

Suspension of liquidation will be extended accordingly.

This notice is published in accordance with section 735(a)(2) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of Assistant Secretary for Import Administration.

Dated: April 23, 2001.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-864]

#### **Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Pure Magnesium in Granular Form From the People's Republic of China**

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

**EFFECTIVE DATE:** April 30, 2001.

**FOR FURTHER INFORMATION CONTACT:**

James Nunno or Christopher Priddy, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0783 or (202) 482-1130, respectively.

#### **The Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

#### **Preliminary Determination**

We preliminarily determine that pure magnesium in granular form (granular pure magnesium) from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

#### **Case History**

Since the initiation of this investigation (*Initiation of Antidumping*

*Duty Investigations: Pure Magnesium from Israel, the Russian Federation, and the People's Republic of China*, 65 FR 68121 (Nov. 14, 2000)) (*Notice of Initiation*), the following events have occurred:

On December 1, 2000, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (*see* ITC Investigation No. 731-TA-895-897).

Also on December 1, 2000, the petitioners in this case (*i.e.*, the Magnesium Corporation of America (Magcorp) and the United Steel Workers of America, Locals 482 and 8319) requested that the Department modify the scope of this investigation to exclude certain magnesium products that are prepared solely for use as a desulfurizer in steel-making from the scope of the investigation. On December 4, 2000, we received comments on the scope of the investigation from ESM Group, Inc. (ESM), a U.S. manufacturer of magnesium powder and desulfurizing reagents. In its submission, ESM requested that the Department exclude from the scope: (1) Magnesium-based reagents, in accordance with the petitioners' intention not to capture such products; and (2) pure magnesium in granular form, because it is a separate class or kind of merchandise from magnesium ingots. For further discussion, see the "Scope of Investigation" and "Comments on Scope" sections of the notice, below.

On December 11, 2000, the Department issued an antidumping questionnaire to the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and requested that MOFTEC forward the questionnaire to all companies which manufactured and/or exported the subject merchandise during the period of investigation (POI). We also sent courtesy copies of the antidumping duty questionnaire to the China Chamber of Commerce of Metals, Minerals, and Chemicals Importers and Exporters, and to each of the companies identified in the petition as possible exporters/producers of the subject merchandise during the POI. The letters provided to MOFTEC and those companies identified in the petition as producers and/or exporters of pure magnesium provided deadlines for responses to the different sections of the questionnaire.

On January 9, 2001, the Department received a section A questionnaire response from Minmetals Precious & Rare Minerals Import and Export

(Minmetals/CNNMIT).<sup>1</sup> On January 23, 2001, the Department received section C and D questionnaire responses from Minmetals/CNNMIT and its suppliers, Taiyuan Shi Geng Yang Enterprise Company, Ltd. (Taiyuan) and Wealth (HEBI) Co., Ltd. (HEBI). We issued supplemental questionnaires to Minmetals/CNNMIT, Taiyuan, and HEBI and received responses to these supplemental questionnaires in February and March 2001.

On January 19, 2001, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production. We received responses from both the petitioners and Minmetals/CNNMIT on February 13, 2001. The petitioners and Minmetals/CNNMIT filed rebuttal comments on surrogate values in February and March 2001.

On March 1, 2001, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request and, on March 6, 2001, postponed the preliminary determination until no later than April 23, 2001. *See Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Pure Magnesium From Israel, the Russian Federation, and the People's Republic of China and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Pure Magnesium From Israel*, 66 FR 14546, 14547 (Mar. 13, 2001).

#### **Postponement of the Final Determination**

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On April 12, 2001, Minmetals/CNNMIT requested that, in the event of

<sup>1</sup> As of February 15, 2001, Minerals Precious & Rare Minerals Import and Export changed the name of its company to China National Nonferrous Metals Industry Trading Group Corp.

an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. Minmetals/CNNMIT also included a request to extend the provisional measures to not more than six months. Accordingly, since we have made an affirmative preliminary determination, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination.

#### Scope of Investigation

There is an existing antidumping duty order on pure magnesium from the PRC. *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). The scope of this investigation excludes pure magnesium that is already covered by the existing order, and classifiable under 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

The scope of this investigation 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 pure 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, and that do not conform to an "ASTM Specification for Magnesium Alloy"<sup>2</sup> (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, except that mixtures containing 90 percent or less pure magnesium, by weight, when mixed with lime, calcium metal, calcium silicon, calcium carbide, calcium

carbonate, carbon slag coagulants, and/or fluorspar, are excluded.

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

#### Comments on Scope

In accordance with our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit such comments within 20 calendar days of publication of the *Notice of Initiation*. *See Notice of Initiation*, 65 FR at 68123. On December 1, 2000, the petitioners requested that the Department clarify that the scope of this investigation excludes finished mixtures containing pure magnesium and/or off-specification pure magnesium prepared solely for use as a desulfurizer in steel-making, unless such mixtures contain only minimal amounts of non-magnesium materials in order to circumvent an antidumping order. On December 4, 2000, ESM submitted a letter supporting the petitioners' position that magnesium-based reagents should not be included in the scope of the Department's investigation. On January 30, 2001, the petitioners submitted proposed language to further clarify their intent with respect to the scope of this investigation. Based on this submission, we have revised the scope to exclude reagent magnesium.

In its December 4 submission, ESM also argued that pure magnesium ingot and granular magnesium constitute separate classes or kinds of merchandise and that the Department should exclude granular magnesium from the scope of the investigation. However, we note that the scope of the investigation includes only granular magnesium. As a consequence, ESM's comments provide no basis for altering the scope.

On April 10, 2001, Rossborough Manufacturing Co., L.P., requested that the Department amend the scope of this investigation to exclude certain additional reagent mixtures and imports of granular magnesium used for making reagent mixtures. Rossborough's submission was filed too late to be given proper consideration for purposes of the preliminary determination, but we will consider these issues for the final determination.

#### Period of Investigation

Pursuant to 19 CFR 351.204(b)(1), the POI for an investigation involving merchandise from a non-market

economy is the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, October 2000). Therefore, in this case, the POI is April 1, 2000, through September 30, 2000.

#### Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy (NME) country in all past antidumping investigations. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (Dec. 31, 1998) (Mushrooms). A designation as a NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act.

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the "Normal Value" section of the notice, below.

No party in this investigation has requested a revocation of the PRC's NME status. We have, therefore, preliminarily continued to treat the PRC as a NME.

#### Separate Rates

Minmetals/CNNMIT is owned by "the whole people" and has provided the separate rates information in its section A response. Minmetals/CNNMIT has stated that there is no element of government ownership or control and has requested a separate company-specific rate.

As stated in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 25586 (May 2, 1994) (*Silicon Carbide*) and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 25545 (May 8, 1995) (*Furfuryl Alcohol*), ownership of the company by "all the people" does not require the application of a single rate. Accordingly, Minmetals/CNNMIT is eligible for consideration of a separate rate.

The Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain*

<sup>2</sup> The 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*.

*Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (Nov. 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (Nov. 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value*, 60 FR 14725, 14726 (Mar. 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991), as modified by *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. See *Silicon Carbide* and *Furfuryl Alcohol*.

#### 1. Absence of De Jure Control

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) any other formal measures by the government decentralizing control of companies.

Minmetals/CNNMIT has placed on the record a number of documents to demonstrate absence of *de jure* control, including the "Law of the People's Republic of China on Industrial Enterprises Owned By the Whole People," and the 1992 regulations that supplemented it, "Provisions on Changing the Systems of Business Operations for State Owned Enterprises."

In prior cases, the Department has analyzed these laws and found that they establish an absence of *de jure* control. See, e.g., *Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China*, 60 FR 29571, 29573 (June 5, 1995);<sup>3</sup> *Notice of Final Determination of*

*Sales at Less Than Fair Value: Manganese Metal From the People's Republic of China*, 60 FR 56045, 56046 (Nov. 6, 1995). We have no new information in this proceeding which would cause us to reconsider this determination. For the purposes of this investigation and in prior cases, the Department has also analyzed the "Industrial Enterprises Law" and found that this law establishes mechanisms for private control of companies which indicate an absence of *de jure* control. See *Pure Magnesium from the People's Republic of China: Final Results of New Shipper Review*, 63 FR 3085, 3086 (Jan. 21, 1998).

According to Minmetals/CNNMIT, pure magnesium exports are not affected by export licensing provisions or export quotas. Minmetals/CNNMIT claims to have autonomy in setting the contract prices for sales of granular pure magnesium through independent price negotiations with its foreign customers without interference from the PRC government. Based on the assertions of Minmetals/CNNMIT, we preliminarily determine that there is an absence of *de jure* government control over the pricing and marketing decisions of Minmetals/CNNMIT with respect to its granular pure magnesium export sales.

#### 2. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Mushrooms*, 63 FR at 72257. Therefore, 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.

The Department typically 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 subject to, the approval of a governmental authority; (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 its 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. See *Id.*

Minmetals/CNNMIT has asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, Minmetals/CNNMIT's questionnaire responses indicate that it does not coordinate with other exporters in setting prices or in determining which companies will sell to which markets. This information supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of these companies. Consequently, we preliminarily determine that Minmetals/CNNMIT has met the criteria for the application of separate rates.

#### *PRC-Wide Rate and Use of Facts Otherwise Available*

As in all NME cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters or producers located in the NME comprise a single exporter under common government control, the "NME entity." The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate.

Information on the record of this investigation indicates that there are numerous producers/exporters of the subject merchandise in the PRC. As noted in the "Case History" section above, all exporters were given the opportunity to respond to the Department's questionnaire. Based upon our knowledge of PRC exporters and the fact that U.S. import statistics show that responding companies did not account for all imports into the United States from the PRC, we have preliminarily determined that PRC exporters of granular pure magnesium failed to respond to our questionnaire.

Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the

*Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472, 54474 (Oct. 24, 1995)

<sup>3</sup> This was unchanged in the final determination. See *Notice of Final Determination of Sales at Less*

administering authority shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.

Section 776(b) of the Act further provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The producers/exporters that decided not to respond to the Department's questionnaire failed to act to the best of their ability in this investigation. Absent a response, we must presume government control of these companies. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19028 (Apr. 30, 1996); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (Feb. 4, 2000). Moreover, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted.

In accordance with our standard practice, as adverse facts available, we are assigning as the PRC-wide rate the higher of: (1) The highest margin stated in the notice of initiation; or (2) the highest margin calculated for any respondent in this investigation. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China*, 64 FR 34660 (May 31, 2000) and accompanying decision memorandum at *Comment 1*. In this case, the preliminary adverse facts available margin is 305.56 percent, which is the highest margin stated in the notice of initiation. *See Notice of Initiation*, 65 FR at 68124.

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also SAA at 870*. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See SAA at 870*. The SAA also states 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. *See SAA at 870*.

In order to determine the probative value of the margins in the petition for use as adverse facts available for purposes of this determination, we examined evidence supporting the calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and NV calculations on which the margins in the petitions were based.

In order to corroborate the petition's EP calculations, we compared the prices in the petition for granular pure magnesium to the prices submitted by Minmetals/CNNMIT. In order to corroborate the petitioners' NV calculation, we compared the petitioners' factor consumption and surrogate value data for granular pure magnesium to the data reported by Taiyuan and HEBI for the most significant factors—material inputs, energy, labor, factory overhead, and selling, general, and administrative (SG&A) expenses, and profit—and to the values selected for the preliminary determination, as discussed below.

As discussed in the April 23, 2001, memorandum from the team to the file entitled "Corroboration of Data Contained in the Petition for Assigning an Adverse Facts Available Rate," we found that the U.S. price and factors of production information in the petition to be reasonable and of probative value. As a number of the surrogate values selected for the preliminary determination differed from those used in the petition, notably the values for ferrosilicon, dolomite, electricity, and coal, we compared the petition margin calculations to the calculations based on the selected surrogate values wherever possible and found they were reasonably close. Therefore, we preliminarily determine that the petition information continues to have probative value. Accordingly, we find that the highest margin stated in the notice of initiation, 305.56 percent, is corroborated within the meaning of section 776(c) of the Act.

#### Fair Value Comparisons

To determine whether sales of the subject merchandise by Minmetals/CNNMIT for export to or within the United States were made at LTFV, we compared the EP to the NV, as described in the "Export Price," and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we

compared POI-wide weighted-average EPs to the NV.

#### Export Price

For Minmetals/CNNMIT, we used EP methodology in accordance with section 772(a) of the Act because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and constructed export price methodology was not otherwise appropriate. We calculated EP based on packed CIF prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight from the plant to the port of export, foreign brokerage and handling, marine insurance, and ocean freight. As certain of these movement services were provided by NME suppliers, we valued them using Indian rates. For further discussion of our use of surrogate data in an NME proceeding, as well as selection of India as the appropriate surrogate country, see the "Normal Value" section of this notice, below.

For foreign inland freight we used price quotes obtained by the Department from Indian truck freight companies in November 1999. These price quotes were recently used in the administrative review of persulfates from the PRC, and were also used in the investigation of bulk aspirin from the PRC. *See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review*, 66 FR 18439, 18441 (Apr. 9, 2001) (*Persulfates 1999–2000 Preliminary Results*); *Notice of Preliminary Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 116, 118 (Jan. 3, 2000).

With respect to foreign brokerage and handling, marine insurance and ocean freight, Minmetals/CNNMIT asserted that it used market-economy suppliers for its shipments of granular pure magnesium. However, based on the submitted information, we could not establish that the brokerage and handling and marine insurance expenses Minmetals/CNNMIT paid reflect prices set by market-economy carriers. Specifically, we found that Minmetals/CNNMIT was unable to demonstrate that its brokerage and handling expenses were invoiced in a market-economy currency. Furthermore, marine insurance was paid to a PRC company, not a market-economy supplier. Regarding ocean freight, while Minmetals/CNNMIT did provide an invoice from a market-economy supplier in a market-economy currency, it was

unable to demonstrate that it paid for this expense in such currency.<sup>4</sup> For further discussion, see the April 23, 2001, concurrence memorandum from the team. Therefore, in accordance with our practice, we based these charges on surrogate values. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (Apr. 13, 2000) and accompanying decision memorandum at *Comment 3*; and *Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 49537 (Aug. 14, 2000) (*Sebacic Acid 1998–1999 Final Results*) and accompanying decision memorandum at *Comment 8*.

Accordingly, we valued foreign brokerage and handling expenses using public information reported in the new shipper review of stainless steel wire rod from India. See *Certain Stainless Steel Wire Rod From India: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews*, 63 FR 48184, 48185 (Sept. 9, 1998); see also the “Preliminary Determination Factors Valuation Memorandum from the Team to the File,” dated April 23, 2001, at page 6 (*Factors Memorandum*). For marine insurance we used the June 1998 marine insurance data used in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Notice of Intent To Revoke Order in Part*, 65 FR 41944, 41948 (July 7, 2000).<sup>5</sup> For ocean freight we used the freight expense reported by the respondent as a surrogate value, for the reasons noted above. Where appropriate, we adjusted the values to reflect inflation up to the POI using the wholesale price indices (WPI) or producer price indices (PPI) published by the International Monetary Fund (IMF).

<sup>4</sup> Nonetheless, we have used this information as a surrogate value because it is a price set by a market-economy supplier in U.S. dollars for transporting the subject merchandise during the POI. As such, we find that it represents a better surrogate value than the other surrogate information on the record of this case (i.e., the 1996 data obtained from the Federal Maritime Commission found in the IA website and used in the petition).

<sup>5</sup> This was unchanged in the final results. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 1953 (Jan. 10, 2001) (*TRBs 1998–1999 Final Results*).

## Normal Value

### A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of overall economic development. See Memorandum from Jeffrey May to Louis Apple, dated January 18, 2001.

According to the available information on the record, we have determined that both India and Indonesia meet the statutory requirements for an appropriate surrogate country for the PRC. For purposes of the preliminary determination, we have selected India as the surrogate country, based on the quality and contemporaneity of the currently available data. Accordingly, we have calculated NV using Indian values for the PRC producers' factors of production. We have obtained and relied upon publicly available information wherever possible.

### B. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by Minmetals/CNNMIT for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian surrogate values.

For purposes of calculating NV, we valued PRC factors of production, in accordance with section 773(c)(1) of the Act. Factors of production 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 cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) An average non-export value; (2) representative of a range of prices within the POI or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive. For a more detailed explanation of the methodology used in calculating various surrogate values, see the *Factors Memorandum*. In accordance with this methodology, we valued the factors of production as follows:

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to Indian surrogate values surrogate freight costs using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997). For foreign inland freight on inputs we used price quotes obtained by the Department from Indian truck freight companies in November 1999. As noted above, these price quotes were used in *Persulfates 1999–2000 Preliminary Results*, and were also used in the investigation of bulk aspirin from the PRC. With regard to rail freight, we based our calculation on information from the *Indian Railway Conference Association*. Where appropriate, we adjusted the values to reflect inflation up to the POI using the WPI published by the IMF.

We valued fluorite powder using 1998 Indian import statistics as published by the United Nations. We valued ferrosilicon and dolomite using price quotes obtained by Minmetals/CNNMIT from Tata International Limited, an Indian producer of ferro-alloys. Where appropriate, we adjusted the values to reflect inflation up to the POI using the WPI published by the IMF.

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value coal, we relied on import prices contained in the March 1999 issue of *Monthly Statistics of the Foreign Trade of India*. These data were used in the antidumping duty administrative review of persulfates from the PRC. See *Persulfates 1999–2000 Preliminary Results*, 66 FR at 18442. We adjusted the values to reflect inflation up to the POI using the WPI published by the IMF. For electricity, we derived a surrogate value based on 1998/1999 electricity price data published by Tata Energy Research Institute. These data were used in the antidumping duty administrative review of manganese metal from the PRC. See *Notice of Final Results of Antidumping Duty Administrative Review of Manganese Metal from the People's Republic of China*, 66 FR 15076 (Mar. 15, 2001) and accompanying decision memorandum at *Comment 10*. See also *Persulfates 1999–2000 Preliminary Results*, 66 FR at 18442. We adjusted the electricity values to reflect inflation up

to the POI using the electricity-specific price index published by the Reserve Bank of India.

We valued grinding services provided by a subcontractor using the factors of production reported for this company, because we were unable to obtain a surrogate value for its services. Specifically, we valued the labor and electricity factors of production using the same sources noted above. In addition, we added amounts for factory overhead, depreciation, SG&A expenses, and interest expenses derived from the financial statements of Southern Magnesium and Chemicals Ltd., an Indian magnesium metal producer. This information was supplied by the petitioners in the petition. Because these financial statements showed a loss, we calculated a profit ratio using the 1998/1999 financial aggregates and ratios data published by the Economic Intelligence Service and the Centre for Monitoring Indian Economy. This information was supplied by Minmetals/CNNMIT in its February 13, 2001, surrogate value submission. For further discussion, see the April 23, 2001, concurrence memorandum from the team.

To value plastic bags, plastic wrapper, and wooden pallets (*i.e.*, the packing materials reported by the respondent), we used import values from the *Monthly Statistics*.

To determine factory overhead, depreciation, SG&A expenses, and interest expenses, and profit for the finished product, we relied on rates derived from the financial statements noted above.

#### Verification

As provided in section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

#### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of any entries of pure magnesium from PRC entered, or withdrawn from warehouse, for consumption on or after the date on which this notice is published in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Manufacturer/exporter	Percent margin
Minmetals Precious & Rare Minerals Import and Export/China National Nonferrous Metals Industry Trading Group Corp .....	8.76
PRC-wide .....	305.56

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above.

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

#### Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding within five days of the publication of this notice. See 19 CFR 351.224(b).

#### Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the publication of this notice in the **Federal Register**.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01-10684 Filed 4-27-01; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-821-813]

### Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation

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

**EFFECTIVE DATE:** April 30, 2001.

**FOR FURTHER INFORMATION CONTACT:** James Nunno or Christopher Priddy, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0783 or (202) 482-1130, respectively.

#### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

#### Preliminary Determination

We preliminarily determine that pure magnesium from the Russian Federation (Russia) is not being, nor is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Act.