

Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the Bakersfield U.S. Export Assistance Center, 2100 Chester Avenue, 1st Floor Suite 166, Bakersfield, California 93301.

Dated: January 24, 2005.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 05-2087 Filed 2-2-05; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

A-570-896

#### Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal From the People's Republic of China

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

**EFFECTIVE DATE:** February 3, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Laurel LaCivita or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 482-4243 or (202) 482-3434.

**SUPPLEMENTARY INFORMATION:**

#### Preliminary Determination of Critical Circumstances

Based on allegations contained in the petitioners' <sup>1</sup> December 28, 2004, amendment to the February 27, 2004 petition, we preliminarily find, pursuant to section 733(e) of the Tariff Act of 1930, as amended ("the Act"), and section 351.206 of the Department of Commerce ("Department") regulations, that critical circumstances exist with regard to imports of magnesium metal from the People's Republic of China ("PRC") for the following entities: Tianjin Magnesium International Co., Ltd. ("Tianjin"), mandatory respondent, Guangling Jinghua Science and Technology Co., Ltd. ("Guangling"), the sole Section A respondent, and the PRC-wide entity. Critical circumstances do not exist with regard to imports of magnesium metal from the PRC for the RSM companies ("RSM") <sup>2</sup>.

<sup>1</sup> The petitioners in this antidumping duty investigation are the U.S. Magnesium LLC, United Steelworkers of America, Local 8319 and Glass, Molders, Pottery, Plastics & Allied Workers International, Local 374 ("petitioners").

<sup>2</sup> The company reported that "RSM" is the trade name of a group of companies, some of which

#### Background

Petitioners filed a timely allegation of critical circumstances on December 28, 2004, in accord and with section 733(e)(1) of the Act and section 351.206(c)(1) of the Department's regulations. None of the parties to the proceeding submitted comments in response to this allegation in accord with section 351.301(c) of the Department's regulations. On January 11, 2005, the Department requested the RSM Companies, Tianjin, and Guangling to report their shipments of subject merchandise to the United States on a monthly basis during the period January 2003 through December 2004. On January 19, 2005, the RSM Companies and Tianjin provided the requested information. Guangling did not respond to the Department's request for information.<sup>3</sup>

#### Period of Investigation

The 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 Section 351.204(b)(1) of the Department's regulations.

#### 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,

produced and exported the subject merchandise during the period of investigation ("POI"). RSM reported that the following companies are in the RSM group: 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").

<sup>3</sup> See the memorandum to the file from Laurel LaCivita, *Antidumping Investigation of Magnesium Metal from the People's Republic of China: Shipment Data With Respect to the Critical Circumstances Allegation with Respect to Beijing Guangling Jinghua Science and Technology Co., Ltd.*, dated January 19, 2005.

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"<sup>4</sup> 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"<sup>5</sup>; (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.<sup>6</sup>

<sup>4</sup> The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys*.

<sup>5</sup> 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).

<sup>6</sup> 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 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 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.

#### Critical Circumstances

On December 28, 2004, petitioners alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigation of magnesium metal from the PRC. Because petitioners submitted critical circumstances allegations more than 30 days before the scheduled date of the final determination but later than 20 days before the preliminary determination, the Department must issue a preliminary determination of critical circumstances within 30 days after petitioners submitted the allegation. See Section 351.206(c)(2)(ii) of the Department's regulations. Section 733(e)(1) of the Act provides that, upon receipt of a timely allegation of critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine (i) the volume and value of the imports, (ii) seasonal trends, and (iii) the share of domestic consumption accounted for by the imports. In addition, Section 351.206(h)(2) of the Department's regulations provides that, "In general, unless the imports during the 'relatively short period' \* \* \* have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive."

Section 351.206(i) of the Department's regulations defines "relatively short period" as generally the period beginning on the date the proceeding

begins (*i.e.*, the date the petition is filed) and ending at least three months later. This section provides further that, if the Department "finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely," then the Department may consider a period of not less than three months from that earlier time.

In determining whether the above statutory criteria have been satisfied, we examined the following information: (1) The evidence presented in the petitioners' December 28, 2004, submission; (2) evidence obtained since the initiation of the less-than-fair-value ("LTFV") investigation (*i.e.*, import statistics released by the U.S. Census Bureau); and (3) the International Trade Commission's ("ITC") preliminary material injury determination. See *Investigation Nos. 731-TA-1071-1072 (Preliminary), Magnesium from China and Russia*, 69 FR 29329 (May 21, 2004) ("*ITC Preliminary Determination*").

In determining whether a history of dumping and material injury exists, the Department generally considers current or previous antidumping duty orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of magnesium metal from the PRC. Petitioners made no statement concerning a history of dumping magnesium metal from the PRC. We are not aware of any other antidumping order in the United States or in any country on magnesium metal from the PRC. Therefore, the Department finds no history of injurious dumping of magnesium metal from the PRC pursuant to section 733(e)(1)(A)(i) of the Act.

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at LTFV, the Department must rely on the facts before it at the time the determination is made. The Department generally bases its decision with respect to knowledge on the margins calculated in the preliminary antidumping duty determination.

The Department normally considers margins of 25 percent or more for export price ("EP") sales and 15 percent or more for constructed export price ("CEP") sales sufficient to impute importer knowledge of sales at LTFV. See, *e.g.*, *Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002). Our preliminary determination found margins of 117.41

percent for the RSM companies, 117.41 percent for China National Nonferrous Metals I/E Corp., Jiangsu Branch ("Jiangsu"), and 177.62 percent for Tianjin, the mandatory respondents in this investigation. See *Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Magnesium Metal from the People's Republic of China*, 69 FR 59187 ("*Preliminary Determination*") (September 24, 2004). The sole Section A respondent, Guangling, preliminarily received a separate rate margin of 140.09 percent based on the weighted-average margins of the RSM companies and Tianjin. See *Preliminary Determination*. The PRC-wide entity received a margin of 177.62 percent. See *Preliminary Determination*. In addition, see the memorandum from Laurie Parkhill, Office Director, China/NME Group, to Barbara E. Tillman, Acting Deputy Assistant Secretary, Import Administration, *Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China (the "PRC")—Affirmative Preliminary Determination of Critical Circumstances*, dated January 28, 2005 ("*Preliminary Critical Circumstances Memorandum*") at Attachment II.

In determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports. See *Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964 (November 20, 1997). In the present case, the ITC preliminarily found a reasonable indication that an industry in the United States is materially injured by imports of magnesium metal from the PRC. See *ITC Preliminary Determination*.

Based on the ITC's preliminary determination of material injury and the preliminary dumping margins for the RSM companies, Jiangsu, Tianjin, the Section A respondent, and the PRC-wide entity, the Department preliminarily finds that there is a reasonable basis to believe or suspect that the importers knew or should have known that there was likely to be material injury by means of sales at LTFV of subject merchandise from the PRC from these respondents.

Pursuant to Section 351.206(h) of the regulations, we will not consider imports to be massive unless imports in the comparison period have increased by at least 15 percent during a relatively "short period" over imports in the base period. The Department normally considers a "relatively short period" as the period beginning on the date the proceeding begins and ending at least three months later. See section 351.206(i) of the Department's regulations. According to the regulations, "if the Secretary finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time." The Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the "base period") to a comparable period of at least three months following the filing of the petition (*i.e.*, the "comparison period"). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. See Section 351.206(c)(2) of the regulations.

Petitioners based their allegation of critical circumstances in this investigation on the increase in imports of magnesium metal that began with the filing of the antidumping duty petition on February 27, 2004, and continued through the preliminary determination on September 24, 2004. According to Section 351.206(i) of the Department's regulations, the comparison period normally should be at least three months; the Department's practice is to rely upon the longest period for which information is available from the month that the petition was filed through the date of the preliminary determination. See *Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 68 FR 66800 (November 28, 2003). Therefore, we have chosen a period of six-months, as the comparison period in determining preliminarily whether imports of the subject merchandise have been massive. A six-month period reflects the "relatively short period" commanded by the statute for determining whether imports have been massive. See Section 733(e)(1)(B) of the Act. Therefore, in applying the

six-month period, we used a base period of March 2004 through August 2004 and a comparison period of August 2003 through January 2004. The Department requested that the respondents in this investigation provide monthly shipment data for 2003 and 2004. See Letter to parties dated January 11, 2005. In addition, the Department obtained U.S. import data for subject merchandise for 2003 and 2004 as reported at the ITC's Web site, <http://dataweb.usitc.gov>.

On January 19, 2004, the Department received company-specific data from Tianjin, the RSM companies, and Jinagsu. When we compared these companies' import data during the base period with the comparison period, we found that the volume of imports of magnesium metal from Tianjin increased by more than 15 percent and the volume of imports from the RSM companies and Jiangsu decreased over the base period. See *Preliminary Critical Circumstances Memorandum at Attachment I*. Therefore, we find the imports for Tianjin, whose volume of exports increased over the base period by more than 15 percent, to be massive.

Because the PRC NME entity did not respond to the Department's antidumping questionnaire, we were unable to obtain shipment data from the PRC NME entity for purposes of our critical circumstances analysis and there is therefore no verifiable information on the record with respect to its export volumes. Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. Furthermore, Section 776(b) of the Act provides that, if a party has failed to act to the best of its ability, the Department may apply an adverse inference.

The PRC NME entity did not respond to the Department's request for information, at all. Thus, we are using adverse facts available, in accordance with section 776(a) of the Act, in preliminarily determining whether there were massive imports of merchandise produced by the PRC NME entity.

Accordingly, an adverse inference is warranted.

The only reliable source of publicly available data from which to measure whether imports from the PRC entity were massive is the aggregate import statistics from the PRC, as reported on the ITC DataWeb site (<http://dataweb.usitc.gov>). Therefore, we have used these statistics to determine whether imports from the PRC entity were massive during the comparison period. Section 776(c) of the Act provides that, when the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action ("SAA"), accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994), states that "corroborate" means to determine that the information used has probative value. See SAA at 870. The aggregate import statistics from the ITC DataWeb are publicly available data by which the Department can determine import volumes of magnesium metal into the United States on a month-by-month basis. Furthermore, this data is reported on a U.S. government Web site, enhancing its reliability.

Our analysis of the import statistics indicate that shipments in the comparison period increased by at least 15 percent over those for the base period. In comparing import statistics from the base period to the comparison period, imports of magnesium metal have increased by 21.63 percent (from 6,874,595 kgs. to 8,361,875 kgs.). See *Preliminary Critical Circumstances Memorandum at Attachment III*. This comparison is based on one of the two HTSUS numbers identified in the scope of the investigation, HTS 8104.19.00. See *Initiation of Antidumping Duty Investigation: Magnesium Metal from the People's Republic of China*, 69 FR 15293 (March 25, 2004). We did not evaluate imports under HTS 8104.30.00, the only other HTS number containing merchandise subject to this investigation, because it includes imports of subject and non-subject merchandise and, thus, cannot indicate reliably whether imports of subject merchandise have increased during the comparison period. As a result of our analysis, we determine that there were massive imports from the PRC-wide entity during the applicable relatively short period of time.

The sole Section A Respondent in this investigation, Guangling, did not respond to our request for information concerning monthly shipment data for

the purposes of determining critical circumstances. Therefore, for the reasons expressed above with respect to the PRC-wide entity, we determine that the increase in imports from Guangling were massive during the applicable relatively short period of time.

We preliminarily determine for the RSM companies and Jiangsu that no critical circumstances exist because we do not find massive imports over a relatively short period.

We will issue a final determination concerning critical circumstances for all producers/exporters of subject merchandise from the PRC when we issue our final determination in this investigation, which will be on February 16, 2005.

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than three days after the publication of the preliminary determination of critical circumstances in this proceeding. Rebuttal briefs limited to issues raised in the aforementioned case briefs will be due no later than two days after the deadline date for case briefs.

#### **Suspension of Liquidation**

With respect to Tianjin, Guangling and the PRC-wide entity for magnesium metal we will direct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all unliquidated entries of magnesium metal from the PRC that were entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determination in these investigation. In accordance with section 733(d) of the Act, with respect to the RSM companies and Jiangsu, we will make no changes to our instructions to the CBP with respect to the suspension of liquidation of all entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of our preliminary determination in the **Federal Register**.

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

Dated: January 28, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 05-2187 Filed 2-2-05; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

[A-580-839]

#### **Certain Polyester Staple Fiber From Korea: Notice of Extension of Time Limit for 2003-2004 Administrative Review**

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

**EFFECTIVE DATE:** February 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Andrew McAllister or Yasmin Bordas, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1174 or (202) 482-3813, respectively.

#### **Statutory Time Limits**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department of Commerce ("Department") to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

#### **Background**

On June 30, 2004, the Department published a notice of initiation of administrative review of the antidumping duty order on certain polyester staple fiber ("PSF") from Korea, covering the period May 1, 2003, through April 30, 2004 (69 FR 39409). The preliminary results for the antidumping duty administrative review of certain PSF from Korea are currently due no later than January 31, 2005.

#### **Extension of Time Limits for Preliminary Results**

Because the Department requires additional time to review and analyze the supplemental questionnaire response, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, January 31, 2005). Therefore, the Department is extending the time limit for completion of the preliminary results to not later than May 31, 2005, in accordance with section 751(a)(3)(A) of the Act.

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

Dated: January 28, 2005.

**Barbara E. Tillman,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 05-2085 Filed 2-2-05; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

[A-421-811]

#### **Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From the Netherlands**

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

**ACTION:** Notice of amended preliminary determination of sales at less than fair value.

**EFFECTIVE DATE:** February 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Angelica Mendoza or John Drury, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3019 or (202) 482-0195, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On December 16, 2004, the Department determined that purified carboxymethylcellulose ("CMC") from the Netherlands is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735(a) of the Tariff Act of 1930, as amended ("the Act"). See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From the Netherlands, 69 FR 77205 (December 27, 2004). The Department released disclosure materials to interested parties on December 21, 2004.

On December 27, 2004, respondent Noviant BV ("Noviant") submitted a letter to the Department alleging significant ministerial errors as defined by 19 CFR 351.224(g). On December 30, 2004, Aqualon Company ("petitioner") also submitted a letter to the Department alleging an additional ministerial error.