

under the authority of Title 13 of the United States Code (U.S.C.), and collected by the BEA under the authority of the International Investment and Trade in Services Survey Act by identifying data-quality issues arising from reporting differences in the Census Bureau and BEA surveys. The Census Bureau and BEA will publish nonconfidential aggregate reports (public use) that have cleared the BEA and Census Bureau disclosure review.

DATES: The Census Bureau will make certain business data collected from the 2002 Economic Census, as discussed in this notice, available to BEA on October 4, 2004.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information on this proposed program should be directed to Mr. Julius Smith, Jr., Chief, Special Studies Branch, Manufacturing and Construction Division, U.S. Census Bureau, 4700 Silver Hill Road, Washington, DC 20233-6900, by phone at (301) 763-7662, by fax at (301) 457-1318 or by e-mail at julius.smith.jr@census.gov.

SUPPLEMENTARY INFORMATION:

Background

The CIPSEA (Pub. L. 107-347, Subtitle V; 44 U.S.C. 3501 *et seq.*) and the International Investment and Trade in Services Survey Act (Pub. L. 94-472 as amended; 22 U.S.C. 3101-3108) allow the BEA and the Census Bureau to share certain business data for exclusively statistical purposes. Section 524(d) of the CIPSEA requires a **Federal Register** notice announcing the intent to share data (allowing 60 days for public comment). On June 30, 2004 (69 FR 39408), the Census Bureau published in the **Federal Register** a notice of this proposed data-sharing activity and requested comments on the subject. The Census Bureau did not receive any public comments.

Shared Data

The Census Bureau will provide the BEA with certain business data from its Business Register and collected from the 2002 Economic Census. The BEA also will share data from its 2002 Foreign Direct Investment in the United States survey. The BEA issued a separate notice addressing this issue.

The BEA will use these data for statistical purposes exclusively. Through record linking, the BEA expects to improve the quality of data collected under the authority of Title 13 of the U.S.C. and the International Investment and Trade in Services Survey Act by identifying data-quality

issues arising from reporting differences in the Census Bureau and the BEA surveys.

Statistical Purposes for the Shared Data

The data from the Business Register and from the 2002 Economic Census are used to estimate employment, payroll, and receipt data of U.S. companies. Statistics from the census are published in separate data publications. All data are collected under Sections 131 and 224 of Title 13 of the U.S.C.

Data Access and Confidentiality

Title 13 of the U.S.C. protects the confidentiality of these data. The data may be seen only by persons sworn to uphold the confidentiality of the information. Access to the shared data will be restricted to specifically authorized personnel and will be provided for statistical purposes only. All BEA employees with access to these data will become Census Bureau Special Sworn Status Employees—meaning that they, under penalty of law, must uphold the data's confidentiality. To further safeguard the confidentiality of the data, the Census Bureau has conducted an Information Technology Security Review of the BEA. The results of this project are subject to disclosure review. Disclosure review is a process conducted to verify that the data to be released do not reveal any confidential information.

Dated: September 29, 2004.

Charles Louis Kincannon,

Director, Bureau of the Census.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-357-812]

Honey From Argentina: Corrected Final Results of Antidumping Duty Administrative Review

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

ACTION: Correction to final results of antidumping duty administrative review.

EFFECTIVE DATE: October 4, 2004.

FOR FURTHER INFORMATION CONTACT:

Brian J. Sheba or Robert M. James, Antidumping and Countervailing Duty Operations Office Seven, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW., Washington, DC 20230, telephone: (202) 482-0145 or (202) 482-0649, respectively.

Background

On May 27, 2004, the Department of Commerce (the Department) published in the **Federal Register** its notice of final results of the antidumping duty administrative review of honey from Argentina for the period May 11, 2001 through November 30, 2002. *See Honey from Argentina: Final Results of Antidumping Duty Administrative Review*, 69 FR 30283 (May 27, 2004). Subsequent to the final results, the Department has discovered a typographical error in its "all others" cash deposit rate. The Department mistakenly used the "all others" rate in the investigation final determination, rather than the corrected "all others" rate published in the antidumping duty order. *See Notice of Final Determination of Sales at Less Than Fair Value; Honey From Argentina*, 66 FR 50611 (Oct. 4, 2001), *Notice of Amended Final Determination of Sales at Less Than Fair Value; Honey From Argentina*, 66 FR 58434 (Nov. 21, 2001), and *Notice of Antidumping Duty Order; Honey From Argentina*, 66 FR 63672 (Dec. 10, 2001).

We now correct the final results of the 2001-2002 antidumping duty administrative review of honey from Argentina as noted above. As a result of this correction, the "all others" cash deposit rate is 30.24 percent *ad valorem*.

These amended final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: September 28, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4-2477 Filed 10-1-04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-896]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Magnesium Metal From the People's Republic of China

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

EFFECTIVE DATE: October 4, 2004.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatryan or Laurel LaCivita, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-6412 or 482-4243.

Preliminary Determination

We preliminarily determine that magnesium metal 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 Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

On February 27, 2004, the Department of Commerce ("Department") received a petition on imports of magnesium metal from the PRC, filed in proper form by the U.S. Magnesium Corporation LLC, United Steelworkers of America, Local 8319, and Glass, Molders, Pottery, Plastics & Allied Workers International, Local 374 (collectively, "Petitioners") on behalf of the domestic industry and workers producing magnesium metal. See *Petition for the Imposition of Antidumping Duties: Magnesium Metal from the People's Republic of China*, dated February 27, 2004 ("the Petition"). This investigation was initiated on March 25, 2004. See *Initiation of Antidumping Duty Investigation: Magnesium Metal from the People's Republic of China*, 69 FR 15293 (March 25, 2004) ("Notice of Initiation").

On April 16, 2004, and April 26, 2004, the Department requested quantity and value ("Q&V") information from a total of one hundred and forty-two producers of magnesium metal in the PRC which were identified in the petition and for which the Department was able to locate contact information. On April 16, 2004, the Department also sent the Government of the PRC a letter requesting assistance in locating all known Chinese producers/exporters of magnesium metal who exported magnesium metal to the United States during the period of investigation ("POI"), July 1, 2003, through December 31, 2003.

On April 26, 2004, the Department received Q&V responses from two Chinese producers/exporters of magnesium metal, the RSM companies ("RSM") and Tianjin Magnesium International Co., Ltd. ("Tianjin"). The Government of the PRC did not respond to the Department's April 16, 2004, letter requesting assistance in identifying producers and exporters of the subject merchandise in the PRC.

On April 30, 2004, the Department determined that India, Pakistan, Indonesia, Sri Lanka, the Philippines, Morocco, and Egypt are countries comparable to the PRC in terms of economic development. See *Memorandum from Ron Lorentzen, Acting Director, Office of Policy to Robert Bolling, Program Manager, Group III, Office 9: Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China (PRC): Request for a List of Surrogate Countries*, dated April 30, 2004 ("Office of Policy Surrogate Countries Memorandum").

On May 6, 2004, we issued Sections A, C, D, and E of our questionnaire to Tianjin and RSM, the only two companies that responded to our request for Q&V information. In addition, on May 6, 2004, we issued a Section A, C, D, and E questionnaire to the Government of the PRC through the Ministry of Commerce and the Chinese Embassy in Washington, DC.

On May 17, 2004, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China and Russia of pure magnesium and magnesium alloy. The ITC's determination was published in the **Federal Register** on May 21, 2004. See *Investigation Nos. 731-TA-1071-1072 (Preliminary), Magnesium from China and Russia*, 69 FR 29329 (May 21, 2004).

On May 19, 2004, the Department issued its respondent selection memorandum, officially selecting RSM and Tianjin as the two mandatory respondents in this investigation. See *Memorandum from Laurel LaCivita, Senior Case Analyst, Office IX, to Edward Yang, Office Director, Office IX, Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China: Selection of Respondents for the Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China*, dated May 19, 2004 ("Respondent Selection Memorandum").

On May 10, 2004, the Department requested that the parties submit comments on surrogate country selection. On May 24, 2004, we received comments regarding our selection of a surrogate country from the Petitioners. On June 2, 2004, we received comments regarding our selection of a surrogate country from RSM and Tianjin. Petitioners argued that India is the appropriate surrogate country for this investigation because India is at a

comparable level of economic development with the PRC based on gross national income ("GNI") and contains the only producer of primary magnesium located in any of the countries identified by the Department as surrogate countries.

RSM and Tianjin provided information identifying Kazakhstan, Russia, and Brazil as potential surrogate countries in this investigation and contended that, according to the World Bank, Kazakhstan, Russia, and Brazil each have a per-capita GNI comparable to that of the PRC. RSM and Tianjin stated further that, according to the World Bank, neither India nor any of the other countries named in the *Office of Policy Surrogate Countries Memorandum* is at a stage of economic development comparable to the PRC.

We received rebuttal comments concerning the selection of a surrogate country from Petitioners and respondents on June 14, 2004, June 28, 2004, and July 9, 2004.

We provided a one-week extension until June 1, 2004 to all interested parties that requested an extension for submitting a response to our Section A questionnaire. Additionally, we provided an extension until June 16, 2004, to all mandatory respondents to respond to sections C, D, and E of the questionnaire. For a detailed discussion on specific mandatory respondent extensions, please see the company-specific section for each mandatory respondent below.

On June 3, 2004, we received a Section A questionnaire response from Beijing Guangling Jinghua Science & Technology Co., Ltd. ("Guangling"), which requested a separate rate.

On June 2, 2004, and June 4, 2004, we received a request from Petitioners, RSM, and Tianjin, respectively, to extend the deadline for supplying surrogate-value information until two weeks after the submission of Section D data. On July 6, 2004, we extended the time period for interested parties to provide surrogate values for factors of production until July 12, 2004. On July 8, 2004, RSM and Tianjin requested an extension until two weeks after the Department decided the surrogate country to submit their surrogate-value information.

On June 17, 2004, RSM requested that the Department excuse it from reporting certain U.S. further-manufacturing activities. On June 21, 2004, we informed RSM that we did not have sufficient information on the record to exempt it from reporting sales and cost for merchandise further manufactured in the United States and requested RSM to report the further-manufactured

downstream sales of its affiliate by June 28, 2004. On June 22, 2004, RSM requested additional guidance concerning the information the Department required it to provide in order to grant RSM an exemption from responding to the Section E questionnaire (for a detailed discussion of this issue, please see the RSM company-specific section below).

On June 28, 2004, Petitioners made a timely request pursuant to 19 CFR 351.205(e) for a fifty-day postponement of the preliminary determination or until September 24, 2004. On July 21, 2004, the Department published a postponement of the preliminary antidumping duty determination on magnesium metal from the PRC. See *Notice of Postponement of the Preliminary Determinations in Antidumping Duty Investigations of Magnesium Metal from the People's Republic of China and the Russian Federation* 69 FR 43561 (July 21, 2004).

On August 3, 2004, the Department determined that India was the appropriate surrogate country to use in this investigation. See *Memorandum to Laurie Parkhill, Office Director, from Laurel LaCivita and Lilit Astvatsatryan, Case Analysts, through Robert Bolling, Program Manager: Antidumping Duty Investigation on Magnesium Metal from the People's Republic of China*, dated August 3, 2004 ("Surrogate-Country Selection Memorandum"). We received comments regarding our selection of India as the surrogate country from interested parties (for a detailed discussion of the comments regarding the surrogate country, please see the "Surrogate Country" section below). On August 3, 2004, we informed Petitioners, RSM, and Tianjin that the due date for submitting surrogate-value information was August 10, 2004. On August 6, 2004, RSM and Tianjin requested that the Department extend the deadline for submitting surrogate-value information until September 1, 2004. On August 9, 2004, we extended the deadline for submitting surrogate-value information until August 17, 2004. We then extended the deadline for submitting surrogate-value information until August 19, 2004. On August 19, 2004, Petitioners, RSM and Tianjin submitted surrogate-value comments. Petitioners filed rebuttal comments concerning RSM and Tianjin Magnesium's August 19, 2004, submission on August 30, 2004. RSM and Tianjin submitted additional, unsolicited surrogate-value information on September 10, 2004, and September 13, 2004. On September 10, 2004, and September 14, 2004, Petitioners objected to RSM's and Tianjin's September 10,

2004, and September 13, 2004, submissions of surrogate-value information, and requested that the Department withdraw them from the record. On September 16, 2004, we responded that we would not use RSM's and Tianjin's surrogate-value submissions of September 10, 2004, and September 13, 2004, for the preliminary determination of this investigation, but would consider the information for the final determination. See *Memorandum to The File from Laurel LaCivita Senior Case Analyst, Through Robert Bolling, Program Manager, AD/CVD Enforcement, Magnesium Metal from the People's Republic of China: Untimely Submissions of Surrogate Value Information*, dated September 16, 2004.

Company-Specific Chronology

As described above, the Department staggered its issuance of sections of the antidumping questionnaire to the mandatory respondents. Upon receipt of the various responses, the Petitioners provided comments and the Department issued supplemental questionnaires. The chronology of this stage of the investigation varies by respondent. Therefore, the Department has separated by company the following discussion of its information-gathering process after issuance of the questionnaire.

RSM

RSM submitted its Section A questionnaire response on June 4, 2004. On June 17, 2004, RSM requested that the Department excuse it from reporting certain further-manufacturing activities in the United States, arguing that the value added in the United States "exceeds substantially" the value of the imported subject merchandise and that there were sufficient sales to unaffiliated U.S. customers upon which to conduct a constructed-export-price ("CEP") analysis. On June 21, 2004, the Department responded that it did not have sufficient information to exempt RSM from reporting its sales of further-manufactured merchandise in the United States. On June 22, 2004, RSM requested further guidance concerning the types of information that the Department needed to grant its request. Petitioners submitted comments concerning RSM's June 22, 2004, request on June 23, 2004, claiming that RSM did not explain fully its affiliations with Toyota Tsusho America, Inc. ("TAI"), its affiliated reseller in the United States, and its further-manufacturer in the United States. Petitioners claimed further that RSM applied an incorrect methodology to determine the value added in the United

States. On June 25, 2004, RSM responded that it need only address the value-added arguments in Petitioners' June 23, 2004, submission. RSM submitted its Section C and D questionnaire responses on June 21, 2004. On June 25, 2004, Petitioners submitted comments on RSM's Section A response. RSM submitted its Section E questionnaire response on June 29, 2004. Petitioners submitted deficiency comments on RSM's Section C and D questionnaire responses on July 2, 2004, and on RSM's Section E questionnaire response on July 13, 2004. The Department issued a supplemental questionnaire concerning Sections A–E of RSM's questionnaire responses on July 23, 2004. RSM submitted a supplemental section A through E questionnaire response on August 20, 2004. The Department issued a second supplemental questionnaire covering RSM on September 2, 2004. RSM provided its second supplemental questionnaire response on September 15, 2004. On September 21, 2004, the Department provided a memorandum to the file explaining that, although it was not rejecting RSM's September 15, 2004, submission, it would not be able to use the information provided in its second supplemental questionnaire response for the preliminary determination. See *Memorandum from Laurel LaCivita, Senior Case Analyst, to the File, through Robert Bolling, Program Manager, AD/CVD Enforcement, Magnesium Metal from the People's Republic of China: The Use of RSM's September 14, 2004 Second Supplemental Section A, C & D Questionnaire Response for the Preliminary Determination*, dated September 20, 2004.

Tianjin

On June 4, 2004, Tianjin submitted its Section A questionnaire response. On June 18, 2004, Tianjin submitted its response to Section C of the Department's May 6, 2004, questionnaire. On June 21, 2004, Tianjin submitted its response to Section D of the Department's questionnaire. On July 2, 2004, Petitioners submitted deficiency comments on Tianjin's responses to Sections A, C, and D of the questionnaire. On July 23, 2004, the Department issued a supplemental Sections A, C, and D questionnaire. On August 13, 2004, Tianjin submitted its response to the supplemental Sections A, C, and D questionnaire. On August 23, 2004, the Department issued a second supplemental Sections A, C, and D questionnaire. On September 2, 2004, Tianjin submitted its response to the second supplemental Sections A, C, and D questionnaire. On September 3, 2004,

Tianjin provided corrected versions of certain exhibits included in its September 2, 2004, submission. On September 13, 2004, Tianjin submitted electronic copies of its supplemental Sections A–D questionnaire responses.

Guangling Jinghua

Guangling Jinghua submitted its Section A response on June 3, 2004. Petitioners provided comments on Guangling Jinghua's Section A response on July 8, 2004. The Department issued a supplemental Section A questionnaire on August 12, 2004. Guangling provided its supplemental Section A response on August 26, 2004.

Postponement of Final Determination

Section 735(a) of the Act provides that a final determination may be postponed until no 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 Petitioners. 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 an extension of the provisional measures from a four-month period to not more than six months.

On September 14, 2004, RSM requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days until 135 days after the publication of the preliminary determination. Accordingly, because we have made an affirmative preliminary determination and the requesting parties account for a significant proportion of the exports of the subject merchandise, we have postponed the final determination until no later than 135 days after the date of publication of the preliminary determination and are extending the provisional measures accordingly.

Period of Investigation

The period of investigation ("POI") is July 1, 2003, through December 31, 2003. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (February 27, 2003). See 19 CFR 351.204(b)(1).

Scope of Investigation

The products covered by this investigation are primary and secondary alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by this investigation includes blends of primary and secondary magnesium.

The subject merchandise includes the following alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an "ASTM Specification for Magnesium Alloy"¹ and thus are outside the scope of the existing antidumping orders on magnesium from the PRC (generally referred to as "alloy" magnesium).

The scope of this investigation excludes the following merchandise: (1) All forms of pure magnesium, including chemical combinations of 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"²; (2) magnesium that is in liquid or molten form; and (3) mixtures containing 90 percent or less magnesium in granular or powder form, by weight, and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag

coagulants, fluorspar, nepheline syenite, feldspar, alumina (Al₂O₃), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.³

The merchandise subject to this investigation is classifiable under items 8104.19.00 and 8104.30.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection or (2) exporters/producers accounting for the largest volume of the merchandise under investigation that can reasonably be examined. Only two of the twenty-four exporters identified in the petition responded to the Department's questionnaire. Therefore, the Department determined that it has the resources available to investigate all responding parties in this investigation and that there is no reason to limit the number of respondents to be examined in this investigation pursuant to section 777A(c)(2) of the Act. See *Respondent Selection Memorandum* at 3. Consequently, in this investigation, we have examined both Tianjin and RSM,

¹ 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*.

² This material is already covered by existing antidumping orders. See *Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; 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); *Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China*, 66 FR 57936 (Nov. 19, 2001).

³ This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from the PRC, Israel, and Russia. See *Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China*, 66 FR 49345 (September 27, 2001); *Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel*, 66 FR 49349 (September 27, 2001); *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation*, 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys because they are not chemically combined in liquid form and cast into the same ingot.

the only two exporters of subject merchandise who responded to the Department's Q&V questionnaire. The two Chinese producers/exporters (Tianjin and RSM) accounted for a significant percentage of all exports of the subject merchandise from the PRC during the POI and were selected as mandatory respondents. See *Respondent Selection Memorandum* at 3.

Non-Market-Economy Country

For purposes of initiation, the Petitioners submitted LTFV analyses for the PRC as a non-market economy. See *Notice of Initiation* at 15295. In every case conducted by the Department involving the PRC, the PRC has been treated as an Non-Market-Economy ("NME") country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. See also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003). Therefore, we have treated the PRC as an NME country for purposes of this preliminary determination.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value ("NV"), in most circumstances, on the NME producer's factors of production valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the NV section below.

The Department determined that India, Pakistan, Indonesia, Sri Lanka, the Philippines, Morocco, and Egypt are countries comparable to the PRC in terms of economic development. See *Office of Policy Surrogate Countries Memorandum*. Customarily, we select an appropriate surrogate country based on the availability and reliability of data from the countries.

The Department received arguments from interested parties on the surrogate country. Petitioners argue that India is the appropriate surrogate country for this investigation because India is at a comparable level of economic development with the PRC based on gross national income ("GNI"). Petitioners contend that the Department has consistently found that India meets these statutory requirements for a surrogate country for the PRC, citing *Pure Magnesium and Alloy Magnesium* at 55425 and 55426 and *Pure Magnesium From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Administrative Review*, 62 FR 55215, 55217 (October 23, 1997). Petitioners argue that India is a significant producer of aluminum, which the Department has determined previously to be the product most comparable product to magnesium, citing *Pure Magnesium and Alloy Magnesium From the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review*, 63 FR 3085, 3087 (January 21, 1998) ("Pure Magnesium New Shipper Review").

Respondents identified Kazakhstan, Russia, and Brazil as potential surrogate countries for the PRC in this investigation. Respondents argue that neither India nor the other countries identified in the Office of Policy's List of Surrogate Countries produce the subject merchandise nor comparable merchandise. Respondents claim further that, among the developing countries other than China, only Kazakhstan, Russia, and Brazil are significant producers and exporters of magnesium and magnesium alloys. See the *Selection of a Surrogate Country Memorandum* dated August 3, 2004, for a complete description of the interested parties surrogate-country arguments.

The Department found that none of the countries on the List of Surrogate Countries are significant producers of the subject merchandise, magnesium metal. In past cases, the Department has determined that aluminum is comparable merchandise to magnesium. See *Pure Magnesium and Alloy Magnesium* at 55425 and 55426 and *Pure Magnesium From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Administrative Review*, 62 FR 55215, 55217 (October 23, 1997). The Department also adopted this decision in *Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review*, 63 FR 3085, 3088 (January 21, 1998). In *Pure Magnesium and Alloy Magnesium*, the

Department explained that, "{a}lthough the material inputs used to produce magnesium and aluminum are different, according to both U.S. Bureau of Mines and Department of Commerce experts, both (1) are light metals in terms of molecular weight; (2) are electricity-intensive products; (3) are produced using an electrolytic process, and (4) share some common end uses (e.g., die casting)." Similarly, in the 1998 new shipper review of *Pure Magnesium* we determined that aluminum constituted comparable merchandise in the context of surrogate selection for magnesium for the reasons specified in *Pure Magnesium and Alloy Magnesium*, *supra*.

Consequently, we have made the following determination about the use of India as a surrogate country: (1) It is a significant producer of comparable merchandise, aluminum; (2) it is at a similar level of economic development pursuant to 733(c)(4) of the Act; and (3) we have reliable data from India that we can use to value the factors of production. See *Selection of a Surrogate Country Memorandum*. Thus, we have calculated NV using Indian prices when available and appropriate to value the factors of production of the magnesium metal producers. We have obtained and relied upon publicly available information wherever possible. See *Memorandum to the File from Laurel LaCivita, Lilit Astvatsatryan and Steven Winkates, Case Analysts, through Robert Bolling, Program Manager, and Laurie Parkhill, Office Director: Magnesium Metal from the People's Republic of China: Factors Valuation Memorandum for the Preliminary Determination*, dated September 24, 2004 ("Factor-Valuation Memorandum").

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the factors of production within 40 days after the date of publication of the preliminary determination.

Affiliation

Section 771(33) of the Act states that the Department considers the following entities to be affiliated: (A) Members of a family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants; (B) Any officer or director of an organization and such organization; (C) Partners; (D) Employer and employee; (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such

organization; (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) Any person who controls any other person and such other person.

For purposes of affiliation, section 771(33) of the Act states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. In order to find affiliation between companies, the Department must find that at least one of the criteria listed above is applicable to the respondents.

The Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("SAA"), H.R. Doc. 103-316 (1994), indicates that stock ownership is not the only evidentiary factor that the Department may consider to exercise restraint or direction to determine whether a person is in a position to control and that control may be established through corporate or family groupings. See SAA at 838. Thus, the statute and the SAA expressly envision affiliation based on family shareholdings, consistent with our practice. See e.g., *Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Review*, 61 FR 42833, 42853 (August 19, 1996), and *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53810 (October 16, 1997). Moreover, as stated in its final regulations, the Department examines issues of affiliation by family groupings closely. See *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping duty Administrative Review*, 62 FR 53808, 53810 (October 16, 1997).

To the extent that the affiliation provisions in section 771(33) of the Act do not conflict with the Department's application of separate rates and the statutory NME provisions in section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding. See *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410, 10413 (March 5, 2004) ("Mushrooms").

Following these guidelines, we have considered whether we should determine that the seven members of the RSM Group ("RSM"): Nanjing Yunhai Special Metals Co., Ltd. ("Yunhai

Special"), Nanjing Welbow Metals Co., Ltd. ("Welbow"), Nanjing Yunhai Magnesium Co., Ltd. ("Yunhai Magnesium"), Shanxi Wenxi Yunhai Metals Co., Ltd. ("Wenxi Yunhai"), Shanxi Wenxi Bada Magnesium Co., Ltd. ("Bada Magnesium"), Yuncheng Wenxi Welfare Magnesium Plant ("Welfare Magnesium"), and Nanjing Yunhai Metals Plant ("Yunhai Metals") are affiliated and should be collapsed. Moreover, we considered whether these companies should be collapsed with China National Nonferrous Metals I/E Corp., Jiangsu Branch ("Jiangsu Metals"), and TAI, thus considering these companies as a single entity for the purposes of the antidumping investigation of magnesium metal from the People's Republic of China ("PRC"). See *Memorandum to Laurie Parkhill, Director, Office 8, NME/China Group, Through Robert Bolling, Program Manager, From Laurel LaCivita, Senior Case Analyst, Antidumping Duty Investigation of Magnesium Metal From the People's Republic of China: Affiliation and Collapsing of Members of the RSM Group and Its Affiliated U.S. Reseller, Toyota Tsusho America, Inc.*, dated September 24, 2004 ("Collapsing Memorandum").

In its original questionnaire responses, RSM also reported that its affiliated reseller in the United States made sales of subject merchandise to an affiliated further-manufacturer in the United States that incorporated the subject merchandise into steering wheel armatures. In its supplemental questionnaire response, RSM argued that TAI was not affiliated with its downstream further-manufacturer. Therefore, we considered whether TAI and its downstream further-manufacturer are affiliated for the purposes of this investigation. See the proprietary *Memorandum to Laurie Parkhill, Director, Office 8, NME/China Group, Through Robert Bolling, Program Manager, From Laurel LaCivita, Senior Case Analyst, Antidumping Duty Investigation of Magnesium Metal From the People's Republic of China: Affiliation and Collapsing of Members of the RSM Group and Its Affiliated U.S. Reseller, Toyota Tsusho America, Inc.*, dated September 24, 2004 ("Affiliation Memorandum").

RSM reported that the members of RSM Group that produced or exported the subject merchandise are Yunhai Special, Welbow, Yunhai Magnesium, Wenxi Yunhai, Bada Magnesium, Welfare Magnesium, and Yunhai Metals. In addition, in its original questionnaire response, RSM claimed that it was affiliated with its U.S. reseller, TAI, during the POI and that all

of the U.S. sales made through TAI should be treated as CEP sales. In its supplemental response, however, RSM argued that TAI was affiliated with only one member of the RSM group, Yunhai Magnesium, through TAI's parent company. Consequently, RSM reclassified all of its U.S. sales, except those originating with Yunhai Magnesium, as export-price ("EP") sales.

Based on our examination of the evidence presented in RSM's questionnaire responses, we have determined that Yunhai Special, Wenxi Yunhai, Welbow, Yunhai Magnesium, Bada Magnesium, Welfare Magnesium, and Yunhai Metals are affiliated under sections 771(33)(B), (E), (F), and (G) of the Act. We found, however, that only Yunhai Special, Welbow, Yunhai Magnesium, and Wenxi Yunhai either produced the subject merchandise during the POI, or were capable of producing the subject merchandise. Thus, we determined that Yunhai Special, Welbow, Wenxi Yunhai, and Yunhai Magnesium are affiliated and should be collapsed and treated as a single entity for purposes of calculating a dumping margin in this investigation for the following reasons: (1) Yunhai Special controls a majority or near-majority of Welbow, Wenxi Yunhai, and Yunhai Magnesium based on stock-ownership; (2) Yunhai Special, Welbow, Wenxi Yunhai, and Yunhai Magnesium share the same general manager and a common board member; and (3) RSM reported that the operations of Yunhai Special and Welbow cannot be distinguished since the two companies share the same general manager, production facilities, and employees.

We also determined that Jiangsu Metals is affiliated with the RSM Group, under sections 771(33)(E) and (F) of the Act, because RSM reported that Jiangsu Metals, an exporter of the subject merchandise, held more than 5 percent of the outstanding stock in Yunhai Magnesium and is therefore affiliated with Yunhai Magnesium pursuant to section 771(33)(E) of the Act. In addition, we found that Jiangsu Metals and Yunhai Special both own shares of Yunhai Magnesium as joint-venture partners. Consequently, we determined that Jiangsu Metals and Yunhai Special are affiliated in accord with section 771(33)(F) of the Act.

We determined further that, in contrast to RSM's arguments in its supplemental questionnaire response, TAI is also affiliated with the RSM Group under sections 771(33)(E) and (F) of the Act because the role that TAI and its parent corporation play in RSM's sales process indicates that TAI is

legally and operationally in a position to exercise control over the RSM Group in accordance with section 771(33)(F) of the Act.

We did not analyze whether Jiangsu Metals, an affiliated exporter, meets the criteria for collapsing with the RSM group because the company did not produce the subject merchandise during the POI. As a result, we have not collapsed Jiangsu Metals with the members of the RSM group for the purposes of calculating the antidumping duty margin. We have considered Jiangsu Metals for a separate rate in its own right.

We examined the information on the record with respect to TAI and its further-manufacturer and determined that TAI was affiliated with its downstream further-manufacturer, under section 771(33)(E) and (F) of the Act, for several reasons. RSM reported that TAI and its further-manufacturer are both subsidiaries of the same parent corporation in Japan and, thus, are affiliated in accord with section 771(33)(E) of the Act. See the proprietary discussion of this issue in the *Affiliation Memorandum* at 3. RSM demonstrated further that the parent corporation's ownership share held a very substantial stock ownership share in both TAI and its further-manufacturer, and is therefore in a position to exercise control over both entities. Because we determined that TAI and its further-manufacturer are affiliated under sections 771(33)(E) and (F) of the Act, we have not used the sales of subject merchandise from TAI to its affiliated further-manufacturer in our margin analysis because such sales do not represent the sales to the first unaffiliated customer in the United States. See *Affiliation Memorandum*. We did not examine the downstream sales of the subject merchandise made by the affiliated further-manufacturer because we determined that the subject merchandise sold to the further-manufacturer was incorporated into products whose value exceeded substantially the value of the imported subject merchandise. See *Memorandum to the File, through Laurie Parkhill, Director, Office 8, NME/China Unit, and Robert Bolling, Program Manager, From Laurel LaCivita, Senior Case Analyst, Magnesium Metal From the People's Republic of China: The Use of RSM's Sales of Further-Manufactured Merchandise in the U.S. Market for the Preliminary Determination*, dated September 24, 2004.

Separate Rates

In proceedings involving NME countries, the Department begins with a

rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The two mandatory respondents and the Section A respondent have provided company-specific information and each has stated that it meet the standards for the assignment of a separate rate.

We have considered whether each company based in the PRC is eligible for a separate rate. The Department's separate-rate test to determine whether the exporters are independent from government control does not consider, in general, 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 Cut-to-Length Carbon Steel Plate From Ukraine: Final Determination of Sales at Less Than Fair Value*, 62 FR 61754, 61757 (November 19, 1997), and *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 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

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) other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

Our analysis shows that the evidence on the record supports a preliminary finding of *de jure* absence of governmental control for Tianjin, Guangling Jinghua, Jiangsu Metals, and the RSM companies consisting of Yunhai Special, Welbow, Wenxi Yunhai, and Yunhai Magnesium based on the criteria listed above. See *Memorandum to Laurie Parkhill, Office Director, China/NME Group, through Robert Bolling, Program Manager, from Laurel LaCivita, Senior Case Analyst and Lilit Astvatsatryan, Case Analyst, Magnesium Metal from the People's Republic of China: Separate Rates Memorandum* ("*Separate-Rates Memorandum*"), dated September 24, 2004.

2. Absence of De Facto Control

Typically the Department considers the following four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586-87; see also *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). 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.

We determine that, for Tianjin, Guangling Jinghua, Jiangsu Metals, and the RSM companies consisting of Yunhai Special, Welbow, Wenxi Yunhai, and Yunhai Magnesium, the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following:

(1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements; and (4) each exporter has autonomy from the government regarding the selection of management.

Therefore, the evidence placed on the record of this investigation by Tianjin, Guangling Jinghua, Jiangsu Metals, and the RSM companies consisting of Yunhai Special, Welbow, Wenxi Yunhai, and Yunhai Magnesium demonstrates an absence of government control, both in law and in fact, with respect to each of the exporter's exports of the merchandise under investigation in accordance with the criteria identified in *Sparklers and Silicon Carbide*. As a result, for the purposes of this preliminary determination, we have granted separate, company-specific rates to the mandatory respondents and the Section A respondent which shipped magnesium metal to the United States during the POI. For a full discussion of this issue, please see the *Separate-Rates Memorandum*.

PRC-Wide Rate

The Department has data that indicates there were more exporters of magnesium metal from the PRC during the POI than those which responded to the Q&V questionnaire. See *Respondent Selection Memorandum* at 1. Although we issued the Q&V questionnaire to 142 known Chinese exporters of the subject merchandise, we received only two Q&V questionnaire responses, which were from the two mandatory respondents. Also, on May 6, 2004, we issued our complete questionnaire to the Chinese Government (*i.e.*, Ministry of Commerce). Although all exporters were given an opportunity to provide information showing they qualify for separate rates, not all of these other exporters provided a response to either the Department's Q&V questionnaire or its Section A questionnaire. Therefore, the Department determines preliminarily that there were exports of the merchandise under investigation from PRC producers/exporters that did not respond to the Department's questionnaire. We treated these PRC producers/exporters as part of the countrywide entity. Further, the Government of the PRC did not respond to the Department's questionnaire.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds

information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Information on the record of this investigation indicates that there are numerous producers/exporters of magnesium metal in the PRC. As described above, all exporters were given the opportunity to respond to the Department's questionnaire. Based upon our knowledge of the volume of imports of subject merchandise from the PRC and the fact that information indicates that the responding companies did not account for all imports into the United States from the PRC, we have preliminarily determined that certain PRC exporters of magnesium metal failed to respond to our questionnaires. As a result, use of adverse facts available ("AFA") pursuant to section 776(a)(2)(A) of the Act is appropriate. Additionally, in this case, the Government of the PRC did not respond to the Department's questionnaire, thereby necessitating the use of AFA to determine the PRC-wide rate. See *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See *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 (February 4, 2000). See also "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 103-316, 870 (1994) ("SAA"). We find that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

Section 776(b) of the Act authorizes the Department to use AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. As AFA, we have assigned to the PRC-wide entity a margin based on a calculated margin derived from information obtained in the course of the investigation and placed on the record of this proceeding. In this case, we have applied a rate of 177.62 percent.

Consequently, we are applying a single antidumping rate—the PRC-wide rate—to producers/exporters that failed to respond to the Q&V questionnaire or Section A questionnaire. This rate will also apply to exporters which did not demonstrate entitlement to a separate rate. See, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000). The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from the two mandatory respondents and the Section A respondent.

Because this is a preliminary margin, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final PRC-wide margin. See *Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 67 FR 79049, 79054 (December 27, 2002).

Margin for Section A Respondent

Guangling Jinghua, the only exporter which submitted a response to Section A of the Department's antidumping questionnaire and had sales of the subject merchandise to the United States during the POI but was not selected as mandatory respondent in this investigation ("Section A respondent"), has applied for a separate rate and provided information for the Department to consider for this purpose. Therefore, we have established a weighted-average margin based on the rate we have calculated for the two mandatory respondents, excluding any

rates that are zero, *de minimis*, or based entirely on adverse facts available. That rate is 140.09 percent. Guangling Jinghua is identified by name in the "Suspension of Liquidation" section of this notice.

Date of Sale

Section 351.401(I) of the Department's regulations state that, "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." After examining the sales documentation placed on the record by the mandatory respondents, we preliminarily determine that date of purchase order is the most appropriate date of sale for RSM and Tianjin. In their submissions, RSM and Tianjin stated that they establish the date of sale on their purchase order date because all of their sales terms are finalized by the purchase order date. Additionally, RSM and Tianjin provided no evidence to suggest that their sales terms changed after the purchase order was established. Based on record evidence, we have determined that RSM's and Tianjin's sales terms did not change after the purchase-order date, and thus we have used purchase order date as the date of sale for the preliminary determination for RSM and Tianjin.

The Department intends to examine the date-of-sale issue at verification thoroughly and may reconsider its position for the final determination based on the results of verification.

Fair Value Comparisons

To determine whether sales of magnesium metal to the United States by the two mandatory respondents were made at less than fair value, we compared EP or CEP to NV, as described in the "Export Price," "U.S. Price," and "Normal Value" sections of this notice.

U.S. Price

In accordance with section 772(a) of the Act, we used EP for Tianjin, as appropriate, because the subject merchandise was first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States and because the use of CEP was not otherwise indicated. In accordance with section 772(b) of the Act, we used CEP for RSM and Jiangsu Metals because the subject merchandise was sold in the United States after the date of importation by a U.S. reseller

affiliated with the producer. In addition, we did not use sales made by the U.S. reseller to an affiliated further-manufacturer because RSM reported that all of those sales were destined for further manufacturing in the United States where the value added substantially exceeded the value of the merchandise imported. See *Memorandum to The File, Through Laurie Parkhill, Director, Office 8, NME/China Unit, and Robert Bolling, Program Manager, From Laurel LaCivita, Senior Case Analyst, Magnesium Metal from the People's Republic of China: The Use of RSM's Sales of Further-Manufactured Merchandise in the U.S. Market for the Preliminary Determination*, dated September 24, 2004.

We calculated EP and CEP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (e.g., foreign inland freight from the plant to the port of exportation, domestic brokerage, ocean freight, marine insurance, U.S. brokerage, and inland freight from warehouse to unaffiliated U.S. customer) in accordance with section 772(c)(2)(A) of the Act. For a detailed description of all adjustments, see *Memorandum to The File Through Robert Bolling, Program Manager, China/NME Group, from Lilit Astvatsatrian, Case Analyst, Analysis for the Preliminary Determination of Magnesium Metal from the People's Republic of China: Tianjin Magnesium International Co., Ltd. ("Tianjin")*, dated September 24, 2004, and *Memorandum to The File Through Robert Bolling, Program Manager, China/NME Group, From Laurel LaCivita, Senior Case Analyst, Analysis for the Preliminary Determination of Magnesium Metal from the People's Republic of China: the RSM Companies*, dated September 24, 2004.

In accordance with section 772(d)(1) of the Act and the SAA at 823–824, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, for which RSM includes U.S. customs duty.

We compared NV to weighted-average EPs and CEPs in accordance with section 777A(d)(1) of the Act. For RSM, in accordance with sections 772(d)(3) and 772(f) of the Act, we deducted CEP profit. For a detailed description of all adjustments, see the Company-Specific Analysis Memoranda dated September 24, 2004.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the factors of production because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under its normal methodologies.

The Department's questionnaire requires that the respondent provide information regarding the weighted-average factors of production across all of the company's plants that produce the subject merchandise, not just the factors of production from a single plant. This methodology ensures that the Department's calculations are as accurate as possible. See e.g., *Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 FR 61395 (Oct. 28, 2003); Issues and Decision Memorandum, Comment 19 (Oct. 20, 2003). Therefore, for Tianjin, the Department calculated the factors of production using the weighted-average factor values for all of the facilities involved in producing the subject merchandise. For RSM and Jiangsu Metals, the Department used the weighted-average factor values reported for the RSM group members which it determined were affiliated and which it collapsed. See the *Collapsing Memorandum*.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by respondents for the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Indian surrogate values (except as discussed below). 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. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the

Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997).

For this preliminary determination, in accordance with past practice, we used data from the Indian Import Statistics in order to calculate surrogate values for the mandatory respondents' material inputs. In selecting the best available information for valuing factors of production in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive. The record shows that data in the Indian Import Statistics represents import data, is contemporaneous with the POI, is product-specific, and is tax-exclusive. See *Manganese Metal From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12441, 12442 (March 13, 1998). Additionally, there is no record evidence which indicates that any of the factors being valued are of low value compared to other items in the basket categories; thus, our use of these statistics does not result in a distortion in favor of higher values. Further, the Indian Import Statistics contain values at both ends of the spectrum (i.e., high value and low value), indicating further that the Indian Import values are not distorted when taken as an average, as we are doing in this case. Therefore, we determined that the Indian Import Statistics provide the best available information for valuing the factors of production. Consequently, we valued raw material inputs for each mandatory respondent using the weighted-average unit import values derived from the World Trade Atlas® online ("Indian Import Statistics"), published by the DGCI&S, Ministry of Commerce of India, which were reported in rupees and are contemporaneous with POI. See *Factor-Valuation Memorandum*. Where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index ("WPI") or the Indian Producer Price Index ("PPI") as published in the *International Financial Statistics* of the International Monetary Fund.

Furthermore, with regard to both the Indian import-based surrogate values and the market-economy input values, we have disregarded prices that we have reason to believe or suspect may be subsidized. We have reason to believe or

suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries are subsidized. See *Amended Final Determination of Sales at Less Than Fair Value: Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 11670 (March 15, 2002). We are also directed by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized. See H.R. Rep. 100-576 at 590 (1988). Rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries either in calculating the Indian import-based surrogate values or in calculating market-economy input values. In instances where a market-economy input was obtained solely from suppliers located in these countries, we used Indian import-based surrogate values to value the input. See *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 1.

We used the Indian Import Statistics to value the following raw material inputs, energy, by-products, and packing materials that RSM and Tianjin used to produce the subject merchandise during the POI: Ferrosilicon, dolomite, No.2 flux, fluorite powder, sulfur powder, primary magnesium, magnesium scrap, zinc, AlBe5, AlBe1, manganese powder, magnesium, aluminum-magnesium alloy, sulfuric acid manganese chip, magnesium chloride, potassium chloride, barium chloride, aluminum, sulfur dioxide, nitrogen, argon, coal, bituminous coal, anthracite, liquified petroleum gas ("LPG"), propane, steel strap, LDPE sheet, printing ink, printing ink solvent, particle board, pallet, little steel sheet, steel band, and plastic bags. For a detailed description of all surrogate values used for respondents, see *Factor-Valuation Memorandum*.

To value electricity, we used data from the International Energy Agency ("IEA") *Key World Energy Statistics* (2003 edition), submitted by the Petitioners in Exhibit 5 of their August 19, 2004, submission. Because the value was not contemporaneous with the POI,

we adjusted the rate for inflation. See *Factor-Valuation Memorandum*.

To value heavy oil and diesel fuel, we used data from IEA's *Key World Energy Statistics* (2003 edition) which was submitted by Petitioners in their August 19, 2004, submission. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation. See *Factor-Valuation Memorandum*.

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2003, <http://ia.ita.doc.gov/wages/01wages/01wages.html>. The source of these wage-rate data on the Import Administration's Web site is the Yearbook of Labour Statistics 2002, ILO (Geneva: 2002), Chapter 5B: Wages in Manufacturing. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent.

The respondents also reported packing inputs. We used Indian Import Statistics data from the period July 2003 to December 2003 to value these inputs. See *Factor-Valuation Memorandum*.

RSM reported magnesium alloy slag as by-product of the production process. We used Indian Import Statistics data from the period July 2003 to December 2003 to value this by-product. See *Factor-Valuation Memorandum*.

We used Indian transport information in order to value the transportation of raw materials. To calculate domestic inland freight for trucking services, we selected freight values from *Chemical Weekly*. Some inputs were transported by market-economy transportation firms and paid for in a market-economy currency. Where this was the case, we added the actual market-economy transportation expense to the valuation of the factor of production.

We used Indian rail freight information in order to value the transportation of raw materials. To value the rail freight, we used two price quotes from November 1999 for steel shipments within India. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation. See *Factor-Valuation Memorandum*.

To value factory overhead, selling, general, and administrative expenses, and profit, we used the audited financial statements for the fiscal year ending March 31, 2003, from the following aluminum producers in India: National Aluminium Company Limited;

Indian Aluminium Company; Limited, Bharat Aluminium Company Limited; the Madras Aluminium Company Limited; and HINDALCO Industries Limited. *See Factor-Valuation Memorandum* for a full discussion of the calculation of these ratios from these financial statements.

Currency Conversion

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

Verification

As provided in section 782(I)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Preliminary Determination

The weighted-average dumping margins are as follows:

MAGNESIUM METAL FROM THE PRC

Manufacturer/exporter	Weighted-average margin (percent)
Tianjin	177.62
RSM	128.11
Jiangsu Metals	117.41
Guangling	140.09
China-Wide Rate	177.62

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. Because we

have postponed the deadline for our final determination to 135 days from the date of publication of this preliminary determination, section 735(b)(2) of the Act requires the ITC to make its final determination as to whether domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of wooden bedroom furniture, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date of the final verification report is issued in this proceeding and rebuttal briefs limited to issues raised in case briefs no later than five days after the deadline date for case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

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 after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: September 24, 2004.

James J. Jochum,
Assistant Secretary for Import
Administration.

[FR Doc. E4-2478 Filed 10-1-04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-821-819]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Magnesium Metal From the Russian Federation

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

SUMMARY: In response to a petition filed by U.S. Magnesium LLC (U.S. Magnesium), United Steelworkers of America, Local 8319, Glass, Molders, Pottery, Plastics and Allied Workers International, Local 374 (collectively, the Petitioners), the U.S. Department of Commerce (the Department) initiated and is conducting an investigation of sales of magnesium metal from the Russian Federation for the period January 1, 2003, through December 31, 2003. *See Notice of Initiation of Antidumping Duty Investigations: Magnesium Metal From the People's Republic of China and the Russian Federation*, 69 FR 15293 (March 25, 2004) (*Initiation Notice*). The Department preliminarily determines that magnesium metal from the Russian Federation 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 Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the "Suspension of Liquidation" section of this notice. Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: October 4, 2004.

FOR FURTHER INFORMATION CONTACT: Joshua Reitze or Sebastian Wright at (202) 482-0666 or (202) 482-5254, respectively; Office of AD/CVD Operations VI, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: