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International Trade Administration
Washington, D.C. 20230

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A-570-896
A-821-819
Scope Review
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November 9, 2006

MEMORANDUM FOR: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Director
AD/CVD Operations, Office 6

Wendy J. Frankel
Director
China/NME Group, Office 8

RE: Pure Magnesium from the People's Republic of China (A-570-832), Magnesium Metal from the People's Republic of China (A-570-896), and Magnesium Metal from Russia (A-821-819): Final Ruling in the Scope Inquiry on Russian and Chinese Magnesium Processed in Canada

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SUMMARY

On July 19, 2005, US Magnesium LLC (US Magnesium), petitioner in the investigations of pure magnesium from the People's Republic of China (PRC) and magnesium metal from the PRC and the Russian Federation (Russia), filed a request for scope rulings. In its request, US Magnesium asked the Department of Commerce (Department) to determine whether pure and alloy magnesium processed in Canada, France, or any third country from pure magnesium ingots originally produced in Russia or the PRC and exported to the United States are within the scope of the antidumping duty orders on pure magnesium from the PRC, magnesium metal from the PRC or magnesium metal from Russia (collectively, the Orders).[1]

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[1] See Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation, 60 FR 25691 (May 12, 1995) (Pure Magnesium from the PRC); Notice of Antidumping Duty Order: Magnesium Metal From the Russian Federation, 70 FR 19930 (April 15, 2005) (Magnesium from Russia); and Notice of Antidumping Duty Order: Magnesium Metal From the People's Republic of China, 70 FR 19928 (April 1

Because the product description did not provide a sufficient basis for making a determination, and because the issue could not be resolved by reference to the descriptions of the product contained in the petition, we determined that formal scope inquiries were required. On September 2, 2005, in response to US Magnesium's request, the Department initiated formal scope inquiries. On August 31, 2006, the Department issued its preliminary scope ruling. See Memorandum from Barbara Tillman and Wendy Frankel to Stephen Claeys, Pure Magnesium from the People's Republic of China (A-570-832), Magnesium Metal from the People's Republic of China (A-570-896), and Magnesium Metal from Russia (A-821-819): Preliminary Decision in the Scope Inquiry on Russian and Chinese Magnesium Processed in Canada (August 31, 2006) (Preliminary Ruling). In the ruling on material processed by Timminco Limited (Timminco), the Canadian producer named in US Magnesium's request, the Department preliminarily determined that Timminco's processing in Canada constituted a substantial transformation of the material it imports from Russia and the PRC, and therefore its alloy magnesium extrusion billets exported to the United States are of Canadian origin and thus not covered by the Orders.

On September 1, 2006, the Department established a schedule for parties to submit comments and rebuttal comments. On September 25, 2006, we received comments from US Magnesium and Timminco. On October 2, 2006, we received comments from US Magnesium, Northwest Alloys, Inc. and Alcoa, Inc. (collectively, Alcoa), and Timminco. On November 1, 2006, Timminco re-submitted its October 2, 2006 rebuttal comments to correct inadvertent bracketing mistakes.

In the instant document, we address the scope inquiries as they apply to processing performed in Canada by Timminco, while processing in France will be addressed at a later date. In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that the processing of pure magnesium ingots into alloy magnesium extrusion billets by Timminco in Canada constitutes substantial transformation for antidumping purposes. Therefore, we recommend finding that the following alloy magnesium extrusion billets produced in Canada by Timminco are of Canadian origin and thus not covered by the scope of the Orders: [
]. This recommendation is based on the finding that Timminco's process of manufacturing these alloy magnesium extrusion billets constitutes a substantial transformation of the Russian and Chinese pure magnesium ingot feedstock, thereby changing the country of origin to Canada.

APPLICABLE REGULATIONS

We have conducted this inquiry pursuant to 19 CFR 351.225(k), as requested by US Magnesium. A determining factor of whether a product falls within the scope of an antidumping duty order is the country of origin of that product. The Department does not routinely analyze whether parties are attempting to circumvent an existing order, absent an allegation of circumvention filed in accordance with the statute and regulations. Scope decisions properly entail both a description of the product, and the identification of the country from which the product originates. See Slater Steels Corp. v. United States, 297 F. Supp. 2d 1351, 1354-55 (CIT 2003) (holding the

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2005) (Magnesium Metal from the PRC).

Department acted properly by not collapsing two companies located in different countries in one antidumping investigation because an antidumping proceeding covers subject merchandise produced in one country), aff'd, 159 Fed. App. 1007; 2005 U.S. App. LEXIS 28124 (Fed. Cir. December 6, 2005). Thus, in order to determine whether a product imported into the United States falls within the scope of an antidumping duty order, the Department must determine not only whether the scope language covers that particular product, but also whether the product is produced in the country against which the antidumping order is issued. Traditionally, the Department has applied a substantial transformation analysis to determine the country of origin of a product.[2] If the product is substantially transformed in a third country, the country of transformation becomes the country of origin.

SCOPE OF THE ORDERS

The Department's order on Magnesium from Russia defines the scope of the order as follows:

> The merchandise covered by this order is magnesium metal (also referred to as magnesium), which includes primary and secondary pure and 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 of 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 order includes blends of primary and secondary magnesium.
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> The subject merchandise includes the following pure and 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: (1) products that contain at least 99.95 percent 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 magnesium, by weight (generally referred to as "pure" magnesium); and (3) chemical combinations of magnesium and other material(s) in which the magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, whether or not conforming to an "ASTM Specification for Magnesium Alloy."

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[2] See, e.g., Notice of Final Determination of Sales at Not Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbon from the Republic of Korea, 69 FR 17645 (April 5, 2004) (TTR from Korea); Memorandum from the Team to Richard W. Moreland, Deputy Assistant Secretary, Final Scope Ruling; Antidumping Duty Order on Pure Granular Magnesium from the People's Republic of China; ESM Group Inc. (August 20, 2002) (Granular Scope Ruling); Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled, Flat-Rolled Carbon-Quality Steel Products From Taiwan, 65 FR 1095 (January 7, 2000) (Prelim CR Steel from Taiwan); Notice of Final Determination of Sales at Less Than Fair Value: 3.5" Microdisks and Coated Media Thereof from Japan, 54 FR 6433 (February 10, 1989) (Microdisks from Japan); Erasable Programmable Read Only Memories (EPROMs) From Japan; Final Determination of Sales at Less than Fair Value, 51 FR 39680 (October 30, 1986) (EPROMs from Japan).

The scope of this order excludes: (1) magnesium that is in liquid or molten form; and (2) 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, nephaline syenite, feldspar, alumina (Al203), 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 order is currently classifiable under items 8104.11.00, 8104.19.00, 8104.30.00, and 8104.90.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

The Department's order on Magnesium Metal from the PRC defines the scope of the order as follows:

The merchandise covered by the order is magnesium metal, which includes 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, 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"[4] and thus are outside the scope of the existing

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[3] This second exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000-2001 investigations of magnesium from China, Israel, and Russia. See Notice of 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); Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel, 66 FR 49349 (September 27, 2001); Notice of 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.

[4] 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.

antidumping orders on magnesium from the PRC (generally referred to as "alloy" magnesium).

The scope of the order 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;"[5] (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, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[6]

The merchandise subject to this order is currently 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 subject merchandise is dispositive.

Finally, the Department's order on Pure Magnesium from the PRC defines the scope of the order as follows:

The product covered by these orders is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of these orders. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses:

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[5] 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), and Antidumping Duty Order: Pure Magnesium in Granular Form From the People's Republic of China, 66 FR 57936 (November 19, 2001).

[6] 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 Notice of 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); Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel, 66 FR 49349 (September 27, 2001); Notice of 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.

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium);

(2) Products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and

(3) Products (generally referred to as "off-specification pure" magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of these orders are alloy primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2 mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1 mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (i.e., length or diameter) of 1 inch or less.

The products subject to these orders are classifiable under subheadings 8104.11.00, 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

ANALYSIS

Applicability of Scope Ruling

As a general matter, US Magnesium argues that the Department's preliminary ruling is contrary to its statutory mandate to prevent circumvention and evasion of AD duties. US Magnesium argues that, in making country-of-origin determinations, the Department must protect the integrity of antidumping duty orders. According to US Magnesium, the Department's Preliminary Ruling destroys the integrity of the relevant orders on magnesium from Russia and the PRC and opens the door to circumvention. Accordingly, US Magnesium argues that the Department should reverse its Preliminary Ruling and include Timminco's alloy magnesium extrusion billets within the orders on magnesium from Russia and the PRC.

In the alternative, if the Department maintains its preliminary ruling, US Magnesium states that the Department should specify that its determination only applies to Timminco and does not otherwise permit Russian and Chinese magnesium processed in third countries to enter the United States free of antidumping duties. US Magnesium also urges the Department to require Timminco to certify that its alloy magnesium extrusion billets are to be used only as feedstock for its U.S. affiliate's extrusion operations.

In response to US Magnesium's concerns about circumvention, Timminco states that it is the only Canadian producer with the capability to produce alloy magnesium extrusion billets, and that its Aurora plant is the only extruder of magnesium in North America. Throughout this proceeding, Timminco has offered to certify that the billets it imports from Canada are used only as feedstock for its operations at its facility in Colorado.

The Department generally does not rely on end-use to define the scope of covered merchandise. Therefore, we will not be requiring that Timminco certify that its billets are sold toward a specific end-use. However, this final scope ruling applies exclusively to the specific types of alloy magnesium extrusion billets, produced in Canada by Timminco from pure magnesium imported from Russia and the PRC. The remainder of this scope ruling details the Department's analysis for the final scope ruling.

Analysis Criteria

As in our Preliminary Ruling, our analysis for the purposes of a final scope ruling concerns whether the processing that takes place in Canada constitutes a substantial transformation so as to confer a new country of origin on the pure magnesium originally imported into Canada from Russia and the PRC. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea, 71 FR 29310 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 3 (Sawblades from Korea). We are basing our final analysis on a set of criteria that have been used by the Department in past scope inquiries, as well in as in the

Preliminary Ruling.[7] Because the Department must examine numerous factors and render a decision based on the totality of its findings, we are evaluating this case with respect to the criteria that are most applicable to the facts present in these inquiries. We applied the following criteria in our final evaluation of whether Timminco's processing constitutes a substantial transformation of the pure magnesium ingots it imports from Russia and the PRC:

1. Class or Kind of Merchandise/Like Product
2. Nature/Sophistication of Processing
3. Physical/Mechanical/Chemical Properties & Essential Component
4. Cost of Production
5. Level of Investment
6. Use (of Purchaser)

The following discussion of each of these elements addresses the comments submitted by parties on these criteria subsequent to the Preliminary Ruling.

1. Class or Kind of Merchandise/Like Product

US Magnesium argues that the Department discounted the importance of the fact the there is no change in class or kind in the processing performed by Timminco. According to US Magnesium, under a substantial transformation test the Department must analyze whether the processing results in a new and different article. US Magnesium cites to TTR from Korea, in which the Department stated that class or kind is consistently examined and emphasized. In that case, the Department stated that when the upstream and downstream products are different classes or kinds of merchandise, the Department will generally find substantial transformation. US Magnesium notes that in the Preliminary Ruling, the Department stated that class or kind is not a controlling factor. US Magnesium argues that this approach does not accord sufficient weight to class or kind in that it does not reflect a fair reading of the Department's precedent. US Magnesium argues that if no change in class or kind has occurred, the Department should not make a ruling of substantial transformation based on the other factors of its analysis. US Magnesium refers to the like product determination from the Department and the U.S. International Trade Commission (ITC) in the investigation of Magnesium from Russia, and concludes that in the past the Department and the ITC have both considered pure and alloy magnesium to be one like product and one class or kind of merchandise. US Magnesium states that the Department's preliminary scope ruling is inconsistent with the prior findings of the Department and the ITC. Accordingly, US Magnesium urges the Department to give more weight in the final ruling to class or kind and continue to find that pure and alloy magnesium are one class or kind of merchandise.

Timminco argues that the Department correctly found that class or kind is not outcome-determinative, and is not a controlling factor in scope inquiries. In addition, Timminco states that

[7] See, e.g., TTR from Korea; Granular Scope Ruling; Prelim CR Steel from Taiwan; Microdisks from Japan; EPROMs from Japan.

the Department appropriately considered a totality of the circumstances when analyzing the facts of these inquiries. However, Timminco also argues that the Department should have treated pure magnesium ingots and alloy magnesium extrusion billets as separate classes or kinds of merchandise. Timminco maintains that these two products are separate classes or kinds of merchandise, and that the overlap in uses noted by the Department and the ITC do not apply to Timminco's products and operations in question.

Timminco argues that, in its Preliminary Ruling, the Department correctly found class or kind not to be outcome-determinative, and that the Department was correct in weighing this factor together with the totality of the other elements examined. Timminco notes that in TTR from Korea, the Department stated that class or kind is "generally" indicative of substantial transformation. In this case, Timminco argues that the Department's reference to TTR from Korea specifically illustrates that a substantial transformation analysis does not rest solely on class or kind. Timminco also notes that in recent cases, including the Granular Scope Ruling and Sawblades from Korea, the Department stated that its analysis was based on the totality of the circumstances of the case. See Granular Scope Ruling and Sawblades from Korea.

Timminco also argues that its alloy magnesium extrusion billets are a different class or kind than pure magnesium ingots because these products are covered by separate orders on magnesium from the PRC. Timminco notes that in the Tin Mill Scope Ruling, the Department found the upstream and downstream products to be separate classes or kinds of merchandise. See Memorandum from Richard O. Weible to Barbara E. Tillman, Re: Final Scope Ruling - Antidumping Duty Order on Tin Mill Products from Japan; Metal One America, Inc., January 7, 2005 (Tin Mill Scope Ruling). In addition, Timminco argues that the rationale for the Department's finding in the Magnesium from Russia investigation that pure magnesium and alloy magnesium are separate classes or kinds of merchandise does not apply to Timminco, and therefore that determination is inapposite. Finally, Timminco disagrees with US Magnesium that the Department should draw comparisons between the instant inquiries and the Russian investigation, stating that the analysis is confined to the facts present in the instant case.

Department's Position:

We agree with US Magnesium that class or kind is an important factor in determining whether a product has or has not been substantially transformed. However, it is also the Department's practice to evaluate cases based on the entirety of the evidence presented by parties. In order for the Department to make a ruling of substantial transformation absent a change to the class or kind of merchandise, the other factors of our analysis must sufficiently suggest a substantial transformation. As we stated in the Tin Mill Scope Ruling, "the Department must examine numerous factors and render a decision based on the totality of its findings." See Tin Mill Scope Ruling at 9. As reflected in the Department's use of the word "generally" in the TTR from Korea decision, a determination on substantial transformation does not hinge solely upon whether downstream products are found to be within the same "class or kind" of merchandise as the upstream product from which they are produced.

As in the Preliminary Ruling, we continue to find that there is only one class or kind of merchandise in this case. This decision is based on the fact that during the investigation of Magnesium from Russia, both the Department and the ITC found that pure and alloy magnesium constituted a single class or kind of merchandise and a single like product. This scope inquiry does not alter that determination.

However, we also continue to find that we must weigh this factor with the remaining elements of our analysis and the facts of the case. The fact that the upstream and downstream merchandise are the same class or kind may suggest, on its own, that no substantial transformation has occurred. Yet in several cases, as discussed in our Preliminary Ruling, the Department has found that the remainder of the evidence suggests that a substantial transformation has occurred without a change in class or kind. In this case, we find that other factors considered in our analysis continue to be strongly indicative of a substantial transformation. Therefore, for this final scope ruling, we continue to find that the weight of the evidence supports a finding of substantial transformation.

2. Nature/Sophistication of Processing

US Magnesium argues that the Department overstated the complexity of Timminco's processing in several respects. First, US Magnesium maintains that while DC casting is more sophisticated than gravity casting, it is not a complex operation because it is an old technology and common in the magnesium industry. Second, US Magnesium contends that a multi-step production process does not equate to a complex process, for complexity is a function of the difficulty, and not the number, of production steps. Third, US Magnesium argues that the Department erred in its consideration of the fact that Timminco's processing is [ ]. According to US Magnesium, the process is necessarily simple because when [ ] systems are used in the production process, employees execute operations by [ ].

US Magnesium also argues that the most relevant precedent for this factor is the Granular Scope Ruling, and that the Department should reconsider the alleged complexity of Timminco's operations in the context of that case. US Magnesium contends that, in the Preliminary Ruling, the Department mischaracterized the process in question in the Granular Scope Ruling as minor. US Magnesium argues that, while grinding is not a substantial transformation, it is not as simple as described by the Department in its Preliminary Ruling. For example, that case involved atomization and particle reduction, and was therefore more complex than a simple grinding process.

Finally, US Magnesium argues that the Department should compare the process by which alloy magnesium extrusion billets are produced to that which is used to produce pure magnesium ingots. US Magnesium also urges the Department to compare Timminco's DC casting with US Magnesium's DC casting operations. According to US Magnesium, these comparisons will reveal the relative simplicity of Timminco's operations.

Timminco argues that the Department correctly found Timminco's DC casting process to be complex and sophisticated, both in and of itself and in comparison with gravity casting. Timminco states that the Department correctly rejected as irrelevant US Magnesium's contention that Timminco did not distinguish its operations from those of US Magnesium because the DC

casting processes employed by the two companies are vastly different. Timminco also notes that its production process is complex due in part to its multiple stages, as the Department found in the Preliminary Ruling and other cases such as the Tin Mill Scope Ruling. Timminco argues that the fact that its operations are [ ] is indicative of their complex nature, as US Magnesium's argument ignores the investment in [ ] necessary to [ ]. Timminco argues that by US Magnesium's logic, hand-ladling molten pure magnesium in gravity casting is more sophisticated because it is [ ].

Timminco also responds to US Magnesium's contentions regarding Timminco's production process in the context of the Granular Scope Ruling, stating that, in that case, US Magnesium argued that grinding magnesium is a simple process compared with the production of pure magnesium ingot. Timminco maintains that, in the instant inquiries, US Magnesium argues that the grinding of the magnesium is a complex process, and that the manufacture of alloy magnesium extrusion billets is not sufficiently more complex than the Department's simplified treatment of the grinding process. Thus, Timminco states that the Department was correct in distinguishing the facts of this case from those of the Granular Scope Ruling, the latter involving a more simplistic production process.

Department's Position:

We disagree with US Magnesium's contention that we must use the production process for pure magnesium ingots as a frame of reference for our analysis of Timminco's production process. At issue here is the sophistication of Timminco's Canadian operations, and not the sophistication of the operations used to produce the primary pure magnesium input. In other substantial transformation inquiries, the Department has focused its analysis on the production process of the producer in question. See, e.g., Tin Mill Scope Ruling, in which the Department examined respondent Metal One/Holasa's production process, without comparison to the production process employed by petitioner United States Steel Corporation. In addition, because we are focusing our analysis on Timminco's operations in Canada, we disagree with US Magnesium's argument that we should compare Timminco's DC casting operations with the DC casting performed by US Magnesium.

We continue to view Timminco's processing as a complex and sophisticated process, and we disagree with US Magnesium's arguments on this issue. First, US Magnesium argues that DC casting is an old technology and is commonplace in the magnesium industry. However, these statements do not contradict a claim of sophistication, as operations that are employed by a number of producers in any industry may still be sophisticated in spite of their ubiquity. Next, US Magnesium contends that complexity is a function of the difficulty, and not the number, of steps. In our Preliminary Ruling, we noted that Timminco's processing was complicated in part because it was a multi-step process. This point was made to distinguish the process from processing involving a simple production process present in basic assembly operations. We maintain that the numerous production steps are an *indication* of a complex process, not the factor that singularly denotes complexity. See, e.g., Tin Mill Scope Ruling. US Magnesium is correct in noting that complexity is partially a function of the difficulty of the steps in a

production process. However, on this point, we continue to find that the record evidence supports our determination that Timminco's processing is complicated and sophisticated. We find that the record evidence submitted by Timminco suggests that the individual phases of Timminco's DC casting are complex, involving numerous variables and requiring a number of controls, such as those involving the [ ]. In addition, the safety requirements necessitated by the processing of volatile molten magnesium heightens the complexity of each step in the process. In addition, Timminco's employees who work on DC casting operations [

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US Magnesium also states that the Department's analysis was flawed with regard to the fact that Timminco's processing is largely [ ]. According to US Magnesium, because Timminco's process is [ ], employees must [ ] to DC cast magnesium, and therefore the production process is simple. However, we disagree with US Magnesium's position on this issue. That Timminco's processes involve enough variables that they must be [ ] indicates that the process is complex; that is, the complexity of the operation does not allow the DC casting to be performed [ ], and therefore requires that multiple processes have a certain degree of [ ].

Finally, we maintain our position that Timminco's processing is more complex than that involved in the Granular Scope Ruling. In that case, US Magnesium did argue, and the Department accepted, the point that the grinding process was not a substantial transformation, a position informed in part by an analysis of the production process. Given the evidence on the record of the instant proceeding, we continue to find that Timminco's production process is complex, substantial, and sophisticated based on the above factors, and also in comparison with the facts presented in the Granular Scope Ruling.

3. Physical/Mechanical/Chemical Properties & Essential Component

US Magnesium argues that the changes to the pure magnesium ingots do not necessarily result in a substantial transformation. First, US Magnesium states that in the Granular Scope Ruling, the Department found that the considerable mechanical changes were not indicative of a substantial transformation. In that case, the pure magnesium underwent changes to properties such as reactivity and density. While the Department's Preliminary Ruling stated that the changes to Timminco's product are essential to the performance of the downstream product, US Magnesium states that this is true of virtually any processing and does not distinguish Timminco's alloy magnesium extrusion billets. Finally, US Magnesium argues that the Department's use of SSSS from the UK is misplaced, as that case did not involve processing of products within the same "class or kind" that resulted in a substantial transformation. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the United Kingdom, 64 FR 30688 (June 8, 1999) (SSSS from the UK).

In addition, US Magnesium contends that, in its determination of substantial transformation, the Department cites cases where changes to the characteristics of a product changed the class or

kind of the merchandise. US Magnesium notes that in SSSS from the UK, Tin Mill Scope Ruling, and Round Wire from Canada, the degree of processing was sufficient to remove the downstream product from the "class or kind" of the upstream product. See SSSS from the UK, Tin Mill Scope Ruling, and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324 (April 9, 1999) (Round Wire from Canada). Thus, US Magnesium argues that these cases are not relevant precedent for the instant case, where there is no change to class or kind.

Timminco argues that the Department correctly analyzed the facts in determining that Timminco's production process imparts the required mechanical properties that allow the billets to be successfully extruded. According to Timminco, the Department accurately concluded that this fact supports a finding of substantial transformation. Timminco states that the Department correctly recognized that the physical, mechanical, and chemical properties of the alloy magnesium extrusion billets were distinct from those of the pure magnesium ingot feedstock. Finally, Timminco argues that the Department was correct in stating that Timminco's processing imparts mechanical changes that are important to the use of the product, and that the essential properties of Timminco's alloy magnesium extrusion billets are imparted through DC casting.

Department's Position:

We continue to find that the mechanical changes imparted by Timminco's DC casting are indicative of a substantial transformation. In its arguments on class or kind, US Magnesium cites the ITC's domestic like product determination, in which the ITC found that "pure and alloy magnesium share the same, basic characteristics, notwithstanding differences in strength, ductility, workability, corrosion resistance, density, and castability." See US Magnesium's September 25, 2006 Comments at 6. This reference illuminates a central point of our position on the changes imparted by DC casting. That is, several of these properties are the specific characteristics that distinguish Timminco's alloy magnesium extrusion billets from pure magnesium ingots and render them suitable for extrusion. This fact has been noted by Timminco throughout this proceeding, and was not contested by US Magnesium. Indeed, the above-referenced quote from the ITC specifically stated certain characteristics that distinguish alloy magnesium from pure magnesium. In addition, as we established in the Preliminary Ruling and in the "Class or Kind" section above, the fact that the upstream and downstream products are in the same class or kind of merchandise or like product does not preclude a finding of substantial transformation.

US Magnesium is correct that the properties of the magnesium in the Granular Scope Ruling were altered by the processing. In that case, the Department ruled that there was no substantial transformation despite these changes. In our analysis in the instant case, we have examined the properties imparted to Timminco's alloy magnesium extrusion billets and found that, on their own, some of these properties do not directly point toward a finding of substantial transformation. That is, the changes to the physical (i.e., shape, size, and form) and chemical (i.e., alloy composition) properties are, by themselves, insufficient for suggesting a substantial transformation. This is consistent with the analysis used by the Department in the Granular Scope Ruling. However, as in the Preliminary Ruling, we find that the mechanical changes to the magnesium (such as [ ]), imparted by Timminco's DC casting process, are significant. The mechanical properties of Timminco's alloy

magnesium extrusion billets are fundamentally distinct from those of the pure magnesium ingots in terms of [ ]. Naturally, virtually all processing changes the input product to some extent and renders changes that distinguish it from the output product. In the instant case, not all of the changes, by themselves, indicate a substantial transformation of the material (especially in the context of the single class or kind, as discussed above); however, when evaluated in toto, these changes do result in the creation of a new and distinct article. Finally, while US Magnesium is correct that SSSS from the UK and Round Wire from Canada involved a change to the class or kind, we have stated throughout this ruling that substantial transformation determinations do not rest solely on the upstream and downstream products belonging to the same class or kind of merchandise. Therefore, viewed in totality with the rest of the evidence, and especially as they pertain to the final properties of the alloy magnesium extrusion billets, we continue to view the mechanical changes as supporting evidence of substantial transformation.

4. Cost of Production

US Magnesium argues that the Department's treatment of Timminco's reported cost of production of alloy magnesium extrusion billets is flawed. First, US Magnesium argues that the Department's consideration of value-added requires that the analysis take into consideration the market value of the product. According to US Magnesium, Timminco's cost buildup reported to the Department [ ]. US Magnesium states that it has submitted evidence on the record that a fair market value for Timminco's alloy magnesium extrusion billets is closer to $[ ] per pound, a figure based on Timminco's past U.S. Customs entry documentation. Accordingly, US Magnesium argues that the Department should rely on a value-added analysis, and not a cost-based analysis, in its substantial transformation test.

In addition, US Magnesium maintains that the Department should not use Timminco's cost to process pure magnesium ingots purchased at below market value, and should adjust the cost of the input to account for the dumped merchandise imported into Canada. US Magnesium states that the Department should incorporate an adjustment of Timminco's purchase price of pure magnesium ingots by applying the 108.26 percent antidumping duty as specified in the order on Magnesium Metal from the PRC. US Magnesium contends that, if the Department uses the input price as reported by Timminco, this will result in an artificially high percentage of cost incurred by Timminco's processing.

Timminco argues that the Department should continue to base its cost analysis on its actual cost of processing, and not on the [ ]. US Magnesium maintains that the Department must consider a market value in analyzing Timminco's cost. In response, Timminco states that the Department was correct in partially basing its Preliminary Ruling on Timminco's cost of production, and not on Timminco's [ ]. Timminco states further that the Department is not bound in its analysis to rely on "market values" when performing a substantial transformation analysis. Timminco argues that, for its final ruling, the Department should continue to rely on Timminco's cost of processing and reject US Magnesium's request for a "market value" test. Should the Department require the use of "market values" in its cost analysis, Timminco argues that the

Department has available the price quoted to Timminco by [ ].

Timminco argues that there is no basis for the Department to adjust Timminco's cost of processing to account for antidumping duties. Timminco states that antidumping duties only apply to imports into the United States. Timminco also states that its Canadian supplier of pure magnesium ingot charges [ ] to that of its Chinese and Russian suppliers, which demonstrates that Timminco's processing [ ]. Therefore, Timminco argues that the Department should reject US Magnesium's request that the Department add antidumping duties to Timminco's purchase price of imported pure magnesium ingots to its cost analysis.

Finally, Timminco argues that the Department correctly analyzed the cost data and concluded that Timminco's cost of production was between [ ] percent of the cost of pure magnesium ingot. As a result, Timminco argues that this finding unequivocally supports the Department's finding of substantial transformation. Timminco states that the Department appropriately rejected US Magnesium's own costs as a benchmark for evaluating Timminco's cost. However, Timminco objects to the Department's deductions to its reported costs, and states that the adjustments made by the Department were part of its manufacturing process and as a result should be included in the final cost calculations. The adjustments included [

].

Department's Position:

Prior to the Preliminary Ruling, US Magnesium had submitted a version of its argument regarding Timminco's reported $[ ]/pound "market value" of alloy magnesium extrusion billets. In our Preliminary Ruling, we stated that we had based our analysis of Timminco's costs not on value-added, but on reported cost-of-production data. We did not rely on value-added as a basis for our analysis because Timminco sells the alloy magnesium extrusion billets exclusively to its [ ]. As a result, we requested cost of production data from Timminco, and we based our analysis of Timminco's cost of processing on the data it provided. We found no reason to believe that the data provided by Timminco were not reliable, and we were able to compare and connect the data to Timminco's audited financial statements. Therefore, for the purposes of our final ruling, we are continuing to use Timminco's reported costs as the basis of our analysis of this element.

We disagree with US Magnesium's suggestion that we should adjust Timminco's cost figures based on an application of the equivalent dumping margin to Timminco's purchase price of pure magnesium ingots. First, the dumping margin established in the investigation of Magnesium Metal from the PRC applies only to imports of Chinese magnesium into the United States. Second, even if we were to make such an adjustment, it would only apply to those billets produced by Timminco using pure magnesium ingots purchased from Chinese suppliers. Finally, if we were to make this adjustment, we would still have cost of production figures for Timminco that, in the context of the rest of the record evidence, appear to be significant.

While parties have submitted arguments and rebuttal arguments on this issue, we do not find that US Magnesium's position provides sufficient basis for disregarding Timminco's reported cost figures in favor of a "market-price" based analysis for the purposes of this final ruling. We find no compelling argument to depart from our use of the cost information that we requested, and Timminco supplied, during the course of this proceeding. The Act requires the Department to conduct a value-based analysis in circumvention inquiries, but it does not require this analysis in country-of-origin inquiries. In past scope inquiries, the Department has analyzed a third-country producer's cost of production. See, e.g., TTR from Korea, in which the Department based its substantial transformation, in part, on the respondent's cost of production. In addition, Timminco notes that there have been no true [ ] in the United States that could form a representative basis for comparison, as Timminco is the only supplier and consumer of alloy magnesium extrusion billets in North America.

Finally, we disagree with Timminco's argument that the Department should not have deducted certain items in the calculation of cost of production in the Preliminary Ruling. The deductions were made to isolate, to the extent possible, the costs that only directly applied to Timminco's production of alloy magnesium extrusion billets in Canada, and represent a conservative estimate of what the Department views as the costs incurred in Timminco's manufacturing process. Because this is a country-of-origin determination and not a sales-below-cost investigation in the context of a less-than-fair-value investigation or administrative review, we are restricting the items of our cost analysis to those that were incurred in Canada, as discussed in the Preliminary Ruling. Further, for this final ruling, we have revised our calculations of Timminco's cost of production to account for slight rounding errors discovered by the Department. See Memorandum to the File from Dana S. Mermelstein, Magnesium Scope Inquiries: Cost of Production and Level of Investment Analysis for Timminco Ltd. (November 9, 2006) (Timminco Cost and Investment Analysis Memo), a public version of which is on file in the Central Records Unit, Room B-099 of the Main Commerce Building (CRU).

While the Department does not have an established threshold for determining whether a certain cost figure, by itself, represents substantial transformation, in the instant case we are viewing the cost numbers in the context of the totality of the evidence. Here, the costs of production, analyzed in conjunction with the totality of the record evidence, reinforce a conclusion of substantial transformation.

5. Level of Investment

US Magnesium argues that Timminco's reported investment does not support a finding of substantial transformation. US Magnesium states that the Department inappropriately considered Timminco's investment in relation to Timminco's total magnesium division assets rather than in relation to the investment necessary to produce pure magnesium ingots, which is far more expensive than the investment needed to set up DC casting equipment.

In addition, US Magnesium argues that the Department did not consider the general investment necessary to convert pure magnesium ingots into alloy magnesium extrusion billets and compare this hypothetical investment to Timminco's reported actual level of investment. US Magnesium states that it could establish a facility to produce alloy magnesium extrusion billets at its plant in

Utah, including modifications to its existing facilities and equipment, for [ ] the figure cited by Timminco. Finally, US Magnesium argues that, in evaluating the level of investment, the Department must consider not only the magnitude of Timminco's actual investment in its operations, but also the magnitude of investment that would be necessary to perform comparable operations.

Timminco states that the Department was correct in its Preliminary Ruling that Timminco's information provided an adequate basis for analyzing Timminco's investment in its facilities used to manufacture alloy magnesium extrusion billets. In addition, Timminco agrees with the Department's preliminary conclusion that Timminco's investment figures were indicative of a significant production process. Timminco argues that the Department is not required to consider the investment made by US Magnesium in its DC casting facility in Utah. Timminco argues that this is irrelevant because, in its substantial transformation analysis, the Department must look at the level of investment made in the foreign country by the respondent, not that of the domestic investment made by the petitioner.

Further, Timminco repeats its arguments that it has invested heavily in proprietary technology and highly specialized equipment. Timminco states that, in past cases, the Department has considered a high level of investment as an indicator of a sophisticated production process. For example, Timminco notes that in Sawblades from Korea, the Department found that processing which requires highly specialized equipment is indicative of a significant investment.

Department's Position:

As we stated in the Preliminary Ruling, we do not have a threshold for considering a certain level of investment to be significant in a substantial transformation analysis. As with the other factors, we examine investment-related activities in the context of the other components of our analysis.

We disagree with US Magnesium's argument that it is inappropriate to examine Timminco's investment in its DC casting operations in relation to its total magnesium division assets. As we stated in our Preliminary Ruling, comparing Timminco's DC casting investment relative to its total magnesium division assets allows us to ascertain the relative significance of the investment Timminco made in its DC casting operations. In our analysis of Timminco's investment, our objective was not to compare Timminco's operations with those of other producers; rather, we analyzed whether Timminco's operations in Canada resulted in a substantial transformation of the pure magnesium ingots.

In this scope analysis, we have not compared Timminco's investment with the investment incurred by US Magnesium in establishing a DC caster, nor in comparison to a hypothetical investment needed to establish DC casting operations. As stated in our Preliminary Ruling, our analysis concerns the investment that Timminco made in its Canadian facility in which it manufactures alloy magnesium extrusion billets. Our analysis here is consistent with the Department's practice. For example, in Sawblades from Korea, the Department examined the investment that the firms in question made in establishing their manufacturing operations. During this proceeding, we analyzed the investment data submitted by Timminco. Accordingly, for this final scope ruling, we have continued to use these data as the basis of our investment analysis, and continue to find that the investment that Timminco made in its DC casting

operations supports a finding of substantial transformation. See Timminco Cost and Investment Analysis Memo.

6. Use (of Purchaser)

US Magnesium argues that the central issue with respect to use is whether purchasers of pure magnesium can use alloy magnesium extrusion billets in their operations. US Magnesium argues that alloy magnesium extrusion billets can be substituted for pure magnesium ingots in the U.S. market. US Magnesium maintains that U.S. purchasers, other than Timminco, could use Timminco's alloy magnesium extrusion billets, and that there is no technical reason why the alloy billets cannot be used in place of pure magnesium ingots. While Alcoa states that this substitution is not possible due to the size, shape, and cost of the billets, US Magnesium states that Alcoa's arguments are not valid.

Timminco argues that pure magnesium ingots and alloy magnesium extrusion billets are not interchangeable products, and that the Department was correct in preliminarily finding that pure magnesium ingots could not be used in extrusion applications. While US Magnesium states that the aluminum alloying and steel desulfurization industries can use the alloy magnesium extrusion billets produced by Timminco, Timminco notes that its processing creates [ ] of the product that are not required by alloying and desulfurization applications. Timminco also argues that the key properties of its billets are designed specifically for extrusion purposes, and that these properties are absent in pure magnesium ingots. In addition, Timminco states that U.S. producers of aluminum (such as Alcoa) have submitted arguments stating that they could not use Timminco's billets due to the [ ] of the billets, and that US Magnesium is incorrect in stating that these producers could simply cut them into smaller sizes.

Department's Position:

In this case, a major factor in our determination of substantial transformation is that the mechanical properties of Timminco's alloy magnesium extrusion billets are significantly different from those of pure magnesium ingots. These mechanical changes, imparted exclusively by Timminco's DC casting, allow the alloy magnesium extrusion billets to be successfully extruded. Therefore, the alloy magnesium extrusion billets have a use distinct from that of the pure magnesium ingots. We agree with US Magnesium that, from strictly a feasibility standpoint, alloy magnesium extrusion billets could be used in aluminum alloying and steel desulfurization applications. While the cost added by the processing would likely be prohibitive, we acknowledge that it is technically feasible. However, the main issue we are addressing here, in light of the mechanical changes to the magnesium imparted by Timminco's processing, is whether pure magnesium ingots could be used in place of alloy magnesium extrusion billets in downstream extruding operations. The evidence on the record indicates that pure magnesium ingots and alloy magnesium extrusion billets are not interchangeable. We based this determination on comparisons of the properties of extrusion-grade alloy magnesium versus the properties of gravity-cast pure magnesium ingots (such as [ ]). Accordingly, we continue to find that Timminco's alloy magnesium extrusion billets have a use distinct from that of the pure magnesium ingots that Timminco imports from Russia and the PRC. This factor, together with our considerations of the production process,

cost, investment, and mechanical changes, has informed our conclusion that a substantial transformation has occurred.

CONCLUSION

The factors discussed above suggest that Timminco's processing is costly, sophisticated, and results in a new and different product with mechanical properties and uses distinct from that of the input material. We acknowledge that the input and output remain in the same "class or kind" of merchandise. However, having considered the entirety of the evidence on the record in light of our evaluation criteria, we have concluded that Timminco's alloy magnesium extrusion billets represent a substantial transformation of the pure magnesium ingots imported from Russia and the PRC from which the billets are made. The processing performed in Canada by Timminco imparts distinct mechanical changes to the pure magnesium imported from Russia and the PRC, and these mechanical changes are directly related to the product's use in extrusion operations. Accordingly, we determine that Timminco's processing constitutes substantial transformation and that the alloy magnesium extrusion billets are a product of Canada, and thus not included within the scope of the Orders.

RECOMMENDATION

Based on our analysis of the record and the comments submitted by the parties, we recommend that the Department determine that pure magnesium imported from Russia and the PRC and processed in Canada by Timminco into the types of alloy magnesium extrusion billets listed above is substantially transformed as a result of such processing and, thus, the resulting alloy magnesium extrusion billets are considered a product of Canada and not subject to the antidumping duty Orders. In addition, we recommend determining that this scope ruling applies solely to the types of extrusion billets listed above, produced in Canada by Timminco, and does not apply to any other types of pure and alloy magnesium produced in Canada from pure magnesium imported from Russia and the PRC. If you agree, we will issue this decision and notify the interested parties.

✓ Agree _____ Disagree

Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

11/9/06
Date