, Inv. No. 731-TA-696 (Review) (August 2000).
[21] *See Continuation of Antidumping Duty Order: Pure Magnesium from the People's Republic of China*, 65 FR 64422 (October 27, 2000).
[22] *See Initiation of Five-Year ("Sunset") Reviews*, 70 FR 52074 (September 1, 2005).
[23] *See Pure Magnesium from the People's Republic of China; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order*, 71 FR 580 (January 5, 2006) and accompanying Issues and Decision Memorandum ("*Second Sunset Final Results*").
[24] *See Pure and Alloy Magnesium from Canada and Pure Magnesium from China*, 71 FR 36359 (June 26, 2006) and USITC Pub. 3859, Inv. Nos. 701-TA-309-A-B and 731-TA-696 (Second Review) (June 2006).
[25] *See Continuation of Antidumping Duty Order: Pure Magnesium from the People's Republic of China*, 71 FR 38860 (July 10, 2006).
[26] *See Initiation of Five-Year ("Sunset") Review*, 76 FR 31588 (June 1, 2011).
[27] *See Pure Magnesium from the People's Republic of China: Final Results of Expedited Third Sunset Review of the Antidumping Duty Order*, 76 FR 62040 (October 6, 2011), and accompanying Issues and Decision Memorandum ("*Third Sunset Final Results*").

injury to an industry in the United States within a reasonably foreseeable time.[28] On November 22, 2011, the Department published the notice of continuation of the *Order*.[29]

LEGAL FRAMEWORK

In accordance with section 751(c) of the Act, the Department is conducting this sunset review to determine whether revocation of the *Order* would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A)-(B) of the Act provide that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigations and subsequent reviews, as well as the volume of imports of the subject merchandise for the period before and after the issuance of the orders.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action ("SAA")[30], the House Report[31], and the Senate Report[32] , the Department's determinations of likelihood will be made on an *Order*-wide, rather than a company-specific, basis.[33] In addition, the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after the issuance of the orders; (b) imports of the subject merchandise ceased after the issuance of the orders; or (c) dumping was eliminated after the issuance of the orders and import volumes for the subject merchandise declined significantly.[34] Alternatively, the Department may determine that revocation of an AD order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.[35]

Furthermore, as a base period of import volume comparison, it is the Department's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of the investigation may dampen import volumes and, thus, skew the comparison.[36] When analyzing import volumes for second and subsequent sunset reviews, the Department's practice is to compare import volumes during the

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[28] *See Pure Magnesium from China*, 76 FR 69284 (November 8, 2011) and USITC Pub. 3859, Inv. Nos. 731-TA-696 (Third Review) (October 2011).
[29] *See Continuation of Antidumping Duty Order: Pure Magnesium from the People's Republic of China*, 76 FR 72172 (November 22, 2011).
[30] *See* HR. Doc. 103-316, vol. 1 (1994) ("SAA").
[31] *See* H. Rep. No. 103-826, pt. 1 (1994) ("House Report")
[32] *See* S. Rep. No. 103-412 (1994) ("Senate Report")
[33] *See* SAA at 879; *see also* House Report at 56.
[34] *See* SAA at 889-890; *see also* House Report at 63-64; Senate Report at 52; *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) ("*Sunset Policy*").
[35] *See* SAA at 889-890; *see also* House Report at 63.
[36] *See, e.g.*, *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.[37]

In addition, section 752(c)(3) of the Act states that the magnitude of the dumping margin likely to prevail if the order were revoked shall be provided by the Department to the ITC. Generally, the Department selects the dumping margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.[38] In certain circumstances, however, a more recently calculated rate may be more appropriate (*e.g.*, "if dumping margins have declined over the life of an order and imports have remained steady or increased, {the Department} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review").[39] Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of "zero or *de minimis* shall not by itself require" the Department to determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at less than fair value.[40]

On February 14, 2012, the Department announced it was modifying its practice in sunset reviews, such that it would not rely on weighted-average dumping margins calculated using the "zeroing" methodology found to be inconsistent with World Trade Organization ("WTO") obligations.[41] In the *Final Modification for Reviews*, the Department stated that "only in the most extraordinary circumstances" would it rely on margins other than those calculated and published in prior determinations.[42] The Department further stated that, apart from the "most extraordinary circumstances", it would "limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent" and that it "may also rely on past dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive."[43]

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[37] *See Ferrovanadium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014), and accompanying Issues and Decision Memorandum.
[38] *See* SAA at 890; *see also Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2.
[39] *See* SAA at 890-91.
[40] *See Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007) and accompanying Issues and Decision Memorandum at Comment 1.
[41] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) ("*Final Modification for Reviews*").
[42] *Id.*
[43] *Id.*, 77 FR at 8109.

DISCUSSION OF THE ISSUES

1. Likelihood of Continuation or Recurrence of Dumping

US Magnesium argues that revocation of the *Order* would likely lead to the continuation or recurrence of dumping because the Department: (1) has, with limited exceptions, consistently found dumping at margins above *de minimis* levels since the *Order* was imposed and since the prior sunset review;[44] and (2) the decline in imports of subject merchandise since the *Order* was imposed indicates that dumping is likely to continue or recur if the *Order* were revoked.[45]

US Magnesium points out that the Department has consistently found high dumping margins throughout the history of the *Order*.[46] Specifically, US Magnesium notes that the Department assigned a best information available ("BIA") rate of 108.26 percent for all exporters of pure magnesium in the original investigation, which also established the PRC-wide entity rate.[47] US Magnesium states that the Department assigned a rate 69.35 percent to Taiyuan Heavy Machinery Import and Export Corporation ("Taiyuan") in the 1996-1997 new-shipper review, and a rate of 111.73 percent to Shanxi Datuhe Coke & Chemicals, Co., Ltd. ("Datuhe") in the 2006-2007 administrative review.[48] US Magnesium also notes that the Department applied this 111.73 rate to Tianjin Magnesium International, Ltd. ("TMI") as adverse facts available ("AFA") in the 2006-2007, 2007-2008, and 2008-2009 administrative reviews, and it applied a calculated rate of 51.26 to TMI in the 2009-2010 administrative review.[49] Thus, US Magnesium contends, although TMI obtained a calculated rate of zero or *de minimis* in the 2004-2005 and 2011-2012 administrative reviews, the dumping margins for all other Chinese producers and exporters have remained very high since the original investigation.[50] US Magnesium notes that TMI's *de minimis* rate in 2011-2012 was based on an insignificant quantity of exports. Moreover, US Magnesium claims that TMI was able to preserve its zero margin since the third sunset review only by not shipping pure magnesium to the United States in subsequent reviews, *i.e.,* the 2012-2013, 2013- 2014, and 2014-2015 administrative reviews. Thus, US Magnesium maintains that revocation of the *Order* likely would lead to a continuation or recurrence of dumping.

US Magnesium notes that the quantity and value of imports of subject merchandise from the PRC declined dramatically after the Department's preliminary determination in the original investigation.[51] After the *Order* was imposed, US Magnesium claims imports of subject merchandise remained at nominal levels, with the exception of the period from 2007 to 2009, when it alleges that TMI attempted to flood the market after it received a zero percent cash deposit rate in the 2004-2005 administrative review.[52] US Magnesium explains that despite the fact that the Department calculated *de minimis* margins for TMI during the 2004-2005 and the

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[44] *See* US Magnesium's Substantive Response at 15-18.
[45] *Id.*, at 18-21.
[46] *Id.*, at 16.
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*, at 19.
[52] *Id.*

2011-2012 reviews, imports of subject merchandise never reached their pre-*Order* volume.[53] Moreover, US Magnesium notes that during the period covered by the instant sunset review (2010-2015), TMI, the only exporter covered by the administrative reviews during this time period, made no shipments during four of the five administrative review periods (the 2010-2011, 2012-2013, 2013-2014, and 2014-2015 periods).[54] Moreover, US Magnesium notes that TMI received a *de minimis* rate in the 2011-2012 administrative review, but shipped only ten metric tons of subject merchandise during that time period.[55]

Based on this analysis of import volumes since the last sunset review, US Magnesium concludes that Chinese exporters cannot ship commercial quantities to the United States without dumping and, therefore, revocation of the *Order* would likely lead to a continuation or recurrence of dumping.[56]

Department Position: As explained in the Legal Framework section above, the Department's determinations of likelihood of continuation or recurrence of dumping will be made on an order-wide basis.[57] In addition, the Department normally will determine 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.[58] In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order.

Pursuant to section 752(c)(1)(A) of the Act, the Department first considered the weighted-average dumping margins determined in the investigation and any subsequent reviews. In the original investigation, the Department found that dumping occurred at levels above *de minimis*.[59] In subsequent reviews, the Department continued to find either dumping margins above *de minimis,*[60] (with the exception of TMI in the 2004-2005 and 2011-2012 administrative reviews[61]), or, no entries of subject merchandise during an administrative review period.[62] As discussed above and in the *Final Modification for Reviews*, the Department has modified its practice in sunset reviews, such that it does not rely on weighted-average dumping margins that are calculated using the "zeroing" methodology. The three previous sunset reviews occurred prior to February 14, 2012, and therefore did not address the issue of zeroing. Accordingly, the

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53 *Id.*, at 21.
54 *Id.*, at 6.
55 *Id.*, at 6 and Exhibit 2, "Pure Magnesium from the People's Republic of China; A-570-832; Response to the Section A Questionnaire by Tianjin Magnesium Metal Co., Ltd., 2011-2012 Administrative Review," dated September 4, 2012 (Public Version).
56 *Id.*, at 21.
57 *See* SAA at 879 and House Report at 56.
58 *See* SAA at 889 and 890, House Report at 63-64, and Senate Report at 52.
59 *See Order*, 60 FR at 25692.
60 *See 97/98 New Shipper Review*, 63 FR at 3092; *First Sunset Final Results*, 65 FR at 47714; *Second Sunset Final Results*, 71 FR at 581; *06/07 AR Final*, 73 FR at 76337; *07/08 AR Final*,74 FR at 66090; and *08/09 AR Final*, 75 FR at 80794.
61 *See 04/05 AR Final*, 71 FR at 61020; *11/12 AR Final*, 79 FR at 95.
62 *See 10/11 Rescission*, *12/13 AR Final*, *13/14 AR Final*, and *14/15 AR Final.*

Department reviewed its official records to establish whether the dumping margins determined in the LTFV investigation were calculated using zeroing. In the *LTFV Final Determination*, the Department assigned as BIA a dumping margin of 108.26 percent to the PRC-wide entity, which did not rely on a methodology that employed zeroing. The 108.26 percent margin represents the highest margin calculated in the investigation,[63] and was assigned in subsequent reviews[64] and thus is indicative of the continued existence of dumping after issuance of the *Order*.[65] Because dumping margins above *de minimis* have prevailed through the majority of the prior segments we are examining, companies have continued to dump with the discipline of an order in place and, based on this past pricing behavior, it is reasonable to conclude that dumping would continue if the *Order* were revoked.

Pursuant to section 752(c)(1)(B) of the Act, the Department also considered the volume of imports of the subject merchandise for the period before and after the issuance of the *Order*. In this case, the volume of imports during the period of this sunset review has decreased. This is reflected in US Magnesium's submitted import statistics.[66] In addition, as explained above, dumping has continued above *de minimis* levels after the issuance of the *Order*. The SAA instructs that "declining (or no) dumping margins *accompanied by* steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked."[67] Therefore, given the decrease in import volumes over the period, and the continued existence of dumping margins, the Department determines that revocation of the *Order* would likely lead to the continuation or recurrence of dumping because dumping margins continued above *de minimis* levels.

2. Magnitude of the Margins Likely to Prevail

US Magnesium argues that the dumping margin of 108.26 percent calculated for all Chinese producers in the original investigation is likely to prevail if the *Order* is revoked because it best represents the behavior of Chinese producers and exporters in the absence of an order. Moreover, US Magnesium notes that this margin was calculated based on the best information available (the precursor to the current practice of facts available ("FA") or adverse facts available ("AFA")), which ensures that it was not based on zeroing. US Magnesium further contends that there is no reason for the Department to deviate from its usual practice of using the original all-others rate because margins have remained at 108.26 percent over the life of the *Order* and subject imports have declined dramatically.[68] US Magnesium states that the Department should

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[63] *See Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Pure Magnesium and Alloy Magnesium from the People's Republic of China*, 59 FR 55424 (November 7, 1994), unchanged in the *LTFV Final Determination*. *See also* Memorandum to the File, "Antidumping duty Investigation of Pure Magnesium from the PRC: Preliminary Determination Margin Calculation," dated October 27, 1994.

[64] *See*, *e.g.*, *First Sunset Final Results, Second Sunset Final Results, 04/05 AR Final, 06/07 AR Final* and *Third Sunset Final Results.*

[65] *See LTFV Final Determination*.

[66] *See* US Magnesium's Substantive Response at Exhibit 1, "U.S. Imports of Subject Pure Magnesium from the People's Republic of China."

[67] *See* SAA at 889-890 (emphasis added).

[68] *See* US Magnesium's Substantive Response at 22 and Exhibit 1.

not use Taiyuan's, TMI's, and/or Datuhe's rates determined in reviews subsequent to the original investigation, given the Department's stated policy of using the "all others" rate from the original investigation for companies not specifically investigated or for companies that did not begin shipping until after the order was issued.[69] However, US Magnesium states that if the Department determines to use Taoyuan's, Datuhe's, or TMI's margins calculated in subsequent reviews, and if these margins were derived using zeroing, the Department may recalculate their rate under the current methodology and report the recalculated margin.[70]

Department Position: Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. The Department's preference is to select a rate from the investigation because it is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.[71] As indicated in the "Legal Framework" section above, the Department's current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology, in accordance with the *Final Modification for Reviews*.

The Department agrees with US Magnesium that it is appropriate to report to the ITC the 108.26 percent rate from the investigation as the margin likely to prevail if the *Order* were revoked. The Department determined the PRC-wide entity rate of 108.26 percent in the original investigation[72] and, as such, it remains the only rate that reflects the behavior of exporters without the discipline of an order in place, and we have received no argument that information from subsequent reviews of the *Order* warrants the use of a more recently calculated dumping margin. Furthermore, this rate, which was also used in all prior sunset reviews, was not calculated using zeroing. Therefore, pursuant to section 752(c)(3) of the Act, we will report to the ITC the 108.26 percent investigation rate for all PRC manufacturers and exporters as the margin likely to prevail, as indicated in the "Final Results of Reviews" section of this memorandum.

FINAL RESULTS OF REVIEW

For the reasons stated above, we determine that revocation of the *Order* on pure magnesium from the PRC would likely lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be weighted-average margins up to 108.26 percent.

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[69] *Id*., at 22.
[70] *Id.*
[71] *See* SAA at 890 and *Sunset Policy*, at section II.B.1; *see also*, *e.g.*, *Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 80 FR 43063 (July 21, 2015), and accompanying Issues and Decision Memorandum at Issue 2.
[72] *See Order*.

RECOMMENDATION

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

☒ ☐

Agree Disagree

1/31/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance