



BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A-570-864]

Pure Magnesium in Granular Form from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATE: [Insert date of publication in the *Federal Register*]

SUMMARY: The U.S. Department of Commerce (“the Department”) is conducting an administrative review of the antidumping duty order on pure magnesium in granular form (“pure granular magnesium”) from the People’s Republic of China (“PRC”) with respect to one producer/exporter for the period of review (“POR”) November 1, 2010, through October 31, 2011.¹ If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on all appropriate entries of subject merchandise during the period of review.

We intend to issue the 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”).

Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Eve Wang, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U. S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6231.

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part*, 76 FR 82268 (December 30, 2011) (“*Initiation*”).

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2011, the Department published in the *Federal Register* a notice of opportunity to request an administrative review of the antidumping duty order on pure granular magnesium from the PRC for the period from November 1, 2010, through October 31, 2011.² On November 20, 2011, the Department received a timely request from US Magnesium LLC (“Petitioner”), in accordance with 19 CFR 351.213(b), for an administrative review of China Minmetals Non-Ferrous Metals Co., Ltd. (“CMN”) in the aforementioned proceeding. On December 30, 2011, in accordance with section 751(a) of the Act, the Department published in the *Federal Register* the initiation notice of the antidumping duty administrative review with respect to CMN.³

In the *Initiation*, the Department stated that if a producer or exporter named in that notice of initiation had no exports, sales, or entries during the period of review (“POR”), it must notify the Department within 60 days of publication of the *Initiation*.⁴ On March 2, 2012, the Department issued a questionnaire to CMN. On March 12, 2012, CMN e-mailed the Department, stating that it had not exported any pure granular magnesium and thus may not be able to provide the information requested in the Department’s questionnaire.⁵ The Department replied that the deadline for the submission of notices of no-shipments had passed, and that the

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 76 FR 67413 (November 1, 2011).

³ See *Initiation*.

⁴ The deadline for a party to submit its notice of no sales was February 28, 2012.

⁵ See the Department’s memo to the file, “2011-2012 Administrative Review of Pure Magnesium in Granular Form from the People’s Republic of China: Email Communication from China Minmetals Non-Ferrous Metals Co., Ltd.” dated April 20, 2012. We note that the Department does not generally accept email communications from a party as the party’s response to the Department’s questionnaire, and we limit those communications to only general procedural questions.

Department would address the treatment of CMN in the preliminary results of this review.⁶

CMN did not submit a response to the Department's questionnaire.

Scope of the Order

The scope of this order excludes pure magnesium that is already covered by an existing order⁷ on pure magnesium in ingot form, and currently classifiable under item numbers 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

The scope of this order includes imports of pure magnesium products, regardless of chemistry, including, without limitation, raspings, granules, turnings, chips, powder, and briquettes, except as noted above.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as "pure" magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an "ASTM Specification for Magnesium Alloy"⁸ (generally referred to as "off-specification pure" magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight. Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials of which the Department is aware used to make such excluded reagents are: lime, calcium metal,

⁶ *Id.*

⁷ 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).

⁸The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys*.

calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nepheline syenite, feldspar, aluminum, alumina (Al₂O₃), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of antidumping duties.

The merchandise subject to this order is currently classifiable under item 8104.30.00 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Separate Rate

Pursuant to section 771(18)(C) 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.⁹ In the *Initiation*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.¹⁰ 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

⁹ See *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); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

¹⁰ See *Initiation*.

NME country under the test established in *Sparklers*,¹¹ as amplified by *Silicon Carbide*.¹²

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.¹³

CMN did not submit a separate rate application or certification to demonstrate its eligibility for separate rate status. As stated in the *Initiation*, “[a]ll firms listed below that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below.”¹⁴ CMN also failed to respond to the Department’s questionnaire. Based on these facts, we determined that CMN has not demonstrated entitlement to a separate rate and is now part of the PRC-wide entity.

The PRC-Wide Entity and Use of Adverse Facts Available (“AFA”)

Sections 776(a) of the Act provide that the Department shall apply “facts otherwise available” if (1) necessary information is not on the record, or (2) an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform

¹¹ See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991).

¹² 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).

¹³ 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).

¹⁴ See *Initiation*, 76 FR at 82269.

the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot serve as a reliable basis, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Because we have determined that CMN is not entitled to a separate rate and is now part of the PRC-wide entity, the PRC-wide entity is now under review. The PRC-wide entity did not respond to our requests for information and, as such, we find it appropriate under section 776(a)(2) of the Act to use facts available as the basis for these preliminary results. Because the PRC-wide entity provided no information, we determine that sections 782(d) and (e) of the Act are not relevant to our analysis. We further find that because the PRC-wide entity failed to respond to the Department's requests for information, it failed to cooperate by not acting to the best of its ability to comply with the Department's requests. Therefore, because the PRC-wide

entity did not cooperate to the best of its ability in the proceeding, the Department finds it appropriate to use an adverse inference in making its determination, pursuant to section 776(b) of the Act.

Selection of the Adverse Facts Available Rate

In deciding what rate to apply as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any other information placed on the record. Because of the PRC-wide entity's failure to cooperate in this administrative review, we have preliminarily assigned the PRC-wide entity an AFA rate of 305.56 percent, which is the PRC-wide rate determined in the investigation of pure magnesium in granular form from the PRC.¹⁵ This is the highest rate on the record for all segments of this proceeding.¹⁶

Corroboration of Facts Available

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall to the extent practicable, corroborate that information from independent sources that are reasonably at the Department's disposal. Secondary information is described in the Statement of Administrative Action ("SAA") as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."¹⁷ The SAA explains that "corroborate" means to determine that the information used has probative value. The Department has determined that to have probative value, information must be reliable and

¹⁵ See *Antidumping Duty Order: Pure Magnesium in Granular Form From the People's Republic of China*, 66 FR 57936 (November 19, 2001).

¹⁶ See *id.*

¹⁷ See The Statement of Administrative Action, reprinted in H.R. Doc. No. 103-216, at 870 (1994) ("SAA") at 870.

relevant.¹⁸ The SAA also explains that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.¹⁹

As stated above, we are applying as AFA the highest and only rate for the PRC-wide entity from any segment of this administrative proceeding. The AFA rate of 305.56 percent selected here is from the investigation.²⁰ This rate was calculated based on information contained in the petition, which was corroborated for the final determination. No additional information has been presented in the current review which calls into question the reliability or relevance of the information and the Department's corroboration. The Department's corroboration analysis of a PRC-wide rate was affirmed by the Court's recent decision in *The Watanabe Group v. United States*, 2010 Lexis 144; Slip Op. 2010-139 (Ct. Int'l Trade Dec. 22, 2010), where the Court held that with no evidence specific to the review and no evidence questioning the prior corroboration of the PRC-wide rate, the Department may rely on the corroborated rate from an earlier segment of the proceeding because doing so is based on a reasonable inference from the current record.

Therefore, the Department finds that the information continues to be reliable and relevant and therefore the rate is corroborated.

¹⁸ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

¹⁹ See SAA at 870; see also *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181, 12183 (March 11, 2005).

²⁰ See *Antidumping Duty Order: Pure Magnesium in Granular Form From the People's Republic of China*, 66 FR 57936 (November 19, 2001).

Preliminary Results

The Department has determined that the following preliminary dumping margin exists for the period November 1, 2010, through October 31, 2011:

Producer/Manufacturer	Weighted-average Margin
PRC-Wide Entity (which includes CMN)	305.56 %

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity (including CMN) at the PRC-wide rate.

Cash Deposit Requirements

If these preliminary results are adopted in the final results, then the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: 1) for previously investigated or reviewed PRC and non-PRC exporters that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; 2) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide entity rate of 305.56 percent; and 3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Since no calculations were performed for these partial preliminary results, no disclosure is required under 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing will be held 37 days after the publication of this notice, or the first business day thereafter unless the Department alters the date pursuant to 19 CFR 351.310(d). Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the *Federal Register* to the Assistant Secretary for Import Administration, U.S. Department of Commerce, pursuant to the Department's e-filing regulations.²¹ Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing. Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(1)(ii). As part of the case brief, parties are encouraged to provide a summary of the arguments and a table of authorities cited in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed in accordance with 19 CFR 351.309(d). All briefs must be filed in accordance with the Department's e-filing regulations.²² The Department intends to issue the final results of this review, which will include the results of its analysis of issues raised in the

²¹ See <https://iaaccess.trade.gov/help/IA%20ACCESS%20User%20Guide.pdf>.

²² *Id.*

briefs, not later than 120 days after the date of publication of this notice in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Paul Piquado
Assistant Secretary
for Import Administration

July 27, 2012 _____
Date

[FR Doc. 2012-18912 Filed 08/01/2012 at 8:45 am; Publication Date: 08/02/2012]