

reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1)(B) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 5, 1998.

Robert S. LaRussa,
Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-814]

Pure Magnesium From Canada; Preliminary Results of Antidumping Administrative Review and Notice of Intent Not To Revoke Order in Part

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

ACTION: Notice of preliminary results of antidumping duty administrative review and notice of intent not to revoke order in part of pure magnesium from Canada.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on pure magnesium from Canada. The period of review is August 1, 1996 through July 31, 1997. This review covers imports of pure magnesium from one producer/exporter.

We have preliminarily found that sales of subject merchandise have not been made below normal value. Further, we intend not to revoke the order with respect to pure magnesium from Canada produced by Norsk Hydro Canada Inc. If these preliminary results are adopted in our final results, we will instruct the Customs Service not to assess antidumping duties.

Interested parties are invited to comment on these preliminary results. We will issue the final results not later

than 120 days from the date of publication of this notice.

EFFECTIVE DATE: May 12, 1998.

FOR FURTHER INFORMATION CONTACT: Zak Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482-1279.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations refer to the regulations, codified at 19 CFR part 351 (62 FR 27399, May 19, 1997).

Background

The Department published an antidumping duty order on pure magnesium from Canada on August 31, 1992 (57 FR 39390). On August 4, 1997, the Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on pure magnesium from Canada (62 FR 41925). On August 29, 1997, a producer/exporter, Norsk Hydro Canada Inc. ("NHCI") requested an administrative review of its exports of the subject merchandise to the United States for the period of review August 1, 1996, through July 31, 1997. In accordance with 19 CFR 351.221, we initiated the review on September 25, 1997. The Department is now conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The product covered by this review is pure magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope currently classifiable under subheading 8104.11.0000 of the Harmonized Tariff Schedule ("HTS"). The HTS item number is provided for convenience and for customs purposes. The written description remains dispositive.

Verification

As provided in section 751(d) of the Act, we verified information provided by the respondent, NHCI, by using our standard verification procedures,

including on-site examination of relevant sales and financial records.

Export Price

For sales to the United States, we used export price ("EP") as defined in section 772(a) of the Act because the merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. The use of constructed export prices was not warranted based on the facts of the record. EP was based on the packed delivered, duties unpaid price to unaffiliated purchasers in the United States. We made a deduction for movement expenses in accordance with section 772(c)(2)(A) of the Act; this included the foreign and U.S. inland freight expense.

Normal Value

We compared the aggregate quantity of home market and U.S. sales and determined that the quantity of the company's sales in its home market was more than five percent of the quantity of its sales to the U.S. market. Consequently, pursuant to section 773(a)(1)(B) of the Act, we based normal value ("NV") on home market sales.

We made adjustments for differences in packing in accordance with sections 773(a)(6)(A), B(i) of the Act. We also made adjustments for movement expenses, consistent with section 773(a)(6)(B)(ii) of the Act, for inland freight. In addition, we made adjustments for differences in circumstances of sale ("COS") in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on home market sales (credit expenses) and adding U.S. direct selling expenses (credit expenses).

Revocation

Pursuant to 19 CFR 351.222(b)(2), NHCI requested revocation of the antidumping duty order in part. In accordance with 19 CFR 351.222(e), the request was accompanied by certifications that NHCI had not sold the subject merchandise at less than normal value during the current period of review and would not do so in the future. NHCI further certified that it sold the subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. NHCI also agreed to immediate reinstatement of the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that NHCI, subsequent to the revocation, sold the

subject merchandise at less than normal value.

On October 22 and November 6, 1997, the petitioner submitted argumentation opposing NHCI's revocation request. On February 12, 1998, the Department established a process for the submission of factual information and argument pertaining to the issue of likelihood of future dumping.

Interested Party Comments on Whether Future Dumping Is Likely

On April 2 and April 9, 1998, NHCI and the petitioner submitted comments and rebuttals, respectively, on the issue of whether it is likely that NHCI would resume dumping if the Department granted NHCI's revocation request.

Petitioner's Arguments: The petitioner contends that NHCI did not make sales in commercial quantities during the last three consecutive review periods, and thus has not fulfilled one of the revocation requirements under the new regulations. In this case, the petitioner states that although one sale during a one-year period may be sufficient for the calculation of an antidumping margin, it does not constitute commercial quantities for the relevant product and industry. The petitioner also argues that the dramatic decline in NHCI's sales after the imposition of the order is indicative of NHCI's inability to make sales in the United States without dumping.

The petitioner made comments as to the condition of the pure magnesium market as well. The petitioner argues that the likelihood that NHCI will resume dumping is all the greater because of the substantial fall and continuing decline in magnesium prices that has occurred over the past two years, which is due to a fundamental oversupply in the global market. According to the petitioner, this oversupply will be exacerbated in coming years as new production facilities come on line in Canada (unrelated to NHCI) and in third countries. Furthermore, NHCI has plans to increase its own production capacity, which, according to the petitioner, will contribute to the oversupply in the global market and thus, likely lead to a resumption of dumping. In response to NHCI's argument that it is focusing on the alloy market, the petitioner states that greater competition in magnesium products along with supply exceeding demand will pressure NHCI to engage the U.S. pure magnesium market. Furthermore, according to the petitioner, if NHCI vigorously enters the U.S. pure magnesium market it will be facing a situation where pure

magnesium prices are actually on the decline, making dumping more likely.

Respondent's Arguments: NHCI argues that it has met all the procedural requirements for revocation. It has made the proper submissions and certifications, has a record of three years of U.S. sales at not less than normal value, and will continue to trade fairly and abide by trade laws in all markets. In response to the petitioner's allegations with respect to commercial quantities, NHCI argues that the Department has stated in past cases that there has been no substantive change of the revocation policy pursuant to the new regulations, and thus no additional revocation threshold in the form of the certification of sales in commercial quantities has been created. Rather, NHCI states that the Department should give great weight to the fact that it has met the Department's requirement of three consecutive years without dumping, all based on bona fide sales.

With respect to the likelihood of future dumping, NHCI argues that it has no incentive to engage in dumping in the U.S. pure magnesium market because it has a stable customer base in Canada and third countries. Additionally, it has no incentive to shift production from alloy magnesium to pure magnesium, given the growth in the alloy magnesium market. While NHCI's planned plant expansion may give it the ability to produce more pure magnesium for sale in the U.S. market, the company contends that the planned expansion is for the alloy magnesium market, and that any increases in production are not necessarily targeted for the United States. Even if some of the new production capacity were for pure magnesium, NHCI states that there has been growth in all magnesium markets, not just alloy. NHCI notes that such market conditions do not lend themselves to dumping.

NHCI maintains that the growth in the alloy magnesium market accounts for the drop off in NHCI's U.S. sales of pure magnesium. In support of its position, NHCI argues that the Norsk Hydro group produces the subject merchandise in both Canada and Norway, yet sales from Norway also declined during the same period, despite the absence of antidumping duties applicable to Norwegian imports. NHCI explains that the controlling factor for these marketing decisions has been the growth of the alloy magnesium market.

Department Analysis

Section 351.222(b)(2) of the Department's regulations states that the Secretary may revoke an order in part if the Secretary concludes that: (i) the

exporter or producer has sold the merchandise at not less than normal value for a period of three consecutive years; (ii) it is not likely that the person will in the future sell the merchandise at less than normal value; and (iii) the person agrees in writing to its immediate reinstatement in the order if the Secretary concludes that dumping has resumed (see, 19 CFR 351.222(b) (1998)). If these preliminary results are adopted as final results, NHCI will have met the first criterion. NHCI's agreement to its immediate reinstatement in the order if the Secretary concludes that dumping has resumed meets the third criterion. Thus, the issue is whether the evidence supports a finding that it is not likely that NHCI will in the future sell the merchandise at less than normal value.

When making this determination, the Department looks at all relevant information on the record (see, Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent To Revoke Order in Part (63 FR 6519, 6523, February 9, 1998) ("Canadian Brass Sheet")). When assessing whether a company is not likely to sell at less than normal value in the future, the lack of dumping over the course of three years can be predictive of future behavior in the absence of contrary evidence. Where, as was done here, the petitioner makes a compelling argument that dumping may occur in the future if the order is revoked, the Department may request and consider additional relevant evidence in making its revocation decision. As we stated in Canadian Brass Sheet, "the Department has considered, in addition to the respondent's prices and margins in the preceding periods, such other factors as conditions and trends in the domestic and home market industries, currency movements, and the ability of the foreign entity to compete in the U.S. marketplace without sales at less than normal value." *Id.* See also, Brass Sheet and Strip from Germany; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part (61 FR 49727, 49730, September 23, 1996) ("German Brass Sheet").

Following the general practice discussed above, we closely examined NHCI's ability to compete in the U.S. market without sales at less than normal value. We based this particular analysis on NHCI's historical sales behavior, examining in particular its behavior prior to and after the issuance of the antidumping duty order. We also analyzed trends and conditions in the

U.S. and Canadian magnesium markets. (For a further discussion of the factual background to our decision, see, Memorandum to Gary Taverman dated May 4, 1998.) As discussed below, we preliminarily find that the evidence on the record does not support a conclusion that the standard for revocation has been met in this case.

An examination of the history of NHCI's U.S. pure magnesium sales behavior reveals that prior to the antidumping order NHCI had numerous U.S. pure magnesium customers and sold very large quantities of pure magnesium. Yet, after the investigation, in which the Department found that NHCI was making sales at less than normal value, imports of pure magnesium into the United States essentially stopped. In the two years after the imposition of the antidumping order, NHCI made no sales of pure magnesium into the United States. Furthermore, in the succeeding three years sales were negligible (*i.e.*, for each year, sales were less than one-half of one percent of the sales volume made in the last completed fiscal year prior to the order). The severe and abrupt drop-off in sales by NHCI after the order is a strong indicator that the company is unable to sell in the United States without engaging in dumping. As noted in German Brass Sheet, "the sharp decrease in volume after imposition of the order . . . suggest[s] that [the respondent] has difficulty selling [the subject merchandise] above fair value" (at 61 FR 49731). Thus, based on the virtual abandonment of the U.S. pure magnesium market by NHCI, it is reasonable to assume that the company has difficulty selling pure magnesium in the United States at or above normal value.

In order for the Department to revoke the antidumping duty order with respect to NHCI, the record evidence must support a finding that it is not likely that the company will sell at less than normal value in the future. As noted above, three years of no dumping is normally probative as to a company's future pricing practices. However, this approach assumes the company continues to participate meaningfully in the U.S. market. In this case, the three years in question are characterized by a negligible number and volume of sales by NHCI to the U.S. market and therefore does not have the same probative value.

NHCI states that the decline in its U.S. sales is not due to its inability to make sales above normal value, but rather due to its focus on the alloy magnesium market. We do not accept this explanation for two reasons. First, while

we recognize the recent and projected rapid growth rates for alloy magnesium, we find it extremely difficult to conclude that NHCI's abrupt abandonment of the U.S. market for pure magnesium was unrelated to the dumping proceedings.

Second, given the size and importance of the U.S. pure magnesium market and NHCI's continued sales of pure magnesium in other markets, we are not convinced that NHCI has permanently changed its marketing and sales strategy to focus solely on alloy magnesium. Although the company implies that it has little interest in the U.S. market for pure magnesium, we note that NHCI maintains significant sales of pure magnesium in Canada and third countries. The magnitude of NHCI's pure magnesium sales in Canada reflects the current global reality of a higher demand for pure than alloy magnesium. The higher demand for pure magnesium also exists in the United States. U.S. consumption of pure magnesium in 1996, for instance, was nearly triple that of alloy magnesium consumption. Given the mix of magnesium products (alloy versus pure) in the United States and the fact that the United States is the largest market in the world for pure magnesium, it appears likely that NHCI, in the absence of the antidumping duty order, would seek to reestablish itself in the U.S. pure magnesium market.

Thus, based on the above, we preliminarily conclude that the revocation standard has not been met in this case. Therefore, we have preliminarily determined not to revoke the antidumping duty order with respect to pure magnesium from Canada produced by NHCI.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that NHCI's margin for the period August 1, 1996, through July 31, 1997, is zero.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Interested parties may also request a hearing within thirty days of publication. If requested, a hearing will be held 37 days after publication. Interested parties may submit case briefs within thirty days of publication. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than five days after the case briefs. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such briefs, within 120 days from the publication of these preliminary results.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of pure magnesium from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required for the company if its weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less than fair value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21 percent, the "all others" rate established in Pure Magnesium from Canada; Amendment of Final Determination of Sales At Less Than Fair Value and Order in Accordance With Decision on Remand (58 FR 62643, November 29, 1993).

This notice serves as a preliminary reminder to importers of their responsibility 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.

This administrative review and notice are in accordance with sections 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR section 351.213.

Dated May 4, 1998.

Robert S. LaRussa,
Assistant Secretary for Import
Administration.

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