

Dated: April 23, 2001.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-508-809]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel

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

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

**FOR FURTHER INFORMATION CONTACT:**

Craig Matney or Andrew Covington, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1778, or (202) 482-3534, respectively.

#### The Applicable Statute and Regulations

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

#### Preliminary Determination

We preliminarily determine that pure magnesium from Israel is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins are shown in the Suspension of Liquidation section of this notice.

#### Case History

Since the publication of the notice of initiation of this investigation in the **Federal Register** (see *Initiation of Antidumping Duty Investigations: Pure Magnesium from Israel, the Russian Federation, and the People's Republic of China*, 65 FR 68121 (November 14, 2000) (*Initiation Notice*)), the following events have occurred:

On December 1, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that

imports of pure magnesium from Israel are materially injuring the United States industry. See 65 FR 77910 (December 13, 2000). On December 4, 2000, the Department requested comments from interested parties regarding the criteria to be used for model matching purposes. The parties submitted comments on our proposed model matching criteria on December 8, 2000. On December 12, 2000, the Department issued an antidumping questionnaire to Dead Sea Magnesium (DSM).

DSM submitted its initial responses to the questionnaire on January 25 and February 1, 2001. The petitioners in this case (*i.e.*, the Magnesium Corporation of America (Magcorp) and the United Steel Workers of America, Locals 482 and 8319) filed comments on the questionnaire responses on February 12, 2001. After analyzing the initial responses and the petitioners' comments, we issued a supplemental questionnaire to DSM on February 22, 2001. We received DSM's response to this supplemental questionnaire on March 15, 2001.

On February 8, 2001, the petitioners requested that the Department initiate an investigation of sales below the cost of production (COP) for DSM. On February 20, 2001, based on our review of the petitioners' below cost allegation, we initiated a cost investigation for DSM and requested that DSM respond to Section D of the antidumping questionnaire concerning COP and constructed value (CV) (see Memorandum dated February 20, 2001, to Senior Office Director Susan Kuhbach, which is on file in Import Administration's Central Records Unit (*Cost Initiation Memo*)). DSM filed its Section D response on March 21, 2001. On April 2, 2001, we issued a Section D supplemental questionnaire to DSM. DSM submitted supplemental section D information on April 10 and 16, 2001.

On March 1, 2001, the petitioners made a timely request for a postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. On March 6, 2001, the Department postponed the preliminary determination until no later than April 23, 2001 (see *Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Pure Magnesium From Israel, the Russian Federation, and the People's Republic of China and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Pure Magnesium From Israel*, 66 FR 14546 (March 13, 2001) (*Postponement Notice*)).

#### Scope of the Investigation

The scope of this investigation includes imports of pure magnesium products, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent pure magnesium, by weight (generally referred to as "pure" magnesium); and (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an "ASTM Specification for Magnesium Alloy"<sup>1</sup> (generally referred to as "off-specification pure" magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, except that mixtures containing 90 percent or less pure magnesium, by weight, when mixed with lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon slag coagulants, and/or fluorspar, are excluded.

The merchandise subject to this investigation is classifiable under 8104.11.00, 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

#### Comments on Scope

In accordance with our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit such comments within 20 calendar days of publication of the *Initiation Notice* (see 65 FR at 68123). On December 1, 2000, the petitioners requested that the Department clarify that the scope of this investigation excludes finished mixtures containing pure magnesium and/or off-specification pure magnesium prepared solely for use as a desulfurizer in steel-making, unless such mixtures contain only minimal amounts of non-magnesium materials in order to circumvent an antidumping order. On

<sup>1</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*.

December 4, 2000, an interested party in this investigation, ESM, submitted a letter supporting the petitioners' position that magnesium-based reagents should not be included in the scope of the Department's investigation. On January 30, 2001, the petitioners submitted proposed language to further clarify their intent with respect to the scope of this investigation. Based on this submission, we have revised the scope to exclude reagent magnesium.

In its December 4, 2000, submission, ESM also argued that pure magnesium ingot and granular magnesium constitute separate classes or kinds of merchandise and that the Department should exclude granular magnesium from the scope of the investigation. While ESM claimed that magnesium ingot and granular magnesium constitute separate classes or kinds of merchandise, it did not address the criteria for determining separate classes or kinds as set forth in 19 CFR 351.225(k) (*i.e.*, the physical characteristics of the products, the expectations of the ultimate purchasers, the ultimate use of the product, the channels of trade in which the product is sold, and the manner in which the product is advertised or displayed). Instead, ESM addressed the criteria relating to designation of like products. The Department determined prior to initiating this investigation that ingot and granular magnesium are a single like product (*see Initiation Notice* 65 FR at 68122 and Memorandum from the team to Richard W. Moreland, Deputy Assistant Secretary, Office of AD/CVD Enforcement, Group I entitled "Like Product and Industry Support Determinations in the Antidumping Duty Investigations of Pure Magnesium from Israel, the People's Republic of China, and the Russian Federation and the Countervailing Duty Investigation of Pure Magnesium from Israel," dated November 6, 2000 (*Like Product/ Industry Support Memo*)).

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

#### *Period of Investigation*

The period of investigation (POI) is October 1, 1999, through September 30, 2000. This period corresponds to the respondent's four most recently

completed fiscal quarters prior to the filing of the petition (*see* 19 CFR 351.204(b)).

#### *Normal Value*

##### *A. Selection of Comparison Market*

Pursuant to section 771(16) of the Act, all products produced and sold by the respondents in the comparison market that fit the definition contained in the Scope of the Investigation section of this notice and were sold during the POI comprise the foreign like product. In accordance with section 773(a)(1)(C)(ii) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (NV), we compared the respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise.

DSM reported that its home market sales of pure magnesium during the POI were less than 5 percent of its sales of pure magnesium in the United States. Therefore, DSM did not have a viable home market for purposes of calculating normal value. However, DSM reported that Germany was its largest viable third country market and, therefore, DSM reported its sales to Germany for purposes of calculating normal value. Because all of DSM's German sales failed the cost test, we have disregarded all comparison market sales (*see* the Results of the COP Test section below). Accordingly, we compared the merchandise sold in the United States to CV, in accordance with section 773(a)(4) of the Act.

##### *B. Cost of Production Analysis*

Based on a timely cost allegation, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that DSM's pure magnesium sales made in Germany were made at prices below COP (*see Cost Initiation Memo*). As a result, the Department has conducted an investigation to determine whether the respondent made sales in its comparison market at prices below the COP during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

##### *1. Calculation of COP*

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for pure magnesium, based on the sum of the cost of materials and fabrication (COM) for the foreign like product, plus amounts for interest expenses, general and administrative

expenses (G&A) and packing costs. We adjusted DSM's reported COM data by treating certain joint products as by-products rather than as co-products. This required the reallocation of manufacturing costs. We also recalculated DSM's reported interest and G&A expenses based on this revised COM. See April 23, 2001 memorandum to Neal Halper regarding adjustments to the COP and CV.

##### *2. Test of Comparison Market Sales Prices*

We compared the adjusted, weighted-average, COP for DSM to its prices for German market sales of the foreign like product. The prices were exclusive of billing adjustments, movement expenses, commissions, and other direct and indirect selling expenses. This is in accordance with 773(b) of the Act, and was done to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

##### *3. Results of the COP Test*

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determine such sales to have been made in substantial quantities within an extended period of time. *See also* section 773(b)(2)(B) of the Act. The Department next compares prices from the comparison market to the POI average COP in order to determine whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time. *See* section 773(b)(2)(D) of the Act.

We found that all of DSM's comparison market sales were made within an extended period of time at prices less than the COP. In addition, the prices did not provide for the recovery of costs within a reasonable period of time. Therefore, because there were no comparable comparison market sales in the ordinary course of trade, we compared EP/CEP to CV in accordance with section 773(a)(4) of the Act. *See* the section on Calculation of Normal Value Based on Constructed Value below.

### C. Calculation of Normal Value Based on Comparison Market Prices

Because all of DSM's sales of comparable merchandise in the comparison market failed the cost test, we did not calculate NV based on comparison market prices.

### D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where normal value cannot be based on comparison market sales, normal value may be based on the constructed value. Accordingly, because all sales of comparison products failed the COP test, we based NV on CV.

Sections 773(e)(1) and (e)(2)(A) of the Act provide that the CV shall be based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling expenses, G&A, profit, and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the Calculation of COP section, above.

Because DSM does not have any above cost comparison market sales of subject merchandise, the Department has not determined selling expenses, G&A expenses, and profit under section 773(e)(2)(A) of the Act, which requires sales by the respondent in question in the ordinary course of trade in a comparison market. In situations where we cannot calculate selling expenses, G&A expenses, and profit under section 773(e)(2)(A), section 773(e)(2)(B) of the Act sets forth three alternatives. The Statement of Administrative Action at 840 (H.R. Doc. 103-316 (1994)) states that "section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods."

Section 773(e)(2)(B)(i) specifies that selling expenses, G&A expenses, and profit may be calculated based on "actual amounts incurred by the specific exporter or producer \* \* \* on merchandise in the same general category" as subject merchandise. DSM also produces alloy magnesium, which could be considered as the same general category of merchandise as pure magnesium. However, there is insufficient information on the record for us to determine the selling and G&A expenses or the profit rate for DSM's sales of alloy magnesium.

Alternative (ii) of this section provides that selling expenses, G&A expenses, and profit may be calculated based on "the weighted average of the actual amounts incurred and realized by {other} exporters or producers that are subject to the investigation." However, because there are no other respondents

in this case, the Department cannot calculate selling expenses, G&A expenses, and profit based on alternative (ii) of this section.

Therefore, the only statutory option available to the Department to calculate the CV selling expenses, G&A expenses, and profit for DSM is under section 773(e)(2)(B)(iii). Alternative (iii) of this section allows the Department to use "any other reasonable method" to calculate the CV selling expenses, G&A expenses, and profit, provided that the amount for profit does not "exceed the amount normally realized by exporters or producers \* \* \* in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise."

With respect to selling expenses, lacking more suitable information, we calculated CV selling expenses based on DSM's reported comparison market sales. We calculated G&A based on DSM's reported information as applied to a revised COM (see the Calculation of COP section, above), as we have no reason to believe DSM's reported G&A expenses are unreliable as a result of all of its comparison market sales being made at prices below the cost of production.

We calculated amounts for the CV profit based on the profit earned by Dead Sea Periclase (DSP). DSP produces periclase (*i.e.*, magnesium oxide) and other magnesium-based compounds. These magnesium-based products, like subject merchandise, are manufactured from the Dead Sea brine. Periclase is primarily used to manufacture refractories and other flame retardant materials. The other magnesium-based compounds are used in pharmaceuticals, food mineral supplements, rubbers, plastics, and to produce specialty steel for transformers. Because we do not have any further information regarding profit on the same general category of merchandise, we have not been able to quantify the "profit cap" described in section 773(e)(2)(B)(iii) of the Act. The SAA, at 841, anticipates such situations and directs that where the Department cannot calculate a profit cap, the Department may apply 773(e)(2)(B)(iii) of the Act on the basis of the facts available. Therefore, we have not calculated a "profit cap" for the instant determination. As facts available, we have used DSP's profit rate of 3.12 percent in calculating CV as a reasonable surrogate for DSM's home market profit.

In addition, we added U.S. packing costs. Lastly, we made adjustments to CV for differences in circumstances of

sale (COS) (*i.e.*, imputed credit) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for both EP and CEP sales.

### Fair Value Comparisons

To determine whether sales of pure magnesium from Israel to the United States were made at less than fair value, we compared the export price (EP) or constructed export price (CEP) to NV, as described in the Export Price and Normal Value sections, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs and CEPs to the NVs.

### Date of Sale

DSM reported that it made a number of its sales based on term contracts in which the terms of sale (*e.g.*, price, quantity, delivery schedule) purportedly were set at the time the contract was signed. In an April 19, 2001 supplemental questionnaire, the Department requested that DSM provide further information on these sales and report the contract date and other necessary information for all term contract sales negotiated during the POI. The current due date for this questionnaire response is May 2, 2001. For purposes of this preliminary determination, the Department has used the reported invoice date as the date of sale. However, we intend to examine DSM's response to our outstanding supplemental questionnaire and consider this issue further for the final determination.

### Export Price

In accordance with section 772 of the Act, we based U.S. price on EP for certain sales. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Consistent with this definition, we found that some of the respondent's sales during the POI were EP sales. For these sales, we calculated EP based on prices charged to the first unaffiliated customer in the United States.

As the starting U.S. price, we relied on the reported gross unit price. These prices were delivered and FOB prices to unaffiliated customers in the United States. In accordance with section 772(c)(2) of the Act, we reduced the EP, where appropriate, by billing adjustments and movement expenses, including foreign inland freight, foreign

brokerage charges, insurance, international freight and U.S. inland freight.

#### Constructed Export Price

For certain sales, we used CEP methodology in accordance with sections 772(b), (c) and (d) of the Act, because sales to the first unaffiliated purchaser in the United States took place after importation. Consistent with these definitions, we found that some of the respondent's sales during the POI were CEP sales. For these sales, we calculated CEP based on prices charged to the first unaffiliated customer in the United States.

As the starting U.S. price, we relied on the reported gross unit price. These prices were delivered and FOB prices to unaffiliated customers in the United States. In accordance with section 772(c)(2) of the Act, we reduced the CEP, where appropriate, by billing adjustments and movement expenses, including foreign inland freight, foreign brokerage charges, insurance, international freight and U.S. inland freight. Also, where appropriate, we deducted direct and indirect selling expenses related to commercial activity in the United States. Pursuant to section 772(d)(3) of the Act, where applicable, we made an adjustment for CEP profit.

#### Currency Conversions

We made currency conversions in accordance with section 773A(a) of the Act.

#### Verification

In accordance with section 782(i) of the Act, we intend to verify information to be used in making our final determination.

#### Suspension of Liquidation

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

The weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin (in percent)
Dead Sea Magnesium .....	12.68
All-others .....	12.68

#### ITC Notification

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

#### Disclosure

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

#### Public Comment

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

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

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral

presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination within 75 days of this preliminary determination.

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

Dated: April 23, 2001.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01-10686 Filed 4-27-01; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-122-838]

#### Notice of Initiation of Antidumping Duty Investigation: Certain Softwood Lumber Products From Canada

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

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

**FOR FURTHER INFORMATION CONTACT:** Valerie Ellis or Charles Riggle at (202) 482-2336 and (202) 482-0650, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

#### Initiation of Investigation

#### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are references to the provisions codified at 19 CFR part 351 (2001).

#### The Petition

On April 2, 2001, the Department received a petition filed in proper form by the Coalition for Fair Lumber Imports Executive Committee,<sup>1</sup> the United

<sup>1</sup> The Coalition for Fair Lumber Imports Executive Committee is comprised of Hood Industries, International Paper Company, Moose River Lumber Company, New South Incorporated, Plum Creek Timber Company, Polatch Corporation, Seneca Sawmill Company, Shearer Lumber Products,