



UNITED STATES DEPARTMENT OF COMMERCE
 International Trade Administration
 Washington, D.C. 20230

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A-570-864

Scope Inquiry
 Public Document
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MEMORANDUM TO: Stephen Claeys
 Deputy Assistant Secretary
 for Import Administration

THROUGH: Wendy J. Frankel
 Director
 AD/CVD Enforcement, Office 8

Robert Bolling
 Program Manager
 AD/CVD Enforcement, Office 8

FROM: Hua Lu
 Case Analyst
 AD/CVD Enforcement, Office 8

RE: Pure Magnesium in Granular Form from the People's Republic of
 China

SUBJECT: Final Scope Ruling: ESM Group Inc.

Summary

On April 11, 2006, the Department of Commerce ("the Department") received a scope ruling request from the ESM Group Inc. ("ESM"). See ESM's April 11, 2006, Request for Scope Ruling ("Scope Request"). ESM requests a scope ruling that U.S.-origin pure magnesium that is exported to and atomized in the People's Republic of China ("PRC") and re-exported to the United States in atomized or granular form is not subject to antidumping duties. See Scope Request. On July 3, 2006, US magnesium LLC ("Petitioner") submitted comments regarding the Scope Request from ESM.

Background

On November 19, 2001, the Department published the antidumping duty order on pure magnesium in granular form from the PRC. See Antidumping Duty Order: Pure Magnesium in Granular Form From the People's Republic of China, 66 FR 57936 (November 19, 2001) ("Order").



The Department defined the scope of the order against pure granular magnesium from the PRC as including "imports of pure magnesium products, regardless of chemistry, including, without limitation, raspings, granules, turnings, chips, powder, and briquettes."

The subject merchandise includes the following items: (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 primary magnesium, by weight (generally referred to as "pure" magnesium); (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" (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.

Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials of which the Department is aware used to make such excluded reagents are: Lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nepheline, syenite, feldspar, aluminum, alumina (Al₂O₃), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of antidumping duties. See Order, 66 FR at 57936.

Summary of the Scope Request

ESM describes its product as pure magnesium ingots of U.S. origin that are atomized in the PRC and returned to the United States. ESM stated that the atomizing process consists of melting pure magnesium ingots and then passing a stream of molten magnesium through a gas nozzle where a pressurized inert gas converts the stream into a spray of molten magnesium. Additionally, ESM provided purchase and shipping documentation which showed that it purchased pure magnesium ingots produced in the United States which it shipped to the PRC where the ingots are processed into atomized particles. Further, ESM asserted that the Chinese processor will not substitute magnesium from other sources for the U.S.-origin ingots and it will not supplement the resulting atomized magnesium produced from the U.S.-origin magnesium ingots with additional magnesium or any other materials or additives from other sources.

ESM contends that although U.S. Customs and Border Protection ("CBP") has classified "ground magnesium powder/atomized magnesium powder" under subheading 8104.30.0000 of the Harmonized Tariff Schedule of the United States ("HTS") which is the subheading for subject merchandise, this classification ruling does not address the country of origin for antidumping duty purposes.

The Department defined the scope of the order against pure granular magnesium from the PRC as including "imports of pure magnesium products, regardless of chemistry, including, without limitation, raspings, granules, turning, chips, powder, and briquettes."

The subject merchandise includes the following items: (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 primary magnesium, by weight (generally referred to as "pure" magnesium); (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" (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.

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In addition, ESM states that the Department applies its own substantial transformation analysis in order to determine the country of origin for scope rulings and the scope rulings have not always been consistent with CBP rulings.

Further, ESM cites the Department's determination in a previous scope ruling concluding that pure magnesium in granular form which is ground in Canada from pure magnesium ingots produced in the PRC was within the scope of the order against Chinese granular magnesium, because the Department determined the process of grinding the ingots into granular magnesium was not a substantial transformation; therefore, the country of origin remained the PRC. See Final Scope Ruling: Antidumping Duty Order on Pure Granular Magnesium from The Peoples's Republic of China; ESM Griup Inc. (August 20, 2002) ("2002 Scope Ruling"). ESM contends that the same logic applies in this case and the country of origin of the magnesium subject to its scope inquiry is the United States.

On July 3, 2006, Petitioner submitted a letter supporting ESM's request. Petitioner states the Department should determine that the atomized granular pure magnesium at issue is not subject to antidumping duties when imported into the United States because the primary magnesium is manufactured in the United States and the atomization process does not substantially transform the magnesium. Petitioner argues that CBP should require the U.S. importer to certify that the atomized granular magnesium imported from the PRC was made from pure magnesium manufactured in the United States, and requests that the Department include this certification requirement in its ruling and subsequent instructions to CBP.

Legal Framework

The Department examines scope requests in accordance with the Department's scope regulations. See 19 CFR 351.225 (2002). On matters concerning the scope of an antidumping duty order, the Department first examines the description of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations) and the International Trade Commission ("ITC"). See 19 CFR 351.225(k)(1). This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. See 19 CFR 351.225(d).

Where the descriptions of the merchandise are *not* dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: i) the physical characteristics of the merchandise; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; iv) the channels of trade in which the product is sold; and v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

For this inquiry, the Department evaluated ESM's request in accordance with 19 CFR 351.225 (k)(1) because it finds that the description of the product contained in the petition, the initial investigation, the determinations by the Secretary (including prior scope determinations) and the ITC are, in fact, dispositive with respect to ESM's atomized pure magnesium. Therefore, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225 (k)(2). Rather, the issue in this inquiry is the country of origin of ESM's atomized pure magnesium.

Analysis

The Department applies its substantial transformation analysis in order to determine the country of origin for antidumping scope purpose. See Certain Cold-Rolled Carbon Steel Flat Products from China, 66 FR, 22183 (May 3, 2001):

In determining whether substantial transformation has occurred for the purposes of establishing the country of origin, we examine whether the degree of processing or manufacturing in the PRC resulted in a new and distinct or different article...The Department has also stated in prior determinations that it is not bound by the country-of-origin and substantial transformation determinations made by other agencies of the U.S. Government... Rather, our determination is made on the basis of reviewing the totality of the circumstances presented to the Department solely for the purpose of the antidumping proceeding. When an input from country A is further processed in country B, without any change in the class or kind of merchandise taking place, the Department normally will consider the product exported to the United States as originating in country A.

As applied to this case, the input from country A is the magnesium ingot from the United States, and the further processing in country B is the atomization of the ingots in the PRC. The question then is whether the atomization process in the PRC changes the country of origin of the magnesium from the United States to the PRC.

In a previous scope ruling concerning this antidumping order, the Department concluded that pure magnesium in granular form that is ground in Canada or another third country from pure magnesium ingots produced in the PRC was within the scope of the order covering Chinese granular magnesium. See 2002 Scope Ruling. In the 2002 scope ruling, the Department found that the Chinese magnesium was not substantially transformed because:

- (1) the grinding process was not significant enough to create a new and different article;
- (2) the grinding of magnesium ingot into granular magnesium did not result in different physical or chemical properties;
- (3) in a more recent investigation, we treated pure magnesium in ingot and granular form as a single class or kind of merchandise;
- (4) magnesium ingots and granular magnesium were interchangeable, particularly in the desulfurization segment of grinding and other segments where there were overlapping sales;
- (5) there was no specific evidence on the record that the value-added in the grinding process was significant enough to effect a substantial transformation, thus creating a new and different article.

For this scope ruling, we have found a similar fact pattern to that found in the 2002 Scope Ruling. However, in this case the input product is U.S.-origin magnesium ingots which are

atomized in the PRC and then returned to the United States. Using the same criteria as the 2002 Scope Ruling, first we have determined the atomization process does not alter the chemical properties of the magnesium. Second, the atomization process only changes the pure magnesium to a different size and shape, but does not result in different physical properties. Therefore, we find that atomized magnesium is not a new and distinct or different article. Third, in the investigations on pure magnesium in all forms from Israel and Russia, we treated pure magnesium ingot and pure magnesium in granular form as a single class or kind of merchandise. See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from the Russian Federation, 66 FR 49347 (September 27, 2001) and Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel, 66 FR 49349 (September 27, 2001). Therefore, we treat atomized magnesium and pure magnesium in granular form as a single class or kind of merchandise. Fourth, as discussed in the 2002 Scope Ruling, pure magnesium in ingot form and pure magnesium in other physical forms are interchangeable, which means atomized pure magnesium is not a new product. Lastly, relative to the overall process for producing the subject merchandise, we find that this process is not significant enough to warrant a finding that it constitutes substantial transformation for antidumping purposes. Thus, we have determined that the country of origin of the pure magnesium remains the United States.

Recommendation

Based upon the above analysis, we recommend the Department find that the U.S.-origin pure magnesium ingots atomized in the PRC are not substantially transformed by the atomization process and, therefore, continue to be U.S. pure magnesium. Consequently, they are not subject to the antidumping duty order on pure magnesium in granular form from the PRC.

Additionally, we recommend requiring the U.S. importer to provide a certification that the imported atomized pure magnesium from the PRC is of U.S. origin in order to distinguish this merchandise from that of Chinese origin. See certificate attached.

✓

Agree

Disagree

Stephen J. Claeys
Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

10/18/06
Date

Attachment